

IN THE
Supreme Court of the United States

JILL SWENSON, *et al.*,

Petitioners,

v.

WISCONSIN STATE LEGISLATURE, *et al.*,

Respondents.

SYLVIA GEAR, *et al.*,

Petitioners,

v.

WISCONSIN STATE LEGISLATURE, *et al.*,

Respondents.

DEMOCRATIC NATIONAL COMMITTEE, *et al.*,

Petitioners,

v.

WISCONSIN STATE LEGISLATURE, *et al.*,

Respondents.

TO THE HONORABLE BRETT M. KAVANAUGH ASSOCIATE JUSTICE OF THE SUPREME
COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE SEVENTH CIRCUIT

**APPENDIX TO RESPONDENT'S OPPOSITION TO
EMERGENCY APPLICATION TO VACATE STAY
VOLUME II OF III**

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TABLE OF CONTENTS

| | |
|---|----------|
| Wisconsin Elections Commission Memorandum In Support Of Its Motion To Dismiss, <i>Edwards v. Vos</i> , No. 3:20-cv-340, Dkt. 15 (W.D. Wis. May 25, 2020)..... | App. 1 |
| Wisconsin Elections Commission’s <i>Voter Registration Guide</i> | App. 10 |
| Notice of Withdrawal of Attorney, <i>Democratic Nat’l Comm. v. Bostelmann</i> , Nos. 3:20-cv-249 <i>et al.</i> , Dkt. 56 (W.D. Wis. Mar. 26, 2020)..... | App. 12 |
| Notice of Withdrawal of Attorney, <i>Democratic Nat’l Comm. v. Bostelmann</i> , Nos. 3:20-cv-249 <i>et al.</i> , Dkt. 57 (W.D. Wis. Mar. 26, 2020)..... | App. 14 |
| Notice of Withdrawal of Attorney, <i>Democratic Nat’l Comm. v. Bostelmann</i> , Nos. 3:20-cv-249 <i>et al.</i> , Dkt. 58 (W.D. Wis. Mar. 26, 2020)..... | App. 16 |
| Washington Post, <i>The Wisconsin Primary Had Extraordinarily High Turnout</i> , dated April 15, 2020..... | App. 18 |
| Wisconsin Elections Commission’s <i>Canvass Results for 2020 Spring Election and Presidential Preference Vote – 4/7/2020</i> | App. 24 |
| Wisconsin Elections Commission’s <i>Unofficial Spring Election Turnout-34.3%-4/14/2020</i> | App. 34 |
| Wisconsin Elections Commission’s <i>April 2020 Absentee Voting Report</i> | App. 37 |
| Deposition of Meagan Wolfe, dated July 3, 2020..... | App. 61 |
| Deposition of Meagan Wolfe, dated July 16, 2020..... | App. 142 |
| DNC Plaintiffs’ Second Amended Complaint, <i>Democratic Nat’l Comm. v. Bostelmann</i> , Nos. 3:20-cv-249, Dkt. 198-1 (W.D. Wis. Apr. 30, 2020)..... | App. 256 |
| <i>Swenson</i> Plaintiffs’ First Amended Complaint, <i>Swenson v. Bostelmann</i> , No. 3:20-cv-459, Dkt. 37 (W.D. Wis. June 23, 2020)..... | App. 296 |
| Deposition of Robert Spindell, dated July 7, 2020..... | App. 367 |
| Wisconsin Elections Commission’s April 7 Election and Next Steps Memorandum from Meagan Wolfe..... | App. 408 |

| | |
|--|----------|
| Wisconsin Elections Commission’s April 18, 2020 Special Teleconference Meeting Notes..... | App. 419 |
| City of Madison’s <i>CORRECTED Polling Place Listing for April 7</i> | App. 422 |
| Leung, <i>et al.</i> , <i>No Detectable Surge in SARS-CoV-2 Transmission due to the April 7, 2020 Wisconsin Election</i> (Apr. 29, 2020)..... | App. 429 |
| Wisconsin Elections Commission’s <i>Absentee Ballot Report – May 12, 2020 Special Election for Congressional District 7</i> | App. 437 |
| Wisconsin Elections Commission’s <i>May 1, 2020 Voter Registration Statistics</i> | App. 440 |
| Wisconsin Elections Commission’s <i>More Than 69,000 Absentee Ballots Already Returned for May 12 Special Election</i> | App. 443 |
| WEC Defendants’ Status Report, <i>Democratic Nat’l Comm. v. Bostelmann</i> , Nos. 3:20-cv-249 <i>et al.</i> , Dkt. 227 (W.D. Wis. June 25, 2020)..... | App. 447 |
| Wisconsin Elections Commission’s <i>Update on Commission Actions 5/27- COVID-19</i> | App. 501 |
| Wisconsin Elections Commission’s <i>WEC Prepares For Fall Elections By Approving Block Grants To Municipalities and Mailing to Voters - COVID-19</i> | App. 504 |
| Court of Appeals Order Granting Emergency Stay (Sept. 28, 2020)..... | App. 509 |
| Transcript of Injunctive Hearing Before District Court (Aug. 5, 2020)..... | App. 512 |
| Wisconsin Elections Commission’s <i>Absentee Ballots</i> | App. 742 |
| Deposition of Neil Albrecht, dated July 23, 2020..... | App. 746 |
| Deposition of Kris Teske, dated July 28, 2020..... | App. 778 |

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

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|---|---|
| <p>DEMOCRATIC NATIONAL COMMITTEE, <i>et al.</i>, Plaintiffs, v. MARGE BOSTELMANN, <i>et al.</i>, Defendants, and REPUBLICAN NATIONAL COMMITTEE, <i>et al.</i>, Intervening Defendants.</p> | <p>Civil Action No. 3:20-cv-249-wmc</p> |
| <p>SYLVIA GEAR, <i>et al.</i>, Plaintiffs, v. MARGE BOSTELMANN, <i>et al.</i>, Defendants, and REPUBLICAN NATIONAL COMMITTEE, <i>et al.</i>, Intervening Defendants.</p> | <p>Civil Action No. 3:20-cv-278-wmc</p> |
| <p>REVEREND GREG LEWIS, <i>et al.</i>, Plaintiffs, v. MARGE BOSTELMANN, <i>et al.</i>, Defendants, and REPUBLICAN NATIONAL COMMITTEE, <i>et al.</i>, Intervening Defendants.</p> | <p>Civil Action No. 3:20-cv-284-wmc</p> |

**SECOND AMENDED COMPLAINT OF PLAINTIFFS DEMOCRATIC NATIONAL
COMMITTEE AND DEMOCRATIC PARTY OF WISCONSIN
FOR DECLARATORY AND INJUNCTIVE RELIEF**

**SECOND AMENDED COMPLAINT OF DNC AND DPW FOR DECLARATORY AND
INJUNCTIVE RELIEF - 1**

Plaintiffs DEMOCRATIC NATIONAL COMMITTEE and DEMOCRATIC PARTY OF WISCONSIN file this Second Amended Complaint for Declaratory and Injunctive Relief against Defendants MARGE BOSTELMANN, JULIE M. GLANCEY, ANN S. JACOBS, DEAN KNUDSON, ROBERT F. SPINDELL, JR., and MARK L. THOMSEN, in their official capacities as Wisconsin Elections Commissioners, and against Intervening Defendants REPUBLICAN NATIONAL COMMITTEE, REPUBLICAN PARTY OF WISCONSIN, and the WISCONSIN LEGISLATURE, and allege as follows:

NATURE OF THE CASE

1. Wisconsin's April 7, 2020 Spring Election was a voting rights and public health fiasco. People throughout the nation were horrified by images of thousands of Wisconsin citizens forced to stand in long lines for hours in order to cast their ballots, many wearing masks, gloves, and other protective gear as they congregated together to vote in the midst of the worst pandemic in over a century. Virtually every other jurisdiction in the United States has thus far postponed in-person voting since mid-March because of the obvious public health risks. But due to Wisconsin's ongoing political dysfunction, the apparent desire of some to use a public health emergency to suppress the vote, and other factors, the State proceeded with the April 7 election in the face of scathing criticism from throughout the country. Equally shocking was the breakdown in Wisconsin's absentee-voting process, with thousands of voters never even receiving their requested ballots in time to vote by election day, thus forcing them either to go to the polls during the pandemic and risk exposure to the COVID-19 virus or be disenfranchised altogether.

2. Plaintiffs support in-person voting options that can be conducted in a safe and secure manner. That did not occur in Wisconsin's April 7 election. The decision to proceed with the election and the manner in which it was conducted have been branded a "travesty" and "an

abomination, a civic tragedy that never should have occurred”;¹ “insane”;² “cruel”;³ “brazen”;⁴ “nightmarish” and “scandalous”;⁵ “appalling” and “terrifying”;⁶ “a dangerous spectacle that forced voters to choose between participating in an important election and protecting their health”;⁷ and “[o]ne of the most shameful chapters in American’s long history of voter suppression,” requiring voters “to make an unconscionable choice between their lives and their citizenship.”⁸ These harms fell disproportionately and with especially brutal impact on voters of color and economically disadvantaged voters.⁹ The title of one article has urged: “Never Forget Wisconsin.” *Supra* n.8.

¹ Ned Foley, *Worrying about Wisconsin, While Waiting for Its Election Returns*, Medium (Apr. 12, 2020), <https://medium.com/@Nedfoley/worrying-about-wisconsin-while-waiting-for-its-election-returns-9dc94334c8a6>.

² The Editorial Board, *You Shouldn’t Have to Risk Your Life to Vote*, N.Y. Times (Apr. 3, 2020), <https://www.nytimes.com/2020/04/03/opinion/wisconsin-primary-coronavirus.html>.

³ Leah Litman, *The Supreme Court’s Wisconsin Decision Is a Terrible Sign for remaining*, The Atlantic (Apr. 7, 2020), https://www.theatlantic.com/ideas/archive/2020/04/supreme-courts-hypocrisy-going-get-americans-killed/609598/?utm_source=newsletter&utm_medium=email&utm_campaign=atlantic-daily-newsletter&utm_content=20200407&silverid-ref=MzEwMTU3MjAxODkzS0.

⁴ Zak Cheney-Rice, *Wisconsin Supreme Court Justices Voted Absentee Before Making Everyone Else Vote in Person*, New York Magazine (Apr. 14, 2020), <https://nymag.com/intelligencer/2020/04/wisconsin-voters-braved-covid-while-justices-voted-absentee.html>.

⁵ Ed Gilgore, *After Its Disturbing Election Day, What Happens Next in Wisconsin?*, New York Magazine (Apr. 8, 2020), <https://nymag.com/intelligencer/2020/04/after-a-disturbing-election-day-now-what-in-wisconsin.html>.

⁶ Miela Fetaw, *‘I Could Get the Virus If I Vote’: Wisconsin’s Terrifying Election Day*, The Daily Beast (Apr. 7, 2020), <https://www.thedailybeast.com/people-are-going-to-die-in-this-election-wisconsin-votes-amid-coronavirus-pandemic-1>.

⁷ Astead W. Herndon & Alexander Burns, *Voting in Wisconsin During a Pandemic: Lines, Masks and Plenty of Fear*, N.Y. Times (Apr. 7, 2020), <https://www.nytimes.com/2020/04/07/us/politics/wisconsin-election-coronavirus.html>.

⁸ Sherrilyn Ifill, *Never Forget Wisconsin*, Slate (Apr. 8, 2020, 6:46 PM), <https://slate.com/news-and-politics/2020/04/never-forget-wisconsin.html>.

⁹ See Fetaw, *supra* n.6; Scott Bauer, *Milwaukee’s black community hit hard by COVID-19 pandemic*, Wisconsin State Journal (Mar. 28, 2020),

3. On April 28, three weeks after the election, the Wisconsin Department of Health Services reported that 52 people who voted in person or worked the polls on April 7 have tested positive for COVID-19 thus far. These numbers may grow.¹⁰

4. Plaintiffs filed this suit on March 18, 2020 in an effort to avoid this calamity and ensure that Wisconsin voters—many of whom are their members and constituents—would be able to fully exercise their constitutional right to vote in the midst of this unprecedented public health crisis. Although this Court denied plaintiffs’ preliminary injunction motion in some respects (without prejudice), in other respects it granted important relief that enabled tens of thousands of voters to register and cast their ballots. And although the Court’s preliminary injunction was further narrowed on appeal by the U.S. Court of Appeals for the Seventh Circuit and the Supreme Court, one of the most important parts of this Court’s injunctive relief survived intact: the Court’s order enjoining defendants “from enforcing the requirement under Wis. Stat. § 6.87(6) that absentee ballots must be received by 8:00 p.m. on election day to be counted,” and extending that deadline for receipt of absentee ballots by six days, provided that such ballots were mailed and postmarked on or before election day. *See Democratic Nat’l Comm. v. Bostelmann*, Civ. No. 20-cv-249-wmc, 2020 WL 1638374, at *22 (W.D. Wis. Apr. 2, 2020), *clarified*, ECF No. 122 (W.D. Wis. Apr. 3, 2020), *stayed in part sub nom. Democratic Nat’l Comm. v. Republican Nat’l Comm.*,

https://madison.com/wsj/news/local/health-med-fit/milwaukees-black-community-hit-hard-by-covid-19-pandemic/article_8cf82962-0e17-5044-aba9-ecdd9b54b65a.html; David Bowen, *Wisconsin’s primary subjected people of color to yet another Covid-19 disadvantage*, *The Guardian* (Apr. 8, 2020), <https://www.theguardian.com/us-news/2020/apr/08/wisconsin-coronavirus-black-communities-inequality>.

¹⁰ Associated Press, *The Latest: 52 coronavirus cases may be linked to spring election* (Apr. 28, 2020), <https://apnews.com/b1503b5591c682530d1005e58ec8c267>. “Several” of these people reported additional possible exposures, so it is unclear whether the election itself caused them to contract the virus. If they already had contracted the virus prior to the election, they may also have spread it to others at the polls on April 7.

Nos. 20-1538 & 20-1546 (7th Cir. Apr. 3, 2020), *stayed in part*, No. 19A1016, 2020 WL 1672702 (U.S. Apr. 6, 2020). The defendants and intervening defendants did not challenge this extension of the ballot-receipt deadline, and the Supreme Court relied on this extension in denying “an additional extension, which would allow voters to mail their ballots after election day.” 2020 WL 1672702, at *2.

5. This Court’s April 2 preliminary injunction extending the ballot-receipt deadline from April 7 to April 13 appears to have resulted in over 142,000 Wisconsin citizens being able to cast their ballots by election day—ballots that would otherwise have been rejected and, thus, voters who would have been disenfranchised.¹¹

6. Although the disastrous April 7 Spring Election is now past, several more elections will be held in Wisconsin in 2020, culminating in the November 3 General and Presidential Election. Contrary to the Wisconsin Legislature’s false claims in a recently filed motion to dismiss, *see* ECF No. 197, plaintiffs’ original and amended complaints clearly and repeatedly ask for injunctive relief both with respect to the April 7 election *and* for “**any election that occurs while this crisis continues.**” ECF No. 55 ¶ 7 (emphasis added); *see id.* at 19, pts. C-E (asking for various injunctive relief to extend “**until the COVID-19 crisis is over**”) (emphasis added); *see also id.* ¶ 44 (seeking injunctive relief for “the upcoming April 7, 2020 [election], **as well as other elections taking place during the COVID-19 crisis**”) (emphasis added). To reiterate, plaintiffs seek injunctive relief applicable to *any and all elections*—up to and including the November 3

¹¹ The data regarding ballots that arrived between April 8 and April 13 can be found at <https://elections.wi.gov/blog>; *see also* <https://electionlawblog.org/?p=110746>. As of 8 p.m. on April 7, there had been 990,129 absentee ballots returned. <https://elections.wi.gov/blog>. WEC reports that, ultimately, 1,132,923 absentee ballots were returned and counted, suggesting that 142,794 ballots were able to be counted that would not otherwise have been. *See* <https://elections.wi.gov/sites/elections.wi.gov/files/2020-04/Ballot%20Data%20as%20of%20April%2017%202020.pdf>.

election—that are held while the COVID-19 crisis continues in Wisconsin and until that crisis is over.

7. Plaintiffs in this Second Amended Complaint challenge the same statutory requirements for registering to vote and absentee voting that they challenged in their prior pleadings, *see* ECF Nos. 1, 55, and add an additional challenge regarding early in-person absentee voting and in-person voting on election day. The previously challenged provisions are: (a) the requirement that polling places receive absentee ballots by 8:00 p.m. on election day for ballots to be counted (“Election Day Receipt Deadline”), Wis. Stat. § 6.87; (b) the requirement that for an absentee ballot to be counted, the absentee voter must have a witness certify to the truth of the information the voter provides on the ballot, *id.* § 6.87(2); (c) the requirement that copies or scans of photo identification accompany absentee ballot applications, *id.* § 6.86; (d) the requirement that copies of proof of residence accompany electronic and by-mail voter registration, *id.* § 6.34; and (e) the by-mail and electronic registration deadlines in *id.* § 6.28(1), which require the registration to “be delivered to the office of the municipal clerk or postmarked no later than the 3rd Wednesday preceding the election.” The additional challenge is to the defendants’ failure to provide sufficient financial, personnel, and other resources to ensure an adequate number of early in-person absentee voting sites and election-day polling places throughout the State to accommodate in-person voters in a safe and secure manner. These challenges are collectively referred to as the “challenged matters” or “challenged provisions.”

8. Each of the challenged matters, on its own, continues to pose significant risks to voters seeking to exercise their right to vote in the remaining 2020 elections (and any other election that occurs while the pandemic continues). Collectively, these challenged matters will ensure that many Wisconsin citizens (a disproportionate number of whom are voters of color or live in

economically disadvantaged communities) will be unable to vote or will have their validly cast ballots discarded. Without injunctive relief from this Court, thousands of Wisconsin voters *at minimum* will likely be disenfranchised again, as occurred in the April 7 election. Or, as also happened in the April 7 election, many other voters will refuse to be disenfranchised, will vote in-person, and will risk exposure to the COVID-19 virus. These are irreparable injuries.

9. Accordingly, plaintiffs file this Second Amended Complaint to ensure that Wisconsin voters—many of whom are their members and constituents—are able to fully exercise their right to vote in the midst of this unprecedented crisis. Plaintiffs seek expanded injunctive relief enjoining the Election Day Receipt Deadline and allowing all ballots postmarked¹² on or before an election day but received within a minimum of 10 days thereafter to be counted; enjoining in part the requirement that a voter submitting an absentee ballot have a witness certify to the accuracy of the voter’s information on the ballot; suspending in part the requirements that copies of documents and photo IDs be included with voter registration and absentee ballot applications; extending the deadline for electronic and by-mail voter registration to the Friday before an election, or whenever in-person absentee voting ends; and requiring defendants to take immediate steps to ensure there will be an adequate number of early in-person absentee voting sites and election-day polling places throughout the State to accommodate in-person voters in a safe and secure manner.

¹² The term “postmark” refers to any type of imprint applied by the U.S. Postal Service to indicate the location and date the Postal Service accepts custody of a piece of mail, including bar codes, circular stamps, or other tracking marks. Where a ballot does not bear a postmark date, it should be presumed to have been mailed on or before election day unless the preponderance of the evidence demonstrates it was mailed after election day.

JURISDICTION AND VENUE

10. Plaintiffs bring this action under 42 U.S.C. §§ 1983 and 1988 to redress the deprivation, under color of state law, of a right secured by the United States Constitution.

11. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1343 because the matters in controversy arise under the Constitution and laws of the United States.

12. This Court has personal jurisdiction over the defendants, the Commissioners of the Wisconsin Elections Commission (WEC), who are sued in their official capacities only. The intervening defendants have voluntarily submitted to the Court's jurisdiction.

13. Venue is proper in the U.S. District Court in the Western District of Wisconsin pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events that gave rise to plaintiffs' claims occurred there.

14. This Court has the authority to enter a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

15. This Court has continuing jurisdiction to enter and enforce additional injunctive relief despite the intervening defendants' appeal of this Court's April 2 and 3 interlocutory orders on plaintiffs' motion for a preliminary injunction. *See* 28 U.S.C. § 1292(a)(1). This Court's April 2 and 3 orders pertained only to the April 7 election. *Bostelmann*, 2020 WL 1638374, at *22 (extending receipt deadline to April 13 and request deadline to April 3); ECF No. 122 at 2 (enjoining release of unofficial results until April 13). To the extent this Court's April 2 order extended beyond the April 7 election—for example, preventing defendants “from enforcing Wis. Stat. § 6.87(2) as to absentee voters who have provided a written affirmation or other statement that they were unable to safely obtain a witness certification despite reasonable efforts to do so,”

2020 WL 1638374, at *22, the Seventh Circuit’s stay does not prevent this Court from reconsidering the issue. The Seventh Circuit stayed this provision of this Court’s order because “the district court did not give adequate consideration to the state’s interests” when suspending this requirement. *Democratic Nat’l Comm. v. Republican Nat’l Comm.*, Nos. 20-1538 & 20-1546, at **3-4. The Seventh Circuit did not declare that suspension of this rule was inappropriate under all circumstances. In fact, the Seventh Circuit suggested that a modified witness requirement might be appropriate. *Id.* at *4. The United States Supreme Court did not consider this issue. *Democratic Nat’l Comm. v. Republican Nat’l Comm.*, 2020 WL 1672702, at *1 (order stayed only “to the extent it requires the State to count absentee ballots postmarked after April 7, 2020”).

PARTIES

16. Plaintiff the Democratic National Committee (DNC) is a national committee, as that term is defined by and used in 52 U.S.C. § 30101, dedicated to electing local, state, and national candidates of the Democratic Party to public office throughout the United States. In particular, the DNC is charged with facilitating the Democratic presidential nominating process, which culminates in the 2020 Convention that is scheduled to take place in Milwaukee, Wisconsin in August.

17. The DNC has members and constituents across the United States, including eligible voters in Wisconsin whose rights to vote have been and will continue to be severely burdened and denied outright by the challenged matters during the current coronavirus crisis.

18. Plaintiff the Democratic Party of Wisconsin (DPW) is a state committee, as defined by 52 U.S.C. § 30101(15), dedicated to electing candidates of the Democratic Party to public office throughout the State of Wisconsin. The DPW has members and constituents from across

Wisconsin, including many voters whose rights to vote have been and will continue to be severely burdened and denied outright by the challenged matters during the current coronavirus crisis.

19. As part of their missions, both plaintiffs work to ensure that their members and constituents are able to effectively exercise their right to vote for their chosen candidates. Plaintiffs are directly harmed by the challenged matters, which by making it more difficult for plaintiffs' members and constituents to register and vote, have required and will continue to require plaintiffs to expend additional resources assisting their members and constituents to overcome these burdens to exercise their right to vote. These are resources that the plaintiffs otherwise could be spending in educating voters about core issues and preparing for the general election. *See, e.g., Crawford v. Marion Cty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007) (political party had standing because of its diversion of resources "to getting to the polls those of its supporters who would otherwise be discouraged by the new law from bothering to vote"), *aff'd*, 553 U.S. 181, 189 n.7 (2008); *One Wis. Inst. v. Thomsen*, 198 F. Supp. 3d 896, 908-10 (W.D. Wis. 2016).

20. Defendants Marge Bostelmann, Julie M. Glancey, Ann S. Jacobs, Dean Knudson, Robert F. Spindell, Jr., and Mark L. Thomsen are the six Commissioners of the WEC and are named as defendants in their official capacities. Together, they comprise the WEC, the body that administers and enforces Wisconsin's election laws, including Wis. Stats. §§ 6.28(1), 6.34, 6.86, and 6.87. *See id.* § 5.05. Defendants have acted under color of state law at all times relevant to this action. Defendants also have "the responsibility for the administration of chs. 5 to 10 and 12 and other laws relating to elections and election campaigns, other than laws relating to campaign financing." Wis. Stat. § 5.05(1); *see also Frank v. Walker*, 196 F. Supp. 3d 893, 918 (E.D. Wis. 2016) ("Carrying out a federal court's order concerning the state's election procedures would

qualify as administering the state’s election laws and ‘other laws relating to elections’ (which includes federal laws relating to elections).”).

21. Intervening defendant the Republican National Committee (RNC) is a national committee, as that term is defined by and used in 52 U.S.C. § 30101, dedicated to electing local, state, and national candidates of the Republican Party to public office throughout the United States. This Court granted the RNC leave to intervene permissively in this litigation on March 28, 2020. *See* ECF No. 85.

22. Intervening defendant the Republican Party of Wisconsin (RPW) is a state committee, as defined by 52 U.S.C. § 30101(15), dedicated to electing candidates of the Republican Party to public office throughout the State of Wisconsin. This Court granted the RPW leave to intervene permissively in this litigation on March 28, 2020. *See* ECF No. 85.

23. Intervening defendant the Wisconsin Legislature (Legislature) is made up of the State Assembly and the State Senate, and is “vested” with the “legislative power” of the State of Wisconsin. *See* Wis. Const. art. IV, § 1. The United States Court of Appeals for the Seventh Circuit held on April 3, 2020 that the Legislature is entitled to intervene in this litigation, and this Court accordingly held that the Legislature has “effectively been an intervening defendant” since that decision and granted the Legislature’s motion to intervene on April 6. *See* ECF No. 191.

STATEMENT OF FACTS AND LAW

A. Wisconsin Registration and Absentee Laws

24. Wisconsin law provides that registration by mail and electronic registration closes on the third Wednesday preceding an election. Wis. Stat. § 6.28 (1)(a).

25. Individuals registering by mail or electronically must provide a copy of an “identifying document that establishes proof of residence.” *Id.* § 6.34(2). The only exception to

this rule is for individuals registering electronically who do not have to provide such documentation if they provide “the number of a current and valid operator’s license [or] identification card.” *Id.* (2m).

26. Individuals wishing to register after the mail and electronic registration deadline can only do so by registering in-person when they apply for an in-person absentee ballot or on Election Day at a polling place. *Id.*

27. Historically, Wisconsin voters have relied heavily on same day registration. Between 2008 and 2016, for example, 10 to 15% of all registrations took place on election day.¹³

28. Wisconsin also provides a process for absentee voting for all registered absentee voters, allowing them to request an absentee ballot by mail, in person at the municipal clerk’s office, or by signing a statement and requesting to receive an absentee ballot, via an agent, special voting deputy, or by e-mail or fax. *Id.* § 6.86(1)(a).

29. All voters, except for those who fall within specified exceptions, are required to present a copy of their proof of identification with their absentee application. *Id.* § 6.86(1)(ac).

30. Once a voter has received and completed their ballot, he or she must return it so that “it is delivered to the polling place no later than 8 p.m. on election day.” *Id.* § 6.87(6).

B. The COVID-19 Pandemic and the April 7 Spring Election

31. We remain in the midst of the worst national health emergency since at least the Great Influenza of 1918-20. As of April 29, 2020, Wisconsin had had at least 6,520 reported cases of the COVID-19 coronavirus, and at least 308 Wisconsinites had died from it, with the death toll continuing to rise. As a result, Wisconsinites continue to socially distance themselves from each

¹³ https://elections.wi.gov/sites/elections.wi.gov/files/page/general_election_voter_registration_and_absentee_s_4.

other to try to slow the spread of the disease in a collective effort to save their friends, neighbors, and families, with no clear end in sight. Projections by the federal government indicate that the virus will persist at least into the fall, if not longer. The Director of the Centers for Disease Control and Prevention recently warned that the country may encounter a second, more deadly wave of COVID-19 in the fall, which will “be even more difficult than the one we just went through.”¹⁴ This means that Wisconsin’s upcoming 2020 elections will occur in the middle or immediate aftermath of the worst public health crisis in over a century. Indeed, the latest projections indicate that this crisis may persist for 14 to 18 months, and perhaps even into 2022.

32. Governor Evers’ “Safer-at-Home Order,” issued March 24, 2020, has been extended pursuant to the April 16, 2020 Emergency Order #12 and is now scheduled to remain in effect until May 26, 2020 “or until a superseding order is issued.” All Wisconsinites must continue to stay at home as much as possible; non-essential businesses and operations remain closed, with limited exceptions; and all forms of travel continue to be prohibited unless explicitly excepted. Virtually all public and private gatherings of any number of people continue to be forbidden. Public and private K-12 schools are now closed for the remainder of the 2019-20 school year. The extended Order remains enforceable by local law enforcement officials and county sheriffs, with violations or obstruction of the Order punishable by imprisonment, fines, or both. Wis. Stat. § 252.25. It is presently uncertain whether and to what extent the Order will survive state legal challenges against it and, if it does, whether it will be extended past May 26. It is reasonably clear, however, that the pandemic will continue and may even worsen this year, and may well extend into 2021 or even 2022.

¹⁴ Zack Budryk, *CDC director warns second wave of coronavirus might be ‘more difficult’*, The Hill (Apr. 21, 2020), <https://thehill.com/policy/healthcare/493973-cdc-director-warns-second-wave-of-coronavirus-might-be-more-difficult>

33. Wisconsin citizens continue to distance themselves to ensure their safety and to comply with the Safer-at-Home Order. Many are unwilling to risk their safety and the safety of others by waiting in line to register to vote or cast their ballot. And the frightening results of the April 7 election, *see supra* ¶¶ 1-3, give them good cause for these concerns. Wisconsin voters have several more elections in 2020, culminating in the November 3 General and Presidential Election, with public-health conditions likely to be similar to, if not even worse than, the April 7 election. The experience of the April election helps demonstrate what the remaining 2020 elections in Wisconsin will be like absent additional judicial intervention and relief.

34. The City of Milwaukee shut down in-person registrations on March 23, 2020. ECF No. 63-1, at 8; *see also* ECF No. 63-9. Based on information and belief, other cities and towns took similar steps to limit in-person registration. As a result, for a large number of Wisconsin citizens, registering by mail or electronically was the only alternative to in-person registration on election day.

35. In-person absentee voting saw similar cuts throughout the State. During the in-person absentee voting period, for instance, the City of Milwaukee closed all three locations offering this option. ECF No. 63-1, at 8; *see also* ECF No. 63-9. The City of Madison closed all in-person absentee voting locations except for one location that permitted voters the option of curbside absentee voting. ECF No. 63-1, at 8.

36. The most severe impacts to in-person voting occurred on election day. This was due in large part to severe staffing shortages.¹⁵ Milwaukee only opened five of its usual 180 sites;

¹⁵ *See, e.g.*, Patrick Marley & Craig Gilbert, *Wisconsin polling places are closing because there's not enough people to work the April 7 election*, Milwaukee Journal Sentinel (Mar. 31, 2020), <https://www.jsonline.com/story/news/politics/elections/2020/03/31/wisconsin-voting-sites-closing-due-coronavirus-poll-worker-shortage/5090003002/>.

Green Bay opened only two of its usual 30 sites; Waukesha opened just one of 13; and Kenosha opened only 10 of its usual 22 sites.¹⁶ In Milwaukee, these closures resulted in thousands of voters being forced to wait in line for hours in close quarters with other voters.¹⁷ The lines were consistently long throughout the day; according to poll workers at one location in north Milwaukee, no fewer than 350 voters were in line throughout the day.¹⁸ Voters in Green Bay also waited for as many as four hours to cast a ballot at one of two locations—down from the normal 30 polling places available.¹⁹

37. The burdens and risks imposed by all of these restrictions on in-person registration, early in-person absentee voting, and in-person voting on election day fell disproportionately on African-American, Latino, and Hmong voters and on economically disadvantaged communities. *See supra* n.9.

38. Faced with few options to vote in-person and stymied at multiple points in obtaining and casting an absentee ballot, it was not surprising that Milwaukee voters turned out in fewer numbers than expected. One political scientist estimates that the City of Milwaukee “saw nearly

¹⁶ Briana Reilly, *Madison has 66 polling sites on Election Day, Milwaukee has five. What’s the deal?* (Apr. 7, 2020) https://madison.com/ct/news/local/govt-and-politics/madison-has-66-polling-sites-on-election-day-milwaukee-has-five-whats-the-deal/article_8868bacf-6697-5cf4-aa4f-d85fb37cf846.html.

¹⁷ Mary Spicuzza, *‘A very sad situation for voters’: Milwaukeeans brave wait times as long as 2 1/2 hours, top election official says*, Milwaukee Journal Sentinel (Apr. 7, 2020), <https://www.jsonline.com/story/news/politics/elections/2020/04/07/wisconsin-election-milwaukee-voters-brave-long-wait-lines-polls/2962228001/>.

¹⁸ Ben Jordan, *Voters bear long lines on Milwaukee’s north side*, WTMJ-TV Milwaukee (Apr. 7, 2020), <https://www.tmj4.com/news/coronavirus/voters-bear-long-lines-on-milwaukees-north-side>.

¹⁹ Daniel Bush, *Record absentee ballots sustain turnout in Wisconsin primary*, PBS (Apr. 14, 2020), <https://www.pbs.org/newshour/politics/record-absentee-ballots-sustain-turnout-in-wisconsin-primary>.

16,000 fewer votes than it should have, given the performance of other municipalities in the county.”²⁰ Similarly, in the City of Green Bay, voter turnout was reportedly down 50% from the 2016 presidential primary election and down 25% from a 2019 mayoral race.²¹

39. Even worse, the voters who stood in line to cast ballots faced public health risks—including exposure to the highly contagious COVID-19 virus. The Wisconsin Department of Health has hired 120 additional contact tracers specifically “to gear up for potential cases resulting from exposure at Tuesday’s Spring General Election.”²² The Wisconsin Department of Health Services reported on April 28 that 52 people who voted in-person or worked as poll workers on April 7 have tested positive for COVID-19.²³

40. For those voters who intended to cast absentee ballots—or did actually cast them—problems also were rampant. *First*, many voters could not provide the required identification to request an absentee ballot.²⁴ As a result, some local officials recommended that all voters consider

²⁰ Charles Stewart III, *Important lessons from the Wisconsin primary*, Mischiefs of Faction (Apr. 17, 2020), <https://www.mischiefsoffaction.com/post/important-lessons-from-the-wisconsin-primary>.

²¹ *Voter turnout in Green Bay down more than 50% compared to 2016 spring election*, Fox 11 News (Apr. 14, 2020), <https://fox11online.com/news/election/voter-turnout-in-green-bay-down-more-than-50-compared-to-2016-spring-election>.

²² J.T. Cestkowski, *State hires ‘contact tracers’ to help contain spread of COVID-19*, WKOW (Apr. 9, 2020, 5:04 PM), <https://wkow.com/2020/04/09/state-hires-contact-tracers-to-help-contain-spread-of-covid-19/>.

²³ *See supra* ¶ 3; *see also* Devi Shastri, *In-person voting was likely a ‘disaster’ for Wisconsin’s efforts to flatten coronavirus curve, national experts say*, Milwaukee Journal Sentinel (Apr. 8, 2020), <https://www.jsonline.com/story/news/politics/elections/2020/04/08/coronavirus-wisconsin-election-likely-hurt-effort-flatten-curve/2961718001/>.

²⁴ *See, e.g.*, Reid J. Epstein & Adam Nagourney, *Democratic Victory in Wisconsin Looms as ‘Clarion Call’ for Trump*, N.Y. Times (Apr. 14, 2020), <https://www.nytimes.com/2020/04/14/us/politics/trump-wisconsin-2020-election.html?smid=nytcore-ios-share> (quoting Wisconsinite on how some voters lacked the “wherewithal to request absentee ballots or the inclination to vote in person on April 7”).

themselves indefinitely confined and therefore exempt from the photo identification requirement.²⁵ The Wisconsin Supreme Court enjoined this practice, holding instead that each voter had to assess, based on their own individual circumstances, whether they were “indefinitely confined” and thus exempt from the photo identification requirement. The court added that a voter did not need to be completely or permanently confined to claim the exemption. *Jefferson v. Dane Cty.*, No. 2020AP557-OA (Wis. Mar. 31, 2020).

41. *Second*, many absentee ballots failed to arrive until *after* April 7, effectively denying the voters who received their ballots late even the opportunity to cast their vote.²⁶ According to statistics from the WEC, as of April 7, there were 1,282,762 absentee ballot applications but only 1,273,374 absentee ballots sent out—a difference of 9,388 absentee ballots that had not even been sent to the requesting voters as of *the day the voters had to mail them back*.²⁷ Other ballots were mailed but never delivered. In Milwaukee, a postal worker located three bins of absentee ballots that never reached their destinations in Oshkosh and Appleton.²⁸ In response to reports that the U.S. Postal Service struggled to deliver mail ballots to voters—resulting in some ballots being delayed or, even worse, not arriving at all—both of Wisconsin’s U.S. Senators called

²⁵ Alison Dirr & Patrick Marley, *Absentee voters in Milwaukee, Dane counties can say they're 'indefinitely confined' and skip photo ID, clerks say*, Milwaukee Journal Sentinel (Mar. 25, 2020), <https://www.jsonline.com/story/news/local/milwaukee/2020/03/25/absentee-voters-milwaukee-dane-counties-can-skip-photo-id-coronavirus-indefinitely-confined/5085017002/>.

²⁶ *See, e.g.*, Nick Corasaniti, *Some People Got to Vote Today*, N.Y. Times (Apr. 7, 2020), <https://www.nytimes.com/2020/04/07/us/politics/wisconsin-absentee-ballots.html> (discussing voters, such as a pregnant health care worker, who did not receive their absentee ballot by the deadline and could not vote in-person).

²⁷ <https://elections.wi.gov/node/6825>

²⁸ Nick Corasaniti & Stephanie Saul, *Inside Wisconsin’s Election Mess: Thousands of Missing or Nullified Ballots*, N.Y. Times (Apr. 9, 2020), <https://www.nytimes.com/2020/04/09/us/politics/wisconsin-election-absentee-coronavirus.html>.

on the Inspector General of the U.S. Postal Service to begin an investigation into “absentee ballots not being delivered in a timely manner.”²⁹ One investigation “into Wisconsin’s missing ballot crisis reveals a system leaking from all sides,” including through “[i]nadequate computer systems, overwhelmed clerks and misleading ballot information [that] hampered Wisconsin’s historic—and historically troubling—spring election.”³⁰

42. The problems voters faced with the U.S. Postal Service during the recent election are not likely to abate any time soon. To the contrary, as more voters throughout the country turn to voting by mail in the coming months, that increased reliance in by-mail voting is likely to coincide with a budgetary crisis the U.S. Postal Service is facing due to COVID-19—a crisis that threatens to shutter the entire agency by this summer.³¹ The Postal Service is experiencing dramatic decreases in mail volume compared to last year and, “[a]s a result, . . . is projecting a \$13 billion revenue shortfall this fiscal year because of the pandemic and another \$54 billion in losses over 10 years.”³² And, as the pandemic continues to spread, postal workers have increasingly been infected. As of April 11, nearly 500 postal workers across the country had already tested positive

²⁹ See Letter from Senators Tammy Baldwin and Ron Johnson to U.S. Postal Service Inspector General (Apr. 9, 2020), <https://www.wispolitics.com/wp-content/uploads/2020/04/200409LETTER.pdf>.

³⁰ Daphne Chen *et al.*, ‘They should have done something’: Broad failures fueled Wisconsin’s absentee ballot crisis, investigation shows, Milwaukee Journal Sentinel (Apr. 21, 2020), <https://www.jsonline.com/story/news/2020/04/21/wisconsin-absentee-ballot-crisis-fueled-multiple-failures/5156825002/> The investigation was conducted by the Milwaukee Journal Sentinel, the PBS series FRONTLINE, and Columbia Journalism Investigations.

³¹ Kyle Cheney, *House panel warns coronavirus could destroy Postal Service by June*, Politico (Mar. 23, 2020), <https://www.politico.com/news/2020/03/23/coronavirus-postal-service-june-145683>.

³² Nicholas Fandos & Jim Tankersley, *Coronavirus Is Threatening One of Government’s Steadiest Services: The Mail*, N.Y. Times (Apr. 9, 2020), <https://www.nytimes.com/2020/04/09/us/politics/coronavirus-is-threatening-one-of-governments-steadiest-services-the-mail.html>.

for the coronavirus, 19 had died, and more than 6,000 were in self-quarantine because of exposure.³³

43. All of these developments have grave implications for voting rights in the State of Wisconsin. In years past, when the Postal Service has faced budget crises, it has closed hundreds of mail processing centers.³⁴ Moving forward, it is likely the Postal Service will need to make further cuts to routes, processing centers, and staff, which will exacerbate mail processing delays. Any such delays will be acutely felt in Wisconsin, where mail routing is already circuitous. *See* ECF No. 72 ¶¶ 6–7 (describing how mail takes five days to go across Madison); *see also* ECF No. 75 ¶ 6 (describing how mail in Viroqua is routed through Minneapolis).

44. *Finally*, even the votes from Wisconsinites who successfully received and returned their absentee ballots on time were not guaranteed to count. Many of them lacked a witness signature—even though it is likely many of them were cast during the window of time when this Court enjoined that requirement and offered a narrow, reasonable alternative. For example, in Milwaukee, at least 750 absentee ballots were missing the signature and were therefore not counted.³⁵ Hundreds in Marathon County were rejected for a variety of reasons, including 48 in the City of Marshfield either because of a late postmark or because of a missing witness signature.³⁶

³³ Jacob Bogage, *White House rejects bailout for U.S. Postal Service battered by coronavirus*, Wash. Post (Apr. 11, 2020), <https://www.washingtonpost.com/business/2020/04/11/post-office-bailout-trump/>.

³⁴ *See* Office of the U.S. Postal Service Inspector General, *Area Mail Processing Consolidations* (June 5, 2015), <https://www.uspsoig.gov/sites/default/files/document-library-files/2015/no-ar-15-007.pdf>.

³⁵ Spicuzza, *supra* note 17.

³⁶ Naomi Kowles, *Hundreds of absentee ballots for April election in Marathon County rejected*, WSAW.com (Apr. 17, 2020), <https://www.wsaw.com/content/news/Hundreds-of->

45. Despite all of these obstacles, more than 1.1 million Wisconsin voters cast absentee ballots.³⁷ Approximately 71% of Wisconsinites who voted in the election cast absentee ballots—far more than the 14% of the electorate who voted this way in the April 2019 election, the 11% in the April 2018 election, and even far more than the 27% in the 2016 general election.³⁸ Given the extraordinary circumstances of the April election that are likely to continue for the foreseeable future, it is not surprising that Wisconsinites—faced with this unconscionable choice between their safety and potentially endangering the lives of others and exercising their fundamental right to vote—relied on absentee voting at record levels. It is all but certain that this unprecedented demand will continue through the remaining elections held in 2020.

C. The Impact of the Challenged Statutory Provisions During the COVID-19 Pandemic

46. As the nation witnessed during the April 7 election, Wisconsin’s regulatory scheme is hostile to voting rights as applied in the context of the COVID-19 pandemic. As a direct result, without additional action by this Court, thousands of Wisconsin voters at a minimum will be disenfranchised in the remaining 2020 elections, culminating in the November 3 General and Presidential Election. Many thousands more, at a minimum, will vote only by overcoming unconscionable burdens, including potential exposure to the COVID-19 virus. These burdens disproportionately impact voters of color and economically disadvantaged communities.

[absentee-ballots-for-april-election-in-Marathon-County-rejected-569748131.html](https://www.wisconsin.gov/elections/absentee-ballots-for-april-election-in-marathon-county-rejected-569748131.html).

³⁷ *Absentee Ballot Report - April 7, 2020 Spring Election and Presidential Preference Primary*, Wis. Elections Comm’n (Apr. 17, 2020), <https://elections.wi.gov/index.php/node/6859>

³⁸ Miles Parks, *‘In The End, The Voters Responded’: Surprising Takeaways From Wisconsin’s Election*, Nat’l Public Radio (Apr. 15, 2020), <https://www.npr.org/2020/04/15/834037566/in-the-end-the-voters-responded-surprising-takeaways-from-wisconsin-s-election>.

47. As described below, each of the challenged statutory provisions on its own poses significant risks to voters seeking to exercise their right to vote in the upcoming 2020 elections; collectively, they combine to ensure that many Wisconsin citizens will continue to be unable to vote or will have their ballots discarded.

a. Extension of Deadline for Receipt of Absentee Ballots

48. In the upcoming 2020 elections, it is highly likely that thousands of absentee ballots will arrive after the Election Day Receipt Deadline imposed by Wis. Stat. § 8.87(6), due to no fault of the voters.

49. In the weeks leading up to the April 7 election debacle, municipal clerks were inundated with an unprecedented number of absentee ballot requests. Despite valiant efforts from understaffed clerk's offices, over 9,300 absentee ballots that were timely requested were not even mailed out by election day. *See supra* ¶ 41. That figure apparently does not include the additional large tubs of undelivered absentee ballots found on election day. *Id.* Many thousands more voters received their ballots just days before the election, often leaving insufficient time for them to return their ballots through the mail by election day.

50. For the April election, this Court extended the absentee ballot receipt deadline by six days, and the Seventh Circuit affirmed that decision. The intervening defendants did not challenge this extension in the U.S. Supreme Court, but instead relied on it in arguing that the District Court should have imposed an April 7 postmark deadline for absentee ballots. *See Democratic Nat'l Comm. v. Republican Nat'l Comm.*, 2020 WL 1672702, at **3-4. Approximately 142,000 absentee ballots arrived during those six days. *See supra* ¶ 5. Had this Court not extended the absentee-ballot-receipt deadline, the voters casting these ballots would have been disenfranchised. In addition, approximately 4,678 additional absentee ballots were rejected

because they arrived after 4:00 p.m. on April 13; it is not yet known how many of these rejected ballots were timely mailed on or before April 7.³⁹

51. All evidence indicates the situation will remain the same for future elections this year. No plans to hire more staff have been announced, and there currently is no budget for heightened “postage and envelope costs” for absentee ballots.⁴⁰ The Postal Service, already “pushed to the brink of [its] capabilities” during the April election, is on the verge of bankruptcy. *Supra* ¶¶ 41-43.

52. Accordingly, it is likely that thousands of voters will once again receive their timely requested absentee ballots too late to be able to cast and return them in sufficient time that the ballots are received by election day. Without intervention by the Court, all of those voters will be disenfranchised by the Election Day Receipt Deadline imposed by Wis. Stat. § 8.87(6). That would squarely conflict with the outcome in *Democratic National Committee v. Republican National Committee*, in which all nine Justices unanimously agreed that it was appropriate to extend the Election Day Receipt Deadline by an additional six days, with the 5-4 disagreement being over whether those ballots had to be postmarked by election day itself. *Compare* 2020 WL 1672702, at **1-4 *with id.* at *5 (Ginsburg, J., dissenting) (“If a voter already in line by the poll’s closing time can still vote, why should Wisconsin’s absentee voters, already in line to receive ballots, be denied the franchise?”).

³⁹ See 2020 Spring Election and Presidential Preference Vote Ballot Status as of April 17, 2020, Wis. Elections Comm’n, <https://elections.wi.gov/sites/elections.wi.gov/files/2020-04/Ballot%20Data%20as%20of%20April%2017%202020.pdf>

⁴⁰ See Summary of April 7, 2020 Election at 5, Wis. Elections Comm’n, <https://elections.wi.gov/sites/elections.wi.gov/files/2020-04/April%207%20Election%20Summary%20and%20Next%20Steps.pdf>.

53. The Supreme Court majority imposed the postmark deadline in part because it found “no probative evidence” that “late-requesting voters” in the April 7 election “would be in a substantially different position from late-requesting voters in other Wisconsin elections,” using the example of a voter who in an “ordinary election” requests an absentee ballot on the last day for doing so (the Friday before the election), who can “usually” expect to receive the ballot the following Monday or even on election day itself—*i.e.*, in time to mail and postmark the ballot by the end of election day. *Id.* at *3. The April 7 election results provide the “probative evidence” the Supreme Court found lacking before the election—evidence that thousands of voters did not receive their requested ballots until *after* election day, through no fault of their own. *See supra* ¶¶ 1, 41. These voters were all in “a substantially different position from the late-requesting voters” described in the *per curiam* opinion, who received their ballots in time to return them on election day.

b. Relief from Requirement of Witness Signature for Absentee Ballots

54. Wisconsin’s requirement that each voter submitting an absentee ballot have another adult witness and sign their ballot puts tens of thousands of Wisconsin voters in an untenable situation and unconstitutionally burdens their right to vote. *See* Wis. Stat. § 6.87(2). Over 600,000 Wisconsinites live alone, and even more live with an individual who is unqualified to be a witness (*e.g.*, a child or non-citizen). With the requirements of the Safer-at-Home Order and the health risks of venturing out to find a witness, many voters who live alone will not have a witness to attest to their absentee ballots and, absent intervention by the Court, simply will not be able to vote. Adding to their burden, a significant portion of this population is comprised of senior citizens who are most at risk from the coronavirus and who could not interact with a witness even if they could find one.

55. This Court granted limited relief from the witnessing requirement, allowing a voter who could not obtain a witness through reasonable effort to certify that “he or she was unable to safely obtain a witness certification despite his or her reasonable efforts to do so.” *Bostelmann*, 2020 WL 1638374, at **20, 22. The Seventh Circuit stayed enforcement of this provision for the April 7 election, concluding that (a) “the district court did not give adequate consideration to the state’s interests in suspending this requirement”; (b) the *Purcell* principle counseled against relief given that the election was only days away; and (c) the “overbreadth of the district court’s order . . . categorically eliminates the witness requirement applicable to absentee ballots.” *Democratic Nat’l Comm. v. Republican Nat’l Comm.*, Nos. 20-1538 & 20-1546, at *3. The panel suggested the WEC’s “alternative suggestions” for fulfilling the witness requirement (*e.g.*, having the witness observe the voter over Skype, the voter mail the completed ballot to the witness, and the witness sign and date the ballot) would be sufficient, especially given the extra time that voters had to obtain a witness signature because of the extension of the ballot-receipt deadline. *Id.*

56. WEC’s proposed alternatives proved insufficient. According to preliminary data, approximately 11,944 returned ballots were rejected because of “insufficient” certification. *Supra* ¶ 50 & n.39. Moreover, there are strong grounds to believe that many of the 135,417 unreturned ballots—over 10% of all ballots sent out—were not returned because the voters who had requested these ballots were unable to navigate the witnessing requirements in the midst of the pandemic and resulting isolation from others. *Supra* ¶¶ 44, 54.

57. Plaintiffs respectfully submit that, given the experience in the April 7 election, both this Court and the Seventh Circuit should reconsider their views on this issue. The Seventh Circuit was concerned that this Court gave “no effect to the state’s substantial interest in combatting voter fraud.” *Democratic Nat’l Comm. v. Republican Nat’l Comm.*, Nos. 20-1538 & 20-1546, at *3.

That criticism is not fairly applied to this Court’s April 2 decision. Moreover, as discussed below, the State permits “indefinitely confined” voters to forego the requirement of submitting copies or scans of their photo IDs, even though the photo ID requirement serves the same “substantial interest in combatting voter fraud.” *See infra* ¶¶ 62-64. There is no sound basis for allowing indefinitely confined voters to avoid the photo ID requirements notwithstanding the State’s interest in combatting voter fraud but not extending similar relief to voters who are willing to attest they cannot meet the witness requirement.

58. The Seventh Circuit suggested that one way for a voter to “satisfy the statutory signature requirement” might be “by maintaining the statutory presence requirement but not requiring the witness’s physical signature.” *Democratic Nat’l Comm. v. Republican Nat’l Comm.*, Nos. 20-1538 & 20-1546, at *4. The panel, however, incorrectly believed the WEC could implement that suggestion. The WEC does not believe it has the authority to make such an “accommodat[ion].”⁴¹

59. Even if it rejects broader relief, this Court should, at minimum, take the Seventh Circuit’s suggestion and provide that a voter who is unable to safely obtain a physical witness signature may have someone act as a witness from afar (or by video) without obtaining their physical signature. The voter would then write down the witness’s name and contact information on the ballot in the space provided, enabling election officials to contact the witness if they had any questions about the legitimacy of the ballot. This narrow relief would allow individuals to comply with social-distancing requirements and to avoid the risk of COVID-19 transfer from touching the same paper. It would not “categorically eliminate[] the witness requirement” and would give “effect to the state’s substantial interest in combating voter fraud.” *Democratic Nat’l*

⁴¹ *See, e.g.*, <https://elections.wi.gov/index.php/node/6790>.

Comm. v. Republican Nat'l Comm., Nos. 20-1538 & 20-1546, at *3. Indeed, every absentee voter would have a witness and the State would have information about that witness.

c. Relief from Proof of Identification Provision

60. Wis. Stat. §§ 6.86 and 6.87, which require a copy of a voter's photo identification to accompany a request for an absentee ballot, continue to burden voters.

61. As discussed *supra* ¶ 40, many voters did not even attempt to vote absentee during the April election because the photo ID requirements were too burdensome, especially for those without access to smartphones or the Internet. Because many workplaces, public libraries, and copy shops remain closed, many voters will continue to face substantial burdens in obtaining the copies or scans they need to complete their absentee ballot applications and will continue to be prevented from voting. In addition, even if those establishments were open, many voters are fearful of leaving their homes because of the health risks of the coronavirus pandemic and the prohibitions in the extended Safer-At-Home Order.

62. Wisconsin law specifically exempts a voter from the requirement of providing a photo ID with a request for an absentee ballot if the voter is "indefinitely confined" because of age, illness, infirmity, or disability. Wis. Stat. §§ 6.86(2)(a), 6.87(4)(b)(2). "Designation of indefinitely confined status is for each individual voter to make based upon their current circumstances. It does not require permanent or total inability to travel outside of the residence." *Jefferson*, No. 2020AP557-OA, at *2. This Court relied heavily on the "indefinitely confined" option in its April 2 order denying preliminary injunctive relief, holding that "the current proof of ID requirement, as being applied under the WEC guidance and state court order, does not impose an undue burden on the right to vote[.]" *Bostelmann*, 2020 WL 1638374, at *21.

63. The “indefinitely confined” option, however, gets only passing mention in the instructions provided to voters requesting an absentee ballot. Voters are not told that designation of indefinitely confined status is for each individual voter to make based on how they feel about their own current circumstances, nor are they told that a claim of indefinitely confined status does not require permanent or total inability to travel outside of their residence. As the WEC and Wisconsin Supreme Court have shown, “indefinitely confined” is not a self-defining term, and in the absence of explicit, prominent instructions on the absentee ballot request form, many voters are likely to misunderstand their entitlement to claim this status and, if they are otherwise unable to copy or upload an acceptable photo ID, may forego attempting to obtain an absentee ballot.

64. Thus, at a minimum, this Court should hold that materials for requesting absentee ballots must explicitly and prominently explain a voter’s option to claim “indefinitely confined” status during the COVID-19 pandemic, including the WEC and Wisconsin Supreme Court explanations of what that term means.

d. Relief from Proof of Residence Provision

65. Wis. Stat. § 6.34 requires new voters to provide a copy of their proof of residence to register if they do so by mail or online and do not have the number of a current driver’s license or state identification card with a matching address on file with the Wisconsin Department of Transportation.

66. This Court denied as moot plaintiffs’ request to enjoin the enforcement of this provision in connection with the April 7 election because the registration deadline for that election had already passed by the time the Court issued its order. *Bostelmann*, 2020 WL 1638374, at *50.

67. The issue is not moot with respect to the remaining 2020 elections. Wisconsin’s requirement that voters provide a copy of their proof of residence to register by mail or

electronically operated to burden eligible voters in the April 7 election and will continue to burden eligible voters in the upcoming 2020 elections. The scanners and printers that many would-be electronic or by-mail registrants would typically use are often located at places of work, libraries, and commercial establishments (*e.g.*, UPS locations) that are now closed or unsafe to visit. As a result, many Wisconsin citizens will be unable to obtain the copies they need to complete their voter registration applications and will be prevented from registering.

68. In addition, it is irrational and unfair for Wisconsin to exempt self-identified “indefinitely confined” voters from having to comply with some documentary proof requirements (*i.e.*, photo ID requirements, *see supra* ¶¶ 62-64) while refusing to exempt such voters from other documentary proof requirements (*i.e.*, proof of residency requirements). The anti-fraud and verification purposes of all these proof requirements are similar if not identical. No reasonable public purpose is served by excusing indefinitely confined voters from some documentation requirements but not others. If relaxing the photo ID requirements to accommodate indefinitely confined voters during the current pandemic is appropriate, there is no reasonable public purpose to be served in failing to relax other documentary proof requirements for such voters.

e. Extension of Mail-In and Electronic Registration Deadlines

69. Under Wis. Stat. § 6.28(1), the deadlines for registrations in person, by mail, and electronically all close on “the 3rd Wednesday preceding the election”—*i.e.*, 21 days before the election. This provision goes on, however, to authorize registrations in person (but not by mail or electronically) to continue for those voters who cast “in-person absentee ballot[s]” or vote at the polls on election day. *Id.* Thus, those casting in-person absentee ballots may continue to register until the Sunday before the election, *see id.*; *id.* § 6.86(b), and those voting at the polls may register

on election day itself, but those seeking to register by mail or electronically must do so no later than three full weeks before the election.

70. Historically, Wisconsin voters have registered to vote in person in large numbers, relying heavily on same-day registration during in-person absentee voting or on election day. As a result, thousands of Wisconsin voters typically do not register before they vote. However, many Wisconsinites did not have viable in-person registration options for the April 7 elections. As discussed above, in-person absentee voting was shut down in many parts of Wisconsin. *See supra* ¶ 34. And many Wisconsinites were understandably reluctant—if not altogether unable—to venture out in public to register and vote either through in-person absentee voting or at the polls, given the public health risks during the pandemic. For these voters, failure to register 21 days prior to the election effectively meant they could not vote.

71. No valid, reasonable state interests are served by this disparity and discrimination against by-mail and electronic registration. If election officials can accommodate registrations as late as election day when done in person, there is no sufficient reason why they cannot accommodate by-mail and electronic registrations much closer to the election than “the 3rd Wednesday preceding” it.

72. In its March 20, 2020 Opinion and Order, this Court recognized “the excruciating dilemma” faced by those who missed the statutory deadline for by-mail or electronic registration—“either venture into public spaces, contrary to public directives and health guidelines or stay at home and lose the opportunity to vote.” ECF No. 37 at 11. The Court found it likely that this was “an undue burden on citizens’ right to vote,” and concluded that extending the registration deadline would “impose only a minimal burden while potentially affording a great number of as yet unregistered voters the opportunity to exercise their franchise by safely voting absentee.” *Id.* at

12, 15. The Court ordered that the “deadline by which individuals may register to vote electronically” be extended from March 18 to March 30 but declined to extend the by-mail registration deadline. *Id.* at 14-15, 20.

73. As the Court predicted, the evidence demonstrates that the extension of the electronic registration deadline to March 30 imposed only minimal burdens while affording many voters the opportunity both to register and to vote without risking exposure to the COVID-19 virus. In fact, the evidence shows that election administrators could have accommodated an extension of *both* the electronic and the by-mail registration deadlines to April 3, the Friday before the election. The Court’s concerns about by-mail registrations received even closer to the election that this, *see id.* at 14-15, could be resolved by requiring that by-mail requests be *received* by the Friday before the election.

74. Absent relief by this Court, unregistered but eligible voters who decide to register and vote shortly before one of the upcoming 2020 elections will face the same “excruciating dilemma” identified by this Court—“either venture into public spaces, contrary to public directives and health guidelines or stay at home and lose the opportunity to vote.” *Id.* at 11.

75. The individual and cumulative impacts of the challenged statutory provisions discussed *supra* ¶¶ 46-74 (together with defendants’ failure to ensure a sufficient number of safe early absentee-voting sites and election-day polling places) will, absent injunctive relief, cause plaintiffs, their members, and their constituents irreparable injuries that cannot be adequately redressed by money damages. Those injuries greatly outweigh any alleged injuries that defendants and intervenor-defendants may claim to face from the requested injunctive relief.

76. The balance of the equities and the public interest strongly favor plaintiffs’ requested injunctive relief.

CLAIMS FOR RELIEF

COUNT I

**First and Fourteenth Amendments
U.S. Const. Amend. I and XIV, 42 U.S.C. § 1983, 28 U.S.C. §§ 2201, 2202
Undue Burden on the Right to Vote**

77. Plaintiffs reallege and incorporate by reference all prior paragraphs of this Second Amended Complaint and the paragraphs in the counts below as though fully set forth herein.

78. Under the *Anderson-Burdick* balancing test, a court considering a challenge to a state election law must carefully balance the character and magnitude of injury to the First and Fourteenth Amendment rights that the plaintiff seeks to vindicate against “‘the precise interests put forward by the State as justifications for the burden imposed by its rule,’ taking into consideration ‘the extent to which those interests make it necessary to burden the plaintiff’s rights.’” *See Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)).

79. Unless plaintiffs are granted the relief requested herein thousands of Wisconsin voters, including plaintiffs’ members and constituents, will be severely burdened in attempting to exercise their right to vote (if not outright disenfranchised) in the upcoming 2020 elections. These burdens will fall disproportionately and with extra force on African American, Latino, and Hmong voters as well as economically disadvantaged voters.

80. Because of the ongoing pandemic and its projected course, many Wisconsin voters who would normally register in-person after the statutory cut-off for electronic and by-mail registration (either by registering during early in-person voting or at the polls) will continue to be unable or unwilling to do so. Similarly, Wisconsin voters are less able and, in some cases, wholly unable to copy and scan the documents and photo IDs required to complete their electronic and

by-mail registration and absentee ballot applications. And, as absentee balloting increasingly becomes the safest way to vote, Wisconsin voters will remain at high risk of not receiving their ballots with sufficient time to return them to the municipal clerk's office so they are received prior to the Election Day Receipt Deadline. Indeed, many thousands of voters may once again not even receive their timely requested absentee ballots by election day, making it impossible to cast those ballots by election day. These are severe burdens on the right to vote that will continue to lead to the outright disenfranchisement of many voters.

81. The State cannot provide any colorable justification as to why the statutory deadline for electronic and by-mail registrations should not be extended and why ballots received after the Election Day Receipt Deadline should not be counted in light of the unprecedented strains on the voting and postal systems created by the COVID-19 pandemic.

82. Further, the requirement that voters have witnesses attest to the truthfulness of their personal information on absentee ballots will disenfranchise many Wisconsin voters who are unable to locate witnesses for this purpose. The State has reasonable alternative means to enforce the witness requirement without requiring a physical witness signature on a voter's ballot.

83. And because of the State's continuing failure to provide sufficient financial, personnel, and other resources to local election officials to ensure an adequate number of safe early in-person absentee voting sites and election-day polling places throughout the State, many voters will continue to be at risk of having to endure long lines and wait times in order to register and vote in person on election day and will thereby increase their risk of exposure to the COVID-19 virus. Wisconsin has delegated its authority to "establish[]" polling places to local governing bodies, Wis. Stat. § 5.25(2), but the State cannot delegate its duty to ensure safe and sufficient in-person registration and voting facilities for all voters throughout the State. The defendants bear

the statutory “responsibility for the administration of” Wisconsin’s election laws, Wis. Stat. § 5.05(1), which at minimum requires defendants to develop and implement plans to coordinate available state, local, and private resources to ensure that all voters throughout the State are able to cast early in-person absentee votes and to vote in-person on election day in as safe and secure a manner as feasible.

84. In short, the challenged matters are not supported by a state interest that is sufficient to justify the resulting burdens on the right to vote, and thus violate the First and Fourteenth Amendments.

COUNT II

Due Process

U.S. Const. Amend. XIV, 42 U.S.C. § 1983

Denial of Procedural Due Process

85. Plaintiffs reallege and incorporate by reference all prior paragraphs of this Second Amended Complaint and the paragraphs in the counts below as though fully set forth herein.

86. The Fourteenth Amendment’s Due Process Clause prohibits the states from depriving “any person of . . . liberty . . . without due process of law.” U.S. Const. amend. XIV, § 1. The right to vote is a fundamental liberty that is recognized and protected by the U.S. Constitution. Which protections are due in a given case requires a careful analysis of the importance of the rights and the other interests at stake. *See Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976). Courts must first consider the nature of the interest that will be affected by the government’s actions as well as the “degree of potential deprivation that may be created” by existing procedures. *Id.* at 341. Second, courts consider the “fairness and reliability” of the existing procedures “and the probable value, if any, of additional procedural safeguards.” *Id.* at 343. Finally, courts consider the public interest, which “includes the administrative burden and other

societal costs that would be associated with” additional or substitute safeguards. *Id.* at 347 “[D]ue process is flexible and calls for such procedural protections as the particular situation demands.” *Id.* at 334 (quotation and citation omitted).

87. Wisconsin’s procedures for registering to vote, absentee voting, and voting in person must comport with due process. “Such due process is not provided when the election procedures [for voting by mail]” do not adequately protect the right to vote or ensure that an “individual is not continually and repeatedly denied so fundamental a right.” *Raetzel v. Parks/Bellefont Absentee Election Bd.*, 762 F. Supp. 1354, 1358 (D. Ariz. 1990); *see also Saucedo v. Gardner*, 335 F. Supp. 3d 202, 217 (D.N.H. 2018) (“Having induced voters to vote by absentee ballot, the State must provide adequate process to ensure that voters’ ballots are fairly considered and, if eligible, counted.”).

88. “When an election process ‘reache[s] the point of patent and fundamental unfairness,’ there is a due process violation.” *Fla. State Conference of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1183 (11th Cir. 2008) (citation omitted) (*re* substantive due process).

89. Under the current circumstances, there is little question that Wisconsin’s election process is fundamentally unfair. The nature of the interest at stake in this case—the right to vote and to have that vote count—is the most precious liberty interest of all because it is preservative of all other basic civil and political rights.

90. But the challenged matters threaten to continue to deprive Wisconsin voters of this right in the remaining 2020 elections. Given the unprecedented situation at hand, Wisconsin must establish adequate procedures to ensure that voters have a reliable, fair, effective and safe method to cast their ballots in these upcoming elections. Because the challenged matters are markedly inadequate in all of these respects, and substitute procedures are readily available to protect voters’

rights with minimal burden to the State, the challenged matters violate Wisconsin voters' procedural due process rights.

COUNT III

Equal Protection U.S. Const. Amend. XIV, 42 U.S.C. § 1983

91. Plaintiffs reallege and incorporate by reference all prior paragraphs of this Second Amended Complaint and the paragraphs in the counts below as though fully set forth herein.

92. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits a state from “denying to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1. This constitutional provision requires that “all persons similarly situated should be treated alike.” *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985).

93. And this applies to voting. “Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote over that of another.” *Bush v. Gore*, 531 U.S. 98, 104-05 (2000). Among other things, this requires “specific rules designed to ensure uniform treatment” in order to prevent “arbitrary and disparate treatment to voters” based on which county or local jurisdiction they live in. *Id.* at 106-07. There is no “emergency exemption” from this equal protection requirement. “The press of time does not diminish the constitutional concern. A desire for speed is not a general excuse for ignoring equal protection guarantees.” *Id.* at 108-09; *see also id.* at 109 (shutting down the 2000 Florida recount

because the recount process was “inconsistent with the minimum procedures necessary to protect the fundamental right of each voter”).

94. The April 7 election abounded with many examples of unfair, unequal, and disparate treatment of Wisconsin voters depending on where they live. Safe and sufficient in-person registration, absentee voting, and election-day voting opportunities were available to some Wisconsin voters but not to others, depending on where they resided. *See, e.g.*, ECF Nos. 63-10, 63-12, 63-14; Exs. 10, 12, 14; *see also* ECF No. 39 at 2 (identifying closure of some, but not all, polling places due to COVID-19). Voters of color and the urban poor were disproportionately denied sufficient opportunities for safe in-person registration, early voting, and election-day voting. Similarly, the application of the documentation requirements for registering to vote and requesting an absentee ballot varied broadly across cities and counties, resulting in some voters being subject to these requirements while others were not. *See* ECF No. 74 ¶ 7. Voters also received conflicting guidance on the witness requirement for absentee ballots depending on where they lived and who they called. *See, e.g.*, ECF No. 63-16 at 6 (quoting Madison officials suggesting FaceTime or Skype to satisfy requirement). Many voters, particularly those who live alone, lacked access to a witness but were simultaneously being instructed by the authorities to stay at home and practice social distancing. *See, e.g.*, ECF No. 66 ¶ 3; ECF No. 70 ¶ 3; ECF No. 75 ¶ 4.

95. Another example of disparate and non-uniform treatment involved the interpretation and administration of the U.S. Supreme Court’s requirement that an absentee ballot be “postmarked by election day” in order to be counted. *Democratic Nat’l Comm. v. Republican Nat’l Comm.*, 2020 WL 1672702, at *2. Wisconsin elections officials and the Postal Service do not follow uniform standards and procedures in postmarking absentee ballots. As a result, many

absentee ballots were returned to local election officials by the Postal Service with either no postmarks at all, postmarks without dates, or illegible postmarks. The six Commissioners of the WEC, on a 3-3 tie vote, largely failed to agree on how election officials should address these issues, leaving local election officials throughout Wisconsin to make these decisions without any uniform standards ensuring consistent treatment throughout the State, rather than through discretion exercised locality by locality.

96. A further example of “arbitrary and disparate treatment [of] voters,” *Bush*, 531 U.S. at 104-05, is the interpretation adopted by the WEC and the Wisconsin Supreme Court of Wis. Stat. §§ 6.86(2)(a) and 6.87(4)(b)(2), which exempt voters who are “indefinitely confined because of age, physical illness or infirmity” from many of the absentee voting restrictions and conditions. In response to conflicting advice from county and local election officials about what it takes to be “indefinitely confined” by the pandemic within the meaning of these statutes, the Wisconsin Supreme Court, in an original action, adopted the WEC’s guidance, which provides in relevant part that the “[d]esignation of indefinitely confined status is *for each individual voter to make based upon their current circumstances*. It does not require permanent or total inability to travel outside of the residence.” *Jefferson*, No. 2020AP557-OA, at *2 (emphasis added). This “guidance” in no way provides “uniform” rather than “arbitrary and disparate treatment to voters.” *Bush*, 531 U.S. at 106-07. If using a standard that “might vary ... from county to county” or “within a single county” violates equal protection, *id.* at 106, so much more the case where the interpretation and application of the standard varies from voter to voter.

97. In these and other respects, if this Court does not require “uniform rules” and “specific standards” in conducting the remaining 2020 elections under these emergency conditions, there will be an unacceptably high risk that Wisconsin will not satisfy “the minimum

requirement for nonarbitrary treatment of voters necessary to secure the fundamental right” to vote. *Bush*, 531 U.S. at 105-06. If anything, the equal protection risks are even greater here than in *Bush v. Gore*. There, the right to vote was at risk. Here, the risks are to the right to vote and to the right to life—our own and the lives of others.

98. The dramatically inconsistent availability of safe and sufficient in-person registration and voting opportunities, the diverging standards across cities and counties with respect to the documents required to register and vote, the conflicting guidance on the witness requirement for absentee ballots, the absence of any statewide standards for implementing the “postmark” requirement, and the standardless discretion left to each voter in applying the “indefinitely confined” exception are depriving voters, including plaintiffs’ constituents, of equal protection of the laws.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that this Court enter judgment:

A. Declaring that in the context of the current coronavirus crisis, Wisconsin’s current by-mail and electronic registration deadlines, Wisc. Stat. § 6.28(1); requirements that copies of proof of residence and voter photo ID accompany electronic and by-mail voter registration and absentee applications, *id.* § 6.34, 6.86, respectively; requirement that polling places receive absentee ballots by 8:00 p.m. on election day to be counted, *id.* § 6.87; and requirement that an absentee voter obtain the signature of a witness attesting to the accuracy of personal information on an absentee ballot, *id.* § 6.87(2); together with defendants’ failure to ensure that all citizens have safe and sufficient opportunities to register and vote in person, are unconstitutional in violation of the First and Fourteenth Amendments;

B. Enjoining defendants and their respective agents, officers, employees, and

successors, and all persons acting in concert with each or any of them, from rejecting ballots that are postmarked on or before Election Day and arrive at the municipal clerk's office within a minimum of ten days after Election Day, subject to the definition of "postmarked" discussed *supra* n.12;

C. Enjoining in part the enforcement of the witness requirement in Wis. Stat. § 6.87(2) until the COVID-19 crisis is over;

D. Enjoining in part the enforcement of the photo identification requirements in Wis. Stat. §§ 6.86 and 6.87 until the COVID-19 crisis is over;

E. Enjoining in part the enforcement of the proof of residency requirement in Wis. Stat. § 6.34 for voter registrations until the COVID-19 crisis is over;

F. Ordering defendants to extend Wisconsin's deadline for electronic and by-mail registration to the Friday before each of the remaining 2020 elections;

G. Ordering defendants to exercise their statutory authority and responsibility, *see* Wis. Stat. § 5.05(1), to develop and implement plans to coordinate available state, local, and private resources to ensure that all voters throughout the State are able to cast early in-person absentee ballots and to vote in-person on election day in a safe and secure manner;

H. Awarding plaintiff their costs, expenses, and reasonable attorneys' fees pursuant to, *inter alia*, 42 U.S.C. § 1988 and other applicable laws; and

I. Granting such other relief as the Court deems just and proper.

Dated this 30th day of April, 2020.

Respectfully submitted,

/s/ John Devaney

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

| | | |
|--|---|-------------------|
| |) | |
| Jill Swenson |) | |
| Melody McCurtis |) | |
| Maria Nelson |) | |
| Black Leaders Organizing for Communities |) | |
| Disability Rights Wisconsin |) | |
| |) | |
| Plaintiffs, |) | No. 20-CV-459-WMC |
| v. |) | |
| |) | |
| Marge Bostelmann, Julie M. Glancey, Ann S. Jacobs, |) | |
| Dean Knudson, Robert F. Spindell, Jr., and |) | |
| Mark L. Thomsen, Commissioners of the Wisconsin |) | |
| Elections Commission; |) | |
| |) | |
| Meagan Wolfe, Administrator of |) | |
| the Wisconsin Elections Commission. |) | |
| |) | |
| Defendants. |) | |
| |) | |

**FIRST AMENDED COMPLAINT AND PRAYER FOR DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

1. The April 7, 2020 election was unlike any other in Wisconsin's history, tainted by breakdowns in critical aspects of the election process and disenfranchisement of a substantial number of Wisconsin voters. Two days before the election, the Surgeon General of the United States likened the novel coronavirus ("COVID-19") pandemic to the Pearl Harbor and September 11 attacks, warning the nation to prepare for the "saddest week of most Americans' lives."¹ While all other states with primaries scheduled in April delayed their elections, Wisconsin held its election in the midst of a global pandemic. Defendants and others took steps to attempt to administer the election fairly, including some at the order of this Court, but those actions were insufficient to protect the rights of Wisconsin voters. As a result, voters were forced to choose between forgoing their constitutional rights to participate in their democracy or risking the health of themselves and their loved ones in order to vote. Tens of thousands of voters were disenfranchised by failures in the absentee and in-person voting systems. The election shook the public's faith in the democratic process.

2. This outcome was foreseeable and, for too many Wisconsin voters, including Plaintiffs, preventable. For over a month before the election, Defendants were aware of the growing danger of COVID-19 and the attendant risks of administering an election during the escalating pandemic. With each passing day, public health officials grew louder in their calls for social distancing, urging Americans to stay at home. Each day brought more deaths and more new infections. By election day, 83 Wisconsinites had died of COVID-19 and 2,440 residents were known to be infected with the virus. At the same time, election experts from across the country expressed alarm over the lack of actionable steps taken by the state to conduct an

¹ Quint Forgey, *Surgeon General Warns This Week 'Is Going to Be Our Pearl Harbor Moment'*, POLITICO (Apr. 5, 2020), available at <https://www.politico.com/news/2020/04/05/surgeon-general-pearl-harbor-moment-165729>.

election in such extraordinary circumstances. As municipal and county clerks warned about the lack of capacity and resources to carry out the election properly, nine mayors, including the mayors of the five largest cities in Wisconsin, demanded that the election be postponed.²

3. What ensued has been described by one election law expert as the biggest election failure since the Voting Rights Act was enacted in 1965.³ Voters encountered obstacles at almost every stage of the election process, including: navigating the online systems designed to register voters and request absentee ballots; requesting absentee ballots, which were either never delivered or delivered too late; and voting in person. Before election day, 111 voting jurisdictions reported not having enough poll workers to open even one polling place; on election day, Milwaukee had 5 (of its usual 180) polling locations, Green Bay had 2 (of its usual 31) polling locations, and Waukesha had only 1 (of its usual 15). Voters who did go to the polls in many places encountered long waits and voting locations without adequate safety supplies for voters and poll workers alike.

4. Plaintiffs bring this case to prevent a replay of this mass disenfranchisement in either the August Partisan Primary or the November General Election. Like the April 7 election, those elections will take place against the backdrop of COVID-19 and the extraordinary challenges it presents to election administrators and voters. There is a growing consensus among experts that COVID-19 will alter the daily lives of Americans at least into next year, and certainly through November. Whatever the precise course of the pandemic between now and the coming elections, there is no question that community transmission and attendant risks will

² Joseph Ax, *Citing Coronavirus, Wisconsin Mayors Urge Postponement of Tuesday's Election*, REUTERS (Apr. 5, 2020), available at <https://www.reuters.com/article/us-health-coronavirus-election-wisconsin/citing-coronavirus-wisconsin-mayors-urge-postponement-of-tuesdays-election-idUSKBN21O0CZ>.

³ Shawn Johnson, *To the Polls in a Pandemic: How Wisconsin Went Ahead with an Election Amidst a Public Health Crisis*, WIS. PUBLIC RADIO (Apr. 13, 2020), available at <https://www.wpr.org/polls-pandemic-how-wisconsin-went-ahead-election-amidst-public-health-crisis>.

continue to impact the demand for online registration and for absentee voting methods, safe protocols for in-person voting, and other mechanics and processes of voting and election administration. The U.S. Constitution and the Voting Rights Act of 1965 require Defendants to administer upcoming elections in a way that avoids forcing voters to choose between their votes and their safety.

5. The U.S. Constitution guarantees that no eligible Wisconsin citizen will be deprived of the right to vote. Plaintiffs are individuals who were deprived of that right in the April 7 election and organizations whose work to ensure that Wisconsinites can participate in elections is burdened by Defendants' failure to provide a safe and accessible election under pandemic conditions. Plaintiffs allege that Defendants, by failing to take appropriate actions to ensure that Wisconsinites can safely access the ballot, violated Section 11(b) of the Voting Rights Act, the First and Fourteenth Amendments of the U.S. Constitution, and the Americans with Disabilities Act ("the ADA"). They bring this civil action to enjoin Defendants—Commissioners and the Administrator of the Wisconsin Elections Commission—from similarly violating Wisconsinites' rights to vote during future elections affected by COVID-19.

6. As the April 7 election demonstrated, Defendants maintain and administer an election system that—amidst a pandemic that both Wisconsin and national public health officials expect will continue and might well intensify between now and November—forces voters to choose between casting a ballot and protecting their own, their families', and their communities' health. In the April 7 election, Defendants failed to take available steps necessary to allow voters to vote safely, either in person or by the absentee voting procedures provided by Wisconsin law; and, despite the reports of substantial voter disenfranchisement, they have not taken sufficient steps to remedy those failures in advance of the coming elections. The burdens imposed by those

failures, moreover, did not fall equally on voters across the state. As a result, voters faced starkly different opportunities to safely cast a ballot depending on where they live, their age, their disability status, and their race.

7. Plaintiffs do not contest the results of the April 7 election. Plaintiffs instead come before this Court to obtain an order requiring Defendants to administer impending elections in a manner that will not violate eligible voters' federally protected rights to participate in those elections. To be sure, Wisconsin's April 7 election was conducted in the face of a public health crisis that few foresaw until the month before the election, and many election officials worked hard to manage the challenges it posed. Those challenges, however, do not alter the fundamental commands of the U.S. Constitution, the Voting Rights Act, and the Americans with Disabilities Act: that Defendants take reasonable steps to ensure that all voters can safely access the ballot and participate equally in a fair democratic process.

8. Specifically, to comply with the requirements of federal law, Defendants must ensure that in-person voting can be safely conducted during the impending elections, including by mandating that all polling locations be managed in compliance with social distancing guidelines to minimize COVID-19 transmission risk; that there is an adequate number of poll workers to open and administer safe, in-person polling locations; that ample, safe opportunities for in-person absentee voting are available; that all voters who request and are qualified to receive absentee ballots in fact timely receive those ballots; that voters can safely, effectively, and timely return their absentee ballots so their votes are counted; and that online systems designed to register voters and request absentee ballots are sufficient to handle anticipated voter traffic. Critically, to restore public confidence in the electoral process and prevent further

disenfranchisement, Defendants must also educate the Wisconsin public about how they can safely vote—either in person or by absentee ballot—in the impending elections.

9. Defendants failed to implement such measures for the April 7 election and have not taken steps to do so for the rapidly approaching August and November elections. Careful preparations are necessary to meet the inevitable challenges of conducting safe, fair elections amidst a pandemic. And those preparations must be undertaken sufficiently in advance of election day. Implementing changes to the administration of elections requires planning and preparation. Yet Defendants have not adopted policies that would implement the changes necessary to avoid the widespread disenfranchisement and substantial burdens on the right to vote that plagued the April 7 primary. Absent intervention by this Court—including by requiring Defendants to adopt such necessary policies when authorized by state law, and by enjoining state laws that currently preclude Defendants from taking necessary measures—the same electoral process breakdown and resulting violation of Plaintiffs’ rights under federal law is likely to recur during the impending August Partisan Primary and November General Election.

PARTIES

I. Plaintiffs

10. **Plaintiff Jill Swenson** is a resident of Appleton, Wisconsin, and a registered voter. Ms. Swenson is sixty-one years old and has early stage chronic obstructive pulmonary disease (“COPD”), an inflammatory lung disease. Ms. Swenson was unable to vote in person because of the risk to her physical health and safety represented by the COVID-19 pandemic. She requested and received a mail-in absentee ballot, but she lives alone and was unable to secure an in-person witness. Consistent with this Court’s order in *Democratic Nat’l Comm. v. Bostelmann*, No. 20-CV-249-WMC, 2020 WL 1638374, *18-20 (W.D. Wis. Apr. 2, 2020), she

mailed in an un-witnessed absentee ballot on the morning of April 3, 2020. After the Seventh Circuit stayed that order, *Democratic Nat'l Comm. v. Bostelmann*, Nos. 20-1538, 1539, 1545, 1546, Order (7th Cir. Apr. 3, 2020), and as a result of Defendants' decision not to provide voters like Ms. Swenson a reasonable opportunity to cure, Ms. Swenson's ballot was not counted. She was thus disenfranchised in the April 7 election. Ms. Swenson does not currently have a safe and effective way to cast a ballot in the upcoming elections.

11. **Plaintiff Melody McCurtis** is a resident of Sherman Park in Northwest Milwaukee, Wisconsin, and a registered voter. Ms. McCurtis lives with her immunocompromised mother, so it was unsafe for her to vote in person due to the COVID-19 pandemic. As a Black community organizer, she is also aware of the disproportionate rates of infection and death in the Black community, and these elevated risks added to her fears. She timely requested an absentee ballot on March 22, 2020. Her ballot never arrived. In order to vote in the April 7 election, Ms. McCurtis was forced to endanger her mother and endure a wait of more than two hours at Washington High School. Ms. McCurtis was unsafe because voters in line were not able to maintain social distance, because the polling location did not provide voters with personal protective equipment, and because voting equipment did not appear to be sanitary. Ms. McCurtis plans to vote in August and November and presently does not have a safe, equitable way to cast her ballot.

12. **Plaintiff Maria Nelson** is a resident of Appleton, Wisconsin, and a registered voter. Ms. Nelson has breast cancer and has been undergoing treatment since February 2019. As a result, she did not feel safe voting in person. Ms. Nelson timely emailed her absentee ballot request to the Appleton Clerk's office. She did not receive an absentee ballot by April 7, 2020. Ms. Nelson was unable to vote in person on April 7 because of the risk to her physical health and

safety represented by the ongoing COVID-19 pandemic. Ms. Nelson was thus disenfranchised in the April 7 election. Ms. Nelson does not currently have a safe and effective way to cast a ballot in the upcoming elections.

13. **Plaintiff Black Leaders Organizing for Communities (“BLOC”)** is a civic engagement project based in Milwaukee, Wisconsin, and a fiscally sponsored project of Tides Advocacy, a California nonprofit. BLOC mobilizes Black Wisconsinites to participate at all levels of government and encourages communities of color to fulfill their potential for electoral impact in Milwaukee. As part of its work, BLOC educates the Black community in Milwaukee about voter eligibility rules and the options for casting a ballot, and it conducts a get-out-the-vote field program. In the run-up to the April 7 election, BLOC was forced to divert significant resources in response to the constitutional and statutory violations challenged here. BLOC staff were forced to spend additional time troubleshooting online registration and absentee ballot request issues, walking voters through changing deadlines, and providing them with information about what in-person voting in Milwaukee would look like. This diversion of resources has continued through the May 12th Special Election and will continue through the August and November elections if these violations are not remedied.

14. **Plaintiff Disability Rights Wisconsin (“DRW”)** is a statewide nonpartisan, nonprofit, non-stock corporation organized under the laws of Wisconsin. DRW is based in Madison, and maintains offices across the state, including in Menasha, Milwaukee, Green Bay, and Rice Lake. DRW’s mission is to address the issues facing, and to ensure the rights of, all people with disabilities in Wisconsin. DRW is a member of the National Disability Rights Network and is designated by the Governor of Wisconsin to act as the congressionally mandated protection and advocacy system for Wisconsin citizens with disabilities, pursuant to Wis. Stat.

§ 51.62; 29 U.S.C. § 794e; 42 U.S.C. §§ 15041, *et seq.*; and 42 U.S.C. §§ 10801, *et seq.*

Accordingly, DRW has a state and federal mandate to protect and advocate for the rights of people with disabilities in Wisconsin, including those with developmental disabilities, mental illness, and traumatic brain injury. As part of this mandate, DRW oversees self-advocacy training and other programs and services to assist people with disabilities, including to secure election access, registering to vote, accessing polling places, and casting their ballots, and it staffs a Voter Hotline to assist voters with disabilities. DRW also co-leads the Wisconsin Disability Vote Coalition. In the run-up to the April 7 election, DRW was forced to divert significant resources in response to the constitutional and statutory violations challenged here. DRW had to produce numerous resources and trainings for voters that it would not have otherwise produced, and it had to spend staff time untangling the options for voters with disabilities and assisting voters who were at risk of being disenfranchised. This diversion of resources has continued through the May 12th Special Election and will continue through the August and November elections if these violations are not remedied. DRW also brings this suit on behalf of people with disabilities in Wisconsin who face significant obstacles to voting as a result of COVID-19 and will either be disenfranchised or exposed to heightened risk of illness if their legal rights to safely vote are not vindicated.

II. Defendants

15. **Defendants Marge Bostelmann, Julie M. Glancey, Ann S. Jacobs, Dean Knudson, Robert F. Spindell, Jr., and Mark L. Thomsen** are the six Commissioners of the Wisconsin Elections Commission and are named as Defendants in their official capacities. Together, they comprise the Wisconsin Elections Commission, the body that administers and

enforces Wisconsin's election laws other than those related to campaign finance. Wis. Stat. § 5.05(1), (2w).

16. **Defendant Meagan Wolfe** is sued in her official capacity as the Administrator of the Wisconsin Elections Commission. She is the chief elections officer of the state. Wis. Stat. § 5.05(3g).

17. Defendants have acted under color of state law at all times relevant to this action.

JURISDICTION AND VENUE

18. Plaintiffs bring this action under 42 U.S.C. §§ 1983 and 1988 to redress the deprivation, under color of state law, of rights secured by the U.S. Constitution and by the Voting Rights Act, 52 U.S.C. §§ 10101, *et seq.*, and the Americans with Disabilities Act, 42 U.S.C. §§ 12131, *et seq.* This Court has jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. §§ 1331 and 1343 because this case arises under the U.S. Constitution and federal statute and seeks equitable and declaratory relief for the deprivation of federal constitutional and statutory rights under color of state law.

19. This Court has jurisdiction to award attorneys' fees and costs pursuant to 42 U.S.C. § 1988(b) and 28 U.S.C. § 1920.

20. This Court has jurisdiction to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.

21. This Court has personal jurisdiction over Defendants, who are sued in their official capacities only.

22. Venue is appropriate in the Western District of Wisconsin, under 28 U.S.C. § 1391(b)(1), because Defendants are state officials located in Madison, Wisconsin. A

substantial part of the events giving rise to these claims occurred and continues to occur in this district, making venue also proper under 28 U.S.C. § 1391(b)(2).

FACTUAL ALLEGATIONS

I. Defendants and the Wisconsin Elections Commission

23. The Wisconsin Elections Commission (“the Commission”) administers and enforces all “laws relating to elections and election campaigns, other than laws relating to campaign financing,” which are administered separately by the Wisconsin Ethics Commission. Wis. Stat. § 5.05(1), (2w).

24. The Commission consists of six members, four appointed by legislative leaders and two nominated by the Governor. Wis. Stat. § 15.61. Defendants Bostelmann, Glancey, Jacobs, Knudson, Spindell, and Thomsen are the members of the Commission.

25. The Commission operates “under the direction and supervision of an administrator,” who also serves as the “chief election officer” for the state. Wis. Stat. § 15.61(1)(b); Wis. Stat. § 5.05(3g). Defendant Wolfe is the Administrator of the Commission.

26. The Commission maintains wide-ranging authority over the architecture of Wisconsin’s electoral system. The Commission retains authority to promulgate rules “applicable to all jurisdictions for the purposes of interpreting or implementing the laws regulating the conduct of elections or election campaigns, other than laws regulating campaign financing, or ensuring their proper administration.” Wis. Stat. § 5.05(1)(f).

27. Among many other things, the Commission’s authority includes:

- Issuing appropriate guidance or formal advisory opinions, or promulgating administrative rules, necessary to implement any state or federal court decision that is binding on the Commission. Wis. Stat. § 5.05(5t).

- Providing financial assistance to eligible counties and municipalities for election administration costs, consistent with other provisions of state law. Wis. Stat. § 5.05(10)-(11).
- Conducting or prescribing requirements for educational programs to inform electors about voting procedures, voting rights, and voting technology. Wis. Stat. § 5.05(12).
- Ensuring that the voting system used at each polling place permits all individuals with disabilities to vote without the need for assistance and with the same degree of privacy that is accorded to nondisabled electors voting at the same polling place. Wis. Stat. § 5.25(4); and
- Prescribing uniform instructions for municipalities to provide to absentee electors. Wis. Stat. § 6.869.

28. The Commission may also “reconsider at any time any written directives or written guidance provided to the general public . . . with regard to the enforcement and administration” of Wisconsin election law, including by county and municipal officials. Wis. Stat. § 5.05(16)(c).

29. Defendants at all times acted under color of state law.

II. The Coronavirus Pandemic and Wisconsin’s Response

A. COVID-19 and its Health Effects

30. In the United States, the first confirmed case of the novel coronavirus known as COVID-19 was identified in Washington State on January 21, 2020.

31. People infected by COVID-19 exhibit a wide range of symptoms, most prominently cough or shortness of breath or difficulty breathing.⁴ In addition, according to the

⁴ Ctrs. for Disease Control and Prevention, “Symptoms of Coronavirus,” *available at* <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html> (last updated May 13, 2020).

U.S. Centers for Disease Control and Prevention (“CDC”), five other symptoms indicate that a person may have COVID-19, including: fever, chills, muscle pain, sore throat, and new loss of taste or smell.⁵

32. COVID-19 is an especially infectious virus because it is frequently transmitted by people who are not experiencing symptoms. It may take up to 14 days after exposure to the virus for a person to exhibit any symptoms, and people may be most infectious prior to exhibiting symptoms. One study estimated that 44 percent of people infected contracted the virus from people who felt healthy at the time.⁶ In fact, some people may remain asymptomatic carriers and nonetheless transmit the virus.⁷ Others recover fully from their symptoms and continue shedding the virus that can infect others.⁸

33. The highly infectious nature of the disease—including its long incubation period and the number of asymptomatic, pre-symptomatic, and post-symptomatic carriers—poses significant concerns for populations that are most vulnerable to COVID-19, such as the elderly and the immunocompromised. The CDC identifies older adults as having a higher risk of developing more serious complications from COVID-19 and recommends that they stay home as much as possible when the virus is spreading in the community. The CDC has also warned that immunocompromised people (including smokers, those undergoing cancer treatment, bone marrow or organ transplantation, and those with poorly controlled HIV or AIDS, and immune deficiencies), as well as individuals with lung disease, asthma, heart conditions, severe obesity, diabetes, chronic kidney disease undergoing dialysis, and liver disease are at higher risk of

⁵ *Id.*

⁶ Katherine Harmon Courage, *How People Are Spreading Covid-19 Without Symptoms*, VOX (Apr. 22, 2020), available at <https://www.vox.com/2020/4/22/21230301/coronavirus-symptom-asymptomatic-carrier-spread>.

⁷ *Id.*

⁸ *Are COVID-19 Patients Contagious After Symptoms*, LABMATE (Apr. 16, 2020), available at <https://www.labmate-online.com/news/laboratory-products/3/breaking-news/are-covid-19-patients-contagious-after-symptoms/52030>.

developing more serious complications from COVID-19 illness.⁹ The Kaiser Family Foundation estimated that 92.6 million Americans ages 18 and older—nearly 40 percent of all American adults—are at heightened risk from COVID-19.¹⁰

34. People outside of these groups, however, are not free from risk. The Wisconsin Department of Health Services has warned that “[y]ounger people, and particularly those who are 18 to 30 years old, aren’t immune to COVID-19.”¹¹ A recent CDC analysis of coronavirus cases from mid-February to mid-March found that a fifth of those who needed to be hospitalized were ages 20 to 44, and nearly half were ages 20 to 54.¹² In Wisconsin, people ages 20 to 49 account for 54 percent of all COVID-19 cases.¹³

35. COVID-19 is infecting and killing Black people at disproportionately high rates across the United States. The latest available data indicates that the COVID-19 mortality rate for Black Americans is 2.3 times higher than the rate for Whites and Asians and 2.2 times higher than the rate for Latinos.¹⁴ A *Washington Post* analysis of available data and census demographics shows that “counties that are majority-black have three times the rate of infections and almost six times the rate of deaths as counties where white residents are in the majority.”¹⁵

⁹ Ctrs. for Disease Control and Prevention, “People Who Are at Higher Risk for Severe Illness,” available at <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html> (last updated May 14, 2020).

¹⁰ Wyatt Koma, et al., *How Many Adults Are at Risk of Serious Illness If Infected with Coronavirus? Updated Data*, KAISER FAMILY FOUNDATION (Apr. 23, 2020), available at <https://www.kff.org/global-health-policy/issue-brief/how-many-adults-are-at-risk-of-serious-illness-if-infected-with-coronavirus/>.

¹¹ Wis. Dep’t of Health Servs., “Outbreaks in Wisconsin,” available at <https://www.dhs.wisconsin.gov/outbreaks/index.htm> (last visited March 26, 2020).

¹² Ctrs. for Disease Control and Prevention, “Severe Outcomes Among Patients with Coronavirus Disease 2019 (COVID-19) — United States, February 12–March 16, 2020” (Mar. 27, 2020), available at https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e2.htm?s_cid=mm6912e2_w#T1_down.

¹³ Wis. Dep’t of Health Servs., “COVID-19: Wisconsin Cases,” available at <https://www.dhs.wisconsin.gov/covid-19/cases.htm> (last updated June 18, 2020).

¹⁴ APM Research Lab, “The Color of Coronavirus: COVID-19 Deaths by Race and Ethnicity in the U.S.,” available at <https://www.apmresearchlab.org/covid/deaths-by-race> (last updated June 10, 2020).

¹⁵ Reis Thebault, et al., *The Coronavirus Is Infecting and Killing Black Americans at an Alarming High Rate*, THE WASHINGTON POST (Apr. 7, 2020), available at <https://www.washingtonpost.com/nation/2020/04/07/coronavirus-is-infecting-killing-black-americans-an-alarmingly-high-rate-post-analysis-shows/?arc404=true>.

This trend is also discernable at the individual state level, where Black people disproportionately are infected with, and die of, COVID-19.

36. In Wisconsin, Governor Tony Evers has called the disproportionately high COVID-19 rates and deaths in the Black community “a crisis within a crisis.” Although Black Wisconsinites comprise just 6.7 percent of the state’s population, they account for roughly a fourth of COVID-19 deaths and nearly a fifth of COVID-19 cases.¹⁶ In Milwaukee County, an analysis found that areas that are “predominantly black are experiencing disproportionately high numbers of reported cases and concentrations of coronavirus clusters,” adding that “[r]ace is emerging as [a] key factor in determining who lives and who dies as this virus sweeps through the county.”¹⁷ Indeed, Blacks in Milwaukee are dying at nearly double the rate of their respective share of the population.¹⁸

37. Overall, according to the World Health Organization, “around 1 in every 5 people who catch COVID-19 needs hospital treatment.”¹⁹ To date, in Wisconsin, 13 percent of cases have required hospitalization, 3 percent of cases have required intensive care, and 3 percent of cases have ended in death.²⁰

¹⁶ Wis. Dep’t of Health Servs., “COVID-19: Wisconsin Deaths,” available at <https://www.dhs.wisconsin.gov/covid-19/deaths.htm> (last updated June 18, 2020); Wis. Dep’t of Health Servs., “COVID-19: Wisconsin Cases,” available at <https://www.dhs.wisconsin.gov/covid-19/cases.htm> (last updated June 18, 2020); U.S. Census Bureau, “QuickFacts Wisconsin,” available at <https://www.census.gov/quickfacts/WI> (last accessed June 18, 2020).

¹⁷ Joel Rast, *et al.*, *Milwaukee’s Coronavirus Racial Divide: A Report on the Early Stages of COVID-19 Spread in Milwaukee County*, UNIVERSITY OF WISCONSIN-MILWAUKEE (Apr. 2020), available at <https://uwm.edu/ced/wp-content/uploads/sites/431/2020/04/COVID-report-final-version.pdf>.

¹⁸ Compare Milwaukee County, “COVID-19 Dashboard,” available at <https://county.milwaukee.gov/EN/COVID-19> (last accessed May 12, 2020), with U.S. Census Bureau, “QuickFacts Milwaukee County, Wisconsin,” available at <https://www.census.gov/quickfacts/fact/table/milwaukeecountywisconsin/RHI225218> (last accessed May 12, 2020).

¹⁹ World Health Organization, “Getting Your Workplace Ready for COVID-19” (Mar. 3, 2020), available at <https://www.who.int/docs/default-source/coronaviruse/getting-workplace-ready-for-covid-19.pdf>.

²⁰ Wis. Dep’t of Health Servs., “COVID-19: Wisconsin Cases,” available at <https://www.dhs.wisconsin.gov/covid-19/cases.htm> (last accessed June 16, 2020).

38. According to the CDC, the best way to protect against illness from COVID-19 is to avoid exposure. As a result, the CDC recommends putting “distance between yourself and other people outside your home” if COVID-19 is spreading in your community.²¹

B. February and March in Wisconsin

39. On February 5, 2020, Wisconsin announced its first known case of COVID-19, the twelfth confirmed case in the United States.²²

40. During a February 27 Commission meeting, the first at which COVID-19 was discussed, Defendant Knudson, the Chair of the Commission, dismissed the need to plan for a COVID-19 outbreak, saying “at worst . . . there would be either long lines or a delay in reporting” and boasting about the Commission’s “robust procedures” for absentee voting.²³ When pressed on how to ensure that every voter would have access to the polls during a coronavirus outbreak, Defendant Knudson changed the subject.

41. On March 11, 2020, the World Health Organization declared an international pandemic. On the same day, municipal clerks in Wisconsin began raising concerns about the impact on the upcoming election, including polling place closures and poll worker shortages. On that date, Wisconsin had six confirmed COVID-19 cases.²⁴

42. On March 12, 2020, Governor Tony Evers declared a health emergency in response to the virus, authorizing the Department of Health Services to “take all necessary and appropriate measures to prevent and respond to incidents of COVID-19” and activating the

²¹ Ctrs. for Disease Control and Prevention, “How to Protect Yourself & Others,” available at <https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html> (last accessed May 11, 2020).

²² Bill Miston & Katie DeLong, *DHS officials confirm 1st case of coronavirus in Wisconsin, patient in ‘home isolation’*, FOX NEWS 6 (Feb. 5, 2020), available at <https://fox6now.com/2020/02/05/dhs-officials-confirm-1st-case-of-coronavirus-in-wisconsin/>.

²³ WisconsinEye, “Wisconsin Elections Commission February 2020 Meeting” (Feb. 27, 2020), available at <https://wiseye.org/2020/02/27/wisconsin-elections-commission-february-2020-meeting/>, at 1:46:07 - 1:50:38.

²⁴ Shamane Mills, *COVID-19 Cases in Wisconsin Jump from 3 to 6*, WIS. PUBLIC RADIO (Mar. 11, 2020), available at <https://bit.ly/2xPVC0Z>.

Wisconsin National Guard.²⁵ Soon after the Governor's announcement, fearful that nursing homes would become incubators for infection, the Defendants allowed municipal clerks to move polling places and directed municipalities not to use the statutory Special Voting Deputy process that facilitates absentee voting by residents of nursing homes and other care facilities.²⁶

43. By March 15, 2020, as the number of confirmed COVID-19 cases in Wisconsin rose to 33,²⁷ Milwaukee city officials stated they would need 1,800 new poll workers to replace older poll workers at higher risk of serious illness.

44. On March 17, 2020, the Wisconsin Department of Health Services banned gatherings of 10 or more people. In response, the Mayor of Green Bay noted that the city would be "unable to administer a normal election."²⁸

45. The next day, multiple Defendants acknowledged that it was not possible for the state to have a safe and fair election on April 7. Defendant Ann Jacobs said that she "no longer believe[d] that we are able to fairly and properly administer this election without delay or postponement, . . . I believe we're putting people at risk." Defendant Mark Thomsen echoed that concern, saying, "We're going to have an election where no one can vote safely — that's absurd," and Defendant Julie Glancey argued in favor of an election by mail-in ballot only.²⁹

²⁵ Wis. Executive Order No. 72, Relating to a Proclamation Declaring a Health Emergency in Response to the COVID-19 Coronavirus (Mar. 12, 2020), available at <https://bit.ly/3eEZpPR>.

²⁶ Meeting of the Wis. Elections Commission (Mar. 12, 2020), available at <https://elections.wi.gov/sites/elections.wi.gov/files/2020-03/March%2012%20Commission%20Meeting%20Agenda%20and%20Materials.pdf>.

²⁷ 33 Positive COVID-19 Cases in Wisconsin, FOX NEWS 11 (Mar. 15, 2020), available at <https://bit.ly/2Kkde8m>.

²⁸ Shawn Johnson, *Wisconsin Bans Crowds Of 10 Or Larger; Order Bars and Restaurants Closed*, WIS. PUBLIC RADIO (Mar. 17, 2020), available at <https://www.wpr.org/wisconsin-bans-crowds-10-or-larger-order-bars-and-restaurants-closed>.

²⁹ Laurel White, *State Election Officials Spar Over Possible Postponement Of April 7 Election*, WIS. PUBLIC RADIO (Mar. 18, 2020), available at <https://www.wpr.org/state-election-officials-spar-over-possible-postponement-april-7-election>.

46. Defendants also issued a memorandum highlighting shortages of absentee ballot envelopes, polling locations, poll workers, and cleaning equipment.³⁰ As Defendants encouraged voters to vote absentee, local clerks across the state estimated a shortage of 600,000 envelopes.

47. On March 20, 2020, a bipartisan group of mayors from Green Bay, Appleton, and Neenah urged that the election be delayed. At that point, there were 216 confirmed cases and three Wisconsinites had died.³¹ The same day, this Court ordered extended online voter registration until March 30, 2020. *Democratic Nat'l Comm. v. Bostelmann*, No. 20-CV-249-WMC, 2020 WL 1320819, at *9 (W.D. Wis. Mar. 20, 2020).

48. On March 22, 2020, citing COVID-19, the Wisconsin Supreme Court suspended jury trials until at least May 22.

49. On March 24, 2020, Department of Health Services Secretary-designee Andrea Palm issued Emergency Order No. 12, the Safer At Home Order, which banned all public and private gatherings of any number of people among members of different households, closed non-essential businesses, and required that everyone maintain social distancing of at least six feet from any other person.³² In response, Defendant Wolfe issued a memorandum stating that in-person absentee voting, sometimes known as early voting, must continue.³³

50. On March 25, 2020, the Wisconsin Senate began preparing for virtual sessions to enable remote voting on legislation. On March 26, 2020, the Wisconsin State Capitol building

³⁰ Wis. Elections Commission, "Update Regarding COVID-19 Election Planning" (Mar. 18, 2020), available at https://elections.wi.gov/sites/elections.wi.gov/files/2020-03/Com_.%20memo%20re%20COVID-19%20Election%20Planning%203.18.20.pdf.

³¹ *Officials: 216 Confirmed Cases of COVID-19 in the State; 3,455 Negative Tests*, Fox6 Now (Mar. 20, 2020), available at <https://fox6now.com/2020/03/20/wisconsin-dhs-206-confirmed-cases-of-covid-19-in-the-state/>.

³² Wis. Dep't of Health Servs., Emergency Order No. 12, Safer at Home Order, available at <https://bit.ly/3cObK2D>.

³³ Wis. Elections Commission, "Emergency Order No. 12 Does Not Eliminate In-Person Absentee Voting - COVID-19" (Mar. 24, 2020), available at <https://elections.wi.gov/node/6773>.

closed to the public. Assembly Speaker Robin Vos and Senate Majority Leader Scott Fitzgerald told reporters that they did not expect to change the date of the April 7 election.³⁴

C. Events Leading up to the April 7 Election

51. On April 2, 2020, after an extensive evidentiary hearing, this Court entered an injunction (a) ordering that absentee ballots received by April 13, 2020 at 4 p.m. be counted; (b) extending by one day, to April 3, 2020, the window to request an absentee ballot; and (c) adjusting the requirement under Wis. Stat. § 6.87(2) that absentee voters have a witness sign their ballot. *Democratic Nat'l Comm. v. Bostelmann*, No. 20-CV-249-WMC, 2020 WL 1638374, *22 (W.D. Wis. Apr. 2, 2020).

52. With respect to the absentee witness requirement, the Court ordered that Defendants “accept an unwitnessed ballot that contains a written affirmation or other statement by an absentee voter that due to the COVID-19 pandemic, he or she was unable to safely obtain a witness certification despite his or her reasonable efforts to do so, provided that the ballot is otherwise valid.” *Id.*, at *20.

53. The next day, April 3, 2020, the Seventh Circuit stayed the portion of this Court’s decision that adjusted the witness requirement for absentee voters but declined to modify the District Court’s extension of the absentee ballot deadline. *Democratic Nat’l Comm. v. Bostelmann*, Nos. 20-1538, 1539, 1545, 1546, order (7th Cir. April 3, 2020).

54. Also on April 3, Governor Evers issued an Executive Order calling a special legislative session so that the Legislature could postpone the April 7 election due to COVID-

³⁴ Will Kenneally, *Legislative Leaders Want April Election to Move Forward*, PBS WISCONSIN (Mar. 25, 2020), available at <https://pbswisconsin.org/news-item/legislative-leaders-want-april-election-to-move-forward/>.

19.³⁵ The next day, both the Wisconsin Assembly and the Senate adjourned the special session within seconds, ensuring that the election would go forward as planned.

55. On April 6, 2020, at 12:46 p.m., just eighteen hours before polls opened, Governor Evers issued Executive Order No. 74, suspending in-person voting for the April 7 election until June 9, or a different date ordered by the legislature.³⁶ Less than 5 hours later, the Wisconsin Supreme Court enjoined the Governor's order, holding that he did not have the power to change the date of the election.³⁷

56. Several hours after that, the United States Supreme Court held that all absentee ballots had to be postmarked by April 7 to be counted, partially overturning this Court's Order. *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205, 1208 (Apr. 6, 2020).

57. By election day, 83 Wisconsinites had died of coronavirus. Wisconsin had 2,440 reported coronavirus cases, and the Safer At Home Order remained operative.³⁸

III. Widespread Disenfranchisement in the April 7 Election

58. The fears surrounding the administration of the election were realized. Neil Albrecht, the Executive Director of the Milwaukee Election Commission, stated that “[i]t was

³⁵ Wis. Executive Order No. 73, Relating to a Special Session of the Legislature to Provide for an All-Mail Spring Election and Special Election for the 7th Congressional District During the COVID-19 Pandemic (Apr. 3, 2020), available at https://docs.legis.wisconsin.gov/code/executive_orders/2019_tony_evers/2020-73.pdf.

³⁶ Office of the Governor, “Gov. Evers Suspends In-Person Voting, Calls Legislature into Special Session on April 7 Election” (Apr. 6, 2020), available at <https://content.govdelivery.com/accounts/WIGOV/bulletins/2852119>; Wis. Executive Order No. 74, Relating to Suspending In-Person Voting on April 7, 2020, Due to the COVID-19 Pandemic (Apr. 6, 2020), available at https://content.govdelivery.com/attachments/WIGOV/2020/04/06/file_attachments/1420231/EO074-SuspendingInPersonVotingAndSpecialSession.pdf.

³⁷ Zac Schultz, *Live: Where Wisconsin's Election Currently Stands*, PBS WISCONSIN (Apr. 6, 2020), available at <https://pbswisconsin.org/news-item/live-where-wisconsins-election-currently-stands/>.

³⁸ German Lopez, *Wisconsin's Election Day Is a Public Health Disaster*, VOX (Apr. 7, 2020), available at <https://www.vox.com/2020/4/7/21212005/coronavirus-wisconsin-voting-lines-election-primary-court>; *Wisconsin Coronavirus Map and Case Count*, N.Y. TIMES, available at <https://www.nytimes.com/interactive/2020/us/wisconsin-coronavirus-cases.html> (last updated May 11, 2020).

chaos, and chaos is never good for the administration of an election.”³⁹ MIT Professor Charles Stewart III, a leading empirical scholar of election administration, has estimated that poll closings kept more than 16,000 people from casting ballots in Milwaukee alone.⁴⁰ Absentee ballots were never sent to over 11,000 voters who requested them,⁴¹ and more than 14% of absentee ballots requested and sent to voters were not received back for counting as of April 8, in significant part as a result of mail delays.⁴²

59. Moreover, the Wisconsin Department of Health Services has identified 52 cases of COVID-19 among poll workers and voters who were at in-person voting locations during the April 7 election and could have contracted the disease at those locations.⁴³

60. Defendants’ administration of the April 7 election failed on numerous dimensions, described in detail below. These failures caused substantial disenfranchisement, particularly among elderly voters, voters with disabilities, immunocompromised voters, and voters of color. Fundamentally, Defendants lacked a coherent, effective plan to ensure that each and every voter had a full and fair opportunity to vote while remaining protected from the threat presented by COVID-19.

A. Defendants’ Failure to Manage Online Registration and Absentee Ballot Problems Disenfranchised Voters

³⁹ Daphne Chen, *et al.*, ‘They Should Have Done Something’: Broad Failures Fueled Wisconsin Ballot Crisis, *Investigation Shows*, FRONTLINE PBS (Apr. 21, 2020), available at <https://www.pbs.org/wgbh/frontline/article/wisconsin-election-coronavirus-absentee-ballots/>.

⁴⁰ Charles Stewart III, @cstewartiii, Twitter (Apr. 15, 2020, 11:12 p.m.), available at <https://twitter.com/cstewartiii/status/1250623188150751232>; Charles Stewart III, *Important Lessons from the Wisconsin Primary*, Mischief of Action (Apr. 17, 2020), available at <https://www.mischiefsoffaction.com/post/important-lessons-from-the-wisconsin-primary>.

⁴¹ Wis. Elections Commission, “Absentee Ballot Report - April 7, 2020 Spring Election and Presidential Preference Primary” (Apr. 6, 2020), available at <https://elections.wi.gov/node/6817>.

⁴² Wis. Elections Commission, “Absentee Ballot Report - April 7, 2020 Spring Election and Presidential Preference Primary” (Apr. 8, 2020), available at <https://elections.wi.gov/node/6833>.

⁴³ Scott Bauer, *52 Who Worked or Voted in Wisconsin Election Have COVID-19*, ABC NEWS (Apr. 29, 2020), available at <https://abcnews.go.com/Health/wireStory/52-worked-voted-wisconsin-election-covid-19-70406317>.

61. Defendants failed to maintain digital systems sufficient to meet the needs of Wisconsin voters with respect to online registration and absentee ballot requests.

62. Wisconsin law requires eligible voters to register in order to cast a ballot. Wis. Stat. § 6.27. Eligible voters can register in person or by mail until 5:00 p.m. on the third Wednesday before election day, or online until 11:59 p.m. on the third Wednesday before election day. Wis. Stat. § 6.28(1). Thus, for the April 7 election, the deadline for registration was set by statute on March 18, 2020. With respect to online registration, this Court's Order subsequently extended the deadline until March 30, 2020. *Democratic Nat'l Comm. v. Bostelmann*, No. 20-CV-249-WMC, 2020 WL 1320819, at *9 (W.D. Wis. Mar. 20, 2020).

63. Those who miss these deadlines can register at the municipal clerk's office until close of business on the Friday before election day, Wis. Stat. § 6.29(2)(a), or in person on election day. *See generally* Wis. Stat. § 6.55.

64. Eligible voters who register to vote electronically or by mail must provide a copy of an "identifying document that establishes proof of residence." Wis. Stat. § 6.34(2). To do so, they must not only have access to the document, but be able to upload or photocopy it. The only exception to this requirement is for individuals registering electronically, who do not have to provide such documentation if they provide "the number of a current and valid operator's license [or] identification card." Wis. Stat. § 6.34(2m). To vote at polls, eligible voters must present an approved voter ID. Wis. Stat. § 6.79.

65. The Wisconsin Division of Motor Vehicles ("DMV") is responsible for issuing all driver's license, state ID, or official voter ID cards to Wisconsin residents. Many people can still only obtain a qualifying voter ID by actually visiting a DMV office in person, including those who are applying for a Wisconsin identification card for the first time, or who have not held a

qualifying Wisconsin ID in recent years. Many of those in this category are voters with disabilities.

66. Wisconsin allows voters to vote by absentee ballot without providing an excuse for why they cannot vote in person. *See* Wis. Stat. § 6.20. Eligible voters can request an absentee ballot by mail; in person at the municipal clerk’s office; by signing a statement and requesting to receive an absentee ballot under special procedures for voters who are indefinitely confined; by an agent, under special procedures for voters who are hospitalized; by delivery to a special voting deputy; or by e-mail or fax. Wis. Stat. § 6.86(1)(a).

67. Defendants administer the digital systems that track voter registration and absentee balloting. MyVote is the public-facing website that allows eligible voters to review general information, register to vote, request an absentee ballot, view the contents of their ballot, view their voting history, and find their polling place. WisVote is Wisconsin’s statewide voter list and election-management database, accessible to election officials.

68. When a request for an absentee ballot is made by a voter in the MyVote website, the system converts it into an email. Next, a municipal elections clerk must review the email to verify the voter’s identification, manually enter the information into WisVote, and print mailing labels.⁴⁴

69. MyVote has seen increased traffic in the last few years. It has experienced outages since at least early 2020, which Defendant Wolfe acknowledged in a memorandum on February 18, 2020.⁴⁵ Defendants failed to take sufficient action to remedy and prevent those outages, and as a result the outages continued during high-demand periods in the run-up to the April 7

⁴⁴ Chen, *et al.*, *‘They Should Have Done Something’: Broad Failures Fueled Wisconsin Ballot Crisis, Investigation Shows*.

⁴⁵ Wis. Elections Commission, “Update for Clerks on MyVote Address Problems” (Feb. 18, 2020), *available at* <https://elections.wi.gov/node/6688>.

election. During the specific periods of time that voters sought to register to vote or request an absentee ballot for that election, the MyVote website suffered from outages and was sometimes erroneously closed to new requests.⁴⁶

70. Absentee ballot requests also caused problems for the system.⁴⁷

71. An investigation by the Milwaukee Journal Sentinel, FRONTLINE, and Columbia Journalism Investigations into Wisconsin's April 7 election named the "[i]nadequate computer system" as one of the main problems in the election.⁴⁸ It found eligible voters in Lodi, Pewaukee, Marshfield, Shorewood, and Bristol who had trouble requesting absentee ballots online, either because the system simply crashed or because they had to give up after spending hours in front of a computer trying to make their request. The investigation also found that—across eight cities—Wisconsin voters said they requested absentee ballots only to be later informed that the state's system had no record of their request.⁴⁹

72. Defendants do not appear to have secured the server capacity and bandwidth necessary to support the surge of online registrations and online absentee ballot requests that was inevitable for an election conducted under the threat of COVID-19.

73. Defendants did not take action to divert traffic away from the website.

74. Defendant Wolfe wrote in a memorandum after the election that the WisVote system "performed very well but required round the clock monitoring and auditing to handle this unique and unprecedented user behavior and traffic."⁵⁰

⁴⁶ Chen, *et al.*, *'They Should Have Done Something': Broad Failures Fueled Wisconsin Ballot Crisis, Investigation Shows.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Wis. Elections Commission, "Summary of April 7, 2020 Election" (Apr. 18, 2020), *available at* <https://elections.wi.gov/sites/elections.wi.gov/files/2020-04/April%207%20Election%20Summary%20and%20Next%20Steps.pdf>.

75. In the same memorandum, she acknowledged with respect to MyVote that “there were unique challenges and obstacles for some voters at the election,” while maintaining that Commission staff had been successful in “accommodating a significant level of voter turnout.” *Id.* at 4.

B. Defendants’ Failures to Ensure Distribution of Requested Absentee Ballots Disenfranchised Voters

76. Defendants failed to ensure that voters who requested absentee ballots timely received them, resulting in the disenfranchisement of those, like immunocompromised voters, unable to vote in person.

77. Under Wisconsin law, voters can request absentee ballots until 5:00 p.m. on the fifth day before an election, and in-person requests must be made at the municipal clerk’s office by the Sunday preceding an election. Wis. Stat. § 6.86(1)(b). Municipal clerks must send an absentee ballot within one business day of when the request was received. Wis. Stat. § 7.15(cm).

78. For the April 7 election, the deadline for the receipt of absentee ballot requests was set by statute as April 2, 2020. With respect to mail, fax, or email absentee ballot requests, this Court’s Order subsequently extended the deadline to April 3, 2020. *Democratic Nat’l Comm. v. Bostelmann*, No. 20-CV-249-WMC, ___ F.Supp.3d ___, 2020 WL 1638374, at *2 (W.D. Wis. Apr. 2, 2020).

79. Wisconsin law requires voters to present a copy of their proof of identification with their application for an absentee ballot. Wis. Stat. § 6.86(1)(ac).

80. Approximately 73% of votes ultimately cast in the April 7 election were absentee ballots;⁵¹ by contrast, in the 2016 General Election, just 27% of the votes were cast absentee.⁵²

81. However, many voters, especially immunocompromised voters, were unable to participate in the April 7 election as a result of Defendants' failures to ensure effective and timely distribution of absentee ballots.

82. Wisconsin Elections Commission data show that on election day, more than 12,000 requested absentee ballots had not yet been sent to voters. Voters around the state who had timely requested absentee ballots never received them. One survey found that voters from almost 100 Wisconsin cities and towns reported not receiving an absentee ballot, despite having requested one—in most cases at least two weeks in advance of the election.⁵³

83. Moreover, according to the Commission's website, 14.5% of 1,284,438 absentee ballots sent to voters (over 186,000 votes) had not been returned by April 13, 2020.⁵⁴ In comparison, in the 2016 general election, only 14,480, or 1.7%, of the 845,243 absentee ballots sent were reported as having not been received for counting.⁵⁵ Though it is impossible to know what proportion of absentee ballots were not returned because voters did not timely receive them, the disproportionate non-return rate suggests that thousands of additional voters who timely requested ballots never actually received them. These data do not take into account how

⁵¹ Chen, *et al.*, *'They Should Have Done Something': Broad Failures Fueled Wisconsin Ballot Crisis, Investigation Shows*.

⁵² Wis. Elections Commission, "Elections and Voting Statistics," available at <https://elections.wi.gov/elections-voting/statistics> (last accessed May 9, 2020); Wis. Elections Commission, "General Election Voter Registration and Absentee Statistics 1984-2016.xlsx," available at https://elections.wi.gov/sites/elections.wi.gov/files/page/general_election_voter_registration_and_absentee_s_40046.xlsx (last accessed May 12, 2020).

⁵³ Chen, *et al.*, *'They Should Have Done Something': Broad Failures Fueled Wisconsin Ballot Crisis, Investigation Shows*.

⁵⁴ Wis. Elections Commission, "Absentee Ballot Statistics for April 7" (Apr. 13, 2020), available at <https://elections.wi.gov/node/6765>.

⁵⁵ Wis. Elections Commission, "Absentee Ballot Report" (Nov. 14, 2016), available at <https://elections.wi.gov/node/4414>.

many of the returned ballots were actually counted. One estimate put the number of returned ballots that were not counted because of mail delays and confusion about deadlines in the tens of thousands.⁵⁶

84. Several problems contributed to this failure to ensure effective distribution of absentee ballots:

- **First**, a shortage of envelopes appears to have delayed the mailing of absentee ballots. On March 18, for example, Defendants noted that clerks across the state estimated a shortage of approximately 600,000 envelopes.⁵⁷ Although Defendants worked with paper suppliers to address the shortage, it created a backlog that contributed to delays.⁵⁸
- **Second**, election clerks struggled to keep up with the large volume of absentee ballot requests, and Defendants did not provide them with additional funding or staff to help. The Madison City Clerk reported that there was “no way humanly possible” for officials to mail out ballots at the rate they were receiving requests, despite working 110 hours a week.⁵⁹ She suggested that exhausted officials were more likely to make errors in fulfilling the ballot requests. Indeed, some voters reported receiving multiple ballots, while one couple reported receiving empty envelopes without a ballot. Another voter did not receive a ballot until after the election because it had been mailed without a street name and had been returned to the clerk’s office as undeliverable.

⁵⁶ Scott Bauer & Nicholas Riccardi, *Parties Mine Wisconsin for Clues to Voting in the Virus Era*, AP NEWS (Apr. 14, 2020), available at <https://apnews.com/99f183ea43fd558e08393d2b064bb801>.

⁵⁷ Wis. Elections Commission, “Update Regarding COVID-19 Election Planning.”

⁵⁸ Emily Bazelon, *Will Americans Lose Their Right to Vote in the Pandemic?*, N.Y. TIMES MAGAZINE (May 5, 2020), available at <https://www.nytimes.com/2020/05/05/magazine/voting-by-mail-2020-covid.html>.

⁵⁹ Chen, *et al.*, *‘They Should Have Done Something’: Broad Failures Fueled Wisconsin Ballot Crisis, Investigation Shows*.

- **Third**, mail delivery problems, of which Defendants were on notice, contributed to this failure. Defendants were aware of “potential delays in mail delivery” by the United States Postal Service (“USPS”) as early as March 18, and, although Defendants sought to stay in touch with USPS to learn about delays and “encouraged clerks to communicate and coordinate with local post offices,” this response was insufficient.⁶⁰

85. The problems turned out to be overwhelming. In Milwaukee, numerous voters never received an absentee ballot even though their ballots had been issued two weeks before the election. In the week leading up to the election, Fox Point Village Hall received returns from USPS of 100 to 150 undelivered absentee ballots per day, with officials making at least seven trips to the post office to re-mail the undelivered ballots.⁶¹ On the morning of the election, officials received a plastic mail bin containing 175 absentee ballots that appeared to have never been sent to voters, including several ballots intended for a different municipality.⁶² The day after the election, a postal worker discovered three containers of undelivered absentee ballots intended for voters in Oshkosh and Appleton.⁶³

86. Defendants failed to ensure a uniform appropriate response to these challenges, and as a result, voters’ ability to cast a ballot that would be counted varied widely and arbitrarily, depending on the location of the residential address at which they were registered to vote. For

⁶⁰ Wis. Elections Commission, “Update Regarding COVID-19 Election Planning.”

⁶¹ *Returned to Sender: Postal Officials Investigating Wisconsin Absentee Ballots That Were Never Delivered*, WIS. PUBLIC RADIO (Apr. 9, 2020), available at <https://www.wpr.org/returned-sender-postal-officials-investigating-wisconsin-absentee-ballots-were-never-delivered>.

⁶² Jeff Ramage, *Post Office Returns Hundreds of Absentee Ballots That Were Supposed to Be Delivered to Fox Point Voters*, MILWAUKEE JOURNAL SENTINEL (Apr. 8, 2020), available at <https://www.jsonline.com/story/communities/northshore/news/fox-point/2020/04/08/wisconsin-election-fox-point-absentee-ballots-never-made-voters/5119812002/>.

⁶³ *Returned to Sender: Postal Officials Investigating Wisconsin Absentee Ballots That Were Never Delivered*, WIS. PUBLIC RADIO.

example, to ensure the orderly distribution of absentee ballots to voters who wanted to avoid in-person voting, some municipalities, including Whitefish Bay and Bayside, mailed every registered voter within the municipality an absentee ballot request form.⁶⁴ Those municipalities experienced significantly higher rates of voter participation than did most municipalities that did not take this step.

87. All of this makes clear that Defendants failed to ensure that all registered voters who timely requested absentee ballots received them in time to participate in the April 7 election.

C. Defendants' Failure to Make Adequate Provisions for Voters to Return Absentee Ballots Disenfranchised Voters

88. Wisconsin law provides that absentee ballots must be “delivered to the polling place no later than 8 p.m. on election day.” Wis. Stat. § 6.87(6). This means that absentee ballots must be physically received by that time in order to count.

89. With respect to the April 7 election, this Court’s Order enjoined “the enforcement of the requirement under Wis. Stat. § 6.87(6) that absentee ballots must be received by 8:00 p.m. on election day to be counted and extend[ed] the deadline for receipt of absentee ballots to 4:00 p.m. on April 13, 2020.” *Democratic Nat’l Comm. v. Bostelmann*, No. 20-CV-249-WMC, ___ F.Supp.3d ___, 2020 WL 1638374, at *2 (W.D. Wis. Apr. 2, 2020). On April 6, the U.S. Supreme Court partially stayed that injunction, requiring that “a voter’s absentee ballot must be either (i) postmarked by election day, April 7, 2020, and received by April 13, 2020, at 4:00 p.m., or (ii) hand-delivered as provided under state law by April 7, 2020, at 8:00 p.m.” *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 140 S. Ct. 1205, 1208 (Apr. 6, 2020).

⁶⁴ Craig Gilbert, *How Two Communities on Milwaukee’s North Shore Achieved Sky-High Levels of Absentee Voting Despite Coronavirus*, Milwaukee Journal Sentinel (Apr. 10, 2020), available at <https://www.jsonline.com/story/news/politics/elections/2020/04/10/wisconsin-absentee-ballot-forms-sent-whitefish-bay-bayside-voters/5129125002/>.

90. More than 100,000 absentee ballots were received in the extended window—namely, after April 7 and before April 13.⁶⁵

91. For many voters, including Plaintiffs Swenson and Nelson, personally delivering a ballot to the municipal clerk, as anticipated by Wis. Stat. § 6.86(6), was not an option due to the need to maintain social distance to preserve their health. Defendants had acknowledged that USPS was experiencing significant delay issues as early as March 18. However, they nonetheless failed to ensure that the many voters seeking and receiving absentee ballots in the weeks before the election would be able to return them so that their votes could be counted.

92. For example, Defendants failed to require that municipalities establish secure drop boxes so that voters could return absentee ballots while maintaining social distancing and without relying on USPS. Defendant Wolfe issued a memorandum on March 31 that identified drop boxes as an option, but it did not require or even recommend that option.⁶⁶

93. This failure presented particular difficulties after the Supreme Court’s April 6 decision requiring either that ballots be postmarked by 8 p.m. on April 7 or that they be hand-delivered by that time. *Republican Nat’l Comm.*, 140 S. Ct. at 1208.

94. Most significantly, Defendants failed to take action to ensure that validly cast absentee ballots without a postmark would be counted. Some voters who responded to this Court’s decision by placing their ballots in the mail on April 7, before the deadline, were nonetheless disenfranchised because no postmark appeared on their ballot — a fact entirely beyond the control of those voters. The Madison City Clerk reported several thousand ballots

⁶⁵ Richard Pildes, *How Many Absentee Ballots in WI Came In on Time Because of the Court Decision to Extend the Receipt Deadline?*, ELECTION LAW BLOG (Apr. 15, 2020), available at <https://electionlawblog.org/?p=110746>.

⁶⁶ Wis. Elections Commission, “FAQs: Absentee Ballot Return Options: USPS Coordination and Drop Boxes” (Mar. 31, 2020), available at <https://elections.wi.gov/sites/elections.wi.gov/files/2020-03/Ballot%20Return%20Options%203.31.2020.pdf>.

missing a postmark, and some ballots bearing two different postmarks, one dated before April 7 and one dated after. Milwaukee, Greenfield, Manitowoc, Fitchburg, and Sister Bay also received ballots without postmarks. Clerks in Luxembourg and Elm Grove reported ballot envelopes with postmarks so light that the date on them was unreadable.

95. Defendants failed to promulgate rules or issue guidance to ensure uniform, appropriate treatment of ballots without a postmark that arrived on April 8, the day after the election, be counted, even though the president of the Wisconsin State Association of Letter Carriers confirmed that ballots received on April 8 had “almost certainly” been mailed by April 7.⁶⁷

D. Defendants’ Enforcement of Wis. Stat. § 6.87(2)’s Witness Requirement Disenfranchised Voters at High Risk From COVID-19

96. As to voters at elevated risk for COVID-19, including elderly and immunocompromised voters, Wisconsin’s absentee ballot-witnessing requirement effectively denied citizens the right to vote.

97. Under Wisconsin law, absentee ballots must be witnessed and signed by another adult citizen who is not a candidate on the ballot. Wis. Stat. § 6.87(4). For elderly and immunocompromised voters, including Plaintiff Swenson, in-person voting was not an option because of the infection risk presented by contact with other people. But absentee voting also presented a risk to the health to these voters because of the requirement that an adult citizen witness them sign the ballot.

⁶⁷ Riley Vetterkind, *Elections Commission Deadlocks Over Whether to Count Ballots Without Postmarks*, WIS. STATE JOURNAL (Apr. 11, 2020), available at https://madison.com/wsj/news/local/govt-and-politics/elections-commission-deadlocks-over-whether-to-count-ballots-without-postmarks/article_74e0285c-76d7-5471-a82e-144b78609f48.html.

98. In Wisconsin, the envelopes in which absentee ballots are returned must include the following language in the “Certification of Voter” box:

I certify that I exhibited the enclosed ballot unmarked to the witness, that I then in (his)(her) presence and in the presence of no other person marked the ballot and enclosed and sealed the same in this envelope in such a manner that no one but myself and any person rendering assistance under s. 6.87(5), Wis. Stats., if I requested assistance, could know how I voted.

Wis. Stat. § 6.87(2).

The absentee ballot witness is required to certify to the following language:

I, the undersigned witness, subject to the penalties of s. 12.60 (1)(b), Wis. Stats., for false statements, certify that I am an adult U.S. citizen and that the above statements are true and the voting procedure was executed as there stated. I am not a candidate for any office on the enclosed ballot (except in the case of an incumbent municipal clerk). I did not solicit or advise the elector to vote for or against any candidate or measure.

Id. Defendants have promulgated a form envelope for absentee ballots that contains these certifications and provides space for the relevant signatures and witness address information.

99. Defendants failed to take action to ensure that immunocompromised voters could successfully comply with this requirement. Defendant Wolfe issued a memorandum declaring that there were “no exemptions in the law for the witness requirement.”⁶⁸ Although the memorandum suggested some ways voters might comply with the requirements while maintaining a physical quarantine, Plaintiff Swenson did not believe that she could plausibly use them to keep herself safe and cast a ballot.

100. This Court recognized that the mechanisms were insufficient at least as applied to certain populations, “in particular those who are immunocompromised or elderly.” *Democratic Nat’l Comm. v. Bostelmann*, No. 20-CV-249-WMC, ___ F.Supp.3d ___, 2020 WL 1638374, at *2- (W.D. Wis. Apr. 2, 2020). This Court’s Order enjoined “the enforcement of Wis. Stat.

⁶⁸ Wis. Elections Commission, “Absentee Witness Signature Requirement Guidance COVID-19” (Mar. 29, 2020), available at <https://elections.wi.gov/node/6790>.

§ 6.87(2) as to absentee voters who have provided a written affirmation or other statement that they were unable to safely obtain a witness certification despite reasonable efforts to do so, provided that the ballots are otherwise valid.” *Id.*

101. The following day, April 3, 2020, the Seventh Circuit stayed enforcement of this aspect of the injunction. *Democratic Nat’l Comm. v. Bostelmann*, Nos. 20-1538, 1539, 1545, 1546, Order (7th Cir. Apr. 3, 2020).

102. In response, Defendants adopted a rule that disenfranchised Plaintiff Swenson and other voters who had complied fully with then-operative law. On April 5, 2020, almost two days after the Commission’s initial advisory notice on the topic, Defendants concluded that “[e]ach absentee ballot for this election must have the required witness signature and address in order to be counted, including ballots that were returned when this Court’s original order was in effect for approximately 24 hours.”⁶⁹

103. Defendants’ action invalidated ballots—like that of Plaintiff Swenson—that complied at the time they were submitted with this Court’s then-valid order and Commission guidelines. The only option that Defendants presented for voters who had cast these ballots was to present a witness to election officials in person—defeating both social distancing and the entire purpose of absentee voting.

E. Defendants Failed to Safeguard the Availability of In-Person Absentee Voting

104. Defendants failed to take action to ensure adequate opportunities for in-person absentee voting (also known as “early voting”) throughout the state. In-person absentee voting allows voters to apply for and obtain an absentee ballot in person, and then to complete and cast the ballot immediately. This increasingly popular method of voting is particularly important

⁶⁹ Wis. Elections Commission, “Updated Absentee Witness Signature Requirement Guidance - COVID-19” (Apr. 5, 2020), available at <https://elections.wi.gov/node/6816>.

during the pandemic because it accommodates voters who are unable to obtain a mail-in absentee ballot for a variety of reasons, such as lack of ready access to the online application system, a transient mailing address, homelessness, and other difficulties. It also alleviates the burden on election day voting by spreading out the period of in-person voting and allowing those voters who prefer to vote in-person—perhaps because they do not trust the mail to deliver or return their ballot—to do so at uncrowded, safer locations at a more convenient time.

105. In-person absentee voting can also be conducted on a “drive through” basis, allowing voters to obtain and cast a ballot while minimizing contact with other people or shared surfaces.

106. During the April 7 election period, Defendants failed to take action to ensure adequate in-person absentee voting opportunities, or to ensure that available opportunities were properly publicized. For example, all three of the City of Milwaukee’s in-person absentee voting locations abruptly closed on March 23, 2020, following an announcement the previous day. The city subsequently reopened one early voting site downtown but made it available only as a drive-through, thereby limiting it to those voters with access to a car. These voting changes were poorly publicized, leaving many voters confused or simply unaware of early voting options in the city. Moreover, the closure of early voting locations outside of downtown disproportionately affected the ability of residents of low-income and predominantly Black and Latino neighborhoods to vote.

107. Similarly, in Green Bay, in-person absentee voting opportunities were severely limited. In-person absentee voting was confined to a single site that was only open on ten weekdays leading up to the election. On eight of those ten days, voting was limited to four midday hours. Capacity was further limited during in order to permit social distancing.

108. More broadly, opportunities for in-person absentee voting varied dramatically across the state in terms of the number of locations, hours, and manner of voting (*i.e.*, drive through vs. walk in). These options were also generally poorly publicized. Defendants' actions and inaction with respect to in-person absentee voting thus deprived voters of a safer alternative to in-person election day voting and put additional pressure on the mail-in absentee system that failed so many voters.

109. For the upcoming August and November elections, Wisconsin law required municipalities to designate locations for in-person absentee voting by June 11, 2020. Wis. Stat. § 6.855(1). Unless this provision is enjoined, Defendants and municipalities will not have the flexibility necessary to provide sufficient and safe in-person absentee voting opportunities because of the early cut-off for designating polling locations.

F. Defendants Failed to Ensure An Adequate Number of Election Day Polling Places

110. Defendants failed to take action to ensure that adequate in-person voting locations would be available to all voters around the state. As a result, in some jurisdictions a high proportion of polling places did not open, and voters who sought to vote in-person—whether because they had not received an absentee ballot or because they had always intended to vote in person—faced hurdles to casting a ballot.

111. Wisconsin law requires that “[p]olling places shall be established for each election at least 30 days before the election.” Wis. Stat. § 5.25(3).

112. Each of these polling places “shall be accessible to all individuals with disabilities,” and Defendants are charged with the responsibility to ensure that voting systems at these polling places allow voters with disabilities to vote privately and independently. *Id.* § 5.25(4)(a).

113. Voters with disabilities who require the use of assistive technology available to them at polling places have no option to avoid in-person voting. Many other voters require in-person voting options if the online registration system fails or they do not receive a requested absentee ballot on time. Still others vote in person because of the symbolic significance of voting at a polling place on election day.

114. Defendants failed to ensure that Wisconsin voters could safely exercise the right to vote, including by ensuring an adequate numbers of poll workers—referred to as election inspectors by Wisconsin statute—available to operate the number of polling places that would enable safe and uncrowded voting.

115. Almost 60 percent of Wisconsin municipalities reported a shortage of poll workers ahead of the April 7 election as volunteers sought to protect themselves against COVID-19. These staffing shortages were especially acute because many older poll workers were unwilling to risk their health. According to a survey conducted by Defendants prior to the election, 111 voting jurisdictions in Wisconsin believed they would not have enough workers to open even one polling place on election day, and 126 additional jurisdictions thought they did not have enough workers to open “all desired polling places.”⁷⁰

116. These massive anticipated poll worker shortages led to unprecedented reductions in the number of polling locations in some jurisdictions. Milwaukee faced the most closures of any city, opening just 5 of its 180 polling sites. While the city usually has 2,000 election

⁷⁰ Wis. Elections Commission, “Special Teleconference-Only Meeting, Polling Place Supply and Personnel Shortages Memorandum” (Mar. 31, 2020), *available at* <https://elections.wi.gov/sites/elections.wi.gov/files/2020-03/Complete%20Packet%2031.pdf>.

workers, on April 7 it had only 400. One news report noted that some communities with just a tenth of Milwaukee's population had more polling sites open.⁷¹

117. Although the Governor eventually mobilized the National Guard to work at the polls, many municipalities were not aware of that option until after they had announced poll closures. City of Milwaukee Election Commission Executive Director Neil Albrecht, who made a request for National Guard assistance months earlier, said that he learned about the Governor's decision through media reports.⁷² Albrecht said that if he had known about the assistance, he could have opened more polling locations in Milwaukee, but it was "too little too late" right before the election.⁷³ In any event, according to a survey conducted by Defendants, only 2,400 National Guard members were available to address the 7,000 person shortage in poll workers.⁷⁴

118. As a result, the 19,000 Milwaukee voters who voted in person encountered wait times of up to two-and-a-half hours. Plaintiff McCurtis waited in line to vote at Washington High School for more than two hours. When the polls were set to close at 8:00 p.m., hundreds of Milwaukee voters were still waiting in line, Plaintiff McCurtis among them.

119. Milwaukee had offered drive-up in-person absentee voting in the days leading up to the election, but on the last day it was possible to vote in that manner, lines of cars stretched for blocks downtown and the wait lasted hours.⁷⁵

⁷¹ Corrinne Hess & Megan Hart, *Wisconsin Polls Close But Hundreds Of Voters Remain In Line*, WIS. PUBLIC RADIO (Apr. 7, 2020), available at <https://www.wpr.org/wisconsin-polls-close-hundreds-voters-remain-line>.

⁷² Molly Beck, *Gov. Tony Evers to Use National Guard Members to Work the Polls Amid Massive Shortage of Workers*, MILWAUKEE JOURNAL SENTINEL (Apr. 1, 2020), available at <https://www.jsonline.com/story/news/politics/elections/2020/04/01/tony-evers-use-national-guard-members-work-polls-amid-massive-shortage-workers/5102869002/>.

⁷³ *Id.*

⁷⁴ Marisa Wojcik, *State Increases Contact Tracing After In-Person Voting*, PBS WISCONSIN (Apr. 10, 2020), available at <https://pbswisconsin.org/news-item/state-increases-contact-tracing-after-in-person-voting/>.

⁷⁵ Aaron Maybin, *'I Had to Go Do This:' Some Waited 2 Hours on Final Day of Drive-Thru Voting in Milwaukee*, FOX 6 (Apr. 5, 2020), available at <https://fox6now.com/2020/04/05/i-had-to-go-do-this-some-waited-2-hours-on-final-day-of-drive-thru-voting-in-milwaukee/>.

120. That Milwaukee was so hard hit by these issues is particularly troubling because Milwaukee is home to 69.4% of Wisconsin’s Black population⁷⁶—meaning that Black Wisconsin voters were disproportionately likely to be affected by polling place closures.

121. In Green Bay, which opened just two of its 31 polling sites because just 17 of its 270 usual poll workers were able or willing to work,⁷⁷ voters faced wait times of up to four hours.⁷⁸ In Waukesha, which has a population of 70,000, just one polling location out of the usual 15 was open.

122. Defendants’ failures to ensure safe access to polling places on election day also resulted in arbitrary disparities, in which whether a voter had access to safe voting options depended on where that voter lives. For example, in stark contrast to Milwaukee and Green Bay, in Madison, 66 out of 92 polling sites were open. Madison also began offering curbside voting as early as Friday, April 1 to high-risk voters. While the voting process was altered, it nonetheless proceeded smoothly. Similarly, in some rural counties across Wisconsin, voting went more smoothly, without the same extended wait times.

123. Nearly a month before the April 7 election, Defendant Wolfe acknowledged that poll worker shortages were likely to be a problem, but she did not take action sufficient to remedy the problem. While she provided several recruiting suggestions and instructed clerks to contact the Commission if they were experiencing “significant poll worker shortages,” the

⁷⁶ Wis. Dep’t of Health Servs., “African Americans in Wisconsin: Overview,” available at <https://www.dhs.wisconsin.gov/minority-health/population/afriamer-pop.htm> (last revised Sept. 10, 2018).

⁷⁷ *Wisconsin Primary Recap: Voters Forced to Choose Between Their Health and Their Civic Duty*, N.Y. TIMES (Apr. 7, 2020), available at <https://www.nytimes.com/2020/04/07/us/politics/wisconsin-primary-election.html>.

⁷⁸ *Wisconsin Heads to the Polls Amid Coronavirus Pandemic*, WIS. PUBLIC RADIO (Apr. 7, 2020), available at <https://www.wpr.org/wisconsin-heads-polls-amid-coronavirus-pandemic>.

“possible recruitment efforts” that the Commission suggested it might undertake did not solve the problem.⁷⁹

124. Defendants’ failure to take action here had a particularly significant effect because underlying legal requirements made it extremely unlikely that municipalities could solve their poll-worker problems on their own. Wisconsin statutes provide that each election official, including each inspector, must be “a qualified elector of a county in which the municipality where the official serves is located.” Wis. Stat. § 7.30(2). The county-residence requirement forbids recruiting inspectors from other parts of the state. This restriction needlessly makes it more difficult for Defendants to address poll worker shortages, which will recur during the upcoming elections.

125. This statute also means that municipalities within the same county can draw from the same pool of inspectors. Defendants did not attempt to facilitate, encourage, or coordinate such intra-county poll-worker sharing.

126. As a result, significant disparities in the availability of polling places and the concomitant wait to vote persisted even within the same county. For example, while the City of Milwaukee experienced the numerous problems described above, other cities within Milwaukee County looked very different. In Wauwatosa, a city which borders Milwaukee with a population of over 46,000, polling locations were largely empty, and in Germantown, with a population of just less than 20,000, there were no lines at all during the day of the election.⁸⁰

⁷⁹ Wis. Elections Commission, “COVID-19 Frequently Asked Questions (FAQ’s) and Guidance on Procedural Changes for Care Facility Absentee Voting and Polling Place Relocation” (Mar. 13, 2020), available at https://elections.wi.gov/sites/elections.wi.gov/files/2020-03/UPDATED%20-%20Clerk%20comm%20re%20FAQ%20and%20SVD%20and%20Polling%20Place%20Procs_3_13_20.pdf.

⁸⁰ *Election Day Blog Recap: Milwaukee Releases Tuesday’s Voter Turnout; Late Lines After Polls Closed*, MILWAUKEE JOURNAL SENTINEL (Apr. 7, 2020), available at <https://www.jsonline.com/story/news/politics/2020/04/07/wisconsin-april-7-presidential-primary-election-updates-voting-pandemic-milwaukee-polling-places/2959757001/>.

127. Defendants’ failures with respect to polling place locations and poll workers led to a situation in which voters in some Wisconsin jurisdictions—but not others—were forced to locate an unfamiliar polling place to cast a ballot in person and, in some cases, to wait in very long lines to cast a ballot in person, or to forgo voting altogether.

G. Defendants’ Failure to Ensure Safe In-Person Voting Resulted in Widespread Voter Intimidation

128. In conducting an election during a pandemic, Defendants failed to ensure that in-person voting was safe in each jurisdiction around the state. As alleged above, numerous failures by Defendants resulted in extremely long lines at polling places. In addition, the availability of personal protective equipment (PPE) for poll workers varied widely around the state. These failures increased the risks that voters faced of contracting COVID-19 from a poll worker.

129. Milwaukee was and is the epicenter of Wisconsin’s COVID-19 pandemic, and as of the April 7 primary election, it accounted for over half of coronavirus cases and 81 percent of related deaths.⁸¹ As a result, the city, which is home to nearly 70 percent of the state’s Black residents, was one of the most dangerous places to vote. Many Milwaukee voters reported being afraid to vote in person. Other voters compared voting in person on April 7 to moments in civil rights history when seeking to cast a ballot meant risking your life.⁸² Given the disparate racial impact of COVID-19 on the Black community, these comparisons are especially apt.

⁸¹ Ella Nilsen & Li Zhou, *How Wisconsin’s Election Disenfranchised Voters*, VOX (Apr. 7, 2020), available at <https://www.vox.com/2020/4/7/21212053/wisconsin-election-coronavirus-disenfranchised-voters>.

⁸² Christina A. Cassidy & Gretchen Ehlke, *Black Voters Weighed History, Health in Wisconsin Election*, AP NEWS (Apr. 8, 2020), available at <https://apnews.com/be402510fea98fd7c37067ca05fd8e1a> (“‘We had to be willing to die to get our vote, and the same thing is happening right now,’ said Thomas, a 33-year-old director of youth ministry at a Milwaukee church.”); Miela Fetaw & Hunter Woodall, *‘I Could Get the Virus If I Vote’: Wisconsin’s Terrifying Election Day*, THE DAILY BEAST (Apr. 7, 2020), available at <https://www.thedailybeast.com/people-are-going-to-die-in-this-election-wisconsin-votes-amid-coronavirus-pandemic-1> (“‘Was I scared? Hell yea I’m scared!’ he said. ‘This virus is taking out the black people in this community, but I knew what I had to do. My daddy couldn’t vote during his time, so I voted for him.’”).

130. The health risk presented by these lines during COVID-19 were objectively intimidating to voters. As a result, some voters were actually deterred from voting, opting to stay home or to leave a polling place before casting a ballot rather than wait in line and increase the risk to their physical well-being and the well-being of their families.

131. Others, like Plaintiff McCurtis, who chose to remain in line to vote, did so in the face of dangerous voting conditions, risking their health in order to exercise the right to vote.

132. Numerous voters expressed their fear to reporters and on social media. The Governor acknowledged that voters were “scared of going to the polls.”⁸³

133. Nonetheless, after the election, Defendant Wolfe claimed in her summary memorandum that voters had reported to the Commission “that they felt safe in polling places and that there were adequate sanitation supplies.”⁸⁴

H. Burdens on Voters with Disabilities

134. The Commission’s failures also severely burdened immunocompromised voters as well as other voters with disabilities who require assistive technology available only at in-person polling places.

135. Voters who are immunocompromised are voters with disabilities during the COVID-19 pandemic. These voters must isolate themselves from other people in order to minimize the risk that they will contract COVID-19 and experience severe illness or death.

136. As a result, these voters with disabilities can cast only absentee ballots; in-person voting is not available to them.

⁸³ Scott Bauer & Steve Peoples, *Wisconsin Moves Forward with Election Despite Virus Concerns*, AP NEWS (Apr. 6, 2020), available at <https://apnews.com/97db30e6564b9b5eedfc300234ea6630>.

⁸⁴ Wis. Elections Commission, “Summary of April 7, 2020 Election” (Apr. 18, 2020), available at <https://elections.wi.gov/sites/elections.wi.gov/files/2020-04/April%207%20Election%20Summary%20and%20Next%20Steps.pdf>.

137. Because Defendants failed to ensure that all voters who requested absentee ballots received them and failed to ensure that absentee voters had access to drop boxes to ensure delivery of their ballots, many of these voters were disenfranchised, despite making every effort to cast an effective ballot. They were also disenfranchised by the witness verification requirement to the extent these immunocompromised voters could not safely secure a witness to verify their ballot.

138. Some voters with disabilities, like voters who are blind, must utilize assistive technology available only at in-person polling locations in order to vote privately and independently.

139. Some voters fall into both of these categories—they are immunocompromised and require the use of assistive technology at an in-person polling place. These voters had no safe opportunity to vote privately and independently, and they were therefore disenfranchised.

140. For voters with disabilities who were forced to vote in person, long lines and lack of curbside voting at some polling locations, particularly in Green Bay, served as additional—often insurmountable—barriers to their ability to access the ballot.

IV. Absent Judicial Intervention, These Failures Are Practically Certain to Recur in August and November

141. When Defendants administer the August and November elections, the COVID-19 pandemic will be ongoing. As a result, regardless of the precise circumstances of the pandemic on those election days, the demand for online registration and absentee voting will remain elevated, and safety measures to protect in-person voters will remain vital. However, as the April 7 election showed, Defendants do not have policies or other measures in place to ensure safe voting in the upcoming August and November elections.

A. The Ongoing COVID-19 Pandemic

142. As of the time of this filing, there have been 23,454 cases reported in Wisconsin and 712 deaths.⁸⁵

143. As of this filing, approximately 279 new cases are diagnosed each day in Wisconsin, as measured by the seven-day average.⁸⁶ The rate of COVID-19 confirmed cases in metropolitan areas continues to grow. And some metropolitan areas are seeing continually increasing growth rates.⁸⁷ It is not yet clear whether Wisconsin has reached the peak of this initial wave of infections.⁸⁸

144. It is unlikely that a vaccine will be available until at least 2021,⁸⁹ and until then, the country will need to continue to take precautions to minimize the spread of COVID-19.⁹⁰

145. Experts predict that there will be multiple peaks in Wisconsin, with their timing tied directly to the duration of the Safer At Home Order and the availability of testing.⁹¹

146. According to Dr. Anthony Fauci, director of the National Institute of Allergy and Infectious Diseases, a second round of COVID-19 cases in the United States is “inevitable” in the fall.⁹²

⁸⁵ Wis. Dep’t of Health Servs., “Outbreaks in Wisconsin,” available at <https://www.dhs.wisconsin.gov/outbreaks/index.htm> (last updated June 17, 2020); Wis. Dep’t of Health Servs., “COVID-19: Wisconsin Cases”; Wis. Dep’t of Health Servs., “COVID-19: Wisconsin Deaths.”

⁸⁶ Wis. Dep’t of Health Servs., “COVID-19: Wisconsin Summary Data,” available at <https://www.dhs.wisconsin.gov/covid-19/data.htm> (last accessed June 18, 2020).

⁸⁷ Univ. of Madison, Wis. “Coronavirus in Wisconsin: How Fast It’s Growing,” available at <https://data-viz.it.wisc.edu/wi-metro-growth-rate/> (last accessed May 14, 2020).

⁸⁸ *Wisconsin Sees 4-day Spike in Coronavirus Cases*, WISN 12 (May 4, 2020), available at <https://www.wisn.com/article/wisconsin-sees-spike-in-new-coronavirus-cases/32361185>.

⁸⁹ Stephen M. Kissler, et al., *Projecting the Transmission Dynamics of SARS-CoV-2 Through the Postpandemic Period*, American Association for the Advancement of Science (Apr. 14, 2020), available at <https://science.sciencemag.org/content/early/2020/04/24/science.abb5793>.

⁹⁰ Lena H. Sun, *CDC Director Warns Second Wave of Coronavirus Is Likely to Be Even More Devastating*, THE WASHINGTON POST (Apr. 21, 2020), available at <https://www.washingtonpost.com/health/2020/04/21/coronavirus-secondwave-cdcdirector/>.

⁹¹ Wis. Dep’t of Health Servs., “Johns Hopkins Modeling WI COVID-19 - GOAL” (Apr. 24, 2020), available at <https://www.dhs.wisconsin.gov/publications/p02643a.pdf>.

⁹² Nicole Chavez, *Another Wave of Coronavirus Will Likely Hit the US in the Fall. Here’s Why and What We Can Do to Stop It*, CNN (May 2, 2020), available at <https://www.cnn.com/2020/05/02/health/coronavirus-second-wave-fall-season/index.html>.

147. The Commission is scheduled to conduct two more elections in 2020: the August 11, 2020 partisan primary and the November 3, 2020 general election. On each of these dates, it is overwhelmingly likely that COVID-19 transmission will continue in Wisconsin, that no vaccine will exist, and that many voters will accordingly retain an objectively reasonable fear of the risk to their physical safety presented by traditional in-person voting.

B. Turnout in November Will Exacerbate Problems

148. If Defendants' election system was unable to ensure that voters in April were enfranchised during the COVID-19 pandemic, it will be that much more inadequate in November absent significant changes. Indeed, "[e]xperts worry that poll worker shortages, long lines and other delays in processing requests for absentee ballots will only get worse in November, when there will be more voters."⁹³

149. Nearly three million Wisconsin voters cast ballots in the 2016 presidential election.⁹⁴ With experts predicting higher than usual voter turnout nationwide this November,⁹⁵ the number of Wisconsin voters who seek to participate in the presidential election is likely to be more than twice the 1.5 million voters who participated in the April 7 election.⁹⁶ As Defendants note, there are particular challenges in November presidential elections, which "see a greater

⁹³ Sam Levine, *'We're going to have a catastrophe': US faces November election fiasco*, The Guardian (June 12, 2020), available at <https://www.theguardian.com/us-news/2020/jun/12/us-presidential-election-fiasco-voter-suppression>.

⁹⁴ *Election 2016: Wisconsin Results*, N.Y. TIMES (Aug. 1, 2017), available at <https://www.nytimes.com/elections/2016/results/wisconsin>.

⁹⁵ Susan Milligan, *Preparing for a Voter Surge*, U.S. NEWS (Sept. 20, 2019), available at <https://www.usnews.com/news/elections/articles/2019-09-20/experts-predict-huge-turnout-in-2020>.

⁹⁶ *Live: Wisconsin Supreme Court and Statewide Election Results*, N.Y. TIMES, available at <https://www.nytimes.com/interactive/2020/04/07/us/elections/results-wisconsin-spring-elections.html> (last accessed May 9, 2020).

proportion of inexperienced voters” and voters that are “more likely to have difficulty navigating the absentee voting process.”⁹⁷

150. If the proportion of voters seeking to cast absentee ballots in the November election is similar to the proportion in April, Defendants’ system would need to be equipped to distribute and receive back more than twice as many absentee ballots as it did in April, and it would need to be able to ensure that more than twice as many voters could vote safely in person. Defendants estimate that if voting patterns from April hold, Wisconsin could receive “more than 1.8 million requests for absentee ballots by mail.”⁹⁸ If a lower proportion of voters seeks to vote absentee, then that system would need to be able to ensure that any even larger number of voters could vote safely, and free from intimidating conditions, in person.

151. Defendants must equip municipal and county clerks to successfully count this unprecedented number of absentee ballots.

152. Larger turnout will also exacerbate the poll worker shortages experienced during the April 7 election. Across the country, poll worker shortages have continued to frustrate elections,⁹⁹ and experts fear that such shortages will only grow worse in the November General Election—particularly since elderly poll workers who often run elections will fear contracting COVID-19.¹⁰⁰

⁹⁷ Wis. Elections Commission, “April 7, 2020 Absentee Voting Report” (May 15, 2020), available at https://elections.wi.gov/sites/elections.wi.gov/files/2020-05/May%2020%2C%202020.Final_.pdf.

⁹⁸ *Id.*

⁹⁹ See, e.g., AP, *Coronavirus fears create shortage of Alaska election workers*, Alaska Public Media (June 17, 2020), available at <https://www.alaskapublic.org/2020/06/17/coronavirus-fears-create-shortage-of-alaska-election-workers/>; Sam Levine & Suman Naishadham, *Georgia primary blighted by long lines and broken voting machines*, The Guardian (June 2, 2020), available at theguardian.com/us-news/2020/jun/09/georgia-election-primary-long-lines-broken-voting-machines (“Elections officials across the state consolidated polling locations as they faced poll worker shortages.”).

¹⁰⁰ See Sam Levine, *‘We’re going to have a catastrophe’: US faces November election fiasco*, The Guardian (June 12, 2020), available at <https://www.theguardian.com/us-news/2020/jun/12/us-presidential-election-fiasco-voter-suppression>; Carrie Levine, *Elderly workers run elections. But COVID-19 will keep many home*, Center for Public Integrity (May 13, 2020), available at <https://publicintegrity.org/politics/elections/democracy-2020/elderly-workers-run-elections-but-covid-19-will-keep-many-home/>.

153. Unless Defendants take swift actions, the numerous irregularities that plagued the April 7 election will disenfranchise countless more voters during the impending August and November elections as well.

C. Defendants Have Not Taken Steps Sufficient to Correct the Ongoing Problems with Wisconsin Elections under COVID-19

154. While Defendants have announced some actions that they plan to take to improve upon the administration of the April 7 election, these actions are insufficient to ensure that subsequent elections during the pandemic will protect voters' rights under the Constitution and federal statutes.

155. **First**, Defendants have not taken sufficient action to ensure that MyVote will be able to support the large-scale online registration and at-home absentee voting which will continue to be necessary during the impending August and November elections. In her April 7 Election Summary Memorandum, Defendant Wolfe wrote on this topic that staff would “work to augment voter workflows for online voter registration and absentee ballot requests.”¹⁰¹ The memorandum did not address outages or mention securing additional capacity. In her May 20 CARES Grant Planning Memorandum, Defendant Wolfe again did not make specific mention of adding additional capacity, although she did acknowledge the need for “software development and consultation” and “system load testing.”¹⁰²

156. Absent significant improvement of computer-system infrastructure, Wisconsin voters will not have adequate access to online absentee ballots or online registration during the August and November elections.

¹⁰¹ Wis. Elections Commission, “Summary of April 7, 2020 Election” (April 18, 2020), *available at* <https://elections.wi.gov/sites/elections.wi.gov/files/2020-04/April%207%20Election%20Summary%20and%20Next%20Steps.pdf>.

¹⁰² Wis. Elections Commission, “CARES Grant Planning” (May 20, 2020), *available at* https://elections.wi.gov/sites/elections.wi.gov/files/2020-05/May%2020%2C%202020.Final_.pdf.

157. **Second**, Defendants have failed to take sufficient action to ensure that voters who timely request absentee ballots for subsequent 2020 elections will receive those ballots in time to participate in those elections. Although the Elections Commission now intends to mail absentee ballot applications to nearly all registered voters who have not already requested one, the April 7 election exposed failures at almost every juncture in the voting process. These failures will not be corrected as a result of this one action. For example, on the topic of allowing voters to track where their absentee ballot is in the process, Defendant Wolfe’s memorandum stated that staff “*hopes* to incorporate intelligent mail barcodes into the absentee process and incorporate that information into the MyVote system,” but offers no concrete commitment or contingency plan. (emphasis added).¹⁰³ Similarly, in a May 20 memorandum, Defendants mention intelligent mail barcodes as a “potential direction,” without any assurances that any system will ultimately be implemented.¹⁰⁴

158. **Third**, Defendants have failed to take sufficient action to ensure that all voters who receive absentee ballots can cast their ballots and have them counted.

159. The statutory deadline for requesting an absentee ballot is just five days before election day, Wis. Stat. § 6.86(1)(b), and clerks can wait up to one business day before mailing a ballot. Wis. Stat. § 7.15(cm). Defendants have acknowledged that postal mail can take up to a week to transport a ballot both from clerk to voter and voter back to clerk, for a total of two weeks. As a result, some voters who timely request absentee ballots, receive them, cast their votes, and timely return them by postal mail will still be disenfranchised. Nonetheless,

¹⁰³ *Id.*

¹⁰⁴ Wis. Elections Commission, “April 7, 2020 Absentee Voting Report” (May 15, 2020), *available at* https://elections.wi.gov/sites/elections.wi.gov/files/2020-05/May%202020%2C%202020.Final_.pdf.

Defendants have failed to require or facilitate the availability of secure drop boxes in each municipality for the socially distant return of absentee ballots.

160. Even with drop boxes, absent judicial relief ensuring that mailed absentee ballots postmarked by election day are accepted for counting, some voters who timely request absentee ballots will inevitably be disenfranchised again.

161. Defendants have no policy or other measures in place to create any more workable alternatives for voters at high risk from COVID-19, especially immunocompromised voters, who cannot safely comply with the witnessing requirements for absentee ballots set forth in Wis. Stat. § 6.87(2).

162. **Fourth**, Defendants have no policy or other measures in place to ensure that voters statewide have sufficient access to in-person absentee voting opportunities, including both walk-in early voting and drive-through early voting. In-person absentee voting is essential for those who are unable, for a variety of reasons, to obtain an absentee ballot by mail or through the online system. It is also essential in order to spread out in-person voting over a longer period, thereby reducing the likelihood that election day polling locations will be overwhelmed and allowing better compliance with safety precautions against spread of coronavirus. Additionally, Wisconsin law requires municipalities to designate locations for in-person absentee voting by June 11, 2020. Wis. Stat. § 6.855(1). Unless this provision is enjoined, Defendants and municipalities will not have the flexibility necessary to provide sufficient and safe in-person absentee voting opportunities because of the early cut-off for designating polling locations.

163. **Fifth**, Defendants, although recognizing the critical shortage of poll workers that led to widespread polling place closures, have no policy or other measure in place to facilitate recruitment of poll workers or provide assistance in facilitating the equitable distribution of poll

workers within counties. Instead, Defendant Wolfe’s memorandum stated that the Commission would (1) “work with” and “survey” jurisdictions to keep abreast of their shortages; (2) maintain a ticket for personnel with the State Emergency Operations Center; and (3) develop training for last-minute poll-worker certification.¹⁰⁵

164. **Sixth**, Defendants have failed to take adequate action to ensure that in-person absentee and election day polling places will be safe during the August and November elections, and that voters are made aware in advance of these changes so that the failures of the April 7 election do not have an intimidating effect on voters in August and November. While Defendant Wolfe wrote that, for the August and November elections, Commission staff would assist jurisdictions in finding sanitary supplies and masks and gloves for poll workers, Defendants have taken no action to require voters or poll workers to wear masks or take other precautions to ensure that voters feel secure in appearing at polling places.¹⁰⁶

165. **Seventh**, Defendants have failed to take adequate steps to ensure that voters with disabilities who require the use of assistive technology to vote privately and independently will have both the option to vote safely in person and the option to use an at-home accessible voting option.

166. **Eighth**, Defendants have not put forward a plan to ensure that all members of the voting public have the information they need to register online, request an absentee ballot, and successfully return that ballot, so that no one at high risk for COVID-19 and thus unable to vote in person is disenfranchised in August or November. They have not put forward a plan to ensure that voters on the wrong side of the digital divide have the information they need to register and request an absentee ballot. Wisconsin voters on the wrong side of the digital divide—who lack

¹⁰⁵ Wis. Elections Commission, “Summary of April 7, 2020 Election.”

¹⁰⁶ *Id.*

internet access or familiarity with online resources—are particularly likely to be disenfranchised because they will not be able to access MyVote in order to easily register and request an absentee ballot. Black, Latino, elderly, and rural voters are disproportionately likely to be on the wrong side of the digital divide.¹⁰⁷

167. Defendants refer only generally to “voter outreach programs.”¹⁰⁸ This is insufficient for the growing demand and need for a comprehensive voter education effort.

168. As a result of these failures, the harms experienced by the voters of Wisconsin, and by Plaintiffs in particular, are overwhelmingly likely to recur in the August and November elections absent relief here.

V. Plaintiffs’ Injuries

Jill Swenson

169. Plaintiff Jill Swenson is sixty-one years old and has, among other serious ailments, early stage chronic obstructive pulmonary disease (“COPD”), an inflammatory lung disease that causes obstructed airflow from the lungs. Ms. Swenson is in one of the highest-risk populations for COVID-19.

170. Ms. Swenson is a regular voter and makes it her usual practice to vote in person on election day. This year, because of her age and health, Ms. Swenson felt unsafe voting in person at her polling location or returning an absentee ballot in person at Appleton City Hall.

¹⁰⁷ U.S. Census Bureau, “The Digital Divide: Percentage of Households by Broadband Internet Subscription, Computer Type, Race and Hispanic Origin” (Sept. 11, 2017), *available at* <https://www.census.gov/library/visualizations/2017/comm/internet.html>; Andrew Perrin, *Digital Gap Between Rural and Nonrural America Persists*, PEW RESEARCH CENTER (May 31, 2019), *available at* <https://www.pewresearch.org/fact-tank/2019/05/31/digital-gap-between-rural-and-nonrural-america-persists/>; Andrea Caumont, *Who’s not online? 5 factors tied to the digital divide*, PEW RESEARCH CENTER (May 31, 2019), *available at* <https://www.pewresearch.org/fact-tank/2013/11/08/whos-not-online-5-factors-tied-to-the-digital-divide/>.

¹⁰⁸ Wis. Elections Commission, “April 7, 2020 Absentee Voting Report” (May 15, 2020), *available at* https://elections.wi.gov/sites/elections.wi.gov/files/2020-05/May%2020%2C%202020.Final_.pdf.

After several unsuccessful attempts to scan in her identification, she successfully requested a mail-in absentee ballot online at the end of February. It arrived about a week later.

171. By March 11, Ms. Swenson had begun to self-quarantine. She did not leave her home or interact with others in person. Ms. Swenson was unable to find anyone who could safely witness her ballot. Her friends and neighbors were either failing to practice social distancing, still working at essential businesses, or recently recovered from possible COVID-19.

172. On March 31, Ms. Swenson contacted the Commission for advice on how to submit her ballot. The Commission told Ms. Swenson to have someone come to her home and hand the ballot back-and-forth through a window or door. It also pointed her to a website with guidance suggesting that voters leave their ballot outside for day before a witness handles the ballot, and then wait another day before handling the witnessed ballot. Ms. Swenson did not feel safe inviting anyone over. The Commission also told Ms. Swenson she could bring her absentee ballot to Appleton City Hall, but she felt unsafe doing so because interacting with staff and other members of the public could cause her serious illness or death.

173. When Ms. Swenson learned about the Court's April 2 order allowing voters to submit un-witnessed absentee ballots by mail, she completed and mailed her absentee ballot immediately, with a note stating that she lived alone, feared contracting COVID-19, and could not find a witness, and that she was submitting an unwitnessed ballot in conformity with the court order. Later that day, the Seventh Circuit stayed enforcement of that Order. Several days later, Ms. Swenson learned through news reports that her ballot would be invalidated and that her vote would not count. She was deeply upset; she cherishes exercising her right to vote.

174. Ms. Swenson was not aware of any opportunity to cure the defect with her absentee ballot and knew that attempting to vote in person after submitting even an invalidated absentee ballot would be unlawful.

175. If the witnessing requirement remains in effect during the August and November elections, Ms. Swenson will not have a safe way to vote—and to ensure her vote is counted—in Wisconsin’s August and November elections.

Melody McCurtis

176. Plaintiff Melody McCurtis lives in the Sherman Park neighborhood of Milwaukee, Wisconsin. She is a lifelong voter who votes in almost every election, large or small. She lives in a multi-generational household that includes her mother, who has hypertension, high blood pressure, and an enlarged heart, putting her at increased risk of COVID-19 complications. As a community organizer, Ms. McCurtis was aware of the disparate impact that COVID-19 had had on the Black community in Milwaukee. Her polling location at Washington High School is located in Sherman Park, the epicenter of the COVID-19 crisis in the Black community. Knowing all this, Ms. McCurtis requested an absentee ballot on March 22.

177. Ms. McCurtis’s ballot never arrived. On April 6, Ms. McCurtis called the Clerk’s office, but there was no answer. She called again on April 7, and was told that she had no choice but to vote in person. Although Ms. McCurtis’s mother was afraid of Ms. McCurtis voting in person, Ms. McCurtis joined the blocks-long line outside of Washington High School around 6:30 p.m. on election day. She cast her ballot at 9:09 p.m.

178. During the wait of more than two-and-a-half hours, Ms. McCurtis experienced intimidation, fear, and frustration. Voters in line were not able to practice social distancing due to the large number of people in line and the failure of election officials to enforce the practice. The

polling location did not provide PPE for voters, and it had run out of sanitary pens. Ms. McCurtis observed seniors and individuals with disabilities waiting in the long line. In addition, there was a noticeably high police presence, including the National Guard. Yet despite the high police presence, no one stopped a young woman who spent over an hour dancing along the line of voters, entering voters' personal space and creating a health risk for those in line.

179. As she waited in line, Ms. McCurtis observed a member of the National Guard approach and speak to a female voter. The woman stepped out of line and left. That National Guard member then approached Ms. McCurtis and said, "You know this will be a two-hour wait, right?" The National Guard member appeared to be discouraging voters from remaining in line. Ms. McCurtis asked him to stop speaking to voters and refrain from discouraging voters from remaining in line, but she was not able to monitor whether he did so. This experience deeply hurt Ms. McCurtis, who is a community organizer focused on encouraging Metcalfe Park community members to vote.

180. Ms. McCurtis still feels the traumatic impact of being subjected to such an unsafe voting experience; the heavy police presence and long line of Black voters reminded her of the violence surrounding earlier generations of Black Americans' efforts to vote. On April 7, she felt afraid for her health and physical safety, and the health and physical safety of her community. In light of her experience in April, Ms. McCurtis reasonably fears that she will not be able to exercise her right to vote in August and November without exposing herself, and therefore her mother, to significant health risks.

Maria Nelson

181. Plaintiff Maria Nelson has breast cancer and is currently undergoing chemotherapy treatment. She is also a regular voter and enjoys taking her two young children to

the polls to teach them the importance of voting. Because of highly publicized reports explaining that immunocompromised individuals are most at risk from the COVID-19 pandemic, Ms. Nelson felt unsafe voting in person at her polling location on election day. Because of this, on March 31, she timely emailed the Appleton City Clerk and requested an absentee ballot. She received a call in response from the Clerk's office stating that the Clerk's office would be sending an absentee ballot by mail. Ms. Nelson agreed, assuming that the Clerk's office was accurately representing its ability to send her a timely ballot.

182. Ms. Nelson's absentee ballot did not arrive before April 7. Instead, it arrived on April 8, too late to be used. On election day, Ms. Nelson was not able to vote in person because she felt too unsafe and was not willing to risk her life by voting in person. As a result, Mrs. Nelson was disenfranchised.

183. If Defendants do not remedy the defects in the in-person and absentee voting systems, Ms. Nelson will not have a safe and reliable way to cast a ballot in the August and November elections.

Black Leaders Organizing for Communities

184. Plaintiff BLOC mobilizes Black Wisconsinites to participate at all levels of government and encourages communities of color to fulfill their potential for electoral impact in Milwaukee. As part of its work, BLOC educates the Black community in Milwaukee about voter eligibility rules, voter ID requirements, the importance of voting, and the opportunity for early voting. BLOC primarily operates as a robust field program. For example, BLOC knocked on approximately 227,000 doors in Milwaukee in 2018, encouraging Black residents to engage in civic participation, including voting. Ahead of the April 7 election, BLOC had hired 50 ambassadors to knock on an anticipated 44,000 doors. Each ambassador went through more than

30 hours of civics training, including training on registering voters and how to vote. Much of that training became out of date as Defendants' policies and deadlines shifted again and again in the days leading up to April 7. Because of the COVID-19 pandemic, BLOC ambassadors have reduced capacity and are working half of their ordinary hours. BLOC is paying ambassadors for their full hours.

185. In light of Defendants' failures to provide adequate and safe voting opportunities in the face of the COVID-19 pandemic, BLOC had to uproot its highly effective field program and divert significant resources to digital outreach to Black Wisconsin voters, including implementing a texting and phone-banking campaign to educate voters on how to cast mail-in absentee ballots. This required setting up new technological tools, and training BLOC's ambassadors on those tools remotely. While BLOC would inevitably had to have made changes to its field program in light of COVID-19, Defendants' policies and practices significantly increased that burden. As deadlines and absentee ballot requirements shifted, BLOC had to repeatedly push out additional training and information to its remote staff and ensure that updated messages were being sent to constituents. BLOC's staff created graphics and social media posts for every new deadline and policy change; ordinarily, minimal new content would be created, and BLOC would be able to reuse any new content. BLOC will be unable to reuse most of the new content created for April.

186. BLOC was also unable to fulfill its mission of encouraging Black Wisconsinites to vote. BLOC had to contact voters multiple times as policies changed. Each call was longer than usual, as BLOC staff spent time explaining confusing online systems, helping voters scan identification over the phone, and walked them through changing deadlines. Because of this, and because BLOC staff had been and continues to work reduced hours, BLOC was unable to meet

its goals for voter contacts leading up to the April 7 election (but at the same cost to BLOC). But for Defendants' failures, much of this work would have been unnecessary. Instead, BLOC would have focused on traditional get-out-the-vote efforts, speaking to voters about candidates and issues. BLOC was not able to have those conversations with voters this year and, because of the numerous barriers facing its constituents, was not able to meet its goals related to getting significant numbers of the Black community to vote.

187. BLOC's organizational planning for the summer and fall are on hold, because BLOC has no way of knowing what policies or deadlines will be in place for the August and November elections. Many voters with whom BLOC works did not receive an absentee ballot by April 7, 2020. Others found the absentee ballot request system confusing and difficult to use. Many of those voters feared for their health and safety due to the ongoing COVID-19 pandemic, including because COVID-19 has disproportionately affected the Black community. They were too afraid to vote in person on April 7. As a result, those voters were disenfranchised and unable to cast a ballot in the election.

188. Absent relief here, many voters with whom BLOC works will be similarly disenfranchised and burdened during subsequent elections. As a result, BLOC will be forced to continue to divert resources in order to attempt to enfranchise these voters, to counteract the uncertainty Defendants' policies and practices are creating, and to reach the increased number of Black voters facing unsafe voting conditions.

189. Although BLOC has invested heavily in building community trust in the election system and building community power through civic engagement, BLOC is now faced with rebuilding that trust after many of the voters with whom BLOC works were disenfranchised due to Defendants' failures. This shift in programmatic focus will likely mean generating new

messaging and outreach campaigns. The lost trust created by Defendants' failures and the disenfranchisement of BLOC's constituents has made it harder for BLOC to achieve its mission.

Disability Rights Wisconsin

190. Plaintiff DRW's mission is to address the issues facing, and to ensure the rights of, all people with disabilities in Wisconsin. DRW has a state and federal mandate to protect and advocate for the rights of people with disabilities in Wisconsin, including those with developmental disabilities, mental illness, and traumatic brain injury. As part of this mandate, DRW oversees self-advocacy training and other programs and services to assist people with disabilities, including to secure election access, including registering to vote, accessing polling places, and casting their ballot. DRW also leads the Wisconsin Disability Vote Coalition.

191. In light of Defendants' failures to provide adequate and safe voting opportunities in the face of the COVID-19 pandemic, DRW had to produce numerous resources and trainings ahead of the April 7 election that it would not have otherwise produced, at the expense of staff time and DRW's other programmatic priorities. For example, DRW organized four Zoom briefings to explain the special circumstances and changing policies around the April 7 election. As requirements changed, DRW had to update and rewrite resources provided to voters five to six times, including its popular Election FAQ document. With each update, DRW staff had to spend time liaising with the Commission to make sure they were conveying accurate information. Ordinarily, DRW would have to create only a single version of these materials. DRW also had to attend emergency meetings of the Commission, prepare for at least two unplanned calls with WEC, and coordinate on an emergency basis with other Wisconsin organizations to ensure voters were getting accurate information.

192. Because of this unplanned and additional work, significant staff time was spent responding to Defendants' failures and informing DRW's constituents about how to vote. This staff time was diverted from other DRW priorities, such as creating key reference materials for parents of children with serious disabilities, completing federal grant reporting requirements, and coordinating Wisconsin's Mental Health Task Force.

193. DRW continues to have to divert resources in response to Defendants' failures and in anticipation of future disenfranchisement, if policies are not changed. DRW has devoted significant staff time to organizing Zoom briefings for the May 12 election, and it is currently coordinating with other Wisconsin groups on a joint voter-education plan for future elections, and developing a campaign to encourage voters to vote absentee. As a part of campaign planning, DRW is conducting in-depth research, including interviews, on how other states provide for accessible absentee voting. None of this work was previously planned, and all of it takes staff time away from previously planned work and affects DRW's ability to fulfill its mission.

194. Many of the Wisconsinites with disabilities on whose behalf DRW advocates face significant obstacles to voting as a result of COVID-19. They will either be disenfranchised or exposed to heightened risk of illness if their legal rights to safely vote are not vindicated. DRW also brings this suit on their behalf.

CLAIMS FOR RELIEF

Count 1: Violation of Section 11(b) of the Voting Rights Act (All Plaintiffs)

195. Plaintiffs reallege and incorporate by reference the allegations contained in the preceding paragraphs.

196. Section 11(b) of the Voting Rights Act provides that:

No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any powers or duties under section 10302(a), 10305, 10306, or 10308(e) of this title or section 1973d or 1973g of Title 42.

52 U.S.C. § 10307(b).

197. Defendants violated Section 11(b) of the Voting Rights Act by failing to take objectively reasonable precautions to enable Wisconsin citizens to vote free of fear of contracting COVID-19. *See Hicks v. Knight*, Civ. No. 15,727, 10 Race Rel. L. Rep. 1507-09 (E.D. La. 1965) (finding that a city violated federal voting rights law when it failed to take reasonable measures to protect voter registration group from physical danger).

198. Defendants did not take objectively reasonable steps to run an absentee-voting program that guaranteed registered voters who timely requested ballots the ability to reliably and safely cast their ballots from home. They did not provide municipal clerks with the resources necessary to timely process an unprecedented volume of absentee ballot requests. They did not provide a means of complying with the absentee ballot witness requirement that was safe and feasible for voters at high risk from COVID-19. And they did not ensure that drop boxes would be available for absentee voters who wanted to ensure timely receipt of their voted ballots.

199. Defendants did not take objectively reasonable precautions to ensure that every voter had access to a safe polling site or in-person absentee voting location that allowed for adequate social distancing practices. They took insufficient steps to ensure, for instance, that there were enough poll workers in each county to staff an adequate number of polling sites to forestall long lines and crowds, and they did not facilitate the equitable sharing of poll workers across jurisdictions within a county. They did not require that poll workers or voters wear masks.

200. As a result, many Wisconsin voters—even those who had timely requested absentee ballots—were forced to choose between risking their physical safety to vote and abstaining from voting.

201. Defendants' failure to take objective reasonable precautions to ensure that each Wisconsin voter could vote free of fear of contracting COVID-19 intimidated and injured Plaintiffs.

202. Plaintiff Swenson was too intimidated by fear of contracting COVID-19 both to vote in person and to get a witness to sign her absentee ballot. As a result, she was disenfranchised. Absent relief, she will be intimidated again in subsequent elections during the pandemic.

203. Plaintiff McCurtis was intimidated and threatened by the unsafe conditions she encountered in voting at Washington High School in Milwaukee. Absent relief, she will anticipate similar conditions at polling places during subsequent elections during the pandemic, and thus will remain intimidated.

204. Plaintiff Nelson was too intimidated by fear of contracting COVID-19 to vote in person, and she did not receive her timely requested absentee ballot. As a result, she was disenfranchised. Absent relief, she will be intimidated again in subsequent elections during the pandemic.

205. Widespread voter intimidation has forced DRW and BLOC to divert resources from other activities in order to ensure that voters are not afraid to cast ballots in subsequent elections during the pandemic.

206. Defendants have not taken sufficient steps to remedy their failure to protect voters from intimidation during the April election.

207. Unless enjoined by the Court, Defendants will continue to violate Section 11(b) of the Voting Rights Act.

**Count 2: Violation of the Equal Protection Clause of the Fourteenth Amendment
to the U.S. Constitution
(Plaintiff McCurtis, Organizational Plaintiffs)**

208. Plaintiffs reallege and incorporate by reference the allegations contained in the preceding paragraphs.

209. The Fourteenth Amendment prohibits Wisconsin from “deny[ing] to any person within its jurisdiction the equal protection of the laws.” U.S. Const. Amend. XIV, § 1.

210. “Having once granted the right to vote on equal terms, [a state] may not, by later arbitrary and disparate treatment, value one person’s vote over that of another.” *Bush v. Gore*, 531 U.S. 98, 104-105 (2000). Defendants cannot “arbitrarily deny” Wisconsinites “the right to vote depending on where they live.” *League of Women Voters of Ohio v. Brunner*, 548 F.3d 463, 476 (6th Cir. 2008).

211. Defendants’ administration of the April 7 election arbitrarily advantaged voters in some jurisdictions and disadvantaged those who resided in others, including especially voters in Milwaukee.

212. Defendants failed to take sufficient action to remedy known poll worker shortages. They also failed to facilitate the equitable sharing of poll workers within counties, leading to situations in which municipalities in the same county had radically different staffing levels and thus provided radically different experiences for voters.

213. Defendants’ arbitrary and disparate administration of the April election injured Plaintiff McCurtis by subjecting her, as a resident of the City of Milwaukee, to a voting system

more dysfunctional than that experienced by Wisconsinites in many jurisdictions—who voted without waiting in line for more than two and a half hours.

214. Defendants' arbitrary and disparate administration of the April election has forced the Organizational Plaintiffs to divert resources from other activities in order to ensure that voters in Milwaukee, Green Bay, and other municipalities that experienced severe problems in April are enfranchised in subsequent elections during the pandemic.

215. Defendants' actions, taken under color of law, deprive Plaintiffs of rights, privileges, or immunities secured to them by the Constitution of the United States, in violation of 42 U.S.C. § 1983.

216. Defendants' actions and failures to act have subjected Plaintiffs to arbitrary disparities in their ability to have their votes counted depending on where they live.

217. Unless enjoined by the Court, Defendants will continue to violate the Equal Protection Clause.

**Count 3: Violation of the First and Fourteenth Amendments
to the U.S. Constitution
(All Plaintiffs)**

218. Plaintiffs reallege and incorporate by reference the allegations contained in the preceding paragraphs.

219. United States citizens' voting rights are protected by the First and Fourteenth Amendments to the U.S. Constitution. *See Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Burdick v. Takushi*, 504 U.S. 428 (1992).

220. Defendants' actions unduly burdened Plaintiffs Swenson, McCurtis, and Nelson's constitutionally protected voting rights by forcing them to choose between exercising their rights to vote and their personal safety.

221. As a result, Defendants' actions imposed a severe—and sometimes impossible—burden on Plaintiffs' right to vote.

222. Defendants' administration of the April election in a manner that imposed severe burdens on voters has forced the Organizational Plaintiffs to divert resources from other activities in order to ensure that voters are nonetheless enfranchised in subsequent elections during the pandemic.

223. Defendants have no countervailing legitimate governmental purpose in forcing individuals to choose between the right to vote and their safety.

224. Unless enjoined by the Court, Defendants will continue to violate the First and Fourteenth Amendments.

**Count 4: Violation of the Due Process Clause of the Fourteenth Amendment
to the U.S. Constitution
(Procedural Due Process)
(Plaintiffs Swenson and Nelson, Organizational Plaintiffs)**

225. Plaintiffs reallege and incorporate by reference the allegations contained in the preceding paragraphs.

226. The Due Process Clause of the Fourteenth Amendment prohibits the Defendants from denying any person of a protected property or liberty interest without fair process. *See* U.S. Const. Amend. XIV, § 1. At the core of these procedural protections is the right to adequate notice with respect to any deprivation of a protected interest, and a fair opportunity to be heard on the matter at a meaningful time and in meaningful manner. *See Mathews v. Eldridge*, 424 U.S. 319 (1976).

227. All eligible Wisconsin voters have a fundamental right to vote protected by the U.S. Constitution and Wisconsin law. Wis. Stat. § 6.02. All eligible Wisconsin voters also have a right to request and receive an absentee ballot for any reason, Wis. Stat. § 6.85, *et seq.*, and to

have their properly cast absentee ballots counted, Wis. Stat. §§ 6.88, 7.52. Each of these rights is a protected liberty or property interest that triggers the fundamental procedural protections of the Due Process Clause.

228. Defendants violated Plaintiffs' procedural rights under the Due Process Clause with respect to the right to obtain an absentee ballot. Defendants violated this right by failing to provide: adequate notice of the procedures by which individuals might cure any errors in a request for an absentee ballot; adequate notice that an absentee ballot would not be delivered to the voter in time to cast the ballot; clear, timely, and effective procedures by which to exercise the right to vote in the event an absentee ballot did not arrive in sufficient time before election day; and clear, timely, and effective procedures by which a voter could seek redress in the event of an erroneous deprivation of the right to obtain an absentee ballot. Defendants further violated these rights by failing to adopt constitutionally adequate rules, directives, or similar guidance on these matters statewide.

229. Defendants also violated Plaintiffs' procedural rights under the Due Process Clause with respect to the right to have absentee ballots counted. Defendants violated this right by failing to provide timely notice that an absentee ballot had been rejected before election results are certified, including with respect to absentee ballots rejected on the grounds that the ballot allegedly lacked necessary signatures or other details, or because of alleged problems with the postmark or other evidence that the ballot was timely cast. Wis. Stat. §§ 6.88, 7.52. Defendants also failed to provide voters a constitutionally adequate opportunity to be heard on the validity of their ballots before they were excluded from the certified election results. *Id.* In order to afford constitutionally adequate notice and a timely opportunity to be heard, state laws

that currently forbid canvassing of absentee ballots prior to election day should be enjoined. *See* Wis. Stat. §§ 6.88, 7.51–.52.

230. Defendants further violated Plaintiffs’ procedural rights under the Due Process Clause by failing to provide timely, meaningful, and effective notice of changes in voting protocols, procedures, and requirements precipitated by the coronavirus pandemic. Defendants’ failure to communicate effective notice of such changes to the public created widespread confusion in the April 7 election about how eligible voters could or could not exercise their fundamental right to vote. This failure resulted in Plaintiffs, like Plaintiffs Swenson and Nelson, losing their fundamental right to vote and other protected interests, including the right to obtain and cast an absentee ballot rather than incur the health risk of going to a polling place on election day. Defendants have not cured those failures and have a continuing obligation under the Due Process Clause to provide effective, timely notice to voters with respect to the protocols, procedures, and other requirements they must satisfy in order to exercise their fundamental right to vote either in person or absentee. Defendants have also violated these requirements by failing to implement rules, directives, or similar guidance with respect to such matters statewide.

231. Defendants’ heavy reliance on websites, particularly MyVote Wisconsin, as a means of providing notice to voters failed to satisfy the requirements of procedural due process with respect to the large number of Wisconsin residents who do not have ready access such means of communication, including those who lack necessary technical skills, those with disabilities, and those who simply do not have ready access to computers or the internet. This failure disproportionately affects low-income, disabled, elderly, and minority voters, and forces the Organizational Plaintiffs to expend significant additional resources to carry out voter

education, voter outreach, and get-out-the-vote activities with respect to the populations that they each serve.

232. Defendants are not taking adequate steps to cure these violations of procedural due process in the August and November elections.

233. Unless enjoined by the Court, Defendants will continue to violate procedural rights guaranteed by the Due Process Clause.

**Count 5: Violation of the Americans with Disabilities Act
(Plaintiffs Swenson and Nelson, Organizational Plaintiffs)**

234. Plaintiffs reallege and incorporate by reference the allegations contained in the preceding paragraphs.

235. Under Title II of the ADA, state and local governments must not impose requirements on participation in public services, programs, or activities, including voting, that prevent individuals with disabilities from fully and equally enjoying that participation, and must make reasonable modifications in policies, practices, or procedures when necessary to avoid discrimination on the basis of disability. 42 U.S.C. § 12132. “Title II of the ADA requires [such entities] to ensure that people with disabilities have a full and equal opportunity to vote. The ADA’s provisions apply to all aspects of voting, including voter registration, site selection, and the casting of ballots, whether on Election Day or during an early voting process.”¹⁰⁹

236. Immunocompromised individuals and those who suffer a significant medical vulnerability that would place them at high risk of serious bodily injury or death should they leave the confines of their home, or should they interact with a non-member of their household, have a disability within the meaning of the ADA.

¹⁰⁹ U.S. Dep’t of Justice, “The Americans with Disabilities Act and Other Federal Laws Protecting the Rights of Voters with Disabilities,” available at <https://www.justice.gov/file/69411/download> (last accessed June 18, 2020).

237. Defendants have failed to safeguard these individuals' right to participate in our democracy in at least three ways.

238. First, through the conduct described above, Defendants have failed to ensure that such individuals who request absentee ballots receive them, as necessary to allow them to vote, and to count their ballots if they are able to mail them back. Defendants must maintain a voting process that ensures those with such disabilities can register for, receive, vote, and have counted their absentee ballots.

239. Second, Defendants have failed to provide reasonable accommodations to voters with disabilities from the in-person witness requirements for absentee voting, Wis. Stat. § 6.87(2). Many Wisconsin voters with disabilities live alone and cannot safely arrange for an in-person witness. Defendants have failed to accommodate these voters by, for example, replacing the witness verification requirement with a self-certification requirement. In so doing, Defendants have violated the ADA by denying these voters the right to participate in Wisconsin's voting process by reason of their disability.

240. Third, blind individuals and others who require the use of assistive technology available only in person to vote privately and independently also have a disability within the meaning of the ADA. By failing to guarantee safe access to in-person voting for these voters, Defendants have violated the ADA.

241. Defendants are not taking adequate steps to avoid these violations of the ADA.

242. Unless the requested relief is granted, Plaintiffs Swenson and Nelson and those similarly situated will suffer irreparable harm in that they will be discriminated against and denied equal access to participation in voting in violation of the ADA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court:

- A. Declare that administering an election during the COVID-19 pandemic in the manner that Defendants administered the April 7, 2020 election violates Section 11(b) of the Voting Rights Act, the First and Fourteenth Amendments of the U.S. Constitution, and the Americans with Disabilities Act;
- B. Order Defendants, for the August and November 2020 elections, to:
 1. Take all appropriate actions to ensure that in-person voting, whether exercised by casting an absentee ballot or by casting a ballot on election day, can be safely conducted;
 2. Require that accessible voting machines be available at all in-person absentee voting locations;
 3. Take all appropriate actions to ensure an adequate number of poll workers to administer safe polling places;
 4. Ensure that each registered voter in Wisconsin receives an absentee ballot request form and that all residents of care facilities have adequate opportunities to register to vote and request absentee ballots;
 5. Ensure that individuals with print disabilities have an accessible means of receiving, marking, and submitting absentee ballots privately and independently;
 6. Take all appropriate actions to ensure that all voters who request and are qualified to receive an absentee ballot in fact receive such absentee ballot, and that any voter whose request for an absentee ballot is rejected or not processed for any reason be notified and given the opportunity to cure any defect in a timely manner;

7. Take all appropriate actions to upgrade electronic voter registration systems so they can process the anticipated elevated number of online registrations and absentee ballot requests;
8. Take all appropriate actions to coordinate with, and ensure that municipalities coordinate with, the United States Postal Service to ensure the timely delivery and return of, and counting of, absentee ballots;
9. Ensure that secure drop boxes for in-person return of absentee ballots are available to every voter and increase in-person absentee voting opportunities that are safe and accessible, including, for instance, drive-through voting; and
10. Engage in a public education campaign to apprise the public on: how to request, vote, and return absentee ballots; the locations and times for in-person absentee voting; all early voting opportunities in each community; the provisions being made for safe in-person voting; and any changes in election day polling locations.

C. Enjoin the enforcement of:

1. Wis. Stat. § 7.30(2) with respect to the requirement that each election official be an elector of the county in which the municipality is located;
2. Wis. Stat. § 6.87(2) during the pendency of the COVID-19 pandemic for all voters who are immunocompromised or otherwise at high risk from COVID-19, or who are actively infected with COVID-19, who cannot safely secure an in-person witness;
3. Wis. Stat. § 6.855(1) with respect to the requirement that all in-person absentee voting locations for the November general election must have already been designated;
4. Wis. Stat § 6.87(6) and require that absentee ballots postmarked by election day or not bearing a postmark but received within a week of election day be counted; and

5. Wis. Stat. §§ 6.88, 7.51-.52 with respect to the requirement that absentee ballots not be counted before election day.

D. Award Plaintiffs their reasonable costs and attorneys' fees incurred in bringing this action pursuant to 42 U.S.C. § 1988(b), 28 U.S.C. § 1920, and other applicable laws; and

E. Grant such other relief as the Court deems just and proper.

Dated: June 23, 2020

By: /s/ Rachel E. Goodman

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7/7/2020

Democratic National Committee v. Marge Bostlemann, et al.

Robert Spindell

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DEMOCRATIC NATIONAL COMMITTEE) Civil Action No.
And DEMOCRATIC PARTY OF) 3:20-cv-249-wmc
WISCONSIN,)
)
Plaintiffs,)
)
v.)
)
MARGE BOSTELMANN, JULIE M.)
GLANCEY, ANN S. JACOBS, DEAN)
KNUDSON, ROBERT F. SPINDELL,)
JR., and MARK L. THOMSEN, in)
their official capacities as)
Wisconsin Elections)
Commissioners,)
)
Defendants,)
)
and)
)
WISCONSIN LEGISLATURE,)
REPUBLICAN NATIONAL)
COMMITTEE, and REPUBLICAN)
PARTY OF WISCONSIN,)
)
Intervening Defendants.)

July 7, 2020
11:04 A.M. (Central)

VIDEOTAPED DEPOSITION TAKEN REMOTELY VIA
ZOOM VIDEOCONFERENCE OF ROBERT SPINDELL

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Page 5

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| | I N D E X | | |
| 1 | WITNESS | EXAMINATION BY | PAGE |
| 2 | | | |
| 3 | | | |
| 4 | ROBERT SPINDELL | | |
| 5 | | | |
| 6 | MR. DELANEY | 9 | |
| 7 | MR. MANES | 94 | |
| 8 | MR. BROWNE | 154 | |
| 9 | E X H I B I T S | | |
| 10 | | PAGE | |
| 11 | | | |
| 12 | Exhibit 1 | No Bates numbers, Notice of Deposition | |
| 13 | Exhibit 11 | No Bates numbers, Supplemental Production | 38 |
| 14 | Exhibit 8 | No Bates numbers, E-mail dated 4/8/20 from Jackson to Kehoe | 76 |
| 15 | | | |
| 16 | Exhibit 4 | No Bates numbers, April 7, 2020 Election Summary Report | 77 |
| 17 | | | |
| 18 | Exhibit 3 | No Bates numbers, 7th Circuit Order | 79 |
| 19 | | | |
| 20 | Exhibit 2 | No Bates numbers, Preliminary Injunction Order | 89 |
| 21 | | | |
| 22 | | | |

Page 7

1 THE VIDEOGRAPHER: This begins the
 2 media of the videotaped deposition of Robert
 3 Spindell, Jr., taken by the counsel for the
 4 plaintiffs in the matter of Democratic
 5 National Committee and Democratic Party of
 6 Wisconsin versus Marge Bostlemann, et al., in
 7 the court -- U.S. District Court for the
 8 Western District of Wisconsin, Case No.
 9 3:20-CV-249-wmc.

10 This deposition is being conducted by
 11 Zoom and recorded in Irving, Texas, on
 12 July 7, 2020. The time on the video screen
 13 is 11:04 a.m., Central Standard Time.

14 My name is Andy Mortensen. I'm the
 15 legal videographer from Digital Evidence
 16 Group. The court reporter is Eileen Mulvenna
 17 in association with Digital Evidence Group.

18 All parties for this deposition are
 19 appearing remotely and have agreed to the
 20 witness being sworn in remotely.

21 Due to the nature of remote reporting,
 22 please pause briefly before speaking to

Page 6

1 (Continued)

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| | E X H I B I T S | | |
| 2 | | | |
| 3 | Exhibit 12 | No Bates numbers, Some Facts about Your Right to Vote in Winconsin | 117 |
| 4 | | | |
| 5 | Exhibit 13 | No Bates numbers, Photograph | 124 |
| 6 | Exhibit 14 | No Bates numbers, Photograph | 125 |
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Page 8

1 ensure all parties are heard completely.

2 Will counsel please introduce
 3 themselves for the record.

4 MR. DEVANEY: John Devaney for the
 5 plaintiffs, Democratic National Committee and
 6 Democratic Party of Wisconsin.

7 MR. MANES: This is Jonathan Manes for
 8 the plaintiffs Joe Swenson and others.

9 MS. ROSENZWEIG: Stacie Rosenzweig
 10 from Halling Cayo for the Edwards plaintiffs.

11 MR. BACH: Daniel Bach on behalf of
 12 Commissioner Spindell.

13 MS. UMBERGER: Michelle Umberger from
 14 Perkins Coie on behalf of the DNC and
 15 Democratic Party of Wisconsin plaintiffs.

16 MR. BROWNE: Robert Browne --
 17 MS. LENS: Good morning --
 18 MR. BROWNE: Whoops. Sorry, go ahead.

19 MS. LENS: Good morning. Molly Lens
 20 from O'Melveny & Myers on behalf of Swenson
 21 plaintiffs.

22 MR. BROWNE: This is Robert Brown,

Page 9

1 Jr., on behalf of the intervenor defendant,
 2 Wisconsin legislature.
 3 MS. CHIMENE-WEISS: Sara Chimene-Weiss
 4 with Protect Democracy here on behalf of the
 5 Swenson plaintiffs.
 6 THE VIDEOGRAPHER: Thank you.
 7 Will the court reporter please swear
 8 in the witness.
 9 THE WITNESS: Should I raise my hand
 10 or how should I do that?
 11 THE REPORTER: Yes, please raise your
 12 hand.
 13 ROBERT SPINDELL,
 14 having been duly sworn by Eileen Mulvenna,
 15 a Notary Public of the State of New York,
 16 was examined and testified as follows:
 17 EXAMINATION
 18 BY MR. DELANEY:
 19 Q. Good morning, Commissioner Spindell.
 20 I'm John Devaney.
 21 A. Good morning.
 22 Q. I'm going to be starting off your

Page 10

1 questioning.
 2 Have you been deposed before?
 3 A. Yes.
 4 Q. So you probably know the rules.
 5 Pretty straightforward.
 6 As Andy said in his introduction,
 7 please allow me to finish my questions before you
 8 answer so that we're not talking over each other and
 9 have a clean transcript. And if I ask you any
 10 questions that you don't you understand, let me know
 11 and I'll do my best to rephrase. If you would like
 12 to take a break at any point, please let me or your
 13 counsel know and I'll be sure to honor that.
 14 A. Okay.
 15 MR. DEVANEY: Andy, could you please
 16 put up the deposition notice.
 17 (Exhibit 1, No Bates numbers, Notice
 18 of Deposition, marked for identification.)
 19 BY MR. DEVANEY:
 20 Q. And, Commissioner Spindell, have you
 21 seen this notice before?
 22 A. Yes.

Page 11

1 Q. And you are appearing today pursuant
 2 to this notice; is that correct?
 3 A. That's correct.
 4 Q. You are a commissioner with the
 5 Wisconsin Elections Commission; is that right?
 6 A. Yes.
 7 Q. How long have you been on the
 8 commission?
 9 A. Since October 2019.
 10 Q. Could you describe for me your
 11 responsibilities as a commissioner?
 12
 13 A. Yes. I'm part of a commission that
 14 consists of six appointees, individuals. The
 15 majority leader and minority leader of the Senate.
 16 The majority leader appoints one. The minority
 17 leader of the Senate appoints one. The speaker of
 18 the House appoints one. The minority leader of
 19 House or Assembly appoints the other.
 20 For the other two who are designated
 21 to be clerks, the names are given to the Governor
 22 both by the majority and minority of the legislature

Page 12

1 and the Governor picks I believe from a list of
 2 three.
 3 As a commissioner, I see our
 4 responsibility as overseeing the election process
 5 and basically doing what the -- what the laws tell
 6 us. I believe -- it says, "The Election Commission
 7 should" -- let me get it here so I can make it
 8 clear.
 9 It says, "The Election Commission
 10 powers and duties, general authority: The Elections
 11 Commission shall have the responsibility for the
 12 administration of Section 5, 10 and 12 and other
 13 laws relating to elections and election campaigns
 14 under the laws within the campaign finances." And
 15 then it gets into some more of the details.
 16 So I believe it's our duty as
 17 commissioners to discuss and come up with good
 18 solutions that satisfies all sides of the issue; but
 19 the main thing is make sure that we follow the
 20 Federal law, State law or any court decisions that
 21 are in effect at the time.
 22 Q. Is part of your responsibility helping

Page 13

1 to ensure that local election officials have the
 2 resources they need to conduct elections?
 3 A. Yes, absolutely.
 4 Q. What types of resources would that be?
 5 A. Well, the resources that we give to
 6 the various election officials -- and this state is
 7 sort of unusual. As you all know by now, there are
 8 1850 of them. Many states -- most states do it by
 9 county, in which case there would have been 72, but
 10 we have 1850.
 11 And we do that by providing a lot of
 12 instruction. We have a great staff. I think
 13 it's -- maybe it's more than this -- 32 employees
 14 with five consultants, so a staff of 37 that helps
 15 with any questions that the clerks may have. It
 16 provides training for any matters that the clerks
 17 have. It clarifies any laws or changes in laws and
 18 court decisions that are presently in effect.
 19 In terms of grant money that we get
 20 from HAVA, CARE grant, whatever, we try and give as
 21 much as possible to the clerks to help them in their
 22 duties and carry out what they need to carry out.

Page 14

1 And basically, it's our job to help them in any way
 2 that we possibly can.
 3 Q. Does that include helping them to
 4 acquire the sufficient supplies necessary to conduct
 5 election day voting?
 6 A. Yes, absolutely. We appropriated
 7 \$500,000, and I spent a lot of time with all our
 8 many meetings that we've had, but to purchase such
 9 items as sanitizer, masks, gloves, tape. I believe
 10 during the last April election, we had some 22
 11 different policies, memos and training. We had all
 12 sorts of training and everything to make sure that
 13 the in-person absentee voting and the election day
 14 voting is as safe as possible and certainly safer
 15 than going to the grocery store or Walmart.
 16 Q. And do your responsibilities as a
 17 commissioner and a commission also include ensuring
 18 that cities and towns and counties have a sufficient
 19 number of polling locations?
 20 A. Well, that's a question -- whether or
 21 not we actually have the authority to do anything, I
 22 believe it's left up primarily to the various

Page 15

1 municipalities and so forth. But if you're
 2 referring to the City of Milwaukee, I was actually
 3 horrified by the fact -- especially after being
 4 election -- the City of Milwaukee Election
 5 Commissioner for 20 years, that there are only five
 6 locations. And I do not believe that we have any
 7 power to do anything about that.
 8 Q. Mr. Spindell, I just want to ask you
 9 to respond to my questions if you could --
 10 A. Sure.
 11 Q. -- not stray beyond them.
 12 Do you as a commissioner feel that you
 13 have some responsibility or supervisory authority
 14 for ensuring that localities have sufficient numbers
 15 of poll workers and polling places?
 16 A. Well, it's -- the way as I understand
 17 the law's set up, all this detail is left to the
 18 municipalities to choose what polling places they
 19 want, to go out and try and get, you know, poll
 20 workers and so forth. We as a commission certainly
 21 give them suggestions, advice and whatever in terms
 22 of how to get them.

Page 16

1 Because that was a problem during this
 2 last election where we did provide some guidance I
 3 believe to the various municipalities in terms of
 4 how to get it, such as asking the political parties,
 5 Republican, Democratic for paid election judges,
 6 more of those. There are various groups out there.
 7 And also, we learned about the National Guard and
 8 what a great job they did.
 9 So I think we try as much as possible
 10 to help all the various municipalities and help give
 11 them advice, but I think it's based simply up to
 12 them to decide precisely what they're going to do.
 13 Q. But in the end, Commissioner Spindell,
 14 is it correct that it's the Commission that has the
 15 ultimate authority to administer the elections in
 16 Wisconsin?
 17 A. Well, as it says, that we have
 18 administered the election laws 5, 10 and 12, those
 19 laws relating to election and election campaign.
 20 I'm not sure that there are laws that says that the
 21 various municipalities must have X number of polling
 22 places, must have X number of people.

Page 17

1 I don't think -- I don't believe that
 2 we have power to do any sort of enforcement to say,
 3 okay, you need another 20 polling individuals or you
 4 should open additional polling places. I do not
 5 think that we have that authority.
 6 Q. Commissioner Spindell, turning to the
 7 April election of this year, I'm going to be asking
 8 you quite a few questions about that.
 9 A. Sure.
 10 Q. Would you agree that COVID had
 11 significant effects on that election?
 12 MR. BACH: I'm going to object to the
 13 extent that you're asking him his personal
 14 opinion. I don't see that that's relevant to
 15 anything. It's beyond the topic areas that
 16 we've discussed.
 17 MR. DEVANEY: Well, Dan, the topics
 18 include a discussion of the April election,
 19 so I have to disagree with your suggestion
 20 that it's beyond the topics.
 21 MR. BACH: Well, but his opinion --
 22 his opinions about cause and effect and so

Page 18

1 forth, I'm struggling to find how that's
 2 relevant to anything having to do with the
 3 litigation.
 4 MR. DEVANEY: Well, your objection is
 5 noted. I don't think it's a basis for
 6 instructing him not to answer, so I will ask
 7 him to answer.
 8
 9 BY MR. DEVANEY:
 10 Q. Commissioner Spindell, would you agree
 11 that COVID had a significant effect on the April
 12 election?
 13 THE WITNESS: Well, am I allowed to
 14 answer that?
 15 MR. BACH: Yeah, you're allowed to
 16 answer it.
 17 THE WITNESS: Okay, sure.
 18 Yes, I think it had an effect on the
 19 election.
 20 BY MR. DEVANEY:
 21 Q. What effects did it have, in your
 22 opinion?

Page 19

1 A. Well, I think we had to make sure that
 2 the election would be held as safely as possible for
 3 all the voters, which I believe that we did by
 4 providing the resources and also for providing the
 5 various items as we just discussed and instructions
 6 in terms of how to have a safe election or in-person
 7 voting and for those places that actually had
 8 in-person absentee voting.
 9 Q. And was also one of the effects a
 10 significant increase in voting by mail?
 11 A. Yes.
 12 Q. And also was another effect an
 13 increase in online registrations to vote?
 14 A. Yes.
 15 Q. Are you aware of the number of COVID
 16 cases that have been diagnosed in Wisconsin over the
 17 past month?
 18 A. Yes.
 19 Q. What is your understanding of the
 20 general trajectory of COVID over the last month in
 21 Wisconsin?
 22 MR. BACH: John, I'm going to make the

Page 20

1 same objection here. And I do think that
 2 this is outside the scope of the topic area.
 3 And, once again, his knowledge of this --
 4 there's public reporting on the number of
 5 cases and so forth that I don't think we need
 6 to get into it with this witness.
 7 MR. DEVANEY: I'll happily ask it a
 8 different way.
 9 BY MR. DEVANEY:
 10 Q. You did say you're tracking the number
 11 of COVID cases. Is the trajectory of COVID a
 12 factor, Commissioner Spindell, for you in planning
 13 for the November election of this year?
 14 A. Well, I think in order to track it,
 15 you need to look at the number of cases, also the
 16 number of hospitalizations and the number of deaths.
 17 I might add here, if I could, that
 18 I've spent extensive time looking at this subject
 19 from the standpoint of trying to have a safe
 20 election. I've spent probably 15 to 20 hours over
 21 the telephone with a friend of mine, who is an M.D.
 22 with a master's degree from Harvard in public health

Page 21

1 and works at a large hospital chain both
 2 administratively in the COVIS [sic] clinic and
 3 trying to pay attention to what is happening as we
 4 move along.
 5 Things have changed considerably since
 6 April and before in terms of being able to treat the
 7 virus, in the number of hospitalizations, the fact
 8 that the number of people now that are testing for
 9 it appear to be younger people where there's very
 10 little chance of serious effects.
 11 And so I would look at the August and
 12 certainly at the November elections as something
 13 that nobody knows, but we're in a much better spot
 14 in terms of handling the virus than we were at the
 15 April election.
 16 Q. And how does your view of the
 17 trajectory of COVID affect your views on how to
 18 conduct the November election?
 19 A. Well, I think in terms of trying to
 20 keep track of everything out there, it appears --
 21 especially from the latest Alabama/Texas cases that
 22 the Supreme Court of the United States is not

Page 22

1 accepting that COVIS pandemic as a reason to change
 2 the election laws. So I don't see that there's a
 3 need at this point in time to change the laws that
 4 were currently on the books that were brought about
 5 by the legislature, signed into law by the governor.
 6 Q. Do you see any need to change the
 7 guidance the commission issues for elections in
 8 light of the trajectory of COVID in Wisconsin?
 9 A. Well, I think that we are taking it
 10 into consideration considerably by the fact that we
 11 are sending out an absentee ballot application to
 12 almost every single registered voter in the state at
 13 great expense and telling them the three ways they
 14 can vote; you can vote in person, you can vote in
 15 person absentee or you can vote by absentee ballot,
 16 and making it extremely easy for them if they want
 17 to vote by absentee ballot to go to their computer
 18 in just a couple minutes and actually request a
 19 ballot or fill out the application and send it in.
 20 That goes to the Wisconsin Election Commission.
 21 So I think we are, you know, doing
 22 well in terms of keeping people informed in terms of

Page 23

1 their abilities and how they're able to vote.
 2 Q. And that mailing you just described,
 3 Commissioner Spindell, if I understand correctly,
 4 that is -- that went to or is going to approximately
 5 2.7 million registered voters; is that correct?
 6 A. That's right, yes.
 7 Q. And you voted to approve that mailing,
 8 correct?
 9 A. Yes.
 10 Q. I take it you wouldn't have voted in
 11 favor of that if you didn't believe voting by mail
 12 was a safe and secure method for voting; correct?
 13 A. Not necessarily, no.
 14 Q. So you do not believe that voting by
 15 mail is safe and secure; is that correct?
 16 A. Well, I think there's -- again, you
 17 know, I want to go to what the legislature talks
 18 about, and I think we've got to again pay to -- pay
 19 attention to what they say about it. And they say
 20 they find voting a constitutional right, the
 21 vigorous exercise which we strongly encourage.
 22 Voting by absentee ballot is a privilege exercise

Page 24

1 wholly outside the traditional safeguards of the
 2 polling place. Legislature finds that the privilege
 3 of voting by absentee ballot must be carefully
 4 regulated to protect the potential for fraud or
 5 abuse and protect overzealous solicitation of
 6 absentee electors that may prefer not to participate
 7 in the election, prevent undue influence on an
 8 absentee elector to vote for or against the
 9 candidate.
 10 I think that's very clear in terms of
 11 what the legislature says and their concerns about
 12 voting absentee.
 13 Also, I might -- as I'm sure you're
 14 aware with the error program during the last
 15 election in 2018, I believe there was 43 referrals
 16 to district attorneys reflecting the probability
 17 that somebody voted twice.
 18 So I mean, there's all sorts of
 19 problems with absentee ballots and we need, in my
 20 opinion as Election Commission, to make sure that
 21 all the safeguards possible are in place; but it's
 22 not the same thing or same security, in my opinion,

Page 25

1 as going to the polling place on election day,
 2 showing your photo ID and voting.
 3 Q. Commissioner Spindell, the April
 4 election that just occurred, my understanding is
 5 that the number of votes cast by mail was
 6 approximately 1.2 million.
 7 Do I have that right?
 8 A. I think that's about right, sure.
 9 Q. And we are now -- I guess we're
 10 three months from that election. And are you aware
 11 of any reports of voting fraud relating to mail
 12 voting in the April election of this year?
 13 A. Well, it seems -- as I understand that
 14 the Election Commission is still looking into it.
 15 As I understand it, there's been some complaints
 16 made to the Election Commission in that regard that
 17 possibly are still under investigation.
 18 But, you know, with this in general --
 19 MR. BACH: Commissioner Spindell, I'm
 20 sorry, I really want you to limit your
 21 answers to the questions.
 22 THE WITNESS: Sure.

Page 26

1 BY MR. DEVANEY:
 2 Q. I want to follow up on that.
 3 Do you personally know of any
 4 occurrences of voting fraud in the April election
 5 with the 1.2 million mail ballots that were cast?
 6 A. I do not personally know of any fraud
 7 at this point.
 8 Q. And no incidents have been brought to
 9 your attention; isn't that right?
 10 A. Well, I think there have been some
 11 incidents that have brought to the Election
 12 Commission in terms of complaints that I have
 13 briefly read, but there hasn't been an evaluation I
 14 don't believe by the Election Commission staff in
 15 terms of the validity.
 16 Q. And is it correct that the volume of
 17 mail voting for the April election was by far and
 18 away the largest volume in Wisconsin's history?
 19 A. Oh, absolutely.
 20 Q. Commissioner Spindell, as you look
 21 forward to the -- or toward anyway the November
 22 election --

Page 27

1 A. Sure.
 2 Q. -- do you have a view on the volume of
 3 mail ballots that are likely to be cast?
 4 A. Well, I think what's going to happen,
 5 people are going to make the decision as they get
 6 closer in terms of what's happening with the virus.
 7 So that's a few months off, three or four months
 8 off, but I don't think we know.
 9 I think the political parties, both
 10 the Republican Party and Democratic Party, are going
 11 to try and make sure everybody votes one way or
 12 another. I will suspect they will contact every
 13 single voter and say are you going to vote absentee
 14 in person or in person and try and push that.
 15 So I would think that with the
 16 application that we have sent out for people, we're
 17 certainly making them aware of one of the methods of
 18 voting.
 19 Q. And given that you've sent that
 20 application out to 2.7 million registered voters,
 21 would you agree that the volume of voting by mail is
 22 likely to be higher than it was in April?

Page 28

1 A. Well, I would suspect that we're going
 2 to have -- the November election is always much
 3 higher than an off election, such as an April
 4 election, so certainly the number of absentee
 5 ballots that we will receive back will be greater
 6 than they were this time.
 7 MR. DEVANEY: Andy, could you pull up
 8 Exhibit 13, please, and also cue the video.
 9 Q. Commissioner Spindell, I'd like to
 10 show you a video of a statement you made in a recent
 11 Commission meeting at which the mailers we've talked
 12 about were discussed --
 13 A. Yes.
 14 Q. -- and ask you a couple of questions
 15 about that.
 16 A. Sure.
 17 (Video is played.)
 18 BY MR. DEVANEY:
 19 Q. Commissioner Spindell, responding to
 20 that, the words you said, "there has been rumors out
 21 there."
 22 What rumors were you referring to?

Page 29

1 A. Well, I would just as a general
 2 statement, I would suspect from --
 3 Q. I really would like to you --
 4 A. I'd say the rumors --
 5 Q. Mr. Spindell, I don't want general
 6 statements, I'd like you to answer my questions.
 7 MR. BACH: Ask him exactly what the
 8 question was again.
 9 Q. The words you used, "there have been
 10 rumors out there," what rumors are you referring to?
 11 A. I'm referring to rumors that have been
 12 out there for ages, times among the overwhelming
 13 majority of Republicans that there's, obviously,
 14 voter fraud in Wisconsin or there's voter fraud with
 15 mailings and things along this line. I think in the
 16 past, not necessarily with this election, but the
 17 items that I mentioned in there about harvesting,
 18 voter harvesting, that's a hot button issue for
 19 Republicans and one that in many states is illegal.
 20 Some states it's very limited. And, of course, here
 21 in Wisconsin, it's actually legal. And that's a
 22 great concern to just about every Republican I know.

Page 30

1 So the perception out there, the perception is
 2 extremely important.
 3 Q. And you spoke in those words about
 4 that concern being especially in the various
 5 projects.
 6 Do you recall saying that?
 7 A. Yes. And basically, I'm not sure
 8 there are any projects in Wisconsin, in Milwaukee.
 9 Can you expand on that?
 10 Q. What projects were you referring to?
 11 A. I'm not really referring to projects
 12 and so forth. There's all sorts of rumors out there
 13 about possible vote fraud, and it's just something
 14 that's extremely difficult to prove because you
 15 really can't do anything until after the election is
 16 over and there's neither the will nor the money to
 17 go investigate that. But there has been rumors that
 18 I heard, you know, in some of the senior housing
 19 that we have a lot of in Milwaukee, in various
 20 apartments and houses. People Helping People are
 21 trying to find people that need their ballot at the
 22 last minute delivered to the clerk. And this is an

Page 31

1 obvious problem in not only Wisconsin, but
 2 throughout the country in the point of view of
 3 Republicans.
 4 Q. Mr. Spindell, when you spoke of
 5 projects, you were speaking of low income projects
 6 in Wisconsin, weren't you?
 7 A. No, I don't think I was. I was
 8 speaking of apartments. I was speaking of housing.
 9 I don't think there are any projects. I don't know
 10 of any projects that we actually -- if you want to
 11 use a terminology of projects, I don't believe that
 12 we have projects in Milwaukee.
 13 Q. When you used the term "projects,"
 14 Commissioner Spindell, you were suggesting that
 15 there are projects in Wisconsin where there's ballot
 16 harvesting happening or at least rumors of that; is
 17 that correct?
 18 A. Well, I think projects can include
 19 anything. It can include apartments. It can
 20 include middle-income housing. It can include -- it
 21 can include any types of possible situations where
 22 there's a large number of people that are together.

Page 32

1 Q. And --
 2 A. I don't think -- I don't think that
 3 necessarily relates to just low-income housing. I
 4 think it's -- and I don't think it's mistake of
 5 harvesting by any means, it's just restricted to
 6 low-income housing. I think in some places like
 7 nursing homes, things along this line, ballot
 8 harvesting there it could be -- it could be a
 9 potential problem.
 10 Q. And, Commissioner Spindell, when you
 11 spoke of rumors about ballot harvesting at projects,
 12 did you have any specific examples about ballot
 13 harvesting that has actually occurred in mind?
 14 A. Well, there was --
 15 MR. BACH: Objection.
 16 John, can we confine your question to
 17 allegations or statements or whatever made to
 18 the Commissioner in his official capacity?
 19 That's how we framed --
 20 MR. DEVANEY: That's fine. That's
 21 fair, Dan. Sure.
 22 MR. BACH: Okay.

Page 33

1 THE WITNESS: Could you repeat the
2 question, please.
3
4 BY MR. DEVANEY:
5 Q. In the capacity as commissioner, when
6 you spoke about concerns about ballot harvesting and
7 rumors about ballot harvesting at projects, did you
8 have any specific incidence of ballot harvesting in
9 mind?
10 A. Well, Urban Milwaukee had an article
11 where a few hundred ballots were picked up -- I'm
12 not saying that it was necessarily illegal because
13 in Wisconsin at this point in time, it is legal for
14 people to collect multiple ballots. But there were
15 several attempts and successful attempts to collect
16 numerous ballots and one organization that's
17 mentioned in the Urban Wisconsin, it was well over a
18 hundred.
19 There was even a state legislator who
20 was said I'll come pick up your ballots if you -- if
21 you have a hard time getting them to the clerk.
22 So I -- and I also got a letter from

Page 34

1 the -- I think it was one of the disability groups,
2 Legal Women Voters, indicating that with ballot
3 harvesting, there will be 29 organizations that are
4 going to be participating -- helping people picking
5 up their ballots and helping people get those to --
6 maybe 39, 29 or 39 -- helping -- those organizations
7 will help people get ballots to the clerks.
8 Q. Two follow-up questions related to
9 that. You're not suggesting that anything you just
10 described is unlawful; correct?
11 A. No, I think it boils down to an
12 interpretation of what the law says. I think the
13 law in my opinion is pretty clear that it's up to
14 the voter to both mail and to deliver it to the
15 clerk.
16 One of our democratic commissioners,
17 Ann Jacobs, thinks -- she believes that that's
18 correct in terms of the voter must mail it, but it
19 says -- it doesn't say the -- it says the voter must
20 mail and she thinks it should say the voter should
21 mail and the voter should deliver and, therefore,
22 since that word was left out, she believes that that

Page 35

1 allows it. I think that's a pretty big stretch.
2 Q. My question to you is, you're not
3 suggesting anything you've described is illegal;
4 correct?
5 A. No, because apparently at this point
6 in time --
7 Q. I just want a no.
8 Second, you learned about what you
9 just described through a newspaper article; is that
10 correct?
11 A. Yes.
12 Q. And the other sources other than
13 newspaper articles?
14 A. They had it on ISN, WTMJ about helping
15 people getting their particular ballots to the clerk
16 on time. So it's a major story in Milwaukee here
17 on -- it's a matter of great interest in Wisconsin
18 and Milwaukee and it's on the TV and it's in the
19 newspapers and so forth.
20 Q. When you in your statement that we
21 heard spoke of a hot button issue for Republicans,
22 were you referring to absentee voting or a

Page 36

1 collection or both?
2 A. Both.
3 Q. Why is absentee voting a hot button
4 for Republicans?
5 A. Because Republicans believe sort of
6 what President Trump was saying. That provides all
7 sorts of opportunities of voting fraud. And that's
8 probably why the legislature and it was a Republican
9 legislature that wrote these rules indicated that
10 they are -- we must do everything possible to
11 prevent fraud or abuse. And I think it's just
12 something that Republicans believe there's been --
13 you know, you go back even to this last 2018
14 election, there was some -- even though it was
15 minor, there was 43 referrals. As far as I know,
16 nothing has been done by the district attorneys that
17 we have knowledge of. There's no prosecution of
18 anybody that does any sort of vote fraud. And
19 that's something whether or not it's legitimate,
20 Republicans believe it. And Wisconsin has close to
21 half the population.
22 Q. Commissioner Spindell, those referrals

Page 37

1 that you mentioned in 2018, nothing happened because
 2 it was determined that those referrals were
 3 groundless, they're baseless; isn't that correct?
 4 A. No, I don't think that's -- I don't
 5 think that's true. This came from Eric and there
 6 are many more than 43 and I don't know the exact
 7 number, but our staff, which is a pretty
 8 sophisticated staff in Wisconsin, lawyers and so
 9 forth, went through and came out with I believe 43
 10 or 48 that they felt were adequate enough and had
 11 enough proof behind them to refer to the particular
 12 district attorneys whether it be in the State of
 13 Wisconsin or some other states, and this referred
 14 basically to people voting more than once.
 15 Q. And it was determined by those
 16 district attorneys not to take any action based on
 17 what was referred; correct?
 18 A. Well, in our last meeting, the
 19 attorney had told us that --
 20 MR. BACH: Bob, do not -- object.
 21 Bob, you can't go into discussions
 22 that you had with counsel.

Page 38

1 THE WITNESS: Okay. Sorry, please
 2 repeat the question again.
 3 BY MR. DEVANEY:
 4 Q. That's okay. I don't want to get into
 5 attorney-client issues.
 6 A. Okay.
 7 MR. DEVANEY: Andy, could you please
 8 pull up Exhibit 11.
 9 (Exhibit 11, No Bates numbers,
 10 Supplemental Production, marked for
 11 identification.)
 12 Q. Commissioner Spindell, this is a
 13 production of documents we received in the last few
 14 days. It's titled "Spindell Supplemental
 15 Production," and there are about 14 pages in here.
 16 And I just want to ask you a few --
 17 A. Sure.
 18 Q. -- questions about some of these
 19 documents.
 20 A. Uh-huh.
 21 Q. So the first page, you'll see it says,
 22 "Scott, this is a heads-up on a newspaper ad below

Page 39

1 sponsored by Patriotic Veterans" -- I'm not going to
 2 read the whole thing, but do you see that?
 3 A. Yes.
 4 Q. Do you recognize this document?
 5 A. Yes.
 6 Q. Who is Scott who you're referring to?
 7 A. Senator Scott Fitzgerald.
 8 Q. And Senator Fitzgerald is the senator
 9 who appointed you to your position; is that correct?
 10 A. That's correct.
 11 Q. I'm just curious, how often do you
 12 interact with Senator Fitzgerald?
 13 A. Well, not very often. This is -- I
 14 think basically in this time frame, especially with
 15 the pandemic, this is about it.
 16 Prior to the pandemic, I had gone to a
 17 lot of Republican events and if he's there, I'll
 18 probably say hello to him or -- like I do anybody
 19 else.
 20 So these are -- these -- very rarely
 21 do we communicate because I basically -- I don't
 22 think there's really many matters that I don't agree

Page 40

1 with him or what his philosophy process would be
 2 or -- what his philosophy would be.
 3 Q. The second paragraph of this document,
 4 it's dated May 20, 2020, I'll just read into the
 5 record and I'll ask you about it.
 6 It said, "Talked to Dean. Said okay
 7 with you to allow absentee application to go back to
 8 WEC because of problems. Is this okay or do you
 9 wish to still push for decentralization? Bob."
 10 Who is Dean?
 11 A. Dean Knudson is the other political
 12 Republican appointee and was at the time chairman of
 13 the Wisconsin Election Commission.
 14 Q. And when you said -- when you wrote,
 15 "Said okay with you to allow absentee application to
 16 go back to WEC because of problems," what are you
 17 referring to?
 18 A. Well, Senator Fitzgerald was very
 19 concerned that all the applications go back to the
 20 Wisconsin Election Commission. We did express that
 21 concern. And I told him I thought it was much more
 22 efficient and pointed out why -- that all the

7/7/2020

Democratic National Committee v. Marge Bostlemann, et al.

Robert Spindell

| | |
|---|--|
| <p style="text-align: right;">Page 41</p> <p>1 responses go directly to the Wisconsin Election 2 Commission because of the huge burden it would put 3 on all the -- on the clerks. And so that was a 4 discussion that I had with Dean prior to -- I don't 5 know if that's 20 May, then we probably had a 6 meeting on 20 May or 21 May or something along that 7 line. 8 Q. The issue of where absentee 9 applications would go is an issue within the 10 authority of the WEC; correct? 11 A. Well, we're saying that it is. I 12 would -- you know, nobody is saying that it isn't. 13 Q. It's not within the authority of the 14 legislature, is it? 15 A. If the legislature said that all 16 applications shall go back to the clerks, I would 17 think that would be very clear. I don't believe 18 that it says that. 19 Q. So my question for you is, why were 20 you asking the Senator about whether he was okay 21 with the plan on where these applications would go? 22 A. He expressed his concern to me of the</p> | <p style="text-align: right;">Page 43</p> <p>1 A. Andrew Hitt is the chairman of the 2 Republican Party of Wisconsin. 3 Q. And what are you referring to when you 4 say, "Per Hitt, we are moving ahead"? 5 A. Well, that involves some strategy that 6 the Republicans are working on in terms of whether 7 or not there should be a mailing, whether we should 8 go along with the -- having a mailing of the 9 absentee ballots. And I don't know if, you know, 10 it's appropriate in my role as a Wisconsin Election 11 Commission to get into the strategy of what the 12 Republican Party of Wisconsin was doing, especially 13 since I'm involved with the Republican Party of 14 Wisconsin. 15 Q. Well -- 16 A. I'd like my counsel to answer that. 17 If he thinks that that's a problem for me to answer 18 it -- 19 MR. BACH: I think the questions that 20 are posed are questions that have been posed 21 to you in your official capacity on the 22 Elections Commission.</p> |
| <p style="text-align: right;">Page 42</p> <p>1 applications going back directly to the Wisconsin 2 Election Commission and -- rather than the 3 decentralized process that we have in Wisconsin 4 where everything should be going to the clerks, and 5 my response to this was to have all this go back to 6 the clerks is going to be an undue response -- you 7 know, burden of proof on them. And I believe from 8 my standpoint looking at it, that this is a much 9 more efficient way to go and this is, obviously, the 10 way we're going. 11 Q. I'm confused. Why were you concerned 12 about getting the Senator's view on that topic? 13 A. Well, I'd like to know as many views 14 as possible on the various issues that are before 15 us. And that was a concern that he had and I tried 16 to answer his concern. 17 Q. Down below that, there's an item that 18 says, "Per Hitt, we are moving ahead with mailing to 19 all registered voters." 20 Do you see that? 21 A. Yes. 22 Q. Who is Hitt?</p> | <p style="text-align: right;">Page 44</p> <p>1 THE WITNESS: Okay. Fine. 2 BY MR. DEVANEY: 3 Q. So, Commissioner Spindell, why were 4 you in discussions with the Republican Party about 5 whether to have this mailing that talked about 6 relating to absentee voting? 7 A. Well, the Republican Party was trying 8 to decide whether or not we wanted to go ahead and 9 do that, and there were different opinions on it. 10 Some people thought that we should. Other people 11 thought that we shouldn't. And we came to the 12 conclusion that the -- you know, Senator Fitzgerald 13 probably was never really in favor of doing a 14 mailing. And it's -- and then from the Republican 15 Party standpoint, we thought that we'd be able to 16 reach a lot of people that maybe we wouldn't reach 17 if the parties were going to do their own mailings. 18 The other alternative to sending out 19 the absentee ballot applications would have been for 20 each of the parties. There's plans in Wisconsin and 21 Madison for those clerks to send out absentee ballot 22 applications, there are plans, Republicans could</p> |

11 (Pages 41 to 44)

Page 45

1 have sent absentee ballot applications with letters
 2 to all people that they knew about, as could the
 3 Democrats, and we thought that us to try -- if
 4 everybody was doing it, make sure that everybody has
 5 an opportunity to receive one of these absentee
 6 ballot applications.

7 Q. In your capacity as Commissioner, who
 8 did you speak with at the Republican Party about
 9 this strategy?

10 A. I spoke with Andrew Hitt, Mark
 11 Jefferson. I was part of the strategy. I was part
 12 of deciding what the strategy should be.

13 Q. Did you participate in meetings with
 14 those individuals to discuss the strategy?

15 A. Well, you know, we can't have live
 16 meetings, so if you want to include telephone calls
 17 and whatever, yes.

18 Q. And when you voted in support of this
 19 absentee ballot initiative as a commissioner, part
 20 of your reasons for supporting that were because it
 21 was in the Republican Party's interest; is that
 22 correct?

Page 46

1 A. Yes.

2 MR. DEVANEY: Next page, please, Andy.
 3 And continue on, please.

4 BY MR. DEVANEY:

5 Q. The next document that appears within
 6 your production, Commissioner Spindell, is titled
 7 "Some Facts about Your Right to Vote in Wisconsin,"
 8 which hopefully you can see.

9 A. Yes.

10 Q. And first let me just pull back and
 11 ask you to describe what this document is.

12 A. This document is a newspaper ad that
 13 was put I believe in 27 different newspapers
 14 throughout the State of Wisconsin, including Madison
 15 papers, Milwaukee paper, some market courier in
 16 Wisconsin, and talking about what it says here in
 17 terms of trying to promote the idea that it's still
 18 safe to vote in person -- or in person, absentee.

19 So this organization decided that it
 20 was worthwhile to -- which I happen to be in
 21 Milwaukee where it's a national organization, but
 22 Milwaukee had been chairman of this particular

Page 47

1 organization for some time, and the ad pretty much
 2 speaks for itself.

3 MR. DEVANEY: Andy, could you focus on
 4 titled Fact 2.

5 THE VIDEOGRAPHER: Sure.

6 THE WITNESS: Fact 2.

7 BY MR. DEVANEY:

8 Q. On April 7 --

9 A. Should I read it? How would you like
 10 me to do that?

11 Q. I'll read it to you and then ask you
 12 questions.

13 A. Sure.

14 MR. DEVANEY: If there's a way to make
 15 that a little smaller, move it to the left so
 16 it's not blocked by the video, that would be
 17 great. There's probably a way for me to
 18 manage the video, but I'm not up to that.

19 BY MR. DEVANEY:

20 Q. It says, "On April 7, more than
 21 1.2 million Badgers voted by mail, a record number.
 22 This completely overwhelmed our election system

Page 48

1 creating many problems. One, ballots not sent to
 2 voters on time."

3 I want to ask you first about your
 4 comment "This completely overwhelmed our election
 5 system."

6 What did you have in mind when you
 7 wrote that?

8 A. I don't think there's any question
 9 about this. As you pointed out earlier, this is by
 10 far and away the most mail and absentee ballots we
 11 have ever had. And we have had news media in
 12 various production of documents in terms of looking
 13 at it from the standpoint of the Milwaukee Election
 14 Commission -- or the Wisconsin Election Commission,
 15 this was a very tough situation on our many 1850
 16 clerks in being able to handle this.

17 You'll see also in some of the
 18 documents further down this frustration that one of
 19 the clerks had, and I don't think that that's an
 20 isolated situation. It appeared because of the
 21 pandemic, all of a sudden, all these various clerks
 22 got overwhelmed by these requests. They had a lot

Page 49

1 of work to do. And they did the best possible job
 2 that they could do, but it was not -- we were not
 3 set up for it.

4 Places like Oregon, Washington spent
 5 years developing an all mail-type situation. And in
 6 a very few weeks, while the Wisconsin Elections
 7 Commission where the clerks did a remarkable job,
 8 the fact of the matter was the system was
 9 overwhelmed, in my opinion.

10 Q. And --

11 A. It was not an efficient operation as I
 12 would have liked to have seen.

13 Q. And then you say, as I read before,
 14 "Ballots not sent to voters on time."

15 Can you explain that comment?

16 A. Well, I think there's some charts that
 17 show when ballots were mailed by some of the clerks,
 18 which could be a day or two off, the request for
 19 ballots were not mailed so there would be any
 20 possible way for those people to receive the ballots
 21 on time and to get them back, especially if they're
 22 mailed on the same day as the election, which some

Page 50

1 were. And there was all sorts of reports of people
 2 not -- a lot of ballots were not returned, and some
 3 of that is because people didn't have it until the
 4 appropriate -- appropriate time.

5 It was pretty tough -- for the
 6 November, August election, especially for the
 7 November, a lot of time to do all this stuff. We
 8 were very much restricted in terms of all this
 9 happening.

10 I mean, you know, middle of March is
 11 when we started learning about the pandemic. And to
 12 go from the middle of March to August 7th and do
 13 this was completely remarkable, but it did overwhelm
 14 our system.

15 Q. The number of ballots not sent to
 16 voters on time, are you able to quantify that for me
 17 in your role as a commissioner?

18 A. Yes, I believe there's a report here
 19 on the -- would you like me to look it up? It's on
 20 the deposition questions that you had. Let's see, I
 21 have it right here, I think.

22 Q. Are these answers to interrogatories?

Page 51

1 A. Yes.

2 Q. Okay. Feel free, if you would, to
 3 read that into the record.

4 A. On page 6, it shows a number of dates
 5 ballots were sent. And I know there's a discussion
 6 in terms of how long it takes for a ballot or
 7 absentee ballot to get through the mail service to
 8 someone. And my -- I do several mailings every year
 9 and, generally, my experience is that it takes two
 10 days. If I mail it today, which should be Tuesday,
 11 it would most likely get there on Thursday. Some
 12 will be longer than that. Very rarely will get
 13 there in one day.

14 So if that's the case and election was
 15 on the 7th of -- on the 7th. So on the 6th, also
 16 there's no mail service on the 6th. It's possible
 17 that ballots that were mailed -- let's see, 7,
 18 Monday, you have to go back to the 4th for any
 19 chance of those ballots being sent or being received
 20 on time by the -- by the voter on Friday or
 21 Saturday. So there's some there, but as the
 22 interrogatory points out, this is just what the

Page 52

1 clerks let us know in terms of what happens.

2 I think there was also substantial
 3 number of ballots that were not returned -- a couple
 4 hundred thousand, something like that. I don't have
 5 that right in front of me.

6 So I think it's pretty clear that
 7 because of this rush, rush situation and because of
 8 these clerks having to work 80 hours a week or more,
 9 some, like City Mall Election Commission overnight
 10 doing this stuff, I don't see how see anybody can
 11 say that the system was [inaudible] at all.

12 Q. Commissioner Spindell, I don't have
 13 that document in front of me. Could I ask you to
 14 just do the math for me. If you take April 4th as
 15 kind of the drop-dead date when a ballot would no
 16 longer arrive on time, carry the number of ballots
 17 from April 4 through April 7, what is the
 18 approximate number that --

19 MR. BACH: I'm going to object. He's
 20 speculating in terms of how long the mail is
 21 going to take there. We answered the
 22 interrogatories. So the data that we have in

Page 53

1 the interrogatory is the best data that the
 2 commission has.
 3 BY MR. DEVANEY:
 4 Q. We can stand by the interrogatory, but
 5 your point, Commissioner, is that if it was not
 6 mailed before April 4th, there's little chance it
 7 would have arrived on time to be counted; correct?
 8 A. Let me make sure I got the dates
 9 right. Seems to me that April 4th was a Saturday.
 10 That would be -- the next day that items could be
 11 mailed would be on Monday. And so basically I'd say
 12 it's pretty difficult if something wasn't mailed by
 13 that time to arrive.
 14 But also, as the interrogatory points
 15 out, that we don't know if these are accurate
 16 day-by-day numbers because sometimes they're so
 17 busy --
 18 MR. BACH: Bob, you don't have to
 19 elaborate on the interrogatory. Just listen
 20 to his question and then answer that. The
 21 interrogatory is what we already sent them.
 22 THE WITNESS: Okay.

Page 54

1 BY MR. DEVANEY:
 2 Q. Commissioner Spindell, number 2 says,
 3 "Ballots not returned on time."
 4 Do you see that?
 5 A. Yes.
 6 Q. Does that refer to problems with post
 7 office delivery?
 8 A. I think what it refers to is certainly
 9 problem with the post office delivery and also
 10 problems with people sending back, you know, either
 11 after the election day or on the election day but
 12 maybe they didn't get stamped because they missed
 13 some mail pickup at their home or something along
 14 that line. So I would suspect that that would be
 15 ballots not returned on time.
 16 Q. In your capacity as commissioner, has
 17 it come to your attention that there were problems
 18 within the post office with delivering ballots on a
 19 timely basis?
 20 A. Yes.
 21 Q. Can you describe for me what you know
 22 about that topic?

Page 55

1 A. Well, there's several different ones
 2 that seem to stand out. One is in Fox Point where
 3 it appears that the ballots were going back and
 4 forth or whatever. I still don't understand what
 5 happened there, but some potential ballots were not
 6 delivered. There's apparently 1600 ballots, some
 7 tubs of ballots that were not delivered up in
 8 Appleton around that area. There's apparently some
 9 tubs of ballots somehow ended up in Chicago, in
 10 Wisconsin.
 11 So there were -- there's certainly
 12 some ballots that could have been into the system on
 13 election day that were not -- you know, that were
 14 delivered late or whatever. I don't -- I'm
 15 really -- the Election Commission staff was involved
 16 in that. I'm just giving you some hearsay in terms
 17 of what I heard about it.
 18 Q. In your role as commissioner, did you
 19 investigate what happened in Fox Point, Appleton and
 20 Chicago with the tubs of ballots that weren't
 21 delivered?
 22 A. No, the only information that I

Page 56

1 received was either a conference call that we had,
 2 the Wisconsin Election Commission and the postal
 3 department, or it was a meeting that I attended by
 4 Zoom, the City of Milwaukee Election Commission
 5 where they had a representative of the post office
 6 talk about it. I did not make any personal calls to
 7 any postal officials. In my opinion, that was --
 8 the staff was doing a good job of that and keeping
 9 us informed.
 10 Q. Did you direct the staff or did any
 11 other commissioner direct the staff to determine
 12 whether the ballots at issue in Fox Point, Appleton
 13 and Chicago, and I guess Milwaukee, were actually
 14 ultimately delivered and counted?
 15 A. I believe that -- I don't have the end
 16 result of that knowledge. I believe that Wisconsin
 17 election staff would have -- I just don't know the
 18 answer to that question.
 19 Q. So you don't know if those ballots
 20 were counted?
 21 A. I think in news reports, maybe they're
 22 indicated that they were not counted. I'm sorry, I

Page 57

1 just don't know the answer to that question.

2 Q. Do you know the volume --

3 A. I think probably some were and some

4 weren't. I would suspect that might be a good

5 answer.

6 Q. But you're just speculating?

7 A. That's right.

8 Q. Do you know the volume of ballots at

9 issue in those locations?

10 A. Well, I think -- I sort of remember

11 hearing something like 1600 in Appleton and several

12 hundred in Fox Point. And the ones that ended up in

13 Chicago, I don't know the precise number of those.

14 And the ones that are floating around in some of

15 these post offices, I'm not sure that we even know

16 now how many there were.

17 Q. In your role as commissioner, did you

18 ever learn what occurred at the post office that led

19 to these problems?

20 A. Well, I think from what the staff told

21 us, the post office was very unapologetic and really

22 did not clearly indicate what might have happened at

Page 58

1 the post office. What -- generally the way the

2 system works is all the Wisconsin substations either

3 send their mail to Milwaukee or Minneapolis where

4 it's processed and then it's back to the various

5 municipalities for delivery.

6 It appears that some of the

7 municipalities were taking a shortcut and trying to

8 do what they needed to do with the ballots at the

9 post office. Election Commission -- or clerk drops

10 off a bunch of ballots at one of these smaller post

11 offices saying, hey, we're not going to send it all

12 the way in, we'll process it here and deliver it. I

13 believe a lot of that has happened.

14 I remember listening to the postal

15 people when they were asked about some sort of stamp

16 that said April whatever, and they indicated, well,

17 that stamp certainly wouldn't be used by anybody in

18 the post office. So I think it's still an open

19 question in terms of what happened.

20 I'm sure the post offices, they're

21 over- -- obviously overwhelmed, too, just like the

22 election officials and clerks are overwhelmed and,

Page 59

1 hopefully, they'll be in much better shape for the

2 August and November elections and know what to do

3 with this.

4 Q. Commissioner Spindell, I take it in

5 your role as commissioner, that the fact that the

6 post office lost what sounds like thousands of

7 ballots is unacceptable performance in your view?

8 A. This is, obviously, a concern. We

9 want to make sure that every ballot is cast and

10 that's why a lot of people are fearful of having

11 mail-in ballots because they're afraid their ballot

12 will not be cast -- it wouldn't be counted.

13 Q. Commissioner Spindell, have you in

14 your capacity as commissioner worked with the post

15 office since the April election to take steps to

16 ensure that similar problems that you describe won't

17 occur in November?

18 A. I have not personally. As you may

19 know, I'm -- this is not my full-time job. It's not

20 even a part-time job. It's a commission role. But

21 the very efficient staff has been working in that

22 regard.

Page 60

1 Q. Had the commissioners other than

2 yourself, if you know, done any coordination with

3 the post office to ensure these problems don't occur

4 in November?

5 A. I don't believe that in our

6 discussions that we've had on -- during our

7 meetings, which is really the only time we really

8 talk to each other, that any voter said that they

9 have gotten involved in this personally. I think

10 we're leaving that up to the staff, which is well

11 equipped, to spend the time and effort and knowledge

12 to get what they need to get from the post office to

13 try and help the post office do what they need to

14 do.

15 Q. Thank you.

16 Back to this document, the last

17 sentence of Fact 2 says, "These problems would only

18 multiply and create more chaos and endless lawsuits

19 in November."

20 What did you mean by that statement?

21 A. Well, if -- you know, this gets back

22 to several items. Obviously, on the mailings that

Page 61

1 we're doing of the 2.7 mailing, there's a number of
 2 people that obviously have moved or whatever. Also,
 3 as you're aware of the lawsuit where there's
 4 approximately 130,000 voters that we do not know
 5 anything about at this point in time, that those
 6 people there can -- or whomever can request absentee
 7 ballots, we do have, you know, some safeguards in
 8 there in terms of voter ID must be required;
 9 however, if you put forth that voter ID prior to
 10 your bringing in or asking for an absentee ballot,
 11 you do not have to return photo ID.

12 So I think there's -- we don't know
 13 who all these ballots are being sent to at this
 14 point, and it's certainly not the same as somebody
 15 walking into the polling place and there's a fill-in
 16 list and the latest up-to-date information about who
 17 should be there, who's registered and who's not and
 18 so forth.

19 Q. Commissioner Spindell, thank you for
 20 that.

21 One follow-up question I have is, when
 22 you speak of these problems are going to multiply,

Page 62

1 do you expect the problems that were experienced
 2 with the mail and the post office that we just
 3 discussed to multiply in November given this
 4 potential significant increase in mail ballots?

5 A. Well, I would hope that -- again, you
 6 know, they were only given a few weeks' notice.
 7 Probably they didn't even think about it as we did.
 8 But I would hope within these, what, April to
 9 November, it's more than six -- what, seven, nine
 10 months, they should have an opportunity basically to
 11 work out their policies and procedures with the
 12 particular clerks and the Election Commission and
 13 try to get a well-tuned system in place. So I
 14 just -- I just don't -- I would hope that they would
 15 do that and they're basically a business, I would
 16 hope that any business would take what they have
 17 done and learn from it and try and get some good
 18 procedures in place. You know, with a quick
 19 turnaround between -- with a pandemic, it's amazing
 20 that they did as well as they did.

21 Q. Sir, you're hoping the post office
 22 will do that, but you're personally not taking any

Page 63

1 steps to ensure that will help; correct?

2 A. No, our staff has been instructed to
 3 try and get with the post office and work out good
 4 policies and procedures. I can't -- I can't do all
 5 the work of 37 people that are in our headquarters
 6 in Wisconsin that are paid good salaries and so
 7 forth and so on. I have -- you know, I try and
 8 spend as much time as I can on this stuff, but I
 9 still work.

10 Q. I understand.

11 But you don't know what steps your
 12 staff has taken with the post office to plan for
 13 November; is that correct?

14 A. Well, sure. What they're doing is
 15 they're still trying to determine what may have been
 16 some of the problems that happened and how the
 17 coordination between the clerks and the postal
 18 office and so forth and so on can be handled in a
 19 more efficient manner. And this -- all of a sudden,
 20 we have 1850 clerks out there with -- each one's got
 21 to have a post office. 1850 branches of post office
 22 had to be the wild, wild west in terms of what was

Page 64

1 going on.

2 I think now it should be under control
 3 because I would suspect, and no reason not to
 4 believe, that the post office would take this very
 5 seriously as long as the postmasters of all --
 6 masters and mistresses of all the various post
 7 offices through the state to make sure that
 8 everything is handled as efficiently as possible. I
 9 don't see -- I don't see why something like that
 10 would not happen.

11 Q. By the way, Commissioner Spindell, do
 12 you know how many days the post office says a
 13 Wisconsin voter should plan for mailing his or her
 14 ballot in advance of the election?

15 A. I think for years, it takes -- they're
 16 saying to be sure, it takes seven days. From my
 17 experience, various mailings that I've done, it
 18 could. I've gotten a piece of mail three months
 19 later; but the overwhelming huge majority, and I
 20 guess the post office could tell you, I think it's
 21 99 percent or something or more, gets there within
 22 the two days especially if it's going, you know,

Page 65

1 within Milwaukee or something along that line.
 2 Q. Commissioner Spindell, just a few more
 3 questions on --
 4 A. Sure.
 5 Q. -- this particular issue.
 6 You're aware, I take it, that
 7 Judge Conley in his current preliminary injunction
 8 order relating to the April election extended the
 9 deadline for receiving ballots from April 7 to
 10 April 13; correct?
 11 A. Yes.
 12 Q. And that's something the Commission
 13 totally supported; correct?
 14 A. Well, I think -- I think that that was
 15 supported if, in fact, the ballot had a postmark on
 16 it as was required the Supreme Court.
 17 Q. And are you aware that that extension
 18 resulted in just under 80,000 additional ballots
 19 being counted that otherwise would not have been?
 20 A. I think that could be the number. I'm
 21 not sure of the exact -- exact number.
 22 Q. Do you agree that was a fair,

Page 66

1 equitable result?
 2 MR. BACH: Well, I object to asking
 3 his personal opinion on relevance grounds.
 4 But answer it again.
 5 Q. Well, I'll ask you in your role as a
 6 commissioner, are you -- do you believe that was the
 7 right result?
 8 A. That was -- we had a lot of problems
 9 because what was the -- what constituted a postmark.
 10 And I think everybody agreed that if a ballot was
 11 postmarked after that date -- for example, if the
 12 election was on the 7th and it was postmarked on the
 13 8th or further would not be counted. It was all up
 14 in the air whether if there's no little mark through
 15 it, if there's no postmark on it or whatever, and I
 16 believe probably in most of the places or back and
 17 forth, some did, some didn't count those ballots.
 18 And we all know had there been a very close election
 19 there would have been a multitude of lawsuits
 20 looking at every one of those things.
 21 So it was very unclear in terms of
 22 what constituted an acceptable ballot or not

Page 67

1 acceptable ballot. It was left up to the local
 2 canvassers for the particular municipalities.
 3 Q. And you've been involved in the issue
 4 of intelligent bar codes for the upcoming election;
 5 is that correct?
 6 A. Yes, the staff has kept us up to date
 7 in terms of what that means, and we have gone along
 8 with having that in place I believe for the -- I
 9 know for the November election probably where I
 10 guess we'll be testing it, for the August election
 11 also.
 12 Q. Is it your understanding that those
 13 bar codes provide for a vast majority of ballots
 14 what is the equivalent of a postmark?
 15 A. I think that's to be determined. I
 16 don't know the answer to that.
 17 Q. Okay. Commissioner Spindell, as you
 18 look ahead to the November election and think about
 19 the fact that, as you said earlier, the volume of
 20 vote by mail is going to very probably exceed what
 21 was experienced in April, do you see some potential
 22 merit in recommending extension of the ballot

Page 68

1 receipt deadline in a similar way to what happened
 2 in April so that voters aren't disfranchised?
 3 A. No, I think we ran into all sorts
 4 problems when we changed after 8 p.m. on Tuesday.
 5 And before we allowed -- before the law was changed,
 6 we did allow the ballots to be accepted up until
 7 close of business on that Friday after the election.
 8 And we just had -- by extending the after 8 p.m., we
 9 had all these additional problems with the post
 10 office. And I would be -- I think what needs to be
 11 done, especially since we have so much time, is that
 12 the political parties get after all their nonvoters,
 13 get them to fill out the absentee ballot, which is
 14 going to be available in plenty of time, drop it in
 15 the mail, give it to the postman and get it in
 16 instead of this last minute stuff that they need to
 17 wait till the very last second in terms of turning
 18 their mail in. I think if we follow the law in this
 19 and have it in by 8 p.m. on election night, that
 20 everybody will be much better off.
 21 Q. Commissioner Spindell, do you agree
 22 that there is value for some voters in waiting till

Page 69

1 the last week of the election so they can have more
 2 information to inform their vote?

3 MR. BACH: I'm going to interpose the
 4 same objection, John, to questions about what
 5 his personal belief is. I don't see how
 6 that's in any way relevant to the issues in
 7 the lawsuit.

8 BY MR. DEVANEY:

9 Q. Well, as Commissioner, can you see the
 10 merit in allowing voters to have until the last week
 11 of the election to cast their vote by mail so that
 12 they're informed on late breaking news and
 13 developments?

14 A. Well --

15 MR. BACH: It's really the same
 16 question posed in a slightly different
 17 fashion. His personal views on the matter
 18 simply aren't relevant to the lawsuit.

19 MR. DEVANEY: Dan, it's really -- I'm
 20 asking more about his views as a
 21 commissioner, whether -- he testified that he
 22 thinks people should mail their ballots in

Page 70

1 early to avoid any chance of getting bounced,
 2 and I'm asking him in his role as a
 3 commissioner, doesn't he see the merit in
 4 waiting until later so that a voter can take
 5 advantage of late breaking developments, and
 6 that's a commission sort of policy question
 7 that I'm asking him.

8 MR. BACH: I just want to have a
 9 standing objection to questions about his
 10 opinions. It's hard for him to take his hat
 11 off whether he's a commissioner or doing his
 12 work on behalf of the Republican Party and so
 13 forth. It's hard to delineate the two in
 14 terms of policies and so forth. Those are
 15 reflected in their public meetings and
 16 discussions and so forth.

17 So I think what they discuss in the
 18 public sessions and so forth is fair game,
 19 but I just would like to have a continuing
 20 objection to questions seeking his personal
 21 views on the matter because I think it's very
 22 hard for somebody in Bob's position to

Page 71

1 segregate what he thinks and what he talks
 2 about in the Republican circles versus what
 3 he does in his role as a commissioner.

4 MR. DEVANEY: Fair enough. I will ask
 5 that last question and I'll try to keep your
 6 answer in mind.

7 THE WITNESS: Yes, I think there's a
 8 theory out there that the more information
 9 people have, it can make a difference. And
 10 oftentimes it can make a difference because
 11 it's got some scandal that comes out the last
 12 few days of the election. But what we are
 13 able to do by having three types of voting,
 14 by having absentee by mail, absentee in
 15 person and absentee at the polling place,
 16 that if somebody really is concerned about
 17 this and wants to wait, they can -- certainly
 18 they'll get their ballots sometime after
 19 September 1st, you know, when ballots are
 20 determined and printed up and so forth and so
 21 on and if they mail them by that Friday, give
 22 it to the postman on Friday, it should get

Page 72

1 there. Or if they still want to wait, they
 2 can do at least two weeks, it can be six
 3 weeks in Milwaukee, two weeks early voting,
 4 early in-person absentee voting, or actually
 5 go to the polling place on election day.

6 I think some of us we're thinking of
 7 this stuff 24 hours a day, politics and this
 8 and that, it's not what everybody is
 9 thinking. So in Wisconsin, we give people a
 10 huge chance in terms of how to vote and
 11 making sure they're able to vote.

12 MR. DEVANEY: Andy, if you could
 13 scroll down this document I think to the next
 14 page.

15 BY MR. DEVANEY:

16 Q. I want to just briefly ask you about
 17 this e-mail. It looks like it was from Vincent
 18 Cinowitz, if I'm pronouncing that correctly?

19 A. Yes.

20 Q. It sounds like you probably know
 21 Mr. Cinowitz from the tone of this e-mail; is that
 22 correct?

Page 73

1 A. Yes, I do.

2 Q. And he's -- I'm paraphrasing here, but

3 he is saying that he's had three ballots issued to

4 him but doesn't have any -- hasn't received any of

5 them.

6 Is that a fair summary?

7 A. That's I think what it says, yeah.

8 Q. And did you look into this and

9 determine why he hadn't received the three ballots

10 that had been issued to him?

11 A. No. As a matter of fact, the first

12 time I saw it is when I was going through my e-mails

13 looking for discovery-type information. I had not

14 seen that until, you know, a couple days ago.

15 Q. So do you know if he voted?

16 A. No, I do not. I think I probably

17 should call him up. I'll call him up and see what

18 the situation is. That's a good point.

19 Q. If we go to the next document, please.

20 Down below, you'll see this is an e-mail from Mary

21 Ann Russom, or Russom?

22 A. Yes.

Page 74

1 Q. She says, "What advice do you have for

2 voters who have not received the absentee ballot

3 they requested?" And that was sent on April 6, the

4 day before the election.

5 And you respond, "I would call City of

6 Milwaukee Election Commission. They can look up

7 your status. If problems, I'll turn you over to

8 Jess Ripp, who took my place on the City of

9 Milwaukee Election Commission."

10 Did you ever speak with Ms. Russom?

11 A. Yes, they did get the ballot and they

12 did vote.

13 Q. Do you know -- because she sent this

14 e-mail on April 6th, do you know when she received

15 the ballot?

16 A. Well, her e-mail to me was on April 6

17 at two o'clock in the afternoon, so if -- I don't

18 know, maybe she got -- I don't really know. I

19 guess -- I guess they indicated to me they received

20 it. Whether or not they went in person to vote or

21 whether they delivered it to the clerk, I do not

22 know the answer to that. I would assume they went

Page 75

1 to in-person vote.

2 MR. DEVANEY: And if we could go down

3 to page 8 of this document, Andy.

4 Q. Do you know Mr. McCumber, the author

5 of this document?

6 A. Yes.

7 Q. It sounds like he might be an election

8 official; is that right?

9 A. Yes, he's a municipality -- municipal

10 clerk --

11 Q. And --

12 A. -- part time. You know, for a very

13 small area.

14 Q. And this e-mail from him is dated

15 May 23, 2020.

16 Did you speak to him about the

17 concerns he raises in this communication?

18 A. No, I have not had a chance to do

19 that.

20 Q. The third paragraph -- third paragraph

21 of the letter, it says, "Thousands of ballots did

22 not get sent out or were trapped in the Fox Valley

Page 76

1 postal system, and how many more were not returned

2 in time to be counted?"

3 So I take it you didn't follow up with

4 him to learn more about what he was referring to?

5 A. No, I thought the letter was pretty

6 self-explanatory. I will probably -- the next time

7 I see him I'll probably talk to him. I probably

8 should have sent this in to Megan. Just been pretty

9 busy doing stuff and I didn't get around to it.

10 I'll send it in to Megan for a response

11 or administrative --

12 Q. Okay. How are you holding up in terms

13 of a break? Are you doing okay?

14 A. Yes, I'm fine.

15 MR. DEVANEY: Just for people to get a

16 sense of where I am, I probably have between

17 15 and 25 minutes left of questions.

18 Andy, please pull up -- I don't have

19 the exhibit number. It's request for

20 production, response number eight, document

21 474.

22 (Exhibit 8, No Bates numbers, E-mail

Page 77

1 dated 4/8/20 from Jackson to Kehoe, marked
 2 for identification.)
 3 MR. DEVANEY: That's pretty good,
 4 Andy.
 5 BY MR. DEVANEY:
 6 Q. First, this was in your production so
 7 I assume you've seen this e-mail before,
 8 Commissioner; is that correct?
 9 A. No, I think they mixed it up with
 10 somebody else's.
 11 Q. So you've not previously seen this
 12 e-mail?
 13 A. No.
 14 Q. Okay. Then I won't ask you about it.
 15 All right.
 16 MR. DEVANEY: Andy, if you could pull
 17 up Exhibit 4.
 18 (Exhibit 4, No Bates numbers, April 7,
 19 2020 Election Summary Report, marked for
 20 identification.)
 21 Q. You'll see, Commissioner, this is an
 22 April 7, 2020, election summary report.

Page 78

1 A. Uh-huh.
 2 Q. I assume you've seen this document
 3 before; correct?
 4 A. Yes.
 5 Q. And the Commission approved this
 6 document?
 7 A. Yes, they approved it four to two.
 8 Q. And which way did you vote?
 9 A. I voted to approve it.
 10 MR. DEVANEY: Andy, please go to
 11 page 9. Sorry, page 15. That's page 11. So
 12 you got to go four pages more. If you go to
 13 the next page, please, Andy.
 14 Give me one second here, Commissioner.
 15 I want to read something and then ask you a
 16 question.
 17 THE WITNESS: Could you raise the type
 18 size? I can't read it. Okay, thank you.
 19 MR. DEVANEY: I'm having a little
 20 trouble with the pagination. I'm going to
 21 come back to this document.
 22 THE WITNESS: Sure.

Page 79

1 MR. DEVANEY: So we'll move on from
 2 this one.
 3 Dave, what I might do, without any
 4 objection from you, rather than slow things
 5 down, when my co-counsel asks some questions,
 6 I'll figure out the document I want to ask
 7 about and come back with him just to ask
 8 about that one document.
 9 MR. BACH: That's fine.
 10 MR. DEVANEY: Thanks.
 11 If I could, Andy, ask you to pull up
 12 Exhibit 3.
 13 (Exhibit 3, No Bates numbers, 7th
 14 Circuit Order, marked for identification.)
 15 BY MR. DEVANEY:
 16 Q. Commissioner Spindell, I want to ask
 17 you a couple of questions about the absentee ballot
 18 witness certification requirement.
 19 Are you familiar with that
 20 requirement?
 21 A. Yes.
 22 Q. Generally, what is your understanding

Page 80

1 of the requirement?
 2 A. The requirement is for somebody that
 3 is filling out an absentee ballot, that they need a
 4 witness to watch them fill out the ballot, put the
 5 ballot in the envelope and seal it --
 6 Q. Do you agree that --
 7 A. -- then they would sign it.
 8 Q. And in your capacity as a
 9 commissioner, do you agree that for some individuals
 10 who are immunocompromised or have COVID itself, that
 11 it can be challenging to have a witness for an
 12 absentee ballot?
 13 A. Well, if they're in a position that
 14 you talked about, they would not -- they would not
 15 be required to have the voter ID; but, no, I would
 16 suspect that anybody could -- that people should not
 17 have a problem in terms of finding a witness. I
 18 know there are many organizations that are out
 19 there, political associations and various
 20 associations that help people, have all sorts of
 21 ways that they can find a witness, whether it be
 22 when you go to the pharmacy to pick up something,

Page 81

1 your caregiver, mailman, whatever.
 2 So I don't really buy the fact that
 3 it's impossible for people to do. I think a very
 4 small percentage, like, what, 600 or something like
 5 that, did not have the -- it was not filled out
 6 properly with that signature.
 7 Q. So, Commissioner Spindell, is it your
 8 testimony that the person who has COVID should be
 9 expected to leave his or her home to go find a
 10 witness if they live alone?
 11 MR. BACH: John, I'm going to object
 12 to the form of the question.
 13 MR. DEVANEY: I don't see the
 14 objection. Are you instructing him not to
 15 answer?
 16 MR. BACH: I'm not instructing him not
 17 to answer, but once again, what he believes
 18 in terms of this isn't relative to any of the
 19 issues in this dispute.
 20 MR. DEVANEY: I'm asking as a
 21 commissioner. He's -- I'm going to get to
 22 some policies of the Commission. I'm laying

Page 82

1 a foundation for those policies.
 2 BY MR. DEVANEY:
 3 Q. You can -- your counsel is not
 4 instructing you not to answer.
 5 A. Can you please repeat the question.
 6 Q. Is it your view as a commissioner that
 7 a person living alone who has COVID should be
 8 expected to leave his or her apartment to find a
 9 witness to sign an absentee ballot?
 10 A. I don't necessarily agree that
 11 somebody has to leave their apartment -- his or her
 12 apartment to find a witness. I don't -- I think if
 13 people have to get help, they have to survive,
 14 something along that line, I think that they can
 15 find a way of doing that. And I think the Election
 16 Commission even agreed to do a video chat or
 17 something like that.
 18 And, also, I think it's been very
 19 clear since the April election, that the
 20 transmission of the virus by touching things is
 21 really not valid any more.
 22 Q. And so is it your view as a

Page 83

1 commissioner, that if someone has COVID, that they
 2 should interact with a witness and they're required
 3 to interact with a witness to have their absentee
 4 ballot signed?
 5 A. Yes. Until the law is changed. I
 6 don't see a reason for changing the law, I guess
 7 that should be my answer.
 8 MR. DEVANEY: Andy, please go to
 9 page 4 of this document.
 10 THE WITNESS: I can't read it. Can
 11 you --
 12 BY MR. DEVANEY:
 13 Q. By the way, Commissioner Spindell,
 14 please read as much of this document as you'd like.
 15 I'm just going to ask you about a small portion of
 16 it, but this is an order from the United States
 17 Court of Appeals for the Seventh Circuit that
 18 affirmed in part and reversed in part Judge Conley's
 19 preliminary injunction. You probably have seen this
 20 before, I take it.
 21 And you'll see here that the -- sorry,
 22 the Court is talking about the concept of

Page 84

1 indefinitely confined.
 2 Are you familiar with that concept?
 3 A. Yes.
 4 Q. What is your understanding of it?
 5 A. Indefinite confinement refers to
 6 the -- it's up to the individual voter to decide if
 7 because of age, sickness, so forth and so on, they
 8 classify themselves as that, they do not have to
 9 submit voter ID. And as long as they vote each
 10 election, they will automatically be sent an
 11 absentee ballot.
 12 However, in the City of Milwaukee,
 13 there was never more than 5,000 of them. About
 14 50,000 for the last election and now there's 200,000
 15 of them. So it looks like to me all of a sudden we
 16 have a lot of people saying they were confined.
 17 Q. Have you evaluated whether that was
 18 related to COVID?
 19 A. No, I have not. I think the State
 20 Supreme Court was concerned about the orders that
 21 the clerk of Dane County provided to say if you
 22 can't do the ballot -- the voter ID, then just say

Page 85

1 you're indefinitely confined.

2 Q. For the signature requirement,

3 Commissioner Spindell, is it -- I'm asking you this

4 in your capacity as a commissioner -- is it

5 permissible for a voter to declare indefinite

6 confinement, not obtain a witness signature because

7 of the concerns about COVID infection?

8 A. I should know the answer to that

9 question, but I really don't know what the law says

10 on that.

11 Q. Do you know if the Commission has

12 provided guidance on what a person in that situation

13 should do with respect to declaring definite

14 confinement?

15 A. Well, I think after the problem was

16 brought out there may be some people who really

17 would not qualify to be indefinite confined, wrote a

18 letter -- or I'm not quite sure, they wrote a

19 letter, they provided a letter sample to all the

20 clerks to send to their people on that list to say,

21 "Are you really confined? If you are not, please

22 let us know and we'll take you off the list."

Page 86

1 Q. Does the Commission intend to issue

2 guidance for the November election with respect to

3 whether a COVID-related condition or susceptibility

4 to COVID qualifies as indefinitely confined?

5 A. Well, you know, thinking back, we did

6 discuss that issue and we wanted to classify it the

7 same way as somebody that was hospitalized. And the

8 idea was that should somebody be told to be

9 quarantined and so forth and so on, that the

10 handling of the ballot so forth and so on could be

11 handled the same way as somebody who was actually in

12 the hospital. And I'm not sure whether -- whether

13 that passed or didn't pass. I sort of think it did

14 pass.

15 Q. My question for you now though is,

16 does the Commission have plans, to your knowledge,

17 to issue any guidance before the November election

18 with respect to whether a COVID-related condition

19 can give rise to indefinitely confined status?

20 A. I don't know. I just -- I don't know

21 the answer to that. I would suspect that we would

22 probably keep the law -- you know, we would probably

Page 87

1 want to keep the law as is. If there's a court

2 order that we need to do something about, then, of

3 course, we will follow that; but I think at this

4 point, the point of view is that the law should be

5 followed. And with the Alabama cases recently and

6 the Texas cases recently where the Supreme Court of

7 the United States said COVID was not a reason to

8 change all the election laws, I would suspect that

9 will be our stance.

10 Q. Okay. And in this decision by the

11 Seventh Circuit, about halfway down this paragraph

12 that's in front of us, there's a sentence that says,

13 "So, too, do we have every reason to believe the

14 commission in keeping with forward-leaning action it

15 has taken thus far to accommodate" --

16 (Telephone interruption.)

17 THE WITNESS: Let me just turn off the

18 telephone. Just a second. Sorry about that.

19 BY MR. DEVANEY:

20 Q. No problem.

21 A. I'm sorry, repeat the question again.

22 Q. So I was going to ask you a question

Page 88

1 about this, the Seventh Circuit's statement here

2 where they say, "So, too, do we have every reason to

3 believe the commission in keeping with the

4 forward-leaning action it has taken far to

5 accommodate voter's interests while also striving to

6 ensure their safety will continue to consider yet

7 other ways for voters to satisfy statutory signature

8 requirement (if possible, for example, by

9 maintaining the statutory present requirements but

10 not requiring the witness' physical signature)."

11 Do you see that?

12 A. I do see that.

13 Q. That language was written in early

14 April. My question is, has the Commission taken any

15 action since then consistent with what the court was

16 suggesting here to consider other alternatives for

17 voters to meet the statutory signature requirement?

18 A. Not to my knowledge.

19 Q. Do you know --

20 A. I don't have knowledge, so I would say

21 no.

22 Q. Do you know if the Commission has any

Page 89

1 plans to follow up on what the court suggested that
 2 it do here?
 3 A. I would suspect that many items will
 4 come before the Commission and this could well be
 5 one of them.
 6 Q. But you're not aware of any specific
 7 plans to consider alternative ways for voters to
 8 satisfy the statutory signature requirement?
 9 A. Not at this point.
 10 MR. DEVANEY: Andy, last or second
 11 last exhibit, I don't have a number. It's
 12 the preliminary injunction order dated
 13 April 2nd.
 14 (Exhibit 2, No Bates numbers,
 15 Preliminary Injunction Order, marked for
 16 identification.)
 17 Q. If you could turn to the end of this
 18 document, page 49, Commissioner Spindell, the top
 19 paragraph of this --
 20 THE WITNESS: Could you raise the type
 21 so I can read. Okay.
 22 Q. You're, of course, free to read the

Page 90

1 page before this if you want for context, but this
 2 is a discussion of the photo ID requirement.
 3 A. Yes.
 4 Q. And am I right that there's also an
 5 indefinitely confined exception for the photo ID
 6 requirement?
 7 A. Yes.
 8 Q. And the guidance from the Commission
 9 quoted in this order is as follows: "The
 10 designation of indefinitely confined status is for
 11 each individual voter to make based upon their
 12 current circumstances. It does not require
 13 permanent or total inability to travel outside of
 14 the residence."
 15 My question for you is, with respect
 16 to that photo ID requirement, if someone has a
 17 COVID-related condition, is it permissible for them
 18 to declare indefinite confinement for purposes of
 19 the photo ID?
 20 MR. BACH: Are you asking him to
 21 interpret the guidance that they've given?
 22 MR. DEVANEY: Yes, I am.

Page 91

1 THE WITNESS: So what you're saying is
 2 if somebody is in quarantine with COVIS, that
 3 we can register him saying that they're
 4 indefinitely confined?
 5 BY MR. DEVANEY:
 6 Q. And thereby be exempted --
 7 A. It's something that is up entirely to
 8 the individual voter, and they sign qualifying
 9 that -- they sign something -- or maybe not even
 10 sign something -- saying that they consider
 11 themselves to be indefinitely confined. So it's
 12 really up to the voter. There's no real guidance
 13 other than what the voter thinks on that.
 14 Q. And is the Commission planning to
 15 issue any guidance on whether a COVID-related
 16 condition can serve as an exception that fits into
 17 this indefinitely confined status for the purposes
 18 of photo ID?
 19 A. You know, I don't know. But
 20 there's -- again, there's 29 local parties and
 21 29 organizations out there to help people meet that
 22 requirement. And so, again, at this point in time,

Page 92

1 I'm sure that at one time it will be on our agenda,
 2 but we have not revisited that.
 3 And, again, looks to me like the
 4 various court cases that are coming up are saying
 5 that COVIS is not an excuse to change the law.
 6 Q. So I guess the short answer is you're
 7 not aware of any plans on the Commission's part to
 8 clarify whether a COVID condition can fit within
 9 this exception; is that correct?
 10 A. I'm not aware; but I'm sure there's
 11 probably -- the last one that you mentioned, this
 12 one and 25 more items that are not planned yet or
 13 not on our agenda that are going to come before us.
 14 We've had, I don't know, since February, 25
 15 meetings. So I would suspect that these will be
 16 items on our agenda.
 17 Q. I don't mean to beat this in the
 18 ground, but you're not aware of this being on any
 19 current agenda; is that correct?
 20 A. Yes. I might say right now there is
 21 no current agenda. We get the notification of an
 22 agenda when the meeting is going to be called 24, 48

Page 93

1 hours in advance.
 2 Q. Commissioner Spindell, thank you.
 3 Those are my only questions.
 4 MR. DEVANEY: Dan, I will reserve that
 5 one document if I can find it while my
 6 co-counsel asks some questions. Thanks.
 7 MR. BACH: Can we take a five- or
 8 ten-minute break here.
 9 MR. DEVANEY: Sure. What's your
 10 preference on length?
 11 MR. BACH: Five minutes is fine with
 12 me, unless somebody else wants more.
 13 MR. MANES: That's fine. Who else is
 14 intending to ask questions? I have some.
 15 I'm not sure if someone from DNC is asking
 16 questions. I might have missed that at the
 17 beginning.
 18 MR. DEVANEY: No one else from the DNC
 19 is asking questions.
 20 MR. MANES: Okay. I'm happy to pick
 21 it up after the break.
 22 MR. BROWNE: The legislature is going

Page 94

1 to have a few limited questions at the end.
 2 MR. DEVANEY: Thank you. 12:50 I
 3 guess is when we'll return.
 4 MR. BACH: 12:50 is fine.
 5 THE VIDEOGRAPHER: The time is 12:45,
 6 and we're off the record.
 7 (Recess from the record.)
 8 THE VIDEOGRAPHER: The time is
 9 12:51 p.m. We're back on the record.
 10
 11 EXAMINATION
 12 BY MR. MANES:
 13 Q. Thank you.
 14 So, Mr. Spindell, my name is Jonathan
 15 Manes, M-A-N-E-S. I'm one of the attorneys for the
 16 Swenson plaintiffs. And thank you for making the
 17 time today, appreciate it.
 18 A. Sure, uh-huh.
 19 MR. MANES: So just off the top, I'd
 20 like to ask Mr. Bach, you know, with respect
 21 to the exhibit that was entered by my
 22 colleague of text messages, I don't remember

Page 95

1 exactly the number that it had, but the text
 2 messages that were introduced at the
 3 beginning of the deposition, are you willing
 4 to stipulate to the authenticity of those? I
 5 believe they're disclosed in discovery. I
 6 just want to make sure that --
 7 MR. BACH: They were part of the
 8 document production that we gave that was
 9 responsive to the request for production, so
 10 they're coming from us on behalf of the
 11 Commission.
 12 MR. MANES: Okay, great. I just
 13 wanted to make that clear. I might have just
 14 missed that. Terrific. Thank you.
 15 BY MR. MANES:
 16 Q. Okay. So, Mr. Spindell, I want to
 17 start -- bring you back to a conversation you were
 18 having with Mr. Devaney about the health risks of
 19 COVID.
 20 So you do believe that COVID poses a
 21 health risk to Wisconsin citizens; correct?
 22 A. Yes --

Page 96

1 MR. BACH: I'm going to have the same
 2 series of objections regarding the relevance
 3 of his opinions on this.
 4 MR. MANES: Sure.
 5 MR. BACH: You know, what he does on
 6 behalf of the Commission in his function as a
 7 Commissioner for the Wisconsin Elections
 8 Commission seems to me fair game. What he
 9 thinks about things in his personal opinion
 10 just isn't relevant.
 11 MR. MANES: My understanding is that
 12 one of the topics for the conversation in the
 13 deposition here is that -- are the factors
 14 that the Commission considers for the
 15 upcoming -- is considering with respect to
 16 the upcoming elections and the voting
 17 procedures in the upcoming elections, and it
 18 strikes me that the Commissioner's views with
 19 respect to the health risks of COVID are one
 20 of the important factors. So I'm asking
 21 these questions to be clear to understand,
 22 you know, that factor.

Page 97

1 MR. BACH: I think it would help if
 2 you preface it in that fashion and say as a
 3 Commissioner did you consider --
 4 MR. MANES: Absolutely. I'm very
 5 happy to do so.
 6 BY MR. MANES:
 7 Q. So in your role as the Commissioner,
 8 and in that capacity, do you believe that COVID
 9 poses a health risk to Wisconsin citizens?
 10 A. Yes.
 11 Q. And do you agree that public health
 12 measures are appropriate to prevent the spread of
 13 COVID?
 14 A. Yes.
 15 Q. So, for example, are you aware --
 16 maybe I should ask you a little bit about -- a
 17 little bit more about something you were talking
 18 with Mr. Devaney before.
 19 So you mentioned to Mr. Devaney that
 20 you've spoken for 15 to 20 hours with a friend who
 21 is a public health professional; is that correct?
 22 A. Yes, a doctor in public health.

Page 98

1 Q. A doctor in public health.
 2 A. Uh-huh.
 3 Q. Do you know the name of that friend?
 4 A. Yes.
 5 Q. What's that person's name?
 6 A. Dr. Don Lee.
 7 Q. And where does he practice?
 8 A. He works for Ascension, which is a
 9 hospital chain, I don't know if -- national or
 10 local, and he works -- while he works at several of
 11 the hospitals that employ him, he primarily is at
 12 St. Mary's which is a hospital here in Milwaukee.
 13 Q. Terrific.
 14 And in your discussions with him over
 15 those 15 to 20 hours, what topics have you covered?
 16 A. Well, I was talking to him in terms
 17 of -- you know, in terms of the virus itself and, of
 18 course, his advice is the best thing is not get it.
 19 But then in terms of what are important items to do.
 20 And I was also asking him this not only for the
 21 Election Commission that it would make safe-type
 22 environments, but also for my ski club which has had

Page 99

1 visual meetings and now they're getting into live
 2 visual. And then also I'm regional vice president
 3 for the Metropolitan Chicago Ski Council, it will
 4 apply also to those. And also guidance for the
 5 Republican convention that's coming up this coming
 6 Saturday.
 7 So I think it's extremely important
 8 that procedures that he has outlined and talked
 9 about be followed. And things have changed from the
 10 first time that I talked to him to recently. Some
 11 things have become more important and things have
 12 changed considerably since the virus first started.
 13 Q. So what are some of the measures that
 14 have become more important that you just referenced?
 15 A. Well, I think it's getting clearer and
 16 clearer that touching something is probably not
 17 going to give you the virus. Also, I think the most
 18 astonishing item, which was hard for me to believe
 19 initially, were the CDC said masks were not
 20 important. I've been over to Asia many times,
 21 everybody wears a mask over there. I thought that
 22 was the first thing that people should do. And

Page 100

1 the -- initially it wasn't and then it came out and
 2 he actually sent me a study that shows how important
 3 it is that masks be worn.
 4 So the three main things that he is
 5 talking about that anybody should follow is social
 6 distancing, wearing masks, and also that the three
 7 questions, which is more important than anything, do
 8 you have -- do you have a fever, do you have a
 9 cough, are you short of breath.
 10 So there's been several different
 11 medicines and I'm not too good at pronouncing what
 12 they are actually are, but there have been several
 13 new medicines that have come out that reduce the
 14 consequences of getting that. And he does see cases
 15 now where one started with older-type people, now it
 16 seems to be much younger-type people that are really
 17 not having much of an effect.
 18 And also they've done such things with
 19 the ventilators, that they've learned how to make
 20 the adjustment on those things that make it much
 21 more successful and provide a much better chance of
 22 survival should you be put on a ventilator. So some

Page 101

1 of these things are good common sense things and
 2 I -- you know, so...
 3 Q. Got you. Got you.
 4 Let me ask you a few follow-up
 5 questions on that.
 6 A. Yeah.
 7 Q. So are you aware that people who are
 8 not showing symptoms can also be spreading the
 9 coronavirus?
 10 MR. BACH: Counsel, I'm going to
 11 object. He's not an expert on that.
 12 MR. MANES: I'm sorry, I'll rephrase.
 13 I'll rephrase the question.
 14 MR. BACH: I think topic areas is what
 15 factors did the Commission consider. In your
 16 role as a Commissioner, did you consider X, Y
 17 or Z?
 18 MR. MANES: I can rephrase the
 19 question, absolutely.
 20 BY MR. MANES:
 21 Q. So in considering how in-person voting
 22 in particular should be configured, have you

Page 102

1 considered the fact that the virus can spread -- be
 2 spread even by people who are not displaying any
 3 symptoms?
 4 A. Yes.
 5 Q. And in considering decisions in your
 6 capacity as a Commissioner, you're aware that the
 7 coronavirus spreads primarily through droplets that
 8 come out of a person's mouth and reach another
 9 person?
 10 A. Yes.
 11 Q. And you just said that you have been
 12 informed that mask wearing is an important
 13 precaution to prevent the spread of coronavirus?
 14 A. Yes, especially if you can add social
 15 distance. And certainly should be worn -- should be
 16 worn in public and, you know -- so I would -- you
 17 know, obviously that has now become a very, very
 18 important item. I have thought since day one it
 19 should have been.
 20 Q. Perfect.
 21 And then, again, with respect to your
 22 role as a Commissioner, is it your understanding

Page 103

1 that the risk of transmission is higher in enclosed
 2 spaces like polling places than it would be
 3 outdoors?
 4 A. Well, I think also outdoors appears to
 5 be a better situation than a very crowded indoor
 6 situation; but, again, there are precautions that
 7 can be taken to make the environment as safe as
 8 possible.
 9 Q. So would you say that it's more
 10 important to take precautions indoors in a place
 11 like a polling place than it would be out of doors?
 12 MR. BACH: Counsel, once again, I'm
 13 going to object. He is not an expert on the
 14 transmission of the coronavirus. We haven't
 15 tendered him as an expert.
 16 MR. MANES: Correct. Absolutely.
 17 MR. BACH: His opinions in that regard
 18 are irrelevant. What factors the Commission
 19 considered are within the scope of the topic
 20 area as we've discussed.
 21 MR. MANES: So I'll move on and maybe
 22 we'll come back to this where it will be

Page 104

1 clearer, the relevance will be clearer.
 2 BY MR. MANES:
 3 Q. So the Commission itself hasn't met in
 4 person for several months; correct?
 5 A. Yes, that's correct.
 6 Q. And that's in order to protect against
 7 the spread of coronavirus?
 8 A. Yeah, it's that and also it's we're
 9 not permitted by Governor order -- government orders
 10 not to meet in person.
 11 Q. And I'm curious, how did you vote in
 12 the spring election?
 13 MR. BACH: Objection.
 14 You do not have to answer that
 15 question.
 16 THE WITNESS: Okay.
 17 MR. BACH: I mean, how did he vote, do
 18 you mean --
 19 THE WITNESS: Oh, you mean what method
 20 did I vote?
 21 MR. MANES: I'm so sorry, I didn't
 22 mean for whom. I meant the method, the

Page 105

1 method by which he voted.
 2 MR. BACH: Okay. That's fair.
 3 MR. MANES: I'm so sorry. The
 4 question was ambiguous and I apologize. I
 5 certainly don't want to probe your -- who you
 6 vote for, that's clearly outside the scope
 7 here.
 8 THE WITNESS: I voted in-person
 9 absentee.
 10 BY MR. MANES:
 11 Q. So you voted in-person absentee.
 12 Are you familiar with the reporting
 13 that some people likely became infected with COVID
 14 as a result of voting in person in the April 2020
 15 election?
 16 A. Yes.
 17 Q. Do you -- in your capacity as a
 18 Commissioner, are there steps that you think could
 19 have been taken to avoid the transmission of the
 20 virus in the April 2020 election?
 21 A. Yes.
 22 Q. What are some of the steps that you

Page 106

1 think could have been taken?
 2 A. Well, I think the -- if we take a look
 3 at the state as a whole, there are really no
 4 problems outside of Green Bay and Milwaukee.
 5 Milwaukee as far as I'm concerned is a horror show
 6 where they are taking 20,000 people, making them
 7 wait two and a half hours or longer in line, trying
 8 to get them to social distance, not talk to each
 9 other, and then go into this voting center to vote.
 10 That's something that in my experience as a City of
 11 Milwaukee Election Commissioner for 20 years, and
 12 this being every single election 30 to 40 polling
 13 places per election, that was something that was
 14 completely unnecessary and it was just a shame. I'm
 15 so sick about it. It's horrific.
 16 And I think some people according to
 17 the City of Milwaukee Election Commission -- I'm
 18 sorry, City of Milwaukee Health Department might
 19 have contracted COVIS there or they can't guarantee
 20 it. There are some people that actually had it. I
 21 frankly am surprised the way they had it set up
 22 there weren't more.

Page 107

1 Q. Do you believe that the Elections
 2 Commission -- the Wisconsin Elections Commission
 3 could have played a role in minimizing the risk of
 4 transmission in Milwaukee?
 5 A. Well, I'll tell you, my -- if there's
 6 a regret that I have is not making a big deal about
 7 it in media as soon as I learned about the situation
 8 rather than -- but beyond -- beyond that, I don't
 9 think there's anything that the Election
 10 Commission -- Wisconsin Election Commission could do
 11 about it other than, you know, public pressure on
 12 that. It was completely unnecessary.
 13 Q. You served -- I think you said you
 14 served for more than 20 years on the Milwaukee
 15 Elections Commission?
 16 A. A little bit less.
 17 Q. A little bit less than 20 years on the
 18 Milwaukee -- and when did you stop serving on the
 19 Milwaukee Elections Commission?
 20 A. In order for me to take the position
 21 on the Wisconsin Election Commission, I had to
 22 resign from the City of Milwaukee Election

Page 108

1 Commission.
 2 Q. And in that capacity, when you were
 3 serving on the Milwaukee Elections Commission, did
 4 you interact with the Wisconsin Elections
 5 Commission?
 6 A. A little bit in the government
 7 accountability board and the Wisconsin election
 8 board before that.
 9 Q. And if the Wisconsin Elections
 10 Commission had issued guidance or directives with
 11 respect to matters about election administration in
 12 Milwaukee during that time, would you have taken
 13 that seriously as a member of the Wisconsin
 14 Elections Commission?
 15 A. Yes. So we as members of the Election
 16 Commission and also in terms of the commission
 17 itself are required to follow the directives, at
 18 least when I was there, the directives of the
 19 Wisconsin Election Commission, GAB, whatever it is.
 20 But apparently -- apparently being there I'm told
 21 now that basically the Election Commission, the
 22 clerks, can do whatever they want.

Page 109

1 Q. I'm sorry, I missed the Elections
 2 Commission --
 3 A. Well, what -- apparently there are
 4 some directives that we can give and it's pretty
 5 well laid out in the statutes and various opinions
 6 and things along this line. Whether or not the
 7 Wisconsin Election Commission -- at least I was told
 8 the Wisconsin Election Commission cannot make the
 9 clerks or Milwaukee Election Commission -- we can
 10 say some policies are this, it takes two -- that you
 11 can have X number -- we follow the law, have X
 12 number of weeks of early voting, but in terms of
 13 instructing them and say you must have more polling
 14 places, that apparently is nothing that we could
 15 have done about from my understanding.
 16 I think the only way to maybe to have
 17 done something like that if I had said what a bad
 18 idea it was in the media, which I should have done.
 19 Q. All right. So let me ask you a few
 20 other questions about the risk of infection at the
 21 polls. As a Commissioner, is it your view that
 22 absentee voting by mail can help reduce the risk of

Page 110

1 coronavirus infection at the polls?
 2 A. Well, I guess what you're saying is if
 3 fewer people go to the polls will that mean that
 4 maybe less people will get it. You know, again, if
 5 the appropriate precautions are taken, and the
 6 Wisconsin Election Commission has worked very, very
 7 hard to do that including \$500,000 of supplies that
 8 have been ordered already, you know, who knows.
 9 Somebody can -- if they're going to the drugstore or
 10 going to the supermarket, whatever, chances are
 11 probably greater there of getting the -- catching
 12 the virus than they will be at a well-run polling
 13 place.
 14 So it's really a question -- it's
 15 really a very hard question to answer. You know, I
 16 don't know.
 17 Q. But if a person -- I'll ask the
 18 question differently.
 19 If a person is concerned about the
 20 health risk of voting in person, should they be able
 21 to vote by absentee ballot?
 22 A. Well, yeah, that's one of the three

Page 111

1 choices that we give them; they can vote by absentee
 2 ballot, they can vote in person where there will
 3 probably be fewer people around, or they can vote in
 4 person on election day. We give everybody that
 5 choice to make -- make it able for everybody to vote
 6 if they want to, sure.
 7 Q. And would you agree that having
 8 designated drop boxes where people can deposit their
 9 absentee ballots before election day would also
 10 reduce the number of people voting in person at the
 11 polls on election day?
 12 A. No, I don't think so. I think that
 13 everybody -- you must remember I don't think
 14 there's any -- everybody in the United States as far
 15 as I know gets mail delivered. Any person that gets
 16 mail delivery also has mail pickup. So if they can
 17 put the ballot in the mailbox by Saturday, the
 18 chances are, I don't know, 99.99 percent that that
 19 ballot will be sent to the clerk and arrive in time
 20 to be counted.
 21 So I think trying to take a little --
 22 little bit look at the -- at the drop boxes there

Page 112

1 has to be some precautions that are set up for that.
 2 From this election, again, because we just had a few
 3 weeks, there's all sorts of ways that they did it,
 4 some had library slots, some set up something at the
 5 clerk's office. So I think there has to be some
 6 sort of controls on that.
 7 It's a policy that the Election
 8 Commission has done nothing about or guidance as far
 9 as I know in terms of what is the correct way of
 10 doing something like that. It seems to me that the
 11 mail service can do it and we're asking for problems
 12 with the drop box, but some places do have them,
 13 some states do have them and maybe procedures can be
 14 set up for that. I don't know if there's any
 15 precaution -- any procedures for that or any -- in
 16 terms of legislation about drop boxes.
 17 Q. You said that if a person -- if I
 18 understood you correctly, you just said that if a
 19 person drops their ballot in the mail on Saturday,
 20 it will arrive by Tuesday 99.99 percent of the time.
 21 How do you know that?
 22 A. Well, I don't know what the -- I

Page 113

1 would -- you know, it's probably like Trump saying
 2 that 99.99 percent of the virus are not serious.
 3 It's just something that it seems to be a statistic
 4 when we're talking about millions of ballots that --
 5 I don't know if it's 99.99, but I would suspect from
 6 what I see and know and whatever that 99 percent of
 7 them -- I just -- I'm speculating.
 8 Q. Sure.
 9 A. I don't know.
 10 MR. BACH: And don't speculate, Bob.
 11 BY MR. MANES:
 12 Q. It's fine. I don't want you to
 13 speculate.
 14 Does Wisconsin law currently permit
 15 people to drop their absentee ballots off at the
 16 clerk's office, is that your understanding?
 17 A. Yes, well -- or really what it says
 18 that on -- you can drop it off at the clerk's office
 19 or on election day it should be dropped off at your
 20 polling places.
 21 Q. And would you agree that dropping off
 22 a ballot at the clerk's office is a more certain way

Page 114

1 to ensure it arrives on time than dropping it in a
 2 mailbox?
 3 A. Yes, because you know it actually was
 4 physically given to somebody. So you would have
 5 reason to believe that my ballot has been received
 6 by the clerk and it will be counted.
 7 MR. MANES: Okay. Let me ask Andy to
 8 pull up the Swenson Exhibit A, please.
 9 BY MR. MANES:
 10 Q. So this document is an advertisement
 11 that I believe you placed in newspapers.
 12 Do you recognize this document?
 13 A. Yes, I did not place it, but, yes, I
 14 do recognize the document.
 15 Q. And can you describe the document
 16 briefly?
 17 A. It's a newspaper ad that I believe was
 18 put in 27 Wisconsin newspapers, including Milwaukee
 19 and Wisconsin, talking about the ability still think
 20 about doing in-person absentee voting and in terms
 21 of doing in-person voting and that the Election
 22 Commission had gone to extraordinary circumstances

Page 115

1 to make sure that the polling places will be as safe
 2 as possible. And I think I also have a little
 3 paragraph in there in terms of what I thought about
 4 the City of Milwaukee situation.
 5 Q. Got it.
 6 And who placed this ad in the
 7 newspaper?
 8 A. This is done by a group that's called
 9 Patriotic Veterans. It's a national organization,
 10 Wisconsin Chapter, but it was placed by that
 11 particular organization.
 12 Q. And so they --
 13 A. I think there's -- I think there's a
 14 website in the information in terms of the
 15 organization and --
 16 Q. Thank you. Thank you.
 17 And so they arranged for this
 18 advertisement to be published in the 27 newspapers?
 19 A. Yes. All I did was -- I had nothing
 20 to do with the placement of the ad or, you know,
 21 anything along that line. All I was, I was in it
 22 and participated in the writing of it.

Page 116

1 Q. Got you.
 2 Did anyone at the Wisconsin Election
 3 Commission review this before it was published?
 4 A. No.
 5 Q. And you said that you were involved
 6 with drafting it; correct?
 7 A. Say it again.
 8 Q. You said that you were involved with
 9 drafting it; correct?
 10 A. Yes.
 11 Q. And it is -- at the bottom of the
 12 advertisement, it identifies you as the author; is
 13 that correct?
 14 A. Yes, that I'm the one that indicated
 15 that it was from me, that's correct.
 16 THE VIDEOGRAPHER: Mr. Manes, excuse
 17 me.
 18 MR. MANES: Yes.
 19 THE VIDEOGRAPHER: Did you want to
 20 mark this as an exhibit?
 21 MR. MANES: Oh, yes, I do want to mark
 22 this as an exhibit. Thank you.

Page 117

1 Can you mark this as an exhibit. I'm
 2 not sure what exhibit number we're on at this
 3 point.
 4 THE VIDEOGRAPHER: I'm going to mark
 5 this Exhibit 12.
 6 MR. MANES: Thank you.
 7 (Exhibit 12, No Bates numbers, Some
 8 Facts about Your Right to Vote in Wisconsin,
 9 marked for identification.)
 10 BY MR. MANES:
 11 Q. So I'd like to focus you on Item A
 12 underneath the sentence "here is what happened."
 13 And I'll read that for you and then ask a few
 14 questions about it.
 15 A. Okay.
 16 Q. It reads, "At my request, and with the
 17 support of all my fellow commissioners, the
 18 Wisconsin Elections Commission created 20 public
 19 health documents for 1,852 municipal clerks in
 20 Wisconsin."
 21 Mr. Spindell, is that statement true,
 22 to the best of your knowledge?

Page 118

1 A. Yes. Yes, it is. Initially the staff
 2 did not want to get -- in my opinion, the staff did
 3 not want to get involved with it. During one of our
 4 meetings, we as commissioners talked about how
 5 important it was that we provide this type of
 6 support, being the Wisconsin Election Commission, to
 7 all 1850, and it passed unanimously. As did the
 8 request for \$500,000 be spent now, also passed
 9 unanimously. We all feel like I believe very
 10 concerned about this.
 11 Q. And so you believe it was within the
 12 Wisconsin Elections Commission's authority to issue
 13 these 20 public health documents?
 14 A. Well, the way that this was done, the
 15 20 public health documents were done with the
 16 coordination of the Wisconsin State Public Health
 17 Department. We asked the Governor, as I understand
 18 it, to provide a public health official to us to
 19 help us carry out these objectives and that person
 20 was extremely helpful to us in making sure, using
 21 that expertise, that we provided the safest possible
 22 in terms of voting places on election day.

Page 119

1 Q. I see.
 2 But what you say -- you say here that
 3 the Elections Commission created 20 public health
 4 documents. Are you referring to documents that were
 5 published by the Elections Commission itself?
 6 A. Yes, and those were -- I mean, the
 7 staff did not come up with the public health
 8 thoughts and procedures. This was done by the
 9 Wisconsin Public Health Department and then from
 10 their guidance we --
 11 Q. I understand. I'm mindful of the
 12 clock and I just want to make sure that we're not
 13 going too far beyond the questions I'm asking.
 14 A. Sure.
 15 Q. So I understand that others were
 16 involved and had input into these documents, but is
 17 it true that these documents were published by the
 18 Elections Commission?
 19 A. Yes.
 20 Q. And when you refer to public health
 21 documents here, do you mean documents that provided
 22 guidance or directives to municipal clerks on public

Page 120

1 health matters?
 2 A. Yes, for these -- for these elections,
 3 sure.
 4 Q. Do you think -- do you think that it
 5 was of use to the municipal clerks for the Elections
 6 Commission to issue these public health documents?
 7 A. Absolutely. And, you know, some --
 8 the City of Milwaukee and Madison, some of those
 9 have their own health departments, but a lot of
 10 these smaller counties and municipalities do not.
 11 And this is taking the expertise of the Wisconsin
 12 Public Health Department and providing this
 13 information along with this -- not only did we do
 14 that, but as you can see from the rest of the
 15 paragraph, we supplied a lot of items to go along
 16 with this.
 17 Q. Got it.
 18 And do you believe that the municipal
 19 clerks by and large followed the guidance contained
 20 in these 20 public health documents?
 21 A. Yes. I've not heard that nobody did,
 22 that anybody did not follow this guidance.

Page 121

1 Q. Okay. And do you think that it's
 2 appropriate for the Elections Commission to continue
 3 to issue these kinds of documents in advance of the
 4 November 2020 election?
 5 A. Absolutely.
 6 Q. Okay. And do you think that issuing
 7 these kinds of documents is consistent with the role
 8 of the Elections Commission as envisioned by the
 9 legislature in this State of Wisconsin?
 10 A. Yes.
 11 Q. Okay. I'd like to move on to item B
 12 in the same portion of the advertisement. So I'll
 13 read that to you and then, again, ask you a few
 14 questions about that.
 15 A. Sure.
 16 Q. "The Wisconsin Election Commission
 17 acquired and provided 8,000 liters of hand
 18 sanitizer, latex gloves, 23,000 masks and 500,000
 19 alcohol wipes, along with 10,000 signs for social
 20 distancing and other supplies for the 2,000 plus
 21 Wisconsin polling places."
 22 So is that statement true, to the best

Page 122

1 of your knowledge?
 2 A. Yes.
 3 Q. And is it correct to say that the
 4 Wisconsin Election Commission acquired and
 5 distributed the supplies described in that paragraph
 6 in order to mitigate the spread of coronavirus at
 7 the polls?
 8 A. We, again, wanted to make the polling
 9 places as safe as possible and, you know, to do the
 10 best that we could. I might also add that the
 11 clerks also added their own touches to this, too, to
 12 provide additional items along this line; but this
 13 is what we provided, sure.
 14 Q. Sure.
 15 And do you think that this is an
 16 appropriate role for the Elections Commission to
 17 acquire and provide supplies to municipal clerks?
 18 A. Yes, and I think the money from the
 19 CARES Grant that we used in order to do this, the
 20 500,000, and the money that we used from other
 21 grants, this is more than appropriate and this is a
 22 very important item that we did. And I understand

Page 123

1 some states they don't do that.
 2 Q. So providing -- so you would agree
 3 then that providing these kinds of supplies is
 4 consistent with the authorities of the Wisconsin
 5 Elections Commission under state law and the
 6 relevant federal laws?
 7 A. Well, you know, I'm sure when the law
 8 was written, they didn't say that we should supply
 9 various supplies -- I don't know what the state law
 10 says, if anything, on that, but I think this is a
 11 very appropriate item to do that. If not us, then
 12 whom?
 13 Q. So do you think it's appropriate for
 14 the Elections Commission to continue acquiring and
 15 providing supplies for the November 2020 election?
 16 A. Yes, and we're doing that as a matter
 17 of fact. It's already being done.
 18 Q. And were some of these supplies meant
 19 to equip poll workers to protect themselves and
 20 others at the -- while working at the polls?
 21 A. Yes.
 22 MR. MANES: Okay. So I'd like to

Page 124

1 introduce -- is it possible to pull up two
 2 exhibits at the same time? It's two
 3 photographs. Exhibits C and D. Swenson
 4 Exhibits C and D.
 5 THE VIDEOGRAPHER: Yes, we can.
 6 BY MR. DEVANEY:
 7 Q. Do you recognize the person in the
 8 photograph on the left?
 9 A. I do.
 10 Q. Who is that in the photograph on the
 11 left?
 12 A. That's Speaker Robin Vos.
 13 MR. MANES: Okay. I'd like to
 14 introduce that photograph on the left as -- I
 15 guess it's Exhibit 13.
 16 (Exhibit 13, No Bates numbers,
 17 Photograph, marked for identification.)
 18 BY MR. MANES:
 19 Q. And in the photograph on the right, do
 20 you see Speaker Vos in the photograph on the right
 21 as well?
 22 A. Yes, it looks like he's the gentleman

Page 125

1 on the left part of the picture.

2 MR. MANES: I'd like to mark that as

3 Exhibit No. 14, the photograph on the right

4 as Exhibit No. 14.

5 (Exhibit 14, No Bates numbers,

6 Photograph, marked for identification.)

7 THE WITNESS: Are they in a garage or

8 what?

9 BY MR. MANES:

10 Q. I mean, do you know where this

11 photograph -- what Mr. Vos was doing when these

12 photographs were taken?

13 A. Well, he was acting as a paid poll

14 worker, paid election judge.

15 Q. And can you describe the personal

16 protective equipment that he's wearing?

17 MR. BACH: Well, Counsel, I think that

18 the photograph speaks for itself. I don't

19 think he's an expert either in what kind of

20 particular gear he's wearing or why this is

21 even relevant to the issues in this lawsuit

22 and this person's testimony.

Page 126

1 MR. MANES: Sure. I mean, it's

2 relevant because it's illustrating, I think,

3 visually the kinds of personal protective

4 equipment that the Commission may think are

5 appropriate in the upcoming elections, and --

6 MR. BACH: Why not ask him that

7 question, what do you think is appropriate

8 for the Commission to issue to the clerks,

9 not what, you know, Mr. Vos is wearing in

10 this --

11 MR. MANES: Sure. So maybe I can

12 focus on the photograph on the right then,

13 Exhibit 14.

14 BY MR. MANES:

15 Q. Are all three of the people pictured

16 there wearing masks?

17 A. Yes.

18 Q. And they're all wearing gloves too as

19 well; is that true?

20 A. Well, the -- most likely, the

21 third gentleman you cannot see.

22 Q. Correct. You can see two of them

Page 127

1 wearing gloves.

2 And they're wearing -- the two people

3 on the left have eye protection as well; is that

4 correct?

5 A. Yes, and the man on the right has a

6 shield.

7 Q. And these measures are -- are these --

8 A. I don't know if they're eye

9 protection, they're glasses or something.

10 Q. Glasses. Terrific.

11 A. Whatever. But that's an important --

12 that's an important part of this is to wear some

13 sort of glasses or goggles or something along that

14 line.

15 Q. Okay. And so in your capacity as a

16 Commissioner of the Elections Commission, is it your

17 view that for in-person voting, it's appropriate for

18 people working at the polls to wear the kinds of

19 protective equipment that are depicted in this

20 photograph?

21 A. Well, again, I'm giving you my

22 personal view on that in my discussions with

Page 128

1 Dr. Lee. I do not think that it's necessary for

2 them to have their protective covering on.

3 Protective covering like that would be necessary

4 should we ever allow special voting deputies into a

5 nursing home or something along that line.

6 But this situation, I think the -- I

7 think the masks are very important. There's

8 questions in terms of whether or not the gloves are

9 a good idea or not. And, you know, so it can't hurt

10 anything, but it's probably not necessary for the

11 protective coverings that they have on there.

12 Q. Okay. Very helpful. Thank you.

13 Just give me a second to make sure I

14 don't have any more questions on this topic.

15 (Pause.)

16 BY MR. MANES:

17 Q. One thing that I'm not sure that we

18 covered explicitly, in your view as a member of the

19 Elections Commission, do you believe that requiring

20 people to stay 6 feet apart inside polling places is

21 a measure that can help prevent the spread of

22 coronavirus in polling places?

Page 129

1 A. Yes, I think social distancing is one
 2 of the very important items that people must cover.
 3 I think -- interesting to note there, that picture,
 4 maybe those people aren't 6 feet apart.
 5 MR. MANES: Okay. I think that we can
 6 take down the exhibits that are currently
 7 displayed and move on to a different set of
 8 questions.
 9 BY MR. MANES:
 10 Q. Looking forward to -- looking ahead to
 11 the November general election. So I think your
 12 testimony previously was that you anticipate that
 13 there will be significantly more voters in the
 14 November general election than there were in the
 15 April spring primary; is that correct?
 16 A. Yes, there always are.
 17 Q. Do you have a sense for how many
 18 people typically vote in a presidential year in a
 19 general election?
 20 A. You know, I may be way off. Is it
 21 3 million? I'm sorry, I don't have the exact
 22 number.

Page 130

1 Q. That's fine.
 2 My understanding is that it's roughly
 3 3 million over the last several cycles.
 4 And is it your understanding that
 5 approximately one and a half million Wisconsin
 6 citizens voted in the April election, roughly
 7 speaking?
 8 A. I think that's probably true.
 9 Q. And I'd like to ask you about the
 10 distribution of -- the methods by which people voted
 11 in the spring election.
 12 MR. BROWNE: Counsel, isn't this a
 13 question better put to the 30(b)(6) designee
 14 here who has the facts and figures at hand if
 15 they aren't already -- I'm sure they're
 16 already publicly available. Why we need to
 17 take up Commissioner's time with these
 18 questions --
 19 MR. MANES: Sure. So I guess the
 20 point I'm driving at is his views and the
 21 facts he's taken into consideration of the
 22 preparation for what might be a

Page 131

1 larger-than-usual proportion of people voting
 2 absentee and complications with voting in
 3 person. So some of this has already been
 4 covered, so I can go through it more quickly.
 5 So I'll do my best here not to waste anyone's
 6 time.
 7 BY MR. MANES:
 8 Q. So you're aware that in the spring
 9 2020 election, the proportion of people who voted by
 10 mail and absentee ballot was upwards of 60 percent;
 11 correct?
 12 A. Yes.
 13 Q. And is your -- what is your sense for
 14 the usual proportion of mail and absentee voting?
 15 A. Well, you know, I probably should know
 16 that. I know in the City of Milwaukee over the many
 17 years there's probably -- if you stay away from the
 18 in-person absentee voting, there are about 5,000
 19 confined and then about another 5 to 10,000 others.
 20 So if that's the same percentage throughout the
 21 state, and then I think it went up to close to
 22 100,000 absentee ballots, most of which -- in the

Page 132

1 City of Milwaukee, most of which were mail-in. So I
 2 don't really have those numbers in front of me. I
 3 think that would be something that Megan Wolf can
 4 answer the question better.
 5 Q. Is it fair to say though that as a
 6 member of the Commission, you anticipate the
 7 proportion of people voting by mail and absentee
 8 will be higher in November than the previous
 9 presidential cycles?
 10 I can't hear you, you seemed to have
 11 cut out.
 12 MR. MANES: I seem to have lost the
 13 connection here.
 14 THE VIDEOGRAPHER: Counsel, I think he
 15 disattached his speaker or his headset.
 16 MS. CHIMENE-WEISS: Yes, I can't hear
 17 him.
 18 MR. BACH: Mr. Spindell, can you hear
 19 us?
 20 THE VIDEOGRAPHER: Mr. Spindell?
 21 Should we go off the record?
 22 MR. MANES: Yeah, I think so.

Page 133

1 THE VIDEOGRAPHER: The time is
 2 1:35 p.m. We're going off the record.
 3 (Recess from the record.)
 4 THE VIDEOGRAPHER: The time is
 5 1:39 p.m. We're going back on the record.
 6 BY MR. MANES:
 7 Q. So let's reset here.
 8 Earlier in your testimony, you
 9 testified that there are three ways for people to
 10 vote in Wisconsin. First, in-person on election
 11 day; second, in-person absentee; and third is
 12 absentee by mail.
 13 A. Yes.
 14 Q. And is it true that all three of those
 15 options are available to Wisconsin citizens by law?
 16 A. As far as I know, yes.
 17 Q. And as a member of the Elections
 18 Commission, do you believe that all three of those
 19 are equally important -- are equally important in
 20 general?
 21 A. Well, I think as I said before, I
 22 think the best way of voting is in-person. So if

Page 134

1 you want me to rank the three, I think voting in
 2 person is most important, voting in person absentee,
 3 and then third is by mail for many reasons that we
 4 discussed before.
 5 Q. Do you think that the Elections
 6 Commission in advance of the November 2020 general
 7 election should be focusing its resources on certain
 8 methods of voting over others?
 9 A. No, I don't believe it's the job of
 10 the Election Commission to pick or recommend one way
 11 of voting over the other. That's the job of the
 12 political parties.
 13 Q. Okay. I'm just mindful of the clock.
 14 I don't want to waste time on issues that have been
 15 covered.
 16 So I'd like to turn to some questions
 17 about the problems in Milwaukee that have been
 18 discussed earlier in this deposition.
 19 So as a member of the Elections
 20 Commission, you administer and enforce the Wisconsin
 21 elections law; correct?
 22 A. Yes, as the -- what the statute says

Page 135

1 the Commission should do.
 2 Q. And you're obligated to carry out
 3 those duties on behalf of all Wisconsinites across
 4 the state; correct?
 5 A. Sure, yes.
 6 Q. And that, of course, includes people
 7 who live in Milwaukee; correct?
 8 A. Yes. I even more so -- I'm more
 9 interested in that than anything, I shouldn't be,
 10 but I am.
 11 Q. Do you live in the City of Milwaukee?
 12 A. Yes, I do.
 13 Q. And there are about 294,000 registered
 14 voters in Milwaukee; is that correct?
 15 A. That sounds about right.
 16 Q. And that's the largest municipality in
 17 the state; correct?
 18 A. Yes.
 19 Q. So when you take actions as members of
 20 the Elections Commission, are you required to
 21 consider the impact of those actions on all citizens
 22 in Milwaukee?

Page 136

1 MR. BACH: Counsel, I object to the
 2 form of the question. I'm not sure what that
 3 means.
 4 MR. MANES: Okay. Maybe I'll just
 5 phrase it differently.
 6 BY MR. MANES:
 7 Q. When you make decisions as a member of
 8 the Elections Commission, do you consider the impact
 9 that those actions will have on citizens in
 10 Milwaukee?
 11 A. Yes, I try to.
 12 Q. And you serve as the Commissioner of
 13 the Elections Commission; correct?
 14 A. Say that again.
 15 Q. You serve as the Commissioner of the
 16 Milwaukee Elections Commission; correct?
 17 A. Well, I'm Wisconsin Election
 18 Commission now. I did serve as a City of Milwaukee
 19 Election Commissioner.
 20 Q. Right.
 21 And would you say that you're familiar
 22 with the voting processes that are specific to

Page 137

1 Milwaukee?

2 A. Yes.

3 Q. And in that position as a commissioner

4 of the Milwaukee Elections Commission and now as a

5 commissioner of the Wisconsin Elections Commission,

6 did you learn about the challenges with election

7 administration in the City of Milwaukee?

8 A. I'm sorry, I don't understand the

9 question.

10 Q. Sure. Sure. Maybe I could ask you an

11 open-ended question.

12 What is the biggest challenge with

13 election administration in Milwaukee?

14 A. Well, I want to go back before the

15 April election. My concern was that the -- every

16 resident in the Milwaukee -- this is basically Mayor

17 Barrett's philosophy, every resident in Milwaukee

18 who is eligible to vote should be able to vote. And

19 I wanted to make it as -- you know, for people to

20 vote, I wanted good customer service in all the

21 polling places. And up until this election, I think

22 we had a very, very good system that developed over

Page 138

1 the time that I was there where for the 2016, 2018

2 election, very few people had to wait over five or

3 ten minutes to vote. And maybe if they had to

4 vote -- wait more than 10 or 15 minutes to register,

5 they were -- profusely apologized.

6 And then I'd drive around to these

7 polling places and hear on the radio all these

8 places like Wauwatosa, an hour and a half, Chibugan

9 and all this, and we had a very good system to allow

10 people to make -- allow people to vote. Excellent

11 system. I'm very proud of it.

12 Q. And part of that system was -- in the

13 City of Milwaukee was having a large number of

14 polling places; is that correct?

15 A. I think that certainly -- certainly

16 helped, yes.

17 Q. And in a typical election, is it your

18 understanding that there were about 180 polling

19 places in Milwaukee?

20 A. Yeah, I think 180, 185, yes.

21 Q. Okay. And you're aware that in the

22 spring election, Milwaukee only opened five polling

Page 139

1 locations?

2 A. Yes.

3 Q. And you're aware also that many voters

4 had to wait in long lines in order to vote in person

5 on election day?

6 A. Yes, and I'm still seeing those lines

7 now on TV on national television.

8 Q. And you're aware that some people had

9 to wait in line upwards of two hours in order to

10 cast a ballot?

11 A. Yeah, and even longer than that.

12 Q. And in your view, is that acceptable

13 or unacceptable?

14 A. Totally unacceptable.

15 MR. BACH: Counsel, I'll object to the

16 relevance of this. The Wisconsin Election

17 Commission doesn't determine how many polling

18 places are open in any municipality including

19 the City of Milwaukee. That's governed by

20 the City of Milwaukee.

21 MR. MANES: That's fine.

22 MR. BACH: I think we have the wrong

Page 140

1 witness here if you want to get into what was

2 going on with the polling places in

3 Milwaukee.

4 MR. MANES: So are you directing the

5 witness not to answer or --

6 MR. BACH: I'm not directing him not

7 to answer, but I think you said yourself you

8 want to be mindful of the time and this is

9 stuff that goes beyond the purview of

10 his role as an Elections Commissioner.

11 MR. MANES: With respect, we think the

12 Elections Commission has an obligation to

13 show that voting is equally accessible

14 statewide and there were problems in

15 Milwaukee, so I think it's worth probing on

16 this just a little bit more.

17 BY MR. MANES:

18 Q. So are you also aware that Milwaukee

19 had problems processing absentee ballot requests?

20 A. Yes.

21 Q. Do you think that it's important to

22 ensure that Milwaukee voters are treated the same as

Page 141

1 voters in other areas of the state in terms of their
 2 ability to exercise the right to vote?
 3 A. Well, again, I'm a little bit
 4 prejudice along that line. I like it to be treated
 5 better.
 6 Q. Okay. And about -- with respect to
 7 your work on the Wisconsin Elections Commission, can
 8 you estimate what proportion of your time is spent
 9 working to ensure that Milwaukee voters are treated
 10 the same as other Wisconsin voters?
 11 A. You mean as -- could you -- I'm sorry,
 12 I don't understand the question. You mean how much
 13 do we -- how much time do we spend in our open
 14 meetings talking about Milwaukee? Is that what --
 15 Q. I wouldn't put it that way.
 16 I'd say in your -- your work on the
 17 Milwaukee Elections Commission, have you focused in
 18 particular on ensuring that Milwaukee voters are
 19 treated the same as other Wisconsin voters?
 20 A. No, and I wanted to -- I suggested
 21 that we do an investigation in Green Bay and the
 22 City of Milwaukee on the April elections and it was

Page 142

1 a 3/3 split, the Republicans wanted the
 2 investigation, the Democrats did not, the
 3 commissioners.
 4 Q. Have you conducted any independent
 5 research relevant to ensuring that Milwaukee voters
 6 are treated the same way as other Wisconsin voters?
 7 A. No, I just -- you know, people talk to
 8 me, give me comments, things along this line in
 9 terms of the problems that they had on election day
 10 and how disappointed they were that the system was
 11 set up the way it was.
 12 Q. So I'm just going to ask you a series
 13 of quick questions here.
 14 A. Sure.
 15 Q. Can you identify any actions that
 16 you've undertaken in your official role as a member
 17 of the Elections Commission since the spring
 18 election to ensure that Milwaukee voters are treated
 19 the same way as other Wisconsin voters in terms of
 20 the number of polling places that are open on
 21 election day?
 22 A. Well, I think it's been determined

Page 143

1 that we do not have any right to do that. I was
 2 absolutely flabbergasted when I learned I believe
 3 the Friday before the election that they were only
 4 going to have five polling places. I was not -- if
 5 I had known this -- you know, we didn't know that
 6 until five days before -- the Friday before.
 7 Q. Okay. I just wanted to -- can you
 8 identify any actions you've undertaken in your
 9 official role as a member of the Wisconsin Elections
 10 Commission to ensure that Milwaukee voters are
 11 treated the same as other Wisconsin voters in terms
 12 of the number of poll workers available to staff
 13 polling places?
 14 A. Well, in polling workers, that was the
 15 initial excuse to not have many, but we ended up
 16 with more and more. And I know personally some poll
 17 workers who were planning to work, but when they
 18 heard that there were five places instead of the
 19 normal 180, they were -- some with underlying health
 20 conditions or whatever said, no, I'm not going to
 21 work in that and I can't say that I blame them.
 22 The National Guard was actually

Page 144

1 brought about and they provided tremendous help to
 2 everybody. And I think the way it ended up there
 3 were many more poll workers than were needed for
 4 these five places. There was no excuse from the
 5 beginning why they only needed five places in my
 6 opinion.
 7 Q. Do you -- are you aware of any actions
 8 that the Commission has taken specifically to
 9 increase the number of poll workers available to
 10 staff polling places in Milwaukee?
 11 MR. BACH: Once again, Counsel, that's
 12 not something that the Wisconsin Election
 13 Commission is in charge of, has authority
 14 over.
 15 MR. MANES: I mean, I know that's your
 16 position, but if the witness can answer the
 17 question, please.
 18 THE WITNESS: Yes, we did make
 19 recommendations when the -- we were told that
 20 they were short on poll workers. We -- as
 21 you know, the way in Wisconsin that paid poll
 22 workers are supposed to be gotten, so to

Page 145

1 speak, is by the political party. So it was
 2 equal number of Republicans, equal number of
 3 Democrats.
 4 Republicans for some time had a policy
 5 to recruit people to be paid poll workers and
 6 it was my suggestion, I think we recommended
 7 it to clerks along with the various groups,
 8 church groups or masons or whatever, to
 9 approach these people to see if we could get
 10 more workers. And we, as a Republican party,
 11 did provide more people to do that. The
 12 Democratic Party was not interested in
 13 participating in that.
 14 And then, of course, we recommended
 15 strongly that the National Guard be utilized
 16 also to make sure that we would have more
 17 poll workers. And I think at the end, it
 18 appeared we had enough poll workers.
 19 BY MR. MANES:
 20 Q. Were any of the actions you just
 21 described taken in your capacity as a member of the
 22 Wisconsin Election Commission?

Page 146

1 A. Well, yes. We discussed and I
 2 recommended and I'm sure the other commissioners
 3 recommended that we provide the guidance that I just
 4 mentioned to all the clerks because we wanted to do
 5 everything we possibly could to give them
 6 suggestions in terms of how to get enough help. And
 7 also I know the staff of the Elections Commission is
 8 working very hard to try and get the National Guard
 9 to participate and I think they made their official
 10 determination the Wednesday before -- Tuesday night
 11 or Wednesday before the election.
 12 Q. One more question along the same
 13 lines. Can you identify any actions that you've
 14 undertaken in your official role on the Wisconsin
 15 Elections Commission to ensure that Milwaukee voters
 16 are treated the same as other Wisconsin voters in
 17 terms of their opportunity to obtain and cast
 18 absentee ballots by mail?
 19 A. I'm sorry, repeat your question.
 20 Q. Sure.
 21 Can you identify any actions you've
 22 taken in your official role on the Elections

Page 147

1 Commission to ensure that Milwaukee voters are
 2 treated the same way as other Wisconsin voters in
 3 terms of their ability to obtain and cast absentee
 4 votes by mail?
 5 A. Yes, we as a Commission allocated
 6 money based on the number of registered voters or
 7 the eligible citizenry to be voters in all the
 8 municipalities. So we provided, I don't know the
 9 precise amount of money, but a huge amount of money
 10 to the City of Milwaukee to do this. Also, because
 11 the City of Milwaukee does have a paid full-time
 12 year-round election staff, I'm sure knowing what
 13 they know now that they will get things going the
 14 way they need to get going to process the ballots
 15 efficiently. And I'm sure the mayor of Milwaukee
 16 and city council is more than happy to provide
 17 additional funds to make sure that the -- it goes
 18 smoothly. But we as commissioners basically did
 19 provide these funds to the City of Milwaukee.
 20 Q. Okay. I have about three minutes left
 21 and then I'll turn it over to my colleagues from the
 22 legislature. Last topic.

Page 148

1 So are you aware that the City of
 2 Milwaukee has the largest number of African-American
 3 voters in Wisconsin?
 4 A. Yes, I certainly am.
 5 Q. And you're aware that a significant
 6 majority of black voters in Wisconsin live in the
 7 City of Milwaukee; correct?
 8 A. Yes.
 9 Q. Are you aware of any specific
 10 challenges that black voters faced in the April 2020
 11 spring election?
 12 A. Yes.
 13 MR. BACH: Are you asking him in his
 14 capacity as --
 15 BY MR. MANES:
 16 Q. In your capacity as a member of the
 17 Wisconsin Elections Commission, are you aware of
 18 any --
 19 A. Yes.
 20 Q. -- specific challenges?
 21 A. Yes, I am.
 22 Q. Can you briefly describe those

7/7/2020

Democratic National Committee v. Marge Bostlemann, et al.

Robert Spindell

Page 149

1 specific challenges?
 2 A. Well, one was the closing up on the
 3 Sunday -- and I can't remember what Sunday it was --
 4 but a week or two prior to the -- or three weeks
 5 prior to the election of the in-person absentee
 6 voting. And especially the one on Capital Court
 7 area in the City of Milwaukee which is primarily
 8 utilized by our African-American population and
 9 throughout the elections always have the most people
 10 voting there absentee. That was closed up. I'm not
 11 quite sure why it was closed up. I was there voting
 12 absentee, as I already said before, on Friday and
 13 there was hardly anybody there. But in any case
 14 that was closed up.

15 Also, the -- I hear this both from the
 16 Democrats and the Blacks, that they do not typically
 17 like mail-in voting, absentee ballots because
 18 they're not sure that their ballot will be counted
 19 and, therefore, they love voting and -- if they like
 20 the candidate, they love voting and they like to be
 21 in-person absentee voting. So when you took the
 22 absentee voting away, that caused many of these

Page 150

1 lines to do it.
 2 And when you reduce a lot of these
 3 high schools that they used, two or three of them
 4 were in the black area, and it provided more -- much
 5 more difficult time for the African-American voters
 6 to vote as well as other people. I hear a lot of
 7 complaints from white people as well, Hispanics,
 8 that these were problematic. And I think there's no
 9 question, but it did by this -- by having these five
 10 polling places greatly reduced the Black turnout.
 11 That's just my estimate from what people tell me.

12 Q. And in your position as a member of
 13 the Elections Commission, do you think it's
 14 important to ensure that Black voters in Milwaukee
 15 aren't treated any differently than other voters in
 16 Milwaukee or elsewhere in the state?

17 A. Absolutely. And that's always been my
 18 point of view, that they should be treated equally
 19 or better.

20 Q. And do you agree -- do you agree that
 21 they should -- it should be no harder for them to
 22 vote than it is for white voters?

Page 151

1 A. Well, you know, we're making -- we're
 2 making it available. These three ways of -- making
 3 things available, City of Milwaukee determines
 4 whether or not they're going to make it extremely
 5 difficult for Black voters to get to the polls, so I
 6 would think that from what I've read or heard that
 7 they're going to have a hundred plus, maybe even 150
 8 or so polling places open in the City of Milwaukee
 9 for these upcoming elections. So I would suspect
 10 that that will make things much easier for Black
 11 voters than trying to have to go long distances on
 12 public transportation to stand in line for two hours
 13 and all this other good stuff. And I think that was
 14 a population that was really hurt by the -- by the
 15 way the election was set up in April in Milwaukee.

16 Q. Okay. And last question, or maybe
 17 last couple questions, have you -- have you spoken
 18 with members of the Black community or the Latino
 19 community in Milwaukee about the voting challenges
 20 that they faced?

21 A. Of the actual people that have filed
 22 challenges to -- to the City of Milwaukee or the

Page 152

1 complaints that are coming in, no, I have not
 2 personally talked with any of those people about
 3 that.

4 Q. Okay.

5 A. I know, you have my exhibit there,
 6 they were deathly afraid that if they didn't tell me
 7 about them that the Wisconsin Elections Commission
 8 might not pay attention to them or not even follow
 9 through. I think that was an unnecessary concern,
 10 but that's a concern they -- they want their voices
 11 heard, and I believe that their voices should be
 12 heard.

13 Q. And in your capacity as a member of
 14 the Elections Commission, have you spoken with
 15 any -- any other community leaders or
 16 representatives of the Black community expressing
 17 concerns about voting opportunities in Milwaukee?

18 A. Yeah, I've had -- I've had
 19 conversations with people that have called me up or
 20 spoken to me. You know, obviously with the pandemic
 21 the way it is, my being able to get around as I
 22 normally get around in the Black community is

38 (Pages 149 to 152)

Page 153

1 limited where I used to be a regular attendee at
 2 brainstorming, which is the community leaders of
 3 each -- every month and unfortunately that meeting
 4 had to be canceled. I'm sure I would have had a lot
 5 of -- a lot of feedback there or other events that I
 6 might -- might have gone to.

7 So it has been limited, but it's
 8 pretty clear in the media and everything else from
 9 what I hear, it was not -- you know, it was not --
 10 they were not treated -- the Black community was not
 11 treated as they should have been, in my opinion.

12 MR. MANES: That's all I've got for
 13 now.

14 I understand that the legislature has
 15 questions, brief questions, and if there's
 16 time, we might need to just ask a couple to
 17 clarify after that; but other than that, I'm
 18 done.

19 Thank you very much, Mr. Spindell. I
 20 really appreciate it.

21 THE WITNESS: Okay.

22 EXAMINATION

Page 154

1 BY MR. BROWNE:
 2 Q. Mr. Spindell, good afternoon. My name
 3 is Robert Browne, and I represent the Wisconsin
 4 legislature in the case. I only have a few
 5 questions for you today, and, again, echoing the
 6 other parties, I appreciate your time today.

7 Commissioner Spindell, the Wisconsin
 8 Election Commission is made up of multiple
 9 commissioners; is that correct?

10 A. I'm sorry, you faded out --

11 Q. Sorry.

12 The Wisconsin Election Commission is
 13 made up of multiple commissioners; is that correct?

14 A. Yes.

15 Q. In fact, it's six commissioners;
 16 right?

17 A. Yes.

18 Q. And each commissioner has an
 19 independent vote; is that correct?

20 A. Yes.

21 Q. Okay. Earlier, if you recall,
 22 Mr. Devaney asked you about some communications you

Page 155

1 had with legislative leader and the Republican
 2 party.

3 Do you remember that?

4 A. Yes.

5 Q. However, in those communications you
 6 had with the legislative leader and the Republican
 7 party, did they ever direct the Wisconsin Election
 8 Commission as to how to act at any point?

9 A. No.

10 Q. Okay. Commissioner Spindell, at the
 11 end of the day, the Wisconsin Election Commission is
 12 an independent body and makes its own
 13 determinations; is that correct?

14 A. Well, it's a bipartisan -- bipartisan
 15 organization that does make its -- by a floor vote,
 16 makes its rulings.

17 Q. Okay. But it makes its own
 18 determinations independent of any other body; is
 19 that correct?

20 A. Yes. Well, I don't know -- yeah, I
 21 think you're basically right except the courts are
 22 involved.

Page 156

1 Q. Okay. Commissioner Spindell, there
 2 was also some discussion today you gave testimony
 3 about an ad that was placed in the newspaper.

4 Do you remember that?

5 A. Yes.

6 Q. That ad that was placed in the
 7 newspaper, that was done apart from and not
 8 involving the Wisconsin Elections Commission; is
 9 that correct?

10 A. Yes.

11 Q. And they had -- the Wisconsin Election
 12 Commission had no -- no part in that ad; is that
 13 correct?

14 A. That's correct.

15 Q. And, in fact, you put at the end of
 16 that ad that you were acting not as part of the
 17 Wisconsin Election Commission and that the Wisconsin
 18 Election Commission did not have any part in that
 19 ad; is that correct?

20 A. Yes.

21 Q. Okay. And my last question,
 22 Commissioner, there was some pictures shown to you

Page 157

1 involving some of the legislative leaders.
 2 Do you remember that?
 3 A. Yes.
 4 Q. And counsel asked you about the
 5 protective equipment that was -- the individuals in
 6 the picture were wearing.
 7 Do you remember that?
 8 A. Uh-huh, yes.
 9 Q. Do you even have any idea whether that
 10 equipment, the PPE, the personal protective
 11 equipment, that the people in the photograph were
 12 wearing was even provided by WEC, by the Wisconsin
 13 Elections Commission?
 14 A. I have -- I have no idea if it was. A
 15 lot of -- a lot of equipment was provided by the
 16 local municipality and several of them provided
 17 their own stuff and then we supplemented whatever we
 18 could. But I would suspect that we probably did not
 19 provide the wrap-around even though -- and I don't
 20 know whose mask it was and gloves. No, I just don't
 21 know.
 22 MR. BROWNE: I have nothing further.

Page 158

1 Again, Commissioner Spindell, thank you for
 2 your time.
 3 MR. DEVANEY: This is John Devaney. I
 4 mentioned before I might have a follow-up
 5 question, I don't. I'm done as well.
 6 Thanks, Commissioner Spindell.
 7 MR. MANES: Likewise, I'm done.
 8 THE WITNESS: So does that mean I am
 9 done?
 10 MR. MANES: I think you are, right on
 11 time.
 12 THE WITNESS: Thank you very much.
 13 MR. DEVANEY: Dan, thanks for your
 14 cooperation with this.
 15 MR. BACH: Thank you, guys.
 16 Appreciate it.
 17 THE VIDEOGRAPHER: The time is
 18 2:07 p.m. Central, and this concludes the
 19 deposition of Robert Spindell, Jr.
 20
 21
 22

Page 159

1 STATE OF NEW YORK)
 2 ss:
 3 COUNTY OF WESTCHESTER)
 4
 5 I, EILEEN MULVENNA, CSR/RMR/CRR,
 6 Certified Court Reporter, Registered Merit Reporter,
 7 Certified Realtime Reporter, and Notary Public in
 8 and for the State of New York, do hereby certify:
 9 That I reported the taking of the
 10 deposition of the witness, ROBERT SPINDELL,
 11 commencing on the 7th day of July, 2020, at the
 12 hour of 11:04 a.m. (Central);
 13 That prior to being examined, the witness
 14 was duly sworn by me to testify to the truth, the
 15 whole truth, and nothing but the truth;
 16 That I thereafter transcribed my said
 17 shorthand notes into typewriting and that the
 18 typewritten transcript of said deposition is a
 19 complete, true and accurate transcription of my
 20 said shorthand notes taken down at said time.
 21 I further certify that I am not a relative
 22 or employee of an attorney or counsel of any of the
 parties, nor a relative or employee of any attorney
 or counsel involved in said action, nor a person
 financially interested in the action.
 IN WITNESS WHEREOF, I have hereunto
 set my signature this 7th day of July, 2020.

 EILEEN MULVENNA, CSR/RMR/CRR

Page 160

1 Robert Spindell, c/o
 2 LAWTON & CATES, S.C.
 3 345 W. Washington Ave., Suite 201, P.O. Box 2965
 4 Madison, WI 53701
 5
 6 Case: Democratic National Committee v. Marge Bostlemann, et al.
 7 Date of deposition: July 7, 2020
 8 Deponent: Robert Spindell
 9
 10 Please be advised that the transcript in the above
 11 referenced matter is now complete and ready for signature.
 12 The deponent may come to this office to sign the transcript,
 13 a copy may be purchased for the witness to review and sign,
 14 or the deponent and/or counsel may waive the option of
 15 signing. Please advise us of the option selected.
 16 Please forward the errata sheet and the original signed
 17 signature page to counsel noticing the deposition, noting the
 18 applicable time period allowed for such by the governing
 19 Rules of Procedure. If you have any questions, please do
 20 not hesitate to call our office at (202)-232-0646.
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Robert Spindell

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4 SIGNATURE PAGE
Case: Democratic National Committee v. Marge Bostlemann, et al.
5 Witness Name: Robert Spindell
Deposition Date: July 7, 2020
6

7 I do hereby acknowledge that I have read
and examined the foregoing pages
8 of the transcript of my deposition and that:
9

10 (Check appropriate box):
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Page 162

1 Digital Evidence Group, LLC
2 1730 M Street, NW, Suite 812
3 Washington, D.C. 20036
4 (202)232-0646
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6 ERRATA SHEET
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8 Case: Democratic National Committee v. Marge Bostlemann, et al.
9 Witness Name: Robert Spindell
10 Deposition Date: July 7, 2020

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Signature Date



Wisconsin Elections Commission

212 East Washington Avenue | Third Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8005 | elections@wi.gov | elections.wi.gov

DATE: For the April 18, 2020 Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Meagan Wolfe, Administrator
Wisconsin Elections Commission

SUBJECT: Summary of April 7, 2020 Election

The April 7 Presidential Preference and Spring Election was by all definitions unprecedented. Wisconsin was the only state thus far to conduct a statewide election in the midst of a COVID-19 pandemic “stay at home” order. Wisconsin is also the most decentralized state for election administration, meaning that 1,850 municipal election officials and 72 county election officials had to adapt to significant changes from court rulings, public health guidance, and voter behavior shifts towards vote by mail. This summary is a very high-level overview and only captures the major efforts WEC staff responded to and implemented for the April 7, 2020 election. This summary does not account for the many remarkable accomplishments and successes of Wisconsin’s local election officials all of whom overcame unforeseen obstacles and ensured polls were open in each city, town, and village in the state.

The summary identifies areas of impact, provides a discussion of each, and outlines next steps related to efforts and initiatives of WEC staff. The summary in each section will provide information on the area of focus followed by discussion of some of the high-level lessons learned, and finally next steps for improvements which WEC staff are working on for the remaining elections in the 2020 cycle.

Background

Ballots for the April 7, 2020 Spring election became available, by statute on February 20. Shortly thereafter in-person absentee voting and voter registration within municipal clerk’s offices began. The Governor issued his first executive order related to COVID-19 on March 12, well after the election had already begun.

Election Preparations

This section describes undertakings prior to election day to support local election jurisdictions in their preparations for election day.

Sanitation Supplies and Personal Protective Equipment (PPE)

Summary: Because of the nationwide shortage of sanitation supplies and PPE, local election officials relayed to WEC in early March that they were unable to procure supplies needed for in-person voting.

Wisconsin Elections Commissioners

Dean Knudson, chair | Marge Bostelmann | Julie M. Glancey | Ann S. Jacobs | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

WEC staff then sent a survey to all local election officials asking them to detail their need for supplies to support safe, in-person voting. The local election officials were able to work with their county health departments and through their own procurement channels while WEC simultaneously looked for opportunities to purchase supplies for distribution to local election officials. WEC experienced the same difficulty in finding or procuring supplies either in the state or around the nation. A ticket for supplies was also entered into the State Emergency Operations Center (SEOC) based on clerk needs. Ultimately, WEC worked with SEOC and state procurement to send the supplies needed to all polling places in Wisconsin. Wisconsin's 72 county clerks played a key role in distributing supplies to more than 2,000 polling places. Supplies that were distributed include:

- Over 8,000-liter bottles of liquid 70% ethyl alcohol solution that was used as a hand and surface sanitizer. The solution was sourced from a local distillery as all other state and national supply chain options were exhausted
- Over 10,000 16oz plastic spray bottles and printed labels for the bottles for the liquid alcohol solution
- 500,000 isopropyl alcohol wipes for use on voting equipment and electronic touchscreens.
- Surgical masks for poll workers
- Latex gloves for poll workers
- 1.5 million ballpoint pens so that each voter would have their own to sign the poll book and mark their ballot
- ~2,000 rolls of painter's tape to facilitate social distancing
- 10,000+ social distancing and public health signs

Discussion: The National Guard helped with the packaging and distribution of supplies from the stockpile in Madison to regional facilities around the state. The counties then drove to the regional facilities, or coordinated pick up in vehicles large enough, to bring the supplies back to the county office for distribution to the municipalities and/or each polling place. WEC did not know until all the individual procurements were complete and the distribution and packaging was complete how many of each supply would be provided to each polling place. Some of the items were found by the SEOC in the day before distribution so the exact make up of the supplies were unknown until they arrived at the polls. Jurisdictions reported having adequate supplies for election day to accomplish practices prescribed in elections specific public health guidance. Voters have also reported to our office that they felt safe in polling places and that there were adequate sanitation supplies. Some jurisdictions reported having excess supplies which we are now in the process of redistributing to the 7th Congressional District for their May 12 election.

Next Steps: With the benefit of time that was not available before the April 7 election, WEC staff can begin to assist jurisdictions with finding the needed supplies for the August and November statewide elections. State and local election officials will be able to better gauge the amount of supplies they may need, based on their experience in April. WEC staff is also hopeful that with additional time, there will be the opportunity to procure more traditional sanitation supplies and to provide them to the jurisdictions

well in advance of the election so that they have time to incorporate the supplies fully into their election day plans and pre-election in-person processes.

WisVote Database

Summary: The WisVote database is the system used by almost 3,000 local election officials to administer elections. While WisVote and the WEC do not issue ballots, the clerks use WisVote to record when they send and receive absentee ballots, to enter voter registrations, and to record voter participation. The system was built by the WEC team and launched in 2016. The system was built based on the way Wisconsin conducts elections, which involves mostly voting in-person at the polls and registering to vote at the polls on election day. By mail voting and registration options are certainly accounted for in the system, but most municipalities had never received a large volume of absentee requests for a specific election prior to this election. Clerk activity in WisVote prior to the election was much higher than any prior election because clerks were all entering and issuing record numbers of absentee requests at the same time. The system performed very well but required round the clock monitoring and auditing to handle this unique and unprecedented user behavior and traffic.

Discussion: The system required a number of updates to accommodate extended deadlines for absentee requests and online voter registration. These extensions meant changing automation in the system to assign voter records and requests to new deadlines and elections. WEC staff also monitored capacity of the system to ensure memory space. Multiple increases of memory were needed to keep pace with absentee requests and attached photo ID's. WEC staff also created two significant new processes to assist local election officials with the new volume of absentee requests. One change was to create an absentee ballot request report that documents when a voter submits a request that includes a photo ID. This change was significant because it allowed WisVote to capture and store photo files of photo ID. This process is usually completed by email. Photo files are very large, therefore the storage and capacity in WisVote had to be significantly adjusted. WEC staff also created "poll book" reports or pages so that jurisdictions with consolidated polling places could use the WisVote system to check in voters, produce and print an individual poll book page for them, and record new registrations and participation in real time on election day. Again, these were not processes that had been conceptualized previously and required significant development and testing.

Next Steps: With additional time, WEC staff will be able to work with local election officials to build additional absentee by mail functionalities. These features will include a new module in the system for "pending" absentee requests which will dramatically reduce any manual data entry and can be entered into the system by the clerk approving the request information and the photo ID. Also, WEC staff will continue to explore the use of WisVote at the polls on election day. Again, this process can save jurisdictions significant time when using consolidated polling places. The WisVote poll book report ensures voters are given the correct ballot and requires no additional data entry needed after election day. However, security and other risk factors will need to be considered to ensure the correct balance of security and efficiency exists. Additional changes to WisVote to accommodate a higher volume of absentee by mail are outlined in the CARES Act grant memo.

MyVote Website

Summary: MyVote is the public facing website where voters can interact with their records and their data in the WisVote system. On the MyVote website, voters can request an absentee ballot, track when their ballot was sent and received by their clerk, register to vote online, find their polling place, view a sample ballot, view their voting history, and more. The site was built by WEC staff with extensive usability studies conducted with hundreds of voters to learn how they use the site. Based on historical data, most voters went to MyVote to find their polling place or to view a sample ballot. Site analytics show this to be true in February 2020, where traffic to the polling place look up tool reached a new record high. Features like requesting an absentee ballot were previously used by voters, but never at the rate they were utilized in the lead up to the April 2020 election. Deadlines for online voter registration and for absentee requests were extended multiple times by court actions prior to this election and deadlines for ballots to be returned and witness requirements were also changed. Deadlines and dates are all currently hardcoded in the MyVote system and in the data exchange with the WisVote database. Therefore, each change required extensive development and testing to avoid unintended consequences. WEC staff also engaged in extensive load testing prior to the election and up to election day to ensure that the site could handle record breaking traffic. Increasing capacity as it was needed required around the clock monitoring of the site. Certainly there were unique challenges and obstacles for some voters at the election, but the work of WEC program and IT staff in maintaining and modifying MyVote, as well as the performance of the website itself, was a key factor in accommodating a significant level of voter turnout, second only to the record turnout for the 2016 Spring Election and Presidential Primary.

Discussion: Usability has always been a foundational principle for WEC staff and is a critical part of website development to make sure that voters are able to navigate the site successfully. Because changes to workflows and deadlines had to be made very quickly and because of the prohibitions on gatherings where usability sessions are usually conducted, WEC staff was unable to usability test most changes prior to implementation. There was also the need for more messaging on the site for emergency notices than had ever been needed before. Load testing is also a critical component to success and, fortunately, WEC staff was able to adjust load testing plans to accommodate the extremely high volume of site traffic coupled with new user behavior and needs.

Next Steps: WEC plans to conduct extensive usability studies on the MyVote site to account for new voter behavior patterns. Traditionally, voters used the site to facilitate in-person voting. New voter needs drive traffic to the site for all electronic and by-mail transactions. WEC staff will work to augment voter workflows for online voter registration and absentee ballot requests. With the increased demand on by-mail voting there is also an increased need for voters to have transparency into the process. Voters have expressed a strong desire to be able to track their absentee ballots like they would any other important package. Utilizing the CARES Act grant, WEC staff hopes to incorporate intelligent mail barcodes into the absentee process and incorporate that information into the MyVote system. WEC staff will also be conducting usability tests on site messaging to ensure voters see and can understand important notices if they are needed in future emergencies.

Envelopes and Postage

Summary: In all previous elections, the majority of Wisconsin voters cast their ballots in-person at the polls on election day. Some voters typically cast an in-person absentee ballot but less than 10% of voters typically vote using an absentee ballot by mail. In the April 7, 2020 election more than 80% of voters who participated did so by casting an absentee ballot by mail. Unofficial and incomplete data indicate the total absentee voting, including in-person absentee voting, ballooned to 1.27 million absentee ballots being issued by municipal clerks. Clerks had already purchased absentee ballots and absentee ballot envelopes based on historic need. Therefore, clerks had only prepared and budgeted for 10-15% absentee by mail, including costs for by mail ballot envelopes and required postage. This significant and unplanned shift meant that clerks quickly ran out of the required outer “election mail” transmission envelopes, and the return “certificate” envelopes required by statute for the absentee process. Further, shortages in the paper supply chain were reported by local election officials meaning they were unable to purchase additional supplies. WEC staff was able to work with paper and print vendors in the state to source enough paper stock and have envelopes printed. The SEOC also played a key role in the procurement and distribution of the envelopes to municipalities.

Discussion: The current envelope process is very reliant on specific paper stock and experienced print vendors to be able to meet the USPS approved standards. Other states who vote primarily by mail have a simplified return envelope with an inner security or certificate envelope. This process requires clerks to use three envelopes but makes the process much less reliant on specific stock and printers. Budgets in local election offices should also be considered, when changes to the by mail process are developed. Current law and processes will require jurisdictions to cover significant increases in vote by mail costs while still maintaining the need to expend the same amount of funds historically spent on polling places and in-person voting processes.

Next Steps: As outlined in the CARES Act grant memo, WEC staff is exploring ways to absorb unbudgeted postage and envelope costs using federal grant funds. WEC staff is also exploring new designs and options for absentee envelopes that may be more readily available and allow for less dependence on specific stock and experienced print vendors. Furthermore, the envelope redesign will allow WEC staff to work with local election officials on developing a usable, efficient absentee certificate and envelope process that can be used for the August and November 2020 elections.

Poll Workers

Summary: In a large election there are between 20,000-30,000 poll workers needed statewide. With the COVID-19 crisis, many poll workers in a more vulnerable health demographic were unable to serve in that role for the April 7 election. In recent statewide surveys, it has been reported that the majority of poll workers are over the age of 60. Many are also over the age of 70 or 80. At the start of the crisis, clerks began reporting to WEC they had a shortage of poll workers and that many clerks were unable to serve in-person processes because they were also in a vulnerable demographic. WEC then sent a survey to all municipal clerks asking them to identify their poll worker shortages. Based on the survey, municipalities reported a shortage of more than 7,000 poll workers. 111 jurisdictions described their shortages as critical, defined as not being able to staff any polling places. 126 jurisdictions described

their need as severe, meaning they could not fully staff all polling places. Based on this need, WEC immediately put in a ticket for poll worker personnel at the SEOC.

Discussion: Because clerks need time to train poll workers, WEC immediately urged state decision makers to exercise authority to assign state personnel as poll workers to fill critical gaps. WEC staff also put out numerous press releases and held press events to encourage Wisconsinites who were able to serve as poll workers. Recruitment materials were also created for local election officials including draft press releases and draft recruitment letters that clerks could send to other municipal and county employees, school districts, and private industry. WEC also created a “become a poll worker” feature on the MyVote website where residents could contact their clerk to become a poll worker. This new feature was used by local election officials and by partners of the SEOC such as the United Way for recruitment efforts. Municipal clerks have a statutory role to train poll workers and historically WEC has not produced or prescribed poll worker training. Because of the anticipation of new, first time poll workers, WEC staff quickly produced a full curriculum of online, video-based poll worker training that local jurisdictions could use to train new poll workers remotely with limited notice. Ultimately in the days prior to the election the Governor authorized the National Guard to serve in plain clothes as citizen poll workers in their home communities. That process is described in a section below. State employees were also encouraged to volunteer in their local communities as poll workers.

Next Steps: As with all initiatives relevant to the April 7 election, time was very limited. Ideally, poll workers should be recruited and trained months before a major election. In preparation for the August and November elections WEC will continue to provide recruitment tools to local officials and work with state partners to recruit poll workers well in advance of the election. WEC staff will also continue to refine the training program for poll workers so that it can be used by local election officials to train new poll workers remotely. The exposure of National Guard members and other individuals to the election process may serve as a catalyst to increasing the pool of poll workers for future elections.

Guidance and Communications for Clerks

Summary: In every election communicating to 1,850 local election officials and 72 counties can be a challenge. Because of the unprecedented health crisis and continual changes resulting from court decisions communication with WEC local election partners was critical leading up to the April 7 election. Throughout the process, the deadlines for absentee voting and voter registration changed. The requirements for witness signatures and absentee ballot return deadlines and terms changed multiple times, requiring WEC staff to communicate new changes which occurred within 24 hours. All traditional in-person voting practices had to be re-visited and re-constructed in light of the COVID-19 crisis. Between March 12 and April 7 WEC staff sent more than 50 communications and guidance documents to clerks. In the weeks prior to a typical election WEC staff, in keeping with a communications policy developed with the clerks, send an average of 10 communications and attempt to avoid issuing new communications to clerks within the week prior to the election. Many of the communications created were developed with a public health official assigned to our agency for a very brief time to review documents from a public health perspective. WEC staff created more than 20 election specific public health documents, an entirely new perspective for the agency, using the high

level guidance provided by the public health official which can be found here <https://elections.wi.gov/covid-19>. WEC staff also held numerous webinars in the weeks leading to the election to present this guidance and answer clerk questions. Many webinars were held live up to three times in a day so that clerks would all have training opportunities that met their schedule.

Discussion: WEC staff received very positive responses from our local election partners about the communications during this crisis. While the volume of information was difficult to keep pace with, all matters communicated were of a critical nature. The recently instituted RAVE alert system was also used on multiple occasions to alert clerks on their phone and emails if there was a critical communication that needed their attention. Opportunities to provide information during live webinars were also an important option. While the recordings of the webinars were also posted, live webinars, at various times throughout the day allowed clerks to be able to directly participate and ask questions. The WEC was assigned a public health official to help structure guidance for only 24 hours in the week before the election. A more extended time period may have allowed for more consolidated guidance to be produced at the beginning of the planning process.

Next Steps: WEC staff will continue to work to develop training materials for local election officials on how to incorporate public health practices into election processes. With additional time before the August and November election, the guidance can be woven into existing training programs. Additional time will also allow clerks to continually train poll workers on these practices. WEC staff will also continue to work with clerks to fine tune communications protocols based on the April 7 experience to ensure that the most useful information is being brought to their attention at the correct time.

Election Day Summary

On Election Day, April 7, 2020 polling places in all 1850 jurisdictions opened and issued ballots to their voters. While in-person turnout made up less than 20% of voters who participated, the effort on the part of local election officials to ensure polling places in every community were able to operate was remarkable.

Polling Place Consolidation

Summary: Some jurisdictions chose to consolidate their polling places, a process by which multiple wards are combined into the same polling place. In 2020, jurisdictions reported consolidation was required due to the unknown in-person turnout and shortage of poll workers. Other jurisdictions consolidated because their original polling places became unavailable due to the evolving health crisis. WEC issued guidance to jurisdictions regarding consolidation and ensuring that the correct ballots were issued to the correct voter and on using the newly developed WisVote process to check in voters and print individual poll book pages. In larger jurisdictions that chose significant consolidations, long voter lines were reported throughout election day.

Discussion: In most elections, polling place consolidations and location changes occur at least 30 days before an election. This allows time to provide notice to voters. There are also emergency provisions in the law to change polling places on election day. Because of the evolving health crisis and other factors

jurisdictions made changes to their election day polling place plans after March 7. The first COVID-19 executive order was issued on March 11 changing many jurisdictions' election day plans. The Commission's decision to authorize municipal clerks to consolidate or relocate polling places within 30 days of the election greatly simplified this process.

Next Steps: With the experience of April 7, WEC hopes to help create data models and reports that municipalities can use in determining polling place locations. Data models could include looking at historical turnout for wards in relationship to geographical information to inform consolidation decisions. It remains to be seen whether the in-person voting rate will reflect the numbers seen in April 2020 or if new patterns of voter behavior will emerge depending on the evolving public health crisis and voter's new exposure to absentee by mail. WEC also anticipates providing additional guidance on the statutory process for moving polling places and providing notice. Additional work will also be done to explore expanded use of WisVote by consolidated jurisdictions. In consolidated jurisdictions using WisVote or Badger Book electronic poll books, there were no reports of voters receiving the wrong ballot. These tools also ensure new voter registrations are assigned to the correct districts and wards in real time.

National Guard as Poll Workers

Summary: Starting in March and with the emerging crisis WEC staff worked with local election officials to understand their need for poll workers, as is outlined above. WEC put in a ticket at the SEOC and had had many conversations about the need for poll worker personnel including the possibility of using the Wisconsin National Guard (WING). On April 2, 2020 WEC was notified that the National Guard would be activated to serve as poll workers in their local counties of residence. On that same day, WEC staff began working with municipal and county election officials to ensure their previous requests for personnel were still accurate. On Friday, April 4 WING put out a call for Service Members (SM) to serve as poll workers in their county of residence. On Saturday, April 5 WEC and WING personnel held a conference call with all 72 county clerks and large municipalities to discuss deployment plans. WEC staff also continued to develop online poll worker and election public health training for the SM to complete. Nearly 2,500 Wisconsin National Guard Service Members were put on active duty on April 6 to begin the intake and health screening process. On the afternoon of April 6, the SM completed the WEC-created training on poll worker duties, voter registration, chief inspector training, and election public health training. On Monday, April 6 the requested number of SM reported to county clerks to be deployed to municipalities in need to do polling place specific training. In some counties, there was a reserve number of SM who stayed with the County on Monday for additional training and to be on standby in case there were un-forecasted shortages on Election Day. The WING service members served in regular poll worker roles, in plain clothes and most in their home municipality or county of residence.

Discussion: Municipalities who used WING personnel report the experience as a very positive one that helped them to be successful on election day. Many jurisdictions are hopeful that the service members will continue to serve as volunteer poll workers in their home communities in the future. Some jurisdictions stated that additional time would have been useful to know how many service members

would be assigned to them sooner. Jurisdictions also expressed that it would have been helpful to train the service members earlier in the process. Only the Governor has the authority to activate the state's National Guard. Once the order was made and the call was made by WING for volunteers, WING was able to provide the number of requested volunteers in each county to WEC and subsequently to county and municipal election officials. Municipal, county and state election officials all wish to express their gratitude for the WING personnel who served their community on election day. The National Guard organized and facilitated its largest ever statewide activation but its Service Members served in the capacity of civilian poll workers under the supervision of municipal clerks and chief election inspectors.

Next Steps: WEC will continue to work with local election officials to identify poll worker shortages for the remaining 2020 elections. WEC has already conducted a survey with clerks in the 7th Congressional District. Currently jurisdictions in that area are citing a shortage of fewer than 30 poll workers, as compared to over 500 SM who served as poll workers for the Spring Election in those jurisdictions. WEC will continue to survey jurisdictions through this year and maintain a ticket for personnel with the SEOC. WEC will also continue to develop and augment training that can be used for last minute poll worker certification and training.

Post-Election Summary

There were additional election related changes that applied to the week following election day which required continued effort on the part of local election officials and support by WEC. Some of the main areas of focus include:

Postmarks and Postal Issues

Summary: As was previously mentioned, in previous elections less than 10% of voters cast their ballot using a by-mail absentee ballot. The current law also says that all absentee ballots must be received by 8:00pm on Election Day to be counted, there are no postmark requirements or exceptions for late arriving ballots in the law. Multiple Court actions prior to April 7 resulted in a requirement that by mail ballots must either be received by 8:00 pm on election day or be postmarked no later than April 7 and returned to the clerk by April 13th to be counted. Starting on April 8, municipalities began reporting irregular or illegible postmarks on ballot return envelopes. Some voters also reported not receiving their absentee ballots by Election Day. Some voters had been issued ballots more than 10 days prior to the election but never received them. WEC asked clerks to report their postmark and mailing issues to the USPS and the WEC.

Discussion: WEC worked with local election officials to understand and collect postmark examples and postal issues. WEC then worked with USPS personnel at the local, state, regional, and national level to get information about the postmark process. Ultimately, USPS provided information that each postal branch made best attempts to postmark ballots on election day, but in the case of missing or illegible postmarks there was no way to determine what date the ballot was marked. WEC staff also sent a letter to local, state, regional, and national USPS representatives asking for them to provide additional information on ballots that were not received and on outgoing ballots that were returned to municipalities without explanation. A response has not yet been received.

Next Steps: As outlined in the WEC staff memo on the 2020 CARES Act grant, WEC staff hopes to use the federal funds to build Intelligent barcodes into the absentee ballot system. Barcodes will allow voters and clerks to track their ballot through the entire process. It will also provide very important information about if and when ballots are received by voters. The current WisVote process and tracker on MyVote relies on the data that each clerk enters into the system regarding when they send the ballot and when they receive the voted ballot back. Barcodes would also provide a definitive answer of when each ballot was received by the postal service, voter, and clerk should postmarks ever be part of the process in future elections.

Results Reporting

Summary: Under current state law, on election night municipalities produce an unofficial results set, which they send to county election officials. The county election official then posts the unofficial results, by municipality and reporting unit on the county website. The Associated Press and other media outlets then aggregate the unofficial results that the public sees on election night. The results are then certified through the canvass process at the municipal, county, and state level before the results are official- usually a month after the election. Court decisions in the days prior to the April election barred local election officials from creating an official tally of results or releasing the unofficial results to the public until 4 pm on April 13th.

Discussion: To accommodate the new procedure, the WEC created new guidance for local election officials to ensure that jurisdictions could suspend voting equipment as open between Election Day and April 13th without producing a results set. Security procedures and chain of custody procedures were also put into place. On election night WEC sent a RAVE alert to all local election officials reminding them that it would be a violation of the court order to release the unofficial results before 4 pm on April 13th.

Next Steps: The extended tally period allowed WEC and local election officials to see the benefit of being able to carefully process ballots and results sets without the pressure of an end-of-the-night deadline. While the extended period was only ordered by the court for the April 7 election, it helps to reinforce the message that accurate and secure elections and tallies take time to produce. Lessons learned from the extended period will also be applied to future guidance and updates to results reporting systems and reports used by local election officials.

Conclusion

The Wisconsin Elections Commission spent significant time and attention over the past 3 years focusing on election security challenges related to foreign interference in campaigns and elections. While that effort sharpened the ability of the WEC and local election officials to develop contingency plans and train for adjusting to fast-moving developments, the rapid onset of the COVID-19 worldwide pandemic quickly and dramatically shifted the focus of emergency planning and responses. Two months prior to the election there were only emerging hints of the impact of the public health impacts on the election. One month before the election it was considered unlikely that over one million absentee ballots would be issued. One week before the election there was no guarantee that all polling places in Wisconsin

would be adequately staffed. The normal intensive work of both the WEC and local election officials prior to an election were impacted significantly, swiftly and repeatedly by circumstances beyond our control. Multiple lawsuits and court decisions required frequent Commission meetings and decisions and adjustments by election officials and voters.

Throughout the public health crisis and election preparations, the WEC staff and clerks overcame numerous challenges in order to serve Wisconsin voters, recognizing their roles as administrators of an election with parameters and characteristics beyond their control. This report reflects an initial attempt to document the issues which arose, steps taken to address those issues, and lessons learned to improve future processes. This report should also acknowledge that the changes and additional responsibilities needed due to COVID-19 were in addition to the high volume of work it normally takes all Wisconsin election officials to conduct a statewide election. As with each initiative of the WEC and local election officials, the ultimate focus is on the experience of each individual voter and their ability and opportunities to participate in democracy.

While the election was certainly imperfect in some respects, there can be no doubt that WEC staff and its many partners made extraordinary efforts to assist in the administration of the Spring Election and Presidential Primary. County and municipal clerks across the state showed amazing flexibility and dedication to ensure resources could be used in the most efficient manner, while considering the health and safety of voters and election officials. The WEC appreciates the assistance and cooperation of its partner agencies at the federal and state levels, the Wisconsin National Guard and State Emergency Operations Center, county and municipal clerks, poll workers and voters who made the election a reality in the face of uncertainty. With these partners the WEC will continue to evaluate lessons learned and to research and implement additional measures to improve the administration of future elections.

EXHIBIT 21



WISCONSIN ELECTIONS COMMISSION

Administering Wisconsin's Election Laws

[Home](#) » [Node](#)

Special Teleconference Meeting

Time: April 18, 2020 - 1:30pm

Location:

Due to the COVID-19 pandemic, this meeting is being held via teleconference only. Members of the public and media may attend by telephone. Please see the online meeting and call-in information below. All public participants' phones/microphones will be muted during the meeting. Members of the public wishing to communicate to the Commissioners should email elections@wi.gov with "Message to Commissioners" in the subject line. Those messages will be provided to the Commission members.

[Commission Meeting](#)

Meeting Recordings:

https://atrtials.zoom.us/rec/share/vpx2KKnMzV9LY4nnzBn9ZaV9ONnfeaa81yRLqadZyEvJoLGiNFl5m2JdLzuO5e_Q

<https://wiseye.org/2020/04/18/wisconsin-elections-commission-special-teleconference-meeting-3/>

AGENDA – OPEN AND CLOSED SESSION

- A. Call to Order
- B. Administrator's Report of Appropriate Meeting Notice
- C. Discussion of April 7 Spring Election and Presidential Preference Primary
- D. Discussion of Milwaukee and Green Bay Polling Place Consolidation
- E. Discussion of Zignego litigation
- F. Discussion of federal CARE grant
- G. Closed Session
 - 1. Litigation Update - 19.85 (1) (g) The Commission may confer with legal counsel concerning litigation strategy.
- H. Adjourn

The Elections Commission will convene in open session but may move to closed session under Wis. Stat. § 19.851. This meeting is not noticed for the Commission to return to open session following the closed session.

| Attachment | Size |
|---|-----------|
| Agenda-Open-Closed Meeting Notice 4-18-2020.pdf | 111.82 KB |

| Attachment | Size |
|---|-----------|
| April 7 Election Summary and Next Steps.pdf | 168.94 KB |
| Ballot Data as of April 17 2020.pdf | 63.64 KB |
| ERIC Data as of April 17 2020.pdf | 67.13 KB |
| CARES ACT.pdf | 151 KB |
| CARES Act Disbursement Req ltr.pdf | 90.78 KB |

Wisconsin Elections Commission | 212 East Washington Avenue, Third Floor P.O. Box 7984 | Madison, Wisconsin 53707-7984

tele (608) 266-8005 | *fax* (608) 267-0500 | *tty* 1-800-947-3529 | *e-mail* elections@wi.gov

Toll-Free Voter Help Line: 1-866-VOTE-WIS

EXHIBIT 22

Coronavirus (COVID-19)

[City Services \(/coronavirus\)](#)

[Public Health \(https://www.publichealthmdc.com/coronavirus\)](https://www.publichealthmdc.com/coronavirus)

[Get Alerts \(/health-safety/coronavirus/updates\)](#)

[Español \(/es/health-safety/coronavirus\)](#)

[Hmoob \(/hmn/health-safety/coronavirus\)](#)

[Home \(/\)](#) / [News & Updates \(/news\)](#) / CORRECTED Polling Place Listing for April 7

CORRECTED Polling Place Listing for April 7

Wednesday, April 1, 2020 - 10:16am

The City of Madison has changed many polling locations due to COVID-19. Below is a list of all polling places for the April 7 Spring Election and Presidential Preference Primary.

City of Madison voters are also able to use the polling place data map created by the City of Madison Planning Division. The map can be found at <https://bit.ly/3dljOTJ> (<https://bit.ly/3dljOTJ>).

All polling places have also been updated on the MyVote Wisconsin website. By visiting myvote.wi.gov (<http://myvote.wi.gov>), voters can confirm their polling place and view a sample ballot.

- 1 Fire Station #14 3201 Dairy Drive
- 2, 123 Glendale Elementary, 1201 Tompkins Drive
- 3, 4, 7 City Church, 4909 E Buckeye Road
- 5, 6, 9, 128, 130, 132, 133 Elvehjem Elementary, 5106 Academy Drive

8, 129, 131, 134 Fire Station #13, 6350 Town Center Drive
10, 11, 17 Kennedy Elementary, 221 Meadowlark Drive
12 New Beginnings Church, 602 Acewood Boulevard
3, 14 LaFollette High School, 700 Pflaum Road
15 YMCA, 711 Cottage Grove Rd
16, 24, 142 Whitehorse Middle School, 218 Schenk Street
18, 21 Hy-Vee, 3801 E Washington Avenue
19, 20 East Madison Community Center, 8 Straubel Court
22, 136, 39 Hawthorne Library, 2707 E Washington Ave
23 Fire Station #11, 4011 Morgan Way
25, 26, 126, 145 Sandburg Elementary, 4114 Donald Drive
27, 28, 29 East High School, 2222 E Washington Ave
30 Sherman Middle School, 1610 Ruskin Street
31, 32 Lakeview Library, 2845 N Sherman Ave
33, 34, 152 Warner Park Shelter, 1625 Northport Drive
35, 36 Mendota Elementary, 4002 School Road
37 Lindbergh Elementary, 4500 Kennedy Road
38, 112, 118, 135 Blackhawk Middle School, 1402 Wyoming Way
40 Olbrich Gardens, 3330 Atwood Ave
41 O’Keeffe Middle School, 510 S Thornton Ave
42 Wil-Mar Neighborhood Center, 504 S. Brearly Street
43, 52 Madison Municipal Building, 215 MLK Jr Blvd
44 Tenney Park Pavilion, 402 N Thornton Avenue
45 Lapham Elementary, 1045 E Dayton Street
46 Gates of Heaven, 302 E Gorham Street
49, 50 Madison Senior Center, 330 W Mifflin Street
51, 53 Central Library, 201 W Mifflin Street
54, 67 UW Welcome Center, 21 N Park Street
55, 58 Union South, 1308 W Dayton Street
56, 66 Union South – Room 2, 1308 W Dayton Street
47, 48, 57 UW Memorial Library, 728 State Street
59, 60 Eagle Heights Community Center, 611 Eagle Hts
61, 63 West High School, 30 Ash Street

- 62, 68 Trinity United Methodist Church, 1123 Vilas Avenue
- 64 Hoyt School, 3802 Regent Street
- 65 Wingra School, 718 Gilmore St
- 69, 72 Catholic Multicultural Center, 1862 Beld Street
- 70, 113 Bridge – Lake Point – Waunona, 1917 Lake Point Dr
- 71, 139, 146 Badger Rock Neighborhood Center, 501 E Badger Road
- 73 Village on Park, 2300 S Park Street
- 74, 75 Leopold Elementary, 2602 Post Road
- 76, 78 Thoreau Elementary, 3870 Nakoma Road
- 77, 93, 94 Toki Middle School, 5606 Russett Road
- 79 Sequoia Library, 4340 Tokay Blvd
- 80, 81 Midvale Elementary, 502 Caromar Drive
- 82 Midtown Police District, 4020 Mineral Point Road
- 83 Covenant Presbyterian Church, 326 S Segoe Road
- 84 Mount Olive Lutheran Church, 110 N Whitney Way
- 85 Wellspring United Methodist, 5702 South Hill Drive
- 86 Asbury United Methodist, 6101 University Avenue
- 87, 89 John Muir Elementary School, 6602 Inner Drive
- 88 Alicia Ashman Library, 733 N High Point Road
- 90, 104, 117, 141, 91 Falk Elementary, 6323 Woodington Way
- 92, 95, 97, 148 Meadowridge Library, 5726 Raymond Road
- 96, 99, 98, 144 Chavez Elementary, 3502 Maple Grove Drive
- 100, 101, 102, 119, 121 Elver Park Shelter, 1250 McKenna Boulevard
- 103, 114, 115, 116 West Police District, 1710 McKenna Boulevard
- 105, 107, 127, 150 Fire Station #12, 400 South Point Road
- 106, 125, 137, 140, 147, 151, 111, 122, 124, 138, 143 Blackhawk Church, 9620
Brader Wy
- 108, 149 Lussier Community Education Center, 55 S Gammon Rd
- 109 High Point Church, 7702 Old Sauk Road
- 110, 120 Attic Angel Association, 640 Junction Rd


Contacts

- Maribeth Witzel-Behl, (608) 266-4601, clerk@cityofmadison.com
(<mailto:clerk@cityofmadison.com>)

Agency: [Clerk's Office \(/clerk\)](/clerk)

Category: [City Hall \(/city-hall\)](/city-hall)

Tags: [COVID-19 \(/tags/covid-19\)](/tags/covid-19)

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CITY OF MADISON

City-County Building

210 Martin Luther King Jr. Blvd
Madison, WI 53703

Madison Municipal Building

215 Martin Luther King Jr. Blvd
Madison, WI 53703

Monday – Friday, 8:00 am – 4:30 pm

WI Relay Service (</civil-rights/programs/disability-rights-services-program/assistive-communication/wisconsin-relay>)

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[Refuse & Recycling \(https://www.cityofmadison.com/streets/refuse/collectionlookup.cfm\)](https://www.cityofmadison.com/streets/refuse/collectionlookup.cfm)

[Metro Transit \(/metro\)](/metro)

[Parking Garages & Lots \(/parking-utility/garages-lots\)](/parking-utility/garages-lots)

City Hall

[Mayor's Office \(/mayor\)](/mayor)

[Common Council \(/council\)](/council)

[Meeting Schedule \(/clerk/meeting-schedule\)](/clerk/meeting-schedule)

2020 Census [↗ \(https://my2020census.gov/\)](https://my2020census.gov/)

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(/)

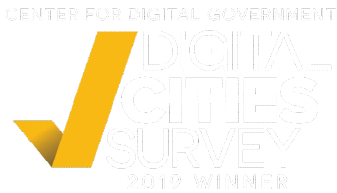
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(<https://www.govtech.com/dc/digital-cities/Digital-Cities-Survey-2019--Winners-Announced.html>)

EXHIBIT 18

No Detectable Surge in SARS-CoV-2 Transmission due to the April 7, 2020 Wisconsin Election

Kathy Leung, Ph.D. and Joseph T. Wu, Ph.D., WHO Collaborating Centre for Infectious Disease Epidemiology and Control, School of Public Health, Li Ka Shing Faculty of Medicine, The University of Hong Kong, Hong Kong Special Administration Region, China

Kuang Xu, Ph.D., and Lawrence M. Wein, Ph.D. (corresponding author), Graduate School of Business, Stanford University, Stanford, CA

Abstract: We analyze confirmed cases and new hospitalizations in Wisconsin in the weeks surrounding the April 7, 2020 election, and find no evidence of a surge in SARS-CoV-2 transmission.

The April 7, 2020 Wisconsin election produced a large natural experiment to help understand the transmission risks of the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). Up to 300,000 people voted in person [1-2] and waiting times in Milwaukee averaged 1.5-2 hr [3]. Poll workers had surgical masks and latex gloves, hand sanitizer was made available to voters, isopropyl alcohol wipes were used to clean voting equipment, and painting tape and signs were used to facilitate social distancing [2].

Wisconsin tracks cases confirmed by testing (Fig. 1A) and throughout April 2020 have restricted testing to frontline workers and those hospitalized with serious illness [4]. We used a deconvolution-based method to reconstruct the SARS-CoV-2 epidemic curve by dates of infections rather than dates of reporting by health authorities, and then used two different methods [5]-[6] to estimate the instantaneous reproduction number R_t , which is the average number of secondary cases generated by one primary case with the time of infection on day t , from March 25 (the start of the safer-at-home order) through April 18 (see the Supplementary Appendix).

As seen in Fig. 1B, there is no detectable spike in R_t on April 7. The number of SARS-CoV-2 tests performed in Wisconsin has been relatively stable throughout April [7] (Fig. 1C), suggesting that reduced testing capacity in the days after April 7, which could have censored some of the April 7 infections, did not occur. Moreover, new SARS-CoV-2 hospitalizations in Wisconsin have steadily declined throughout April (Fig. 1D), from a high of 101 on April 3 to a low of 14 on April 18 [7], suggesting that daily new hospitalizations are much less than testing capacity.

The lengths of the incubation period and the reporting delay imply that April 7 infections would not be reported until April 17 on average, with most cases being reported during April 11-22. Taken together, there is no evidence to date that there was a surge of infections due to the April 7, 2020 election in Wisconsin, which has a relatively low level of SARS-CoV-2 transmission in the US.

Finally, the Wisconsin Department of Health Services announced on April 22 that 19 people who either voted in person or worked at the polls on April 7 have tested positive for SARS-CoV-2, although several of these people also experienced non-voting exposures [8]. This fact is not inconsistent with our population-level analysis, because 19 cases is small relative to the total number of confirmed cases in Wisconsin. To put this information into perspective, if we assume that the SARS-CoV-2 fatality rate among symptomatic patients who were physically capable of voting in person on April 7 (e.g., not including nursing home residents) is 1% (using the fatality rate of known cases for people aged <60 [9]), then we would expect 0.19 deaths out of 300,000 people, which is the fatality risk of driving an automobile approximately 50 miles [10]. However, in addition to the individual risk of voting on April 7, there is the community risk: how many downstream cases will these 19 original cases generate? According to Fig. 1B, the reproduction number in Wisconsin has been hovering near the value of one for all of April. If this value was much larger than one (as it was in, say, January) then these 19 cases would cause a lot of downstream damage, and if this value was clearly smaller than one then they would cause minimal damage. But a value near one, coupled with the small number of cases, means that it is very difficult to reliably predict the amount of downstream damage.

Taken together, it appears that voting in Wisconsin on April 7 was a low-risk activity.

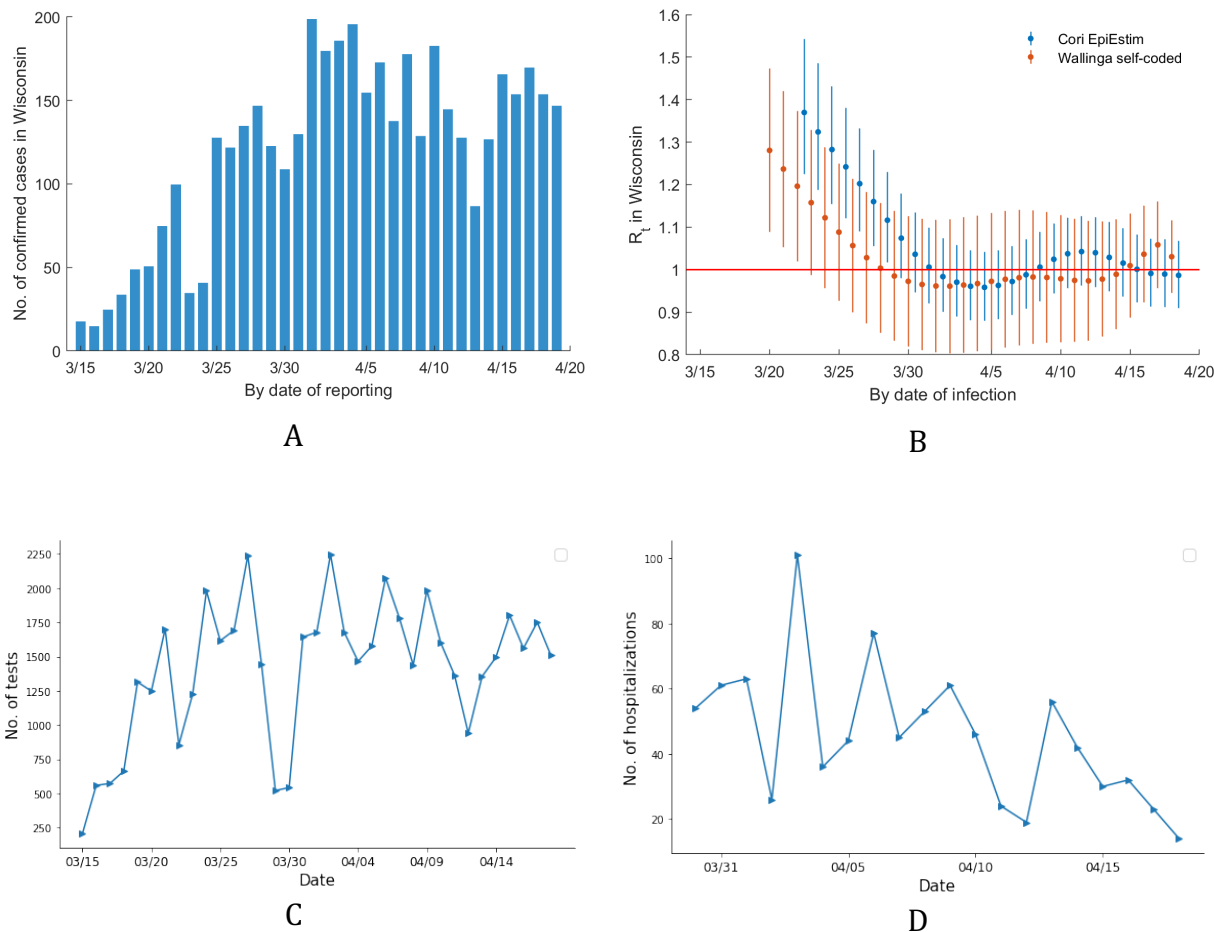


Figure 1. SARS-CoV-2 Dynamics Surrounding the April 7, 2020 Election in Wisconsin. Panel A shows the number of daily confirmed SARS-CoV2 cases in Wisconsin from March 15 to April 19. Panel B shows the estimated instantaneous reproduction number R_t (along with 95% confidence intervals) each day from March 25 (the start of the safer-at-home-order in Wisconsin) to April 18 using two different methods. Panel C shows the number of SARS-CoV-2 tests performed each day from March 15 to April 18. Panel D shows the number of new SARS-CoV-2 hospitalizations in Wisconsin on each day from March 30 to April 18. In generating the curve in Panel C, a possible mis-entry in the original data set [4] led to the cumulative test count on March 29 being smaller than the day prior; in response, we replaced the March 29 cumulative case count by the average value between March 28 and 30.

1. 2020 spring election and presidential preference vote ballot status as of April 17, 2020. Accessed at <https://elections.wi.gov/sites/elections.wi.gov/files/2020-04/Ballot%20Data%20as%20of%20April%2017%202020.pdf>
2. Wisconsin Election Commission. Summary of April 7, 2020 election. Accessed at <https://elections.wi.gov/sites/elections.wi.gov/files/2020-04/April%207%20Election%20Summary%20and%20Next%20Steps.pdf>
3. Spicuzza M. 'A very sad situation for voters': Milwaukeeans brave wait times as long as 2 ½ hours, top election official says. Milwaukee Journal Sentinel, April 7, 2020.
4. Wisconsin Department of Health Services. Coronavirus Disease 2019 (COVID-19) Situation Report. Publication P-02624, March 25, 2020.
5. Wallinga J, Teunis P. Different epidemic curves for severe acute respiratory syndrome reveal similar impacts of control measures. Am J Epidemiology 2004;160:509-516.
6. Cori A, Ferguson NM, Fraser C, Cauchemez S. A new framework and software to estimate time-varying reproduction numbers during epidemics. Am J Epidemiol. 2013;178:1505-12.
7. Wisconsin COVID-19 Historical Cases by State Boundary as of April 19. Accessed at <https://data.dhsgis.wi.gov/datasets/wisconsin-covid-19-historical-cases-state-boundary>
8. Stracqualursi V, Phillip A. 19 coronavirus cases connected to Wisconsin primary election, state health official says. cnn.com, April 22, 2020. Accessed at <https://www.cnn.com/2020/04/22/politics/wisconsin-april-7-election-coronavirus-cases/index.html>
9. Verity R, Dorigatti I, Winskill P et al. Estimates of the severity of coronavirus disease 2019: a model-based analysis. Lancet 2020;395:published online on March 30, 2020.
10. National Safety Board. Injury facts. Accessed on April 22, 2020 at <https://injuryfacts.nsc.org/motor-vehicle/historical-fatality-trends/deaths-and-rates/>

SUPPLEMENTARY APPENDIX

The instantaneous reproductive number R_t was defined as the average number of secondary cases generated by one primary case with the time of infection on day t . If $R_t > 1$ the epidemic is expanding at time t , whereas $R_t < 1$ indicates that the epidemic size is shrinking at time t .

Since the epidemic curve of Wisconsin is based on the dates of test confirmation, we use a deconvolution-based method to reconstruct the SARS-CoV-2 epidemic curve by dates of infection [1-2]. Let $f_{incubation}$ be the probability density function (pdf) of the incubation period, and $f_{onset-confirmation}$ be the pdf of the time between symptom onset and test confirmation. We assume $f_{incubation}$ and $f_{onset-confirmation}$ are independent such that the pdf of the time between infection and confirmation is

$$f_{infection-confirmation}(t) = \int_0^t f_{onset-confirmation}(t-u)f_{incubation}(u)du$$

We use $f_{infection-confirmation}$ to deconvolute the time series of the daily number of confirmed cases to reconstruct an epidemic curve of daily number of new infections. We assume the incubation period distribution is gamma with mean and SD of 5.2 and 2.3 days [3]. We assume that the distribution of the time between symptom onset and confirmation is gamma with mean and standard deviation (SD) of 4.3 and 3.2 days, based on 186 cases reported in Jan-Feb 2020 in Beijing [4]. With the epidemic curve by dates of infection in hand, we applied two different methods -- developed by Wallinga and Teunis [5] and by Cori et al. [6] -- to estimate R_t using the R package EpiEstim. We assume the generation time distribution is approximately the same as the serial interval distribution, which was

inferred to be gamma with mean 5.4 and SD 4.7 days from the dates of symptom onset of 56 infector-infectee pairs from mainland China [4].

1. Goldstein E, Dushoff J, Ma J et al. Reconstructing influenza incidence by deconvolution of daily mortality time series. PNAS 2009;106:21825-29.
2. Wu JT, Ho A, Ma ESK et al. Estimating infection attack rates and severity in real time during an influenza pandemic: analysis of serial cross-sectional serologic surveillance data. PLOS Medicine 2011;8,10:e1001103.
3. Li Q, Guan X, Wu P et al. Early transmission dynamics in Wuhan, China, of novel coronavirus-infected pneumonia. N Engl J Med 2020;382:1199-1207.
4. Leung K, Wu JT, Leung GM. First-wave COVID-19 transmissibility and severity in China outside Hubei after control measures, and second-wave scenario planning: a modelling impact assessment. Lancet 2020;395:published online April 8.
5. Wallinga J, Teunis P. Different epidemic curves for severe acute respiratory syndrome reveal similar impacts of control measures. Am J Epidemiology 2004;160:509-516.
6. Cori A, Ferguson NM, Fraser C, Cauchemez S. A new framework and software to estimate time-varying reproduction numbers during epidemics. Am J Epidemiol. 2013;178:1505-12.

EXHIBIT 25



WISCONSIN ELECTIONS COMMISSION

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Absentee Ballot Report - May 12, 2020 Special Election for Congressional District 7

Date: Mon, 05/18/2020 - 07:30

Absentee Counts by County - 2020 Special Election Representative in Congress District 7

Please note that the numbers in this report are unofficial, and are based on data entered into the statewide voter system by clerks. The column Absentee Ballots Reported Returned does not reflect whether the ballots were counted. Official reports on how many ballots were counted are not due from clerks until 30 days after the election May 12. Users of this report should exercise caution when drawing conclusions and making comparisons to election results.

| County Name | AbsenteeApplications | BallotsSent | BallotsReturned |
|-------------------|----------------------|-------------|-----------------|
| ASHLAND COUNTY | 2465 | 2451 | 2115 |
| BARRON COUNTY | 6411 | 6330 | 5159 |
| BAYFIELD COUNTY | 3778 | 3582 | 3244 |
| BURNETT COUNTY | 2088 | 2054 | 1650 |
| CHIPPEWA COUNTY | 3463 | 3378 | 2863 |
| CLARK COUNTY | 2266 | 2115 | 1856 |
| DOUGLAS COUNTY | 6951 | 6894 | 5512 |
| EAU CLAIRE COUNTY | 1 | 0 | 0 |
| FLORENCE COUNTY | 930 | 845 | 780 |
| FOREST COUNTY | 1436 | 1409 | 1168 |
| IRON COUNTY | 1457 | 1440 | 1258 |
| JACKSON COUNTY | 200 | 199 | 148 |

| | | | |
|------------------|--------|--------|-------|
| JUNEAU COUNTY | 746 | 727 | 577 |
| LANGLADE COUNTY | 2876 | 2860 | 2507 |
| LINCOLN COUNTY | 4500 | 4471 | 3140 |
| MARATHON COUNTY | 25161 | 24832 | 21218 |
| MONROE COUNTY | 429 | 408 | 298 |
| ONEIDA COUNTY | 8765 | 8726 | 7152 |
| POLK COUNTY | 4714 | 4539 | 3813 |
| PRICE COUNTY | 2432 | 2373 | 1914 |
| RUSK COUNTY | 1555 | 1452 | 975 |
| ST. CROIX COUNTY | 13535 | 13428 | 11047 |
| SAWYER COUNTY | 3120 | 3075 | 2646 |
| TAYLOR COUNTY | 2374 | 2326 | 2076 |
| VILAS COUNTY | 5413 | 5354 | 4708 |
| WASHBURN COUNTY | 2592 | 2553 | 2122 |
| WOOD COUNTY | 4766 | 4725 | 4061 |
| TOTAL | 114424 | 112546 | 94007 |

Wisconsin Elections Commission | 212 East Washington Avenue, Third Floor P.O. Box 7984 |
Madison, Wisconsin 53707-7984

tele (608) 266-8005 | fax (608) 267-0500 | tty 1-800-947-3529 | e-mail elections@wi.gov

Toll-Free Voter Help Line: 1-866-VOTE-WIS

EXHIBIT 26



WISCONSIN ELECTIONS COMMISSION

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May 1, 2020 Voter Registration Statistics

Date: Fri, 05/01/2020 - 00:00

File(s)

| Attachment | Size |
|---|-----------|
| RegisteredVotersByCounty_05-01-2020.xlsx | 7.06 KB |
| RegisteredVotersByMunicipality_05-01-2020.xlsx | 130.63 KB |
| RegisteredVotersByWard_05-01-2020.xlsx | 226.7 KB |
| RegisteredVotersByStateAssemblyDistrict_05-01-2020.xlsx | 7.98 KB |
| RegisteredVotersByStateSenateDistrict_05-01-2020.xlsx | 6.04 KB |
| RegisteredVotersByCongressionalDistrict_05-01-2020.xlsx | 5.24 KB |
| RegisteredVotersByAgeGroup_05-01-2020.xlsx | 5.11 KB |

The State of Wisconsin had 3,397,693 active registered voters on May 1, 2020.

Wisconsin does not collect information on the gender, race or political party affiliation of registered voters.

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EXHIBIT 27



WISCONSIN ELECTIONS COMMISSION

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More Than 69,000 Absentee Ballots Already Returned for May 12 Special Election

Date: Fri, 05/08/2020 - 15:45

MADISON, WI – More than 69,000 voters in Wisconsin's 7th Congressional District have already returned their absentee ballots for the Special Election on May 12, according to the Wisconsin Elections Commission.

As of Friday morning, 110,921 absentee ballot applications have been reported received by municipal clerks in the district, which covers all of 21 Northern Wisconsin counties and portions of another five. Those clerks also report sending 107,644 ballots and receiving 69,472 back.

It's important to note that these numbers do not include absentee ballot requests that have not yet been entered into the state system by clerks, meaning the actual numbers are higher. Because of the rural nature of the 7th CD, there may also be some delays in data entry in the state's system because many small-town clerks rely on their county clerks for this task.

Daily absentee ballot reports, including county-by-county numbers, are being posted here: <https://elections.wi.gov/publications/statistics/absentee>.

Meagan Wolfe, Wisconsin's chief elections official, urged voters to return their absentee ballots as soon as possible to ensure they are received by the deadline of 8 p.m. on Tuesday, May 12.

“We want everyone’s vote to count,” Wolfe said. “If you are concerned the post office may not get your ballot to your clerk’s office in time, please make arrangements to drop your ballot off at your clerk’s office or at the polling place on Election Day.” Wisconsin law allows voters to have another person deliver their absentee ballot to the clerk’s office or polling place as an alternative to mailing.

Wolfe also encouraged voters who have not already returned their absentee ballots to make sure the return envelope is signed and properly witnessed. Witnesses are required to sign the envelope and provide an address, and if either is missing, the ballot cannot be counted.

Voters heading to the polls on Tuesday are encouraged to double-check their polling place location at <https://MyVote.wi.gov> or by contacting their municipal clerk’s office. While no large-scale polling place reductions are planned, some clerks with multiple polling places may be consolidating them simply because this is a special election and they anticipate a lower voter turnout.

The Wisconsin Elections Commission, working with the State Emergency Operations Center, has distributed personal protective equipment (PPE) and sanitizing supplies to all clerks in the district. Voters should follow instructions at the polling place to practice safe social distancing.

Wisconsin National Guard members will be deployed to some polling places in the district where clerks have identified shortages. As they also did in April, these National Guard members will serve as community members at polling places in their home counties in plain clothes. Approximately 250 Guard members have been activated, though about 125 will be initially assigned to polling places, with the remainder in reserve or supporting roles in the event of last-minute shortages.

Wolfe said it is difficult to know what these absentee ballot reports might indicate about turnout in the May 12 Special Election. “We normally estimate turnout by looking at recent similar elections, but in this case, there are few good comparisons available,” she said.

Congressional District 7 has approximately 420,500 registered voters, meaning somewhat more than 25% of registered voters have requested absentee ballots so far. For April 7, approximately 1.23 million requests were made by the state’s 3.38 million registered voters, or 36%.

| Attachment | Size |
|------------|------|
|------------|------|

| Attachment | Size |
|---|--------------|
| NR Elections - WEC Releases Absentee Numbers for CD7 Special Election-COVID-19 05-08-2020.pdf | 160.16 KB |

For more information, contact

Reid Magney, public information officer, 608-267-7887, or reid.magney@wi.gov.

Wisconsin Elections Commission | 212 East Washington Avenue, Third Floor P.O. Box 7984 |
Madison, Wisconsin 53707-7984

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Toll-Free Voter Help Line: 1-866-VOTE-WIS

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

DEMOCRATIC NATIONAL COMMITTEE, et al.,

Plaintiffs,

Case No. 20- CV-249

v.

MARGE BOSTELMANN, et al.,

Defendants,

and

REPUBLICAN NATIONAL COMMITTEE,
REPUBLICAN PARTY OF WISCONSIN AND
WISCONSIN STATE LEGISLATURE,

Intervening Defendants

SYLVIA GEAR, et al.,

Plaintiffs,

Case No. 20- CV-278

v.

DEAN KNUDSON, et al

Defendants,

and

REPUBLICAN NATIONAL COMMITTEE,
REPUBLICAN PARTY OF WISCONSIN AND
WISCONSIN STATE LEGISLATURE,

Intervening Defendants.

WEC DEFENDANTS' STATUS REPORT

Defendants Dean Knudson, Julie M. Glancey, Robert F. Spindell, Jr., Mark L. Thomsen, Ann S. Jacobs and Marge Bostelmann, by their undersigned counsel and pursuant to this Court's Order of June 10, 2020, submit the following statement:

I. Measures the WEC is Taking or Anticipates Taking to Prepare for the August and November 2020 Elections.

Given the COVID-19 crisis, and in addition to normal election preparations, the Wisconsin Elections Commission ("WEC") and its staff have taken, or plan to take the following measures to prepare for the August and November Elections:

- a. Comprehensive Reports: "Summary of April 7, 2020 Election" and "April 7, 2020 Absentee Voting Report." Following the April 7, 2020 Spring Election, WEC staff compiled a report¹ for the Commission that captured the major efforts the WEC staff responded to and implemented for the April 7, 2020 Election. The report identified areas of impact, provided a discussion of each, and outlined next steps related to efforts and initiatives of WEC staff to improve election administration for the 2020 Fall elections. The report was presented and accepted by the Commission at its April 18, 2020 meeting. The report is attached as Exhibit A. The Commission also directed staff to compile a report² outlining absentee voting issues identified during the April 7, 2020 election and provide recommendations on how to improve absentee voting processes moving forward given the anticipated shift

¹ <https://elections.wi.gov/sites/elections.wi.gov/files/2020-04/April%207%20Election%20Summary%20and%20Next%20Steps.pdf>

² <https://elections.wi.gov/node/6908>

to by-mail absentee voting that will occur at the 2020 Fall elections.

The Commission adopted the report at its May 20, 2020 meeting. The report is attached as Exhibit B.

- b. Absentee Ballot Mailers. On May 27, 2020, the WEC directed staff to spend federal CARES Act grant money (approximately \$2.25 million) to develop, print and send an informational mailing to approximately 2.7 million registered voters in Wisconsin that provides information about the options for voting at the 2020 General Election. The mailer will be sent to registered voters who do not have an active absentee ballot request on file and who are not on the Electronic Registration Information Center (ERIC) Movers List. The informational mailing also includes a paper absentee ballot request form for voters that choose to request an absentee ballot using a paper form. The paper form can be returned to the WEC or the voter's municipal clerk to request an absentee ballot. Due to the anticipated high volume of absentee ballot requests for the 2020 General Election, WEC staff and contractors will be assisting with data entry of the requests into the statewide voter registration system (WisVote). Municipal clerks would still be required to review the request and take action by either approving the request and sending the ballot, following up with the voter to obtain additional information, or denying the request if applicable. WEC staff would also be available to follow-up with

absentee voters that submitted an incomplete application, including a lack of photo ID if required. The intent is to shift some of the data entry volume away from municipal clerks so they can focus on final review of the application and getting absentee ballots out to voters as soon as practicable after receiving the request. The informational mailer was sent to the printer on June 22, 2020 to begin the printing and proofing process. The informational mailing is scheduled to be sent on or about September 1, 2020 to the targeted group of registered voters. A sample of that mailer and paper absentee ballot request form is attached as Exhibit C.

- c. Sanitation and PPE Supplies³. The WEC has directed staff to spend federal CARES Act grant money (\$500,000) to secure and distribute sanitation supplies and other materials to all 72 counties across the state, who in turn will distribute these supplies to municipalities in their respective counties. Similar to the distribution of supplies coordinated between the WEC, the State Emergency Operations Center, the Wisconsin National Guard and County Clerks for the April election, based on a needs survey conducted in mid-June, the WEC anticipates providing municipalities with the following supplies (subject to availability) for the upcoming Fall elections: disinfecting solution (surface and hand sanitizer), empty spray bottles for use with

³ <https://elections.wi.gov/sites/elections.wi.gov/files/2020-05/Clerk%20Comm%20re%20May%2027%20Commission%20Meeting.pdf>

disinfecting solution, paper towels, disinfecting wipes such as Clorox wipes, hand sanitizer (normal gel based), procedural masks, latex gloves, painters tape (social distancing markers, signage). Isopropyl wipes (for equipment cleaning) and one-time use writing utensils are also possible supplies that could be available and distributed if requested. Municipalities are also instructed to use any leftover supplies from the April election for the August and November elections.

- d. Funding to Municipal Clerks (Subgrants)^{4, 5}. The WEC has directed staff to spend federal CARES Act grant money (up to \$4.1 million) to provide subgrants to municipalities to help pay for increased election costs due to the COVID-19 pandemic. A municipality is eligible to receive a base grant amount of \$200 plus an additional amount of \$1.10 per registered voter in their municipality. Allowable uses for the subgrant to municipalities include: additional ballot supplies, printing and postage for higher levels of absentee voting, additional cleaning supplies, cleaning services and protective equipment, additional staffing for processing higher levels of absentee ballots, additional mailings for public communication related to changes in procedures or other pandemic related issues, additional absentee ballot drop boxes,

⁴ <https://elections.wi.gov/sites/elections.wi.gov/files/2020-05/Clerk%20Comm%20re%20May%2027%20Commission%20Meeting.pdf>

⁵ <https://elections.wi.gov/WEC-CARES-subgrant>

additional space leasing to process higher volumes of absentee ballots or spread out operations, and acquisition of additional equipment necessary to process a higher volume of absentee ballots. This subgrant opened on June 17, 2020 and municipalities have until September 1, 2020 to submit a subgrant agreement to the WEC requesting the funds.

- e. Intelligent Mail Barcodes⁶. The WEC has directed staff to spend federal CARES Act grant money (up to \$400,000) on WEC staff development costs for Intelligent Mail Barcodes (IMBs) and other absentee process improvements. IMBs will allow clerks and voters to track an absentee ballot once it leaves the municipal clerk's office and enters the mail stream of US Postal Service. IMBs are scanned by US Postal Service processing centers while the ballot is en route to the voter. Users of the WisVote system (clerks, staff) will have access to the status and location of the ballot in WisVote and their voters will have access to this US Postal Service-informed information on the MyVoteWI website. Use of IMBs will not change the preparation of absentee ballots in any significant way, but they will allow for more precise population of tracking information in WisVote/MyVoteWI. WEC staff have also conducted training webinars for clerks on IMBs⁷.

⁶ <https://elections.wi.gov/sites/elections.wi.gov/files/2020-05/Clerk%20Comm%20re%20May%2027%20Commission%20Meeting.pdf>

⁷ <https://elections.wi.gov/node/6926>

- f. Clerk Advisory Committee for Vote by Mail. Following the April 7 Spring Election, WEC formed a new Clerk Advisory Committee dedicated to Vote by Mail to provide direction and feedback from clerks on WEC staff proposals regarding Vote by Mail⁸.
- g. HAVA Elections Security Subgrant to Counties⁹. The WEC has directed staff to spend federal Help America Vote Act (HAVA) security funds (up to \$3.9 million) by offering a subgrant to assist counties with improvement of their overall election security posture as they prepare for the 2020 Fall elections. The subgrant funds are being provided to assist counties with conducting assessments of their systems, remediation of discovered issues and other overall improvements to election security at the county level. The HAVA election security subgrant to counties provides a maximum allocation of a \$35,000 base grant per county, plus an additional amount of \$.30 per voting-age person in the county based on 2019 voting-age population demographics estimated by the Wisconsin Department of Administration. Counties will complete an application outlining individual security needs based on its assessment, and the Commission will approve subgrants up to the allowable amount per the approved formula.

⁸ https://elections.wi.gov/sites/elections.wi.gov/files/2020-05/May%202020%2C%202020.Final_.pdf

⁹ https://elections.wi.gov/sites/elections.wi.gov/files/2020-06/Open%20Session%206.10.2020.Final_.pdf

- h. HAVA Elections Security Subgrant – Reopened to Municipalities¹⁰. In 2019, the WEC offered a HAVA election security subgrant to municipalities to obtain up to date, secure hardware, professional IT support to help manage their systems and to ensure that clerks attend security training offered by the WEC and other partners. Not all municipalities applied for the subgrant in 2019. The WEC has authorized the reopening of this grant program in 2020 to municipalities that did not take advantage of it in 2019. The WEC has directed staff to spend HAVA security funds (up to \$2.1 million) to assist municipalities in meeting basic security standards prior to the 2020 Fall elections. Municipalities are eligible to receive up to \$1,200 to address either baseline security needs, or if those standards are already met, advanced security needs as outlined in the agreement.
- i. Changes to MyVote¹¹. In conjunction with the introduction of Intelligent Mail Barcodes described above, and changes to WisVote described below, WEC staff introduced several upgrades to the MyVote Wisconsin website to improve the quality and quantity of information available to voters. Changes were applied to the absentee request process and to the absentee tracking process. For the request process, a more-user friendly interface and menu options were developed through extensive usability testing conducted with the general public.

¹⁰ https://elections.wi.gov/sites/elections.wi.gov/files/2020-06/Open%20Session%206.10.2020.Final_.pdf

¹¹ https://elections.wi.gov/sites/elections.wi.gov/files/2020-06/Open%20Session%206.10.2020.Final_.pdf

These changes were specifically designed to reduce the most common user errors, such as submitting a personal photograph instead of a photo ID. Changes to the tracking process added information and linked MyVote tracking to US Postal Service mail tracking data. This will enable voters to more precisely observe the status of their absentee request and know when a ballot has been mailed to them.

- j. Changes to WisVote¹². WEC staff are making changes to the WisVote system to meet the needs of clerks experiencing a large increase in the demand for absentee ballots. The WisVote system was originally designed to offer multiple methods for managing absentee ballot requests and ballot records meant to meet the needs of all sizes of communities in Wisconsin. While helpful, multiple methods can create confusion among clerks and their staff. WEC staff intend to work with clerks to identify which method of processing absentee ballot requests, ballot records, and absentee address labels is best in managing high volumes of requests, and train exclusively on this method. WEC staff also intend to implement additional tracing procedures and audit tools in WisVote to enable early detection of issues that could occur during the high volume of absentee ballot request processing. Such tools will allow technical staff greater insight into the internal WisVote processes that go beyond the current audit logs and reports to allow

¹² https://elections.wi.gov/sites/elections.wi.gov/files/2020-06/Open%20Session%206.10.2020.Final_.pdf

near real-time monitoring of system performance. Enhanced monitoring will allow WEC staff to identify potential issues and address all issues more quickly if necessary. WEC staff are also exploring ways to provide clerks and voter more immediate feedback from the system to provide users confidence they have successfully navigated a process, or if there is an issue that needs attention before the process can be completed. Finally, additional reports are planned so clerks can more efficiently manage and audit absentee ballot requests and ballots entering and leaving their office. The increased reports will help provide clerks more confidence that all requests have been processed and all absentee ballots have been sent to voters with valid requests on file. WEC staff are hopeful that these improvements in WisVote will provide clerks the tools they need to monitor their absentee data more closely and help identify and resolve potential issues that occur.

- k. Usability Testing. WEC staff continue to conduct usability testing on items presented to clerks and the general public, to ensure clear messaging and understanding by intended audiences. For example, usability testing was used during the development of the voter information mailing that will be sent out in September, to insure voters would understand the information and instructions being provided to cast a ballot at the General election.

1. Poll Worker Recruitment/Training/National Guard Assistance^{13,14}.

The WEC staff continue to urge counties and municipalities to solicit election inspectors for the upcoming 2020 Fall elections. While Wisconsin National Guard members may be available to assist with staffing polling locations in the Fall, that is not currently confirmed. WEC staff will continue to monitor the impact of COVID-19 on polling place staffing leading up to those elections. WEC staff has compiled training protocols for Wisconsin National Guard members that are ordered to serve as election inspectors on election day. Should Wisconsin National Guard members be needed to serve as election inspectors during the 2020 Fall elections, appropriate training will be provided to those members called to serve¹⁵. WEC staff has also created recruitment tools that can be used by local election officials to reach out to groups in their community to encourage them to serve as poll workers. Outreach tools include template news releases, letters, and social media posts that can be used by local election officials as well as suggestions for community groups they may wish to work with. WEC will also continue to promote the need for poll workers through our MyVote website widget, through earned and social media, and by

¹³ <https://elections.wi.gov/node/6766>

¹⁴ <https://elections.wi.gov/sites/elections.wi.gov/files/2020-03/3.20.20%20Letter%20to%20Governor.pdf>

¹⁵ <https://elections.wi.gov/COVID-19/training-for-poll-workers>

encouraging state employees and working with state leadership to promote the efforts.

- m. Voter Outreach Videos, Guides, and Survey. To help educate voters on unfamiliar aspects of voting, WEC is working with their advertising agency to produce videos, web content, social media content, earned media plans, and other outreach documents and tools. These educational resources will be made available to local election officials, voter groups, and the general public to explain the mechanics of how to vote by absentee ballot and on how state and local election officials ensure that voting by absentee ballot is secure. WEC will also continue to focus on earned media strategies such as press releases, news conferences, and public appearances to educate the public about the process, deadlines, and requirements of absentee voting. WEC is also working to conduct a second, statewide survey of Wisconsin voters to learn more about where they obtain their election administration information, what sources they trust, and what additional information about the voting process they are seeking. Based on the data collected in this survey, additional voter tools will be created to provide the type of information voters are seeking through the channels they utilize and trust.

- n. Public Health Guidance¹⁶. For the April 2020 Election, WEC staff worked with public health officials to produce over 20 public health guidance documents for clerks, poll workers, and the public. WEC will continue to work with public health officials to ensure that the guidance is kept current and to create additional guidance as needed. WEC staff also plans to post public health information about elections specifically for the public. Public outreach documents and the voter mailer both reference the elections.wi.gov/covid-19 webpage, therefore, work is being conducted on that webpage to present elections public health information to voters in a approachable and useful format.
- o. Local Election Official and Election Inspector Training¹⁷. WEC staff continue to provide training opportunities to both local election officials and election inspectors in advance of the August and November elections. A webinar series has been developed that will provide training on administrative elections procedures and training on the use and functionality of elections IT applications used to manage elections in Wisconsin. The goal of these trainings is to increase and maintain the consistency of how elections are administered across jurisdictions and provide access to elections training required by law. Training subject matter is varied with presentations developed for local election officials, such as issuing and managing absentee ballots,

¹⁶ <https://elections.wi.gov/covid-19>

¹⁷ <https://elections.wi.gov/clerks/education-training/webinars>

to election inspector focused training on subjects such as managing the poll book on election day. Training specific to conducting elections during the current public health crisis will be developed and COVID-19 related material will be added to existing trainings to supplement those programs. The training offered by WEC is provided through online learning platforms and is available at no cost to local election officials and election inspectors. Most agency training programs use live webinars that are recorded and posted to the agency website for viewing at any time by trainees who could not participate live. The agency also maintains an online learning center which houses training on agency elections administration IT applications and elections security procedures.

II. WEC Statement on Whether Any Additional Requested Relief Would Improve the Administration of the August and November 2020 Elections.

Among the relief sought in the Second Amended Complaint is a request that this Court order WEC to develop and implement plans to coordinate available state, local, and private resources to ensure that all voters throughout the State are able to cast early in-person absentee ballots and to vote in-person on election day in a safe and secure manner. [Dkt. No. 198-1, p. 39, ¶ G]. To the extent that this relief comports with measures identified in Section I, *supra*, the WEC believes it will improve the administration of the remaining 2020 Elections. Otherwise, the WEC takes no position on whether the additional relief would be helpful.

III. WEC Statement on Whether It Has the Statutory Authority to Provide Any of the Relief Requested by Plaintiffs.

The WEC has the statutory authority to administer Wisconsin's election statutes. Wis. Stat. § 5.05 (1). Therefore, the WEC has the authority to implement the measures described in Section I. The WEC does not have the authority to waive or adjust Wisconsin's statutory election requirements, including deadlines.

Dated: June 25, 2020

LAWTON & CATES, S.C.

Electronically signed by Daniel S. Lenz

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Wisconsin Elections Commission

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DATE: For the April 18, 2020 Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Meagan Wolfe, Administrator
Wisconsin Elections Commission

SUBJECT: Summary of April 7, 2020 Election

The April 7 Presidential Preference and Spring Election was by all definitions unprecedented. Wisconsin was the only state thus far to conduct a statewide election in the midst of a COVID-19 pandemic “stay at home” order. Wisconsin is also the most decentralized state for election administration, meaning that 1,850 municipal election officials and 72 county election officials had to adapt to significant changes from court rulings, public health guidance, and voter behavior shifts towards vote by mail. This summary is a very high-level overview and only captures the major efforts WEC staff responded to and implemented for the April 7, 2020 election. This summary does not account for the many remarkable accomplishments and successes of Wisconsin’s local election officials all of whom overcame unforeseen obstacles and ensured polls were open in each city, town, and village in the state.

The summary identifies areas of impact, provides a discussion of each, and outlines next steps related to efforts and initiatives of WEC staff. The summary in each section will provide information on the area of focus followed by discussion of some of the high-level lessons learned, and finally next steps for improvements which WEC staff are working on for the remaining elections in the 2020 cycle.

Background

Ballots for the April 7, 2020 Spring election became available, by statute on February 20. Shortly thereafter in-person absentee voting and voter registration within municipal clerk’s offices began. The Governor issued his first executive order related to COVID-19 on March 12, well after the election had already begun.

Election Preparations

This section describes undertakings prior to election day to support local election jurisdictions in their preparations for election day.

Sanitation Supplies and Personal Protective Equipment (PPE)

Summary: Because of the nationwide shortage of sanitation supplies and PPE, local election officials relayed to WEC in early March that they were unable to procure supplies needed for in-person voting.

Wisconsin Elections Commissioners

Dean Knudson, chair | Marge Bostelmann | Julie M. Glancey | Ann S. Jacobs | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

WEC staff then sent a survey to all local election officials asking them to detail their need for supplies to support safe, in-person voting. The local election officials were able to work with their county health departments and through their own procurement channels while WEC simultaneously looked for opportunities to purchase supplies for distribution to local election officials. WEC experienced the same difficulty in finding or procuring supplies either in the state or around the nation. A ticket for supplies was also entered into the State Emergency Operations Center (SEOC) based on clerk needs. Ultimately, WEC worked with SEOC and state procurement to send the supplies needed to all polling places in Wisconsin. Wisconsin's 72 county clerks played a key role in distributing supplies to more than 2,000 polling places. Supplies that were distributed include:

- Over 8,000-liter bottles of liquid 70% ethyl alcohol solution that was used as a hand and surface sanitizer. The solution was sourced from a local distillery as all other state and national supply chain options were exhausted
- Over 10,000 16oz plastic spray bottles and printed labels for the bottles for the liquid alcohol solution
- 500,000 isopropyl alcohol wipes for use on voting equipment and electronic touchscreens.
- Surgical masks for poll workers
- Latex gloves for poll workers
- 1.5 million ballpoint pens so that each voter would have their own to sign the poll book and mark their ballot
- ~2,000 rolls of painter's tape to facilitate social distancing
- 10,000+ social distancing and public health signs

Discussion: The National Guard helped with the packaging and distribution of supplies from the stockpile in Madison to regional facilities around the state. The counties then drove to the regional facilities, or coordinated pick up in vehicles large enough, to bring the supplies back to the county office for distribution to the municipalities and/or each polling place. WEC did not know until all the individual procurements were complete and the distribution and packaging was complete how many of each supply would be provided to each polling place. Some of the items were found by the SEOC in the day before distribution so the exact make up of the supplies were unknown until they arrived at the polls. Jurisdictions reported having adequate supplies for election day to accomplish practices prescribed in elections specific public health guidance. Voters have also reported to our office that they felt safe in polling places and that there were adequate sanitation supplies. Some jurisdictions reported having excess supplies which we are now in the process of redistributing to the 7th Congressional District for their May 12 election.

Next Steps: With the benefit of time that was not available before the April 7 election, WEC staff can begin to assist jurisdictions with finding the needed supplies for the August and November statewide elections. State and local election officials will be able to better gauge the amount of supplies they may need, based on their experience in April. WEC staff is also hopeful that with additional time, there will be the opportunity to procure more traditional sanitation supplies and to provide them to the jurisdictions

well in advance of the election so that they have time to incorporate the supplies fully into their election day plans and pre-election in-person processes.

WisVote Database

Summary: The WisVote database is the system used by almost 3,000 local election officials to administer elections. While WisVote and the WEC do not issue ballots, the clerks use WisVote to record when they send and receive absentee ballots, to enter voter registrations, and to record voter participation. The system was built by the WEC team and launched in 2016. The system was built based on the way Wisconsin conducts elections, which involves mostly voting in-person at the polls and registering to vote at the polls on election day. By mail voting and registration options are certainly accounted for in the system, but most municipalities had never received a large volume of absentee requests for a specific election prior to this election. Clerk activity in WisVote prior to the election was much higher than any prior election because clerks were all entering and issuing record numbers of absentee requests at the same time. The system performed very well but required round the clock monitoring and auditing to handle this unique and unprecedented user behavior and traffic.

Discussion: The system required a number of updates to accommodate extended deadlines for absentee requests and online voter registration. These extensions meant changing automation in the system to assign voter records and requests to new deadlines and elections. WEC staff also monitored capacity of the system to ensure memory space. Multiple increases of memory were needed to keep pace with absentee requests and attached photo ID's. WEC staff also created two significant new processes to assist local election officials with the new volume of absentee requests. One change was to create an absentee ballot request report that documents when a voter submits a request that includes a photo ID. This change was significant because it allowed WisVote to capture and store photo files of photo ID. This process is usually completed by email. Photo files are very large, therefore the storage and capacity in WisVote had to be significantly adjusted. WEC staff also created "poll book" reports or pages so that jurisdictions with consolidated polling places could use the WisVote system to check in voters, produce and print an individual poll book page for them, and record new registrations and participation in real time on election day. Again, these were not processes that had been conceptualized previously and required significant development and testing.

Next Steps: With additional time, WEC staff will be able to work with local election officials to build additional absentee by mail functionalities. These features will include a new module in the system for "pending" absentee requests which will dramatically reduce any manual data entry and can be entered into the system by the clerk approving the request information and the photo ID. Also, WEC staff will continue to explore the use of WisVote at the polls on election day. Again, this process can save jurisdictions significant time when using consolidated polling places. The WisVote poll book report ensures voters are given the correct ballot and requires no additional data entry needed after election day. However, security and other risk factors will need to be considered to ensure the correct balance of security and efficiency exists. Additional changes to WisVote to accommodate a higher volume of absentee by mail are outlined in the CARES Act grant memo.

MyVote Website

Summary: MyVote is the public facing website where voters can interact with their records and their data in the WisVote system. On the MyVote website, voters can request an absentee ballot, track when their ballot was sent and received by their clerk, register to vote online, find their polling place, view a sample ballot, view their voting history, and more. The site was built by WEC staff with extensive usability studies conducted with hundreds of voters to learn how they use the site. Based on historical data, most voters went to MyVote to find their polling place or to view a sample ballot. Site analytics show this to be true in February 2020, where traffic to the polling place look up tool reached a new record high. Features like requesting an absentee ballot were previously used by voters, but never at the rate they were utilized in the lead up to the April 2020 election. Deadlines for online voter registration and for absentee requests were extended multiple times by court actions prior to this election and deadlines for ballots to be returned and witness requirements were also changed. Deadlines and dates are all currently hardcoded in the MyVote system and in the data exchange with the WisVote database. Therefore, each change required extensive development and testing to avoid unintended consequences. WEC staff also engaged in extensive load testing prior to the election and up to election day to ensure that the site could handle record breaking traffic. Increasing capacity as it was needed required around the clock monitoring of the site. Certainly there were unique challenges and obstacles for some voters at the election, but the work of WEC program and IT staff in maintaining and modifying MyVote, as well as the performance of the website itself, was a key factor in accommodating a significant level of voter turnout, second only to the record turnout for the 2016 Spring Election and Presidential Primary.

Discussion: Usability has always been a foundational principle for WEC staff and is a critical part of website development to make sure that voters are able to navigate the site successfully. Because changes to workflows and deadlines had to be made very quickly and because of the prohibitions on gatherings where usability sessions are usually conducted, WEC staff was unable to usability test most changes prior to implementation. There was also the need for more messaging on the site for emergency notices than had ever been needed before. Load testing is also a critical component to success and, fortunately, WEC staff was able to adjust load testing plans to accommodate the extremely high volume of site traffic coupled with new user behavior and needs.

Next Steps: WEC plans to conduct extensive usability studies on the MyVote site to account for new voter behavior patterns. Traditionally, voters used the site to facilitate in-person voting. New voter needs drive traffic to the site for all electronic and by-mail transactions. WEC staff will work to augment voter workflows for online voter registration and absentee ballot requests. With the increased demand on by-mail voting there is also an increased need for voters to have transparency into the process. Voters have expressed a strong desire to be able to track their absentee ballots like they would any other important package. Utilizing the CARES Act grant, WEC staff hopes to incorporate intelligent mail barcodes into the absentee process and incorporate that information into the MyVote system. WEC staff will also be conducting usability tests on site messaging to ensure voters see and can understand important notices if they are needed in future emergencies.

Envelopes and Postage

Summary: In all previous elections, the majority of Wisconsin voters cast their ballots in-person at the polls on election day. Some voters typically cast an in-person absentee ballot but less than 10% of voters typically vote using an absentee ballot by mail. In the April 7, 2020 election more than 80% of voters who participated did so by casting an absentee ballot by mail. Unofficial and incomplete data indicate the total absentee voting, including in-person absentee voting, ballooned to 1.27 million absentee ballots being issued by municipal clerks. Clerks had already purchased absentee ballots and absentee ballot envelopes based on historic need. Therefore, clerks had only prepared and budgeted for 10-15% absentee by mail, including costs for by mail ballot envelopes and required postage. This significant and unplanned shift meant that clerks quickly ran out of the required outer “election mail” transmission envelopes, and the return “certificate” envelopes required by statute for the absentee process. Further, shortages in the paper supply chain were reported by local election officials meaning they were unable to purchase additional supplies. WEC staff was able to work with paper and print vendors in the state to source enough paper stock and have envelopes printed. The SEOC also played a key role in the procurement and distribution of the envelopes to municipalities.

Discussion: The current envelope process is very reliant on specific paper stock and experienced print vendors to be able to meet the USPS approved standards. Other states who vote primarily by mail have a simplified return envelope with an inner security or certificate envelope. This process requires clerks to use three envelopes but makes the process much less reliant on specific stock and printers. Budgets in local election offices should also be considered, when changes to the by mail process are developed. Current law and processes will require jurisdictions to cover significant increases in vote by mail costs while still maintaining the need to expend the same amount of funds historically spent on polling places and in-person voting processes.

Next Steps: As outlined in the CARES Act grant memo, WEC staff is exploring ways to absorb unbudgeted postage and envelope costs using federal grant funds. WEC staff is also exploring new designs and options for absentee envelopes that may be more readily available and allow for less dependence on specific stock and experienced print vendors. Furthermore, the envelope redesign will allow WEC staff to work with local election officials on developing a usable, efficient absentee certificate and envelope process that can be used for the August and November 2020 elections.

Poll Workers

Summary: In a large election there are between 20,000-30,000 poll workers needed statewide. With the COVID-19 crisis, many poll workers in a more vulnerable health demographic were unable to serve in that role for the April 7 election. In recent statewide surveys, it has been reported that the majority of poll workers are over the age of 60. Many are also over the age of 70 or 80. At the start of the crisis, clerks began reporting to WEC they had a shortage of poll workers and that many clerks were unable to serve in-person processes because they were also in a vulnerable demographic. WEC then sent a survey to all municipal clerks asking them to identify their poll worker shortages. Based on the survey, municipalities reported a shortage of more than 7,000 poll workers. 111 jurisdictions described their shortages as critical, defined as not being able to staff any polling places. 126 jurisdictions described

their need as severe, meaning they could not fully staff all polling places. Based on this need, WEC immediately put in a ticket for poll worker personnel at the SEOC.

Discussion: Because clerks need time to train poll workers, WEC immediately urged state decision makers to exercise authority to assign state personnel as poll workers to fill critical gaps. WEC staff also put out numerous press releases and held press events to encourage Wisconsinites who were able to serve as poll workers. Recruitment materials were also created for local election officials including draft press releases and draft recruitment letters that clerks could send to other municipal and county employees, school districts, and private industry. WEC also created a “become a poll worker” feature on the MyVote website where residents could contact their clerk to become a poll worker. This new feature was used by local election officials and by partners of the SEOC such as the United Way for recruitment efforts. Municipal clerks have a statutory role to train poll workers and historically WEC has not produced or prescribed poll worker training. Because of the anticipation of new, first time poll workers, WEC staff quickly produced a full curriculum of online, video-based poll worker training that local jurisdictions could use to train new poll workers remotely with limited notice. Ultimately in the days prior to the election the Governor authorized the National Guard to serve in plain clothes as citizen poll workers in their home communities. That process is described in a section below. State employees were also encouraged to volunteer in their local communities as poll workers.

Next Steps: As with all initiatives relevant to the April 7 election, time was very limited. Ideally, poll workers should be recruited and trained months before a major election. In preparation for the August and November elections WEC will continue to provide recruitment tools to local officials and work with state partners to recruit poll workers well in advance of the election. WEC staff will also continue to refine the training program for poll workers so that it can be used by local election officials to train new poll workers remotely. The exposure of National Guard members and other individuals to the election process may serve as a catalyst to increasing the pool of poll workers for future elections.

Guidance and Communications for Clerks

Summary: In every election communicating to 1,850 local election officials and 72 counties can be a challenge. Because of the unprecedented health crisis and continual changes resulting from court decisions communication with WEC local election partners was critical leading up to the April 7 election. Throughout the process, the deadlines for absentee voting and voter registration changed. The requirements for witness signatures and absentee ballot return deadlines and terms changed multiple times, requiring WEC staff to communicate new changes which occurred within 24 hours. All traditional in-person voting practices had to be re-visited and re-constructed in light of the COVID-19 crisis. Between March 12 and April 7 WEC staff sent more than 50 communications and guidance documents to clerks. In the weeks prior to a typical election WEC staff, in keeping with a communications policy developed with the clerks, send an average of 10 communications and attempt to avoid issuing new communications to clerks within the week prior to the election. Many of the communications created were developed with a public health official assigned to our agency for a very brief time to review documents from a public health perspective. WEC staff created more than 20 election specific public health documents, an entirely new perspective for the agency, using the high

level guidance provided by the public health official which can be found here <https://elections.wi.gov/covid-19>. WEC staff also held numerous webinars in the weeks leading to the election to present this guidance and answer clerk questions. Many webinars were held live up to three times in a day so that clerks would all have training opportunities that met their schedule.

Discussion: WEC staff received very positive responses from our local election partners about the communications during this crisis. While the volume of information was difficult to keep pace with, all matters communicated were of a critical nature. The recently instituted RAVE alert system was also used on multiple occasions to alert clerks on their phone and emails if there was a critical communication that needed their attention. Opportunities to provide information during live webinars were also an important option. While the recordings of the webinars were also posted, live webinars, at various times throughout the day allowed clerks to be able to directly participate and ask questions. The WEC was assigned a public health official to help structure guidance for only 24 hours in the week before the election. A more extended time period may have allowed for more consolidated guidance to be produced at the beginning of the planning process.

Next Steps: WEC staff will continue to work to develop training materials for local election officials on how to incorporate public health practices into election processes. With additional time before the August and November election, the guidance can be woven into existing training programs. Additional time will also allow clerks to continually train poll workers on these practices. WEC staff will also continue to work with clerks to fine tune communications protocols based on the April 7 experience to ensure that the most useful information is being brought to their attention at the correct time.

Election Day Summary

On Election Day, April 7, 2020 polling places in all 1850 jurisdictions opened and issued ballots to their voters. While in-person turnout made up less than 20% of voters who participated, the effort on the part of local election officials to ensure polling places in every community were able to operate was remarkable.

Polling Place Consolidation

Summary: Some jurisdictions chose to consolidate their polling places, a process by which multiple wards are combined into the same polling place. In 2020, jurisdictions reported consolidation was required due to the unknown in-person turnout and shortage of poll workers. Other jurisdictions consolidated because their original polling places became unavailable due to the evolving health crisis. WEC issued guidance to jurisdictions regarding consolidation and ensuring that the correct ballots were issued to the correct voter and on using the newly developed WisVote process to check in voters and print individual poll book pages. In larger jurisdictions that chose significant consolidations, long voter lines were reported throughout election day.

Discussion: In most elections, polling place consolidations and location changes occur at least 30 days before an election. This allows time to provide notice to voters. There are also emergency provisions in the law to change polling places on election day. Because of the evolving health crisis and other factors

jurisdictions made changes to their election day polling place plans after March 7. The first COVID-19 executive order was issued on March 11 changing many jurisdictions' election day plans. The Commission's decision to authorize municipal clerks to consolidate or relocate polling places within 30 days of the election greatly simplified this process.

Next Steps: With the experience of April 7, WEC hopes to help create data models and reports that municipalities can use in determining polling place locations. Data models could include looking at historical turnout for wards in relationship to geographical information to inform consolidation decisions. It remains to be seen whether the in-person voting rate will reflect the numbers seen in April 2020 or if new patterns of voter behavior will emerge depending on the evolving public health crisis and voter's new exposure to absentee by mail. WEC also anticipates providing additional guidance on the statutory process for moving polling places and providing notice. Additional work will also be done to explore expanded use of WisVote by consolidated jurisdictions. In consolidated jurisdictions using WisVote or Badger Book electronic poll books, there were no reports of voters receiving the wrong ballot. These tools also ensure new voter registrations are assigned to the correct districts and wards in real time.

National Guard as Poll Workers

Summary: Starting in March and with the emerging crisis WEC staff worked with local election officials to understand their need for poll workers, as is outlined above. WEC put in a ticket at the SEOC and had had many conversations about the need for poll worker personnel including the possibility of using the Wisconsin National Guard (WING). On April 2, 2020 WEC was notified that the National Guard would be activated to serve as poll workers in their local counties of residence. On that same day, WEC staff began working with municipal and county election officials to ensure their previous requests for personnel were still accurate. On Friday, April 4 WING put out a call for Service Members (SM) to serve as poll workers in their county of residence. On Saturday, April 5 WEC and WING personnel held a conference call with all 72 county clerks and large municipalities to discuss deployment plans. WEC staff also continued to develop online poll worker and election public health training for the SM to complete. Nearly 2,500 Wisconsin National Guard Service Members were put on active duty on April 6 to begin the intake and health screening process. On the afternoon of April 6, the SM completed the WEC-created training on poll worker duties, voter registration, chief inspector training, and election public health training. On Monday, April 6 the requested number of SM reported to county clerks to be deployed to municipalities in need to do polling place specific training. In some counties, there was a reserve number of SM who stayed with the County on Monday for additional training and to be on standby in case there were un-forecasted shortages on Election Day. The WING service members served in regular poll worker roles, in plain clothes and most in their home municipality or county of residence.

Discussion: Municipalities who used WING personnel report the experience as a very positive one that helped them to be successful on election day. Many jurisdictions are hopeful that the service members will continue to serve as volunteer poll workers in their home communities in the future. Some jurisdictions stated that additional time would have been useful to know how many service members

would be assigned to them sooner. Jurisdictions also expressed that it would have been helpful to train the service members earlier in the process. Only the Governor has the authority to activate the state's National Guard. Once the order was made and the call was made by WING for volunteers, WING was able to provide the number of requested volunteers in each county to WEC and subsequently to county and municipal election officials. Municipal, county and state election officials all wish to express their gratitude for the WING personnel who served their community on election day. The National Guard organized and facilitated its largest ever statewide activation but its Service Members served in the capacity of civilian poll workers under the supervision of municipal clerks and chief election inspectors.

Next Steps: WEC will continue to work with local election officials to identify poll worker shortages for the remaining 2020 elections. WEC has already conducted a survey with clerks in the 7th Congressional District. Currently jurisdictions in that area are citing a shortage of fewer than 30 poll workers, as compared to over 500 SM who served as poll workers for the Spring Election in those jurisdictions. WEC will continue to survey jurisdictions through this year and maintain a ticket for personnel with the SEOC. WEC will also continue to develop and augment training that can be used for last minute poll worker certification and training.

Post-Election Summary

There were additional election related changes that applied to the week following election day which required continued effort on the part of local election officials and support by WEC. Some of the main areas of focus include:

Postmarks and Postal Issues

Summary: As was previously mentioned, in previous elections less than 10% of voters cast their ballot using a by-mail absentee ballot. The current law also says that all absentee ballots must be received by 8:00pm on Election Day to be counted, there are no postmark requirements or exceptions for late arriving ballots in the law. Multiple Court actions prior to April 7 resulted in a requirement that by mail ballots must either be received by 8:00 pm on election day or be postmarked no later than April 7 and returned to the clerk by April 13th to be counted. Starting on April 8, municipalities began reporting irregular or illegible postmarks on ballot return envelopes. Some voters also reported not receiving their absentee ballots by Election Day. Some voters had been issued ballots more than 10 days prior to the election but never received them. WEC asked clerks to report their postmark and mailing issues to the USPS and the WEC.

Discussion: WEC worked with local election officials to understand and collect postmark examples and postal issues. WEC then worked with USPS personnel at the local, state, regional, and national level to get information about the postmark process. Ultimately, USPS provided information that each postal branch made best attempts to postmark ballots on election day, but in the case of missing or illegible postmarks there was no way to determine what date the ballot was marked. WEC staff also sent a letter to local, state, regional, and national USPS representatives asking for them to provide additional information on ballots that were not received and on outgoing ballots that were returned to municipalities without explanation. A response has not yet been received.

Next Steps: As outlined in the WEC staff memo on the 2020 CARES Act grant, WEC staff hopes to use the federal funds to build Intelligent barcodes into the absentee ballot system. Barcodes will allow voters and clerks to track their ballot through the entire process. It will also provide very important information about if and when ballots are received by voters. The current WisVote process and tracker on MyVote relies on the data that each clerk enters into the system regarding when they send the ballot and when they receive the voted ballot back. Barcodes would also provide a definitive answer of when each ballot was received by the postal service, voter, and clerk should postmarks ever be part of the process in future elections.

Results Reporting

Summary: Under current state law, on election night municipalities produce an unofficial results set, which they send to county election officials. The county election official then posts the unofficial results, by municipality and reporting unit on the county website. The Associated Press and other media outlets then aggregate the unofficial results that the public sees on election night. The results are then certified through the canvass process at the municipal, county, and state level before the results are official- usually a month after the election. Court decisions in the days prior to the April election barred local election officials from creating an official tally of results or releasing the unofficial results to the public until 4 pm on April 13th.

Discussion: To accommodate the new procedure, the WEC created new guidance for local election officials to ensure that jurisdictions could suspend voting equipment as open between Election Day and April 13th without producing a results set. Security procedures and chain of custody procedures were also put into place. On election night WEC sent a RAVE alert to all local election officials reminding them that it would be a violation of the court order to release the unofficial results before 4 pm on April 13th.

Next Steps: The extended tally period allowed WEC and local election officials to see the benefit of being able to carefully process ballots and results sets without the pressure of an end-of-the-night deadline. While the extended period was only ordered by the court for the April 7 election, it helps to reinforce the message that accurate and secure elections and tallies take time to produce. Lessons learned from the extended period will also be applied to future guidance and updates to results reporting systems and reports used by local election officials.

Conclusion

The Wisconsin Elections Commission spent significant time and attention over the past 3 years focusing on election security challenges related to foreign interference in campaigns and elections. While that effort sharpened the ability of the WEC and local election officials to develop contingency plans and train for adjusting to fast-moving developments, the rapid onset of the COVID-19 worldwide pandemic quickly and dramatically shifted the focus of emergency planning and responses. Two months prior to the election there were only emerging hints of the impact of the public health impacts on the election. One month before the election it was considered unlikely that over one million absentee ballots would be issued. One week before the election there was no guarantee that all polling places in Wisconsin

would be adequately staffed. The normal intensive work of both the WEC and local election officials prior to an election were impacted significantly, swiftly and repeatedly by circumstances beyond our control. Multiple lawsuits and court decisions required frequent Commission meetings and decisions and adjustments by election officials and voters.

Throughout the public health crisis and election preparations, the WEC staff and clerks overcame numerous challenges in order to serve Wisconsin voters, recognizing their roles as administrators of an election with parameters and characteristics beyond their control. This report reflects an initial attempt to document the issues which arose, steps taken to address those issues, and lessons learned to improve future processes. This report should also acknowledge that the changes and additional responsibilities needed due to COVID-19 were in addition to the high volume of work it normally takes all Wisconsin election officials to conduct a statewide election. As with each initiative of the WEC and local election officials, the ultimate focus is on the experience of each individual voter and their ability and opportunities to participate in democracy.

While the election was certainly imperfect in some respects, there can be no doubt that WEC staff and its many partners made extraordinary efforts to assist in the administration of the Spring Election and Presidential Primary. County and municipal clerks across the state showed amazing flexibility and dedication to ensure resources could be used in the most efficient manner, while considering the health and safety of voters and election officials. The WEC appreciates the assistance and cooperation of its partner agencies at the federal and state levels, the Wisconsin National Guard and State Emergency Operations Center, county and municipal clerks, poll workers and voters who made the election a reality in the face of uncertainty. With these partners the WEC will continue to evaluate lessons learned and to research and implement additional measures to improve the administration of future elections.



April 7, 2020 Absentee Voting Report

May 15, 2020

Wisconsin Elections Commissioners

Dean Knudson, chair | Marge Bostelmann | Julie M. Glancey | Ann S. Jacobs | Robert Spindell | Mark L. Thomsen

Administrator
Meghan Wolfe

TABLE OF CONTENTS

| <u>SECTION</u> | <u>PAGE</u> |
|--|-------------|
| EXECUTIVE SUMMARY | 3 |
| FACTS: Absentee Voting Data | 3 |
| FINDINGS: Absentee Performance During the April 2020 Primary | 8 |
| General Assessment | 8 |
| Case Studies | 13 |
| RECOMMENDATIONS: Proposed Courses of Action | 21 |
| CONCLUSION | 24 |
| Supplemental Absentee Voting Data 2016-2020 | Exhibit A |

I. Executive Summary

Absentee voting in the April 2020 election reached unprecedented levels but Wisconsin voters, local election officials and election administration systems largely adapted to the demand and managed the volume successfully. At a macro level, the processes to request, receive, return, and review absentee ballots proceeded normally and without inconsistencies. At a local level, the extraordinary volume placed enormous stress on election officials, elections systems, and the United States Postal Service (“USPS”).

Absentee voting remains a largely manual, labor-intensive process administered by each individual jurisdiction across the state. While voters can request a ballot and upload a photo ID on their smart phone in just a few minutes, behind the scenes clerks must still manually verify the IDs, stuff and seal envelopes by hand, apply postage, carry boxes of envelopes to the post office, and physically check off each request. These manual processes have worked well in the past, but they are not easy to scale up without advance warning or extensive preparation. When mail volume is up to ten times higher than anticipated, clerks must complete the same tasks without the benefit of having more staff, additional supplies or more hours to meet statutory deadlines.

Despite these challenges, clerks across the state did what was necessary to complete the task. Many jurisdictions hired and trained temporary staff, developed new procedures, and worked long nights and weekends to meet voter needs. The Wisconsin Elections Commission (“WEC” or “Commission”) likewise hired temporary staff, rapidly expanded technical systems, and worked around the clock to keep up with demand. The data in this report affirms that these efforts were successful, while still revealing opportunities for improvement and important lessons learned.

WEC staff, Wisconsin clerks, and the USPS are working together to make improvements to the absentee voting process and prepare for continued high vote-by-mail volume for the remainder of 2020 and beyond. Process improvements in development will revise the absentee ballot request application, ballot mailing, ballot tracking, and overall quality control. Every step in the process, from the application form, to the envelope, to the tracking tools, is under examination and being evaluated for potential improvements. The tools now in development will provide voters, clerks, and WEC staff with a simpler process and improved communication.

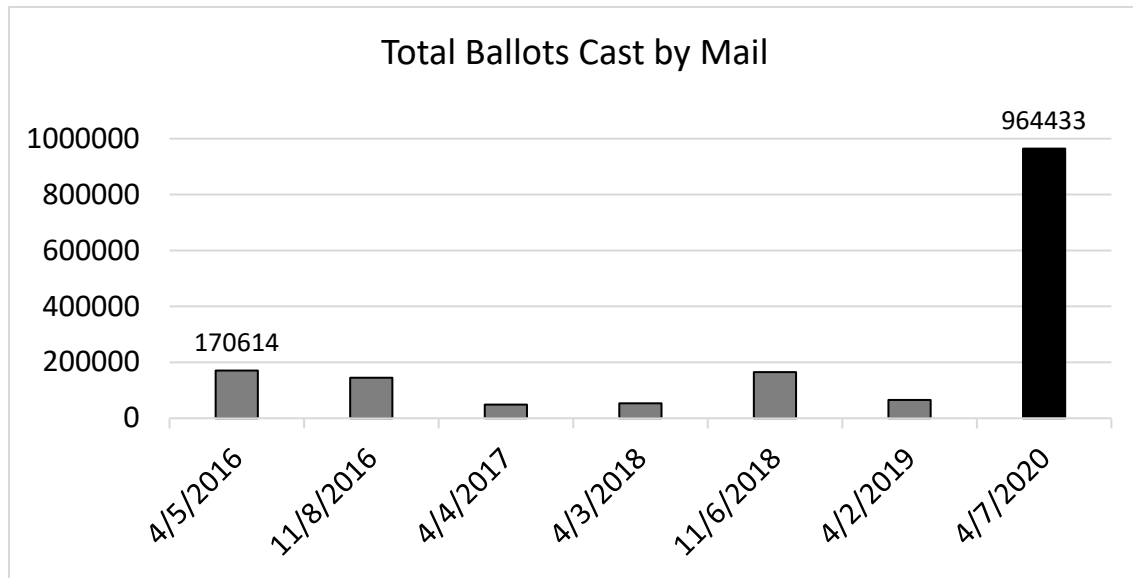
II. Facts: Absentee Voting Data

The April 2020 election broke absentee voting records in Wisconsin while maintaining relatively high turnout for a spring election. Indeed, the April 2020 election produced several state records, including:

- Most by mail ballots ever cast in any Wisconsin election
- Most absentee ballots ever cast in any Wisconsin election
- Second most total ballots ever cast in a Wisconsin Spring Election
- Most in-person absentee ballots in a Wisconsin Spring Election.

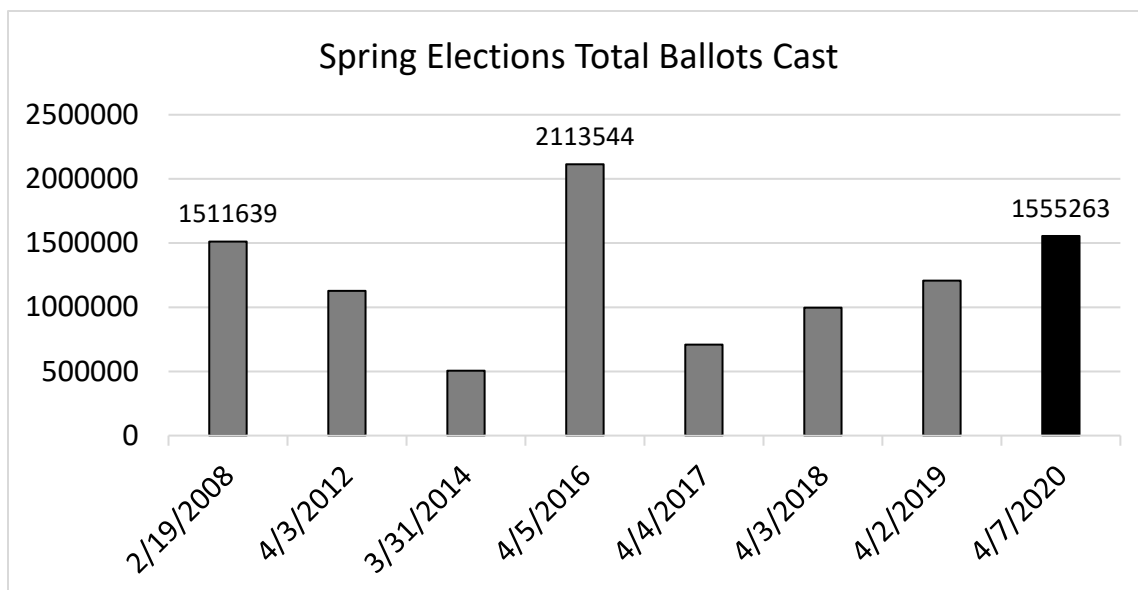
The total number of absentee ballots cast by mail easily surpassed the previous record set in April 2016.

Table 1.



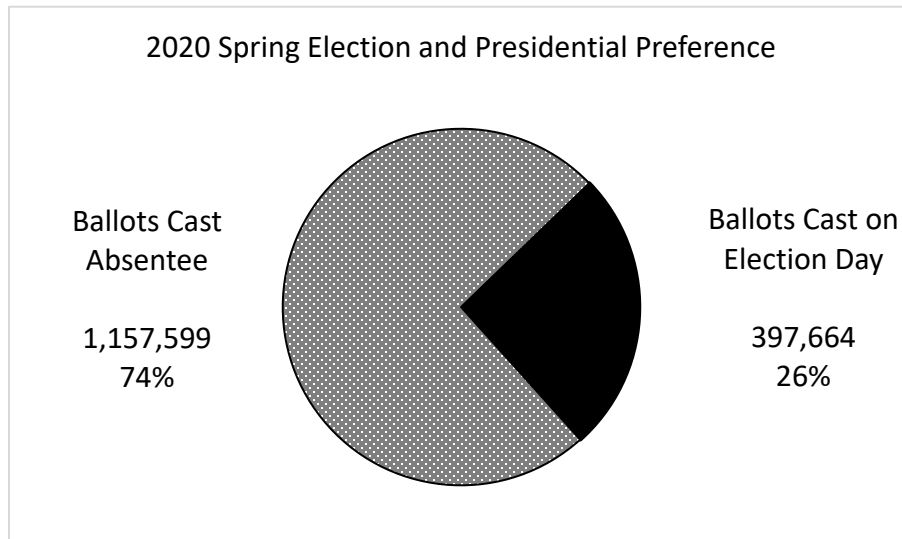
While the COVID-19 pandemic produced an exceptional shift to vote-by-mail, it is not clear that the crisis influenced overall participation. The total ballots cast in the Spring Election and Presidential Preference Vote were not markedly different from previous spring elections. While voter participation for this election was consistent with historic turnout numbers for similar elections, it is also impossible to determine how many voters were unable to cast a ballot for this election due to concerns and complications related to the COVID-19 pandemic. As demonstrated by the chart below, total ballots cast for this election were comparable to the 2008 Spring Election and Presidential Preference Vote and trailed only the same election in 2016 where both major political parties had competitive presidential primaries on the ballot in Wisconsin.

Table 2.



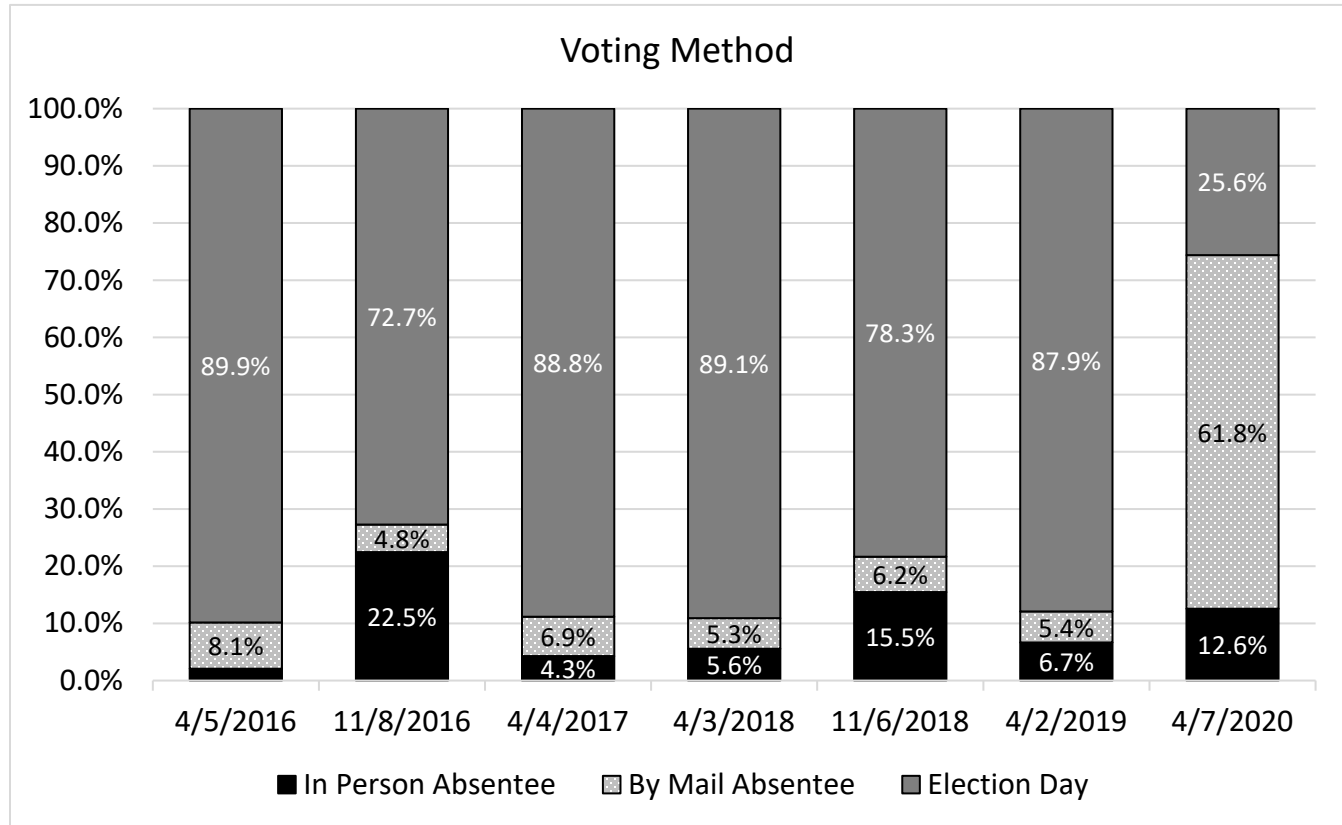
Absentee ballots cast for the April 2020 election also represented a far greater percentage of the ballots cast than is typical. More than three-quarters of the ballots cast were absentee and more than 60% were delivered by mail. Historically, over 80% of ballots in Wisconsin are cast in person on election day and only 6% are cast as by mail absentee ballots. Wisconsin has seen a steady rise in absentee voting percentages in recent years, but those gains could be attributed to an increase in in-person absentee voting, commonly referred to as early voting. For this election, almost 75% of all ballots cast were by absentee voters with over 60% issued and returned by mail. For this election, Wisconsin local election officials saw increases in both in-person absentee voting and absentee by mail, which created resource issues for a system primarily designed to support polling place voting on election day. Some smaller staffs were nearly overwhelmed by the demand and many had to recruit assistance from other municipal departments or secure temporary staff.

Table 3.



As compared with earlier elections, the 2020 shift to voting by mail is distinct, with barely one quarter of voters choosing to cast a ballot on election day. In person voting on election day was still required for this election and each municipality had to dedicate resources to securing, staffing and supplying polling places, while also processing the increased volume of absentee voting. Almost 400,000 voters cast their ballot at a Wisconsin polling place on election day and each municipality operated at least one polling place. The combination of increased by mail absentee voting and continued support of in person voting has resulted in many local election officials reporting that their 2020 municipal postal budgets have already been exhausted or are on pace for shortages.

Table 4.



Nearly 1.3 million absentee ballots were delivered to voters for the April election, either by mail or in person at local clerks' offices. While almost 90 percent of ballots were returned and counted, approximately 1 in 10 ballots were either not returned to the clerk or were returned but rejected. Almost 121,000 absentee ballots were issued by local election officials, but not returned by voters. This report will provide information about several factors that contributed to the number of unreturned ballots.

Table 5.

| April 7, 2020 - Absentee Ballots | Absentee Ballot Count | % of Ballots |
|---|------------------------------|---------------------|
| Total Absentee Ballots Sent ¹ | 1,303,985 | 100.00% |
| Absentee Ballots Returned and Counted | 1,159,800 | 88.94% |
| Absentee Ballots Returned and Rejected – After 4/13 | 2,659 | 0.20% |
| Absentee Ballots Returned and Rejected - Other | 20,537 | 1.57% |
| Absentee Ballots Not Returned | 120,989 | 9.28% |

¹ An additional 21,301 absentee ballot records were created by clerks but deactivated for administrative reasons (e.g. clerk error, voter error, voter request, ineligible voter, etc.). This represents approximately 1.6% of the total absentee ballot records. Since 2016, the median rate of administrative cancellations is approximately 2.3% of the total absentee ballot records created, with a range of 1.1% (November 2018) to 4.0% (April 2016).

The figures above are largely consistent with the percentage of ballots rejected or not returned in recent April elections. Both the ballot rejection and unreturned ballot rates were consistent with or lower than the previous rates. This comparison does not seek to downplay the concerns and experiences reported by voters who had difficulty receiving or returning their ballot or voters who could not meet the witness requirement due to COVID-19 concerns. It does demonstrate the Wisconsin vote by mail system for the April 7, 2020 election performed consistently with its performance in previous comparable elections, but there are still several opportunities for improvements. The State is currently pursuing multiple initiatives that will improve the by mail absentee process prior to the fall 2020 elections.

Table 6.

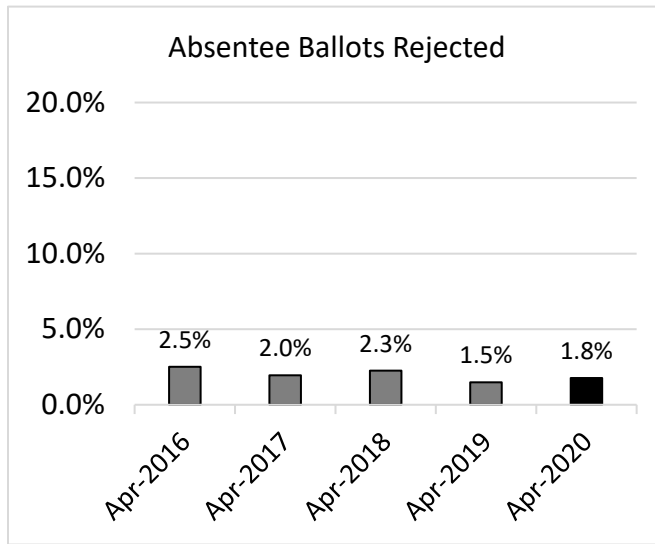
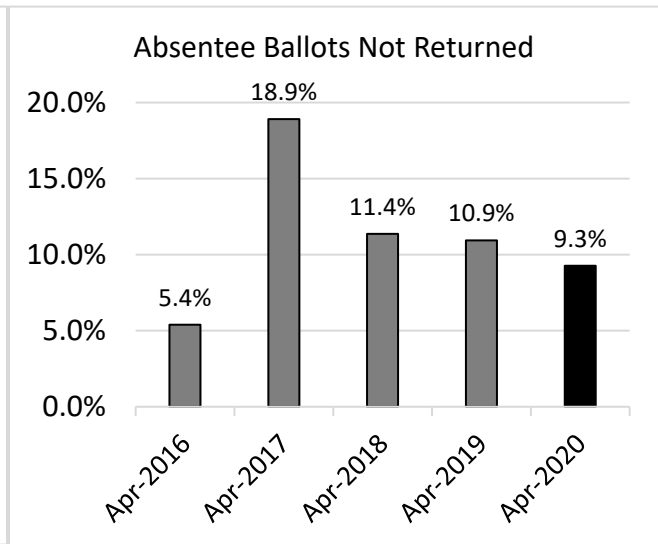


Table 7.



Likewise, most ballots were returned prior to Election Day, but nearly 7% arrived in the window between Election Day and the court ordered deadline of 4:00 p.m. on 4/13/2020. Over 1.1 million of the absentee ballots that were issued for this election were returned in accordance with current Wisconsin state law that requires ballots to be received by 8:00 PM on Election Day in order to be counted. Judge Conley’s extension of the ballot return deadline to 4:00 PM on April 13, 2020 resulted in an additional 79,054 ballots being counted for this election. Local election officials have also reported 2,659 ballots that were returned after the April 13 deadline that were not counted due to their late arrival.

Table 8.

| April 2020 Absentee Ballot Return Dates | Absentee Ballot Count | % of Ballots |
|---|-----------------------|--------------|
| Total Absentee Ballots Returned | 1,182,996 | 100.00% |
| Ballots returned before 4/8/2020 | 1,101,324 | 93.09% |
| Ballots returned between 4/8/2020 and 4/13/2020 | 79,054 | 6.68% |
| Ballots returned after 4/13/2020 | 2,659 | 0.22% |

Additional historical data is attached to this report as Exhibit A - Absentee Voting Data.

III. Findings: Absentee Performance During the April 2020 Primary

A. General Assessment

Wisconsin voters demonstrated an unprecedented commitment to the democratic process in the April 2020 election. In the midst of a COVID-19 pandemic and rapidly changing voting rules and protocols, nearly 1.2 million voters cast an absentee ballot in the Spring Election and Presidential Preference Primary. This section assesses the performance of the absentee voting process during the April 2020 election and examines the experiences of voters, election officials, and election systems. The assessment will consider both a broad overview and examine specific case studies from across the state.

1. The Absentee Process in Wisconsin

The Wisconsin Legislature has determined that the vigorous exercise of our constitutional right to vote should be strongly encouraged. The Legislature also recognizes that it is difficult for some individuals to get to their polling place on Election Day. In order to meet this need, the Legislature has established the privilege of absentee voting as an extension of the right to vote on Election Day. The Legislature recognized that the privilege of voting absentee is exercised wholly outside the traditional safeguards of the polling place. It has determined that the privilege of absentee voting must be carefully regulated to prevent the potential for fraud or abuse, overzealous solicitation of absent electors who may prefer not to participate in an election, and undue influence on an absentee elector to vote for or against a candidate or referendum. Wis. Stat. § 6.84(1).

Any qualified elector who is unable or unwilling to appear at the polling place on Election Day may vote by absentee ballot. Wis. Stat. § 6.85. Registered electors wishing to vote absentee must submit an absentee ballot request in writing to the municipal clerk. The request is made to the municipal clerk in writing or electronically using the Application for Absentee Ballot (EL-121), or a letter requesting an absentee ballot which provides the information required on the application form. The written request should include the elector's: 1. Name 2. Residential address 3. Mailing address, if different than residential address 4. Signature 5. Proof of identification, if necessary. Military and Overseas electors may also use the Federal Postcard Application (FPCA), which is a combination registration form and absentee ballot request. Voters may also apply for and vote an absentee ballot in person at the municipal clerk's office. Wis. Stat. § 6.86.

Municipal clerks prepare official absentee ballots for delivery to electors requesting them. An absentee ballot must be sent to any voter with an absentee application on file, no later than 47 days before a federal election, and no later than 21 days before a primary or other election. Otherwise, the municipal clerk shall send or transmit an official absentee ballot within one business day of the time the elector's request for such a ballot is received. Wis. Stat. § 7.15(1)(cm).

The municipal clerk or the clerk's designee is required to enter absentee applications and ballot information into the WisVote system maintained by the Commission within 48 hours after mailing or receiving an in-person absentee ballot application. Wis. Stat. § 6.33(5). Or, in the case where the

municipality relies on the county or another municipality, the clerk shall submit the information to the clerk's WisVote provider, and the provider shall enter the absentee information into the WisVote system within 24 hours. Wis. Stat. § 6.33(5).

2015 Wisconsin Act 261 charged the Government Accountability Board (G.A.B.), and later the Wisconsin Elections Commission, with developing a subscription service that would allow the public to access absentee ballot data that is tracked in WisVote. Given the implementation of the absentee subscription service available in BADGER Voters as well as increase in absentee voting and the growing public interest in obtaining absentee ballot data, it is important that clerks are able to timely and accurately enter absentee ballot data into WisVote including entry of absentee applications, issuance of ballots, and recording ballot statuses. The WEC staff plays an important role in assisting clerks with entering and tracking absentee ballots in the WisVote system.

a. Support Provided by the WEC

Commission staff do not process or send absentee ballots to voters in Wisconsin; all requests are required to be fulfilled by a local municipal clerk. However, Commission staff provide a range of both technical and direct support to municipalities for the absentee request process. The Commission provides access to and maintains the WisVote system and the MyVote website, along with technical support and training related to these products.

The WisVote system is the primary administrative means of tracking and supporting the absentee process in Wisconsin. Along with voter registration records, WisVote allows clerks to track absentee requests for single and multiple elections, create records for issued ballots, and record the final disposition of ballots. Centralized absentee tracking allows Commission staff to monitor and support clerk compliance with Federal and State UOCAVA requirements. It also allows Commission staff to gather and submit federally required absentee information to the U.S. Elections Administration Commission on behalf of all Wisconsin clerks.

WisVote has several built-in reports and report-building functions to further support clerks in the entering and tracking of absentee applications and ballot records. Commission development will also create new reports based on clerk feedback and needs, such as the recent Photo ID Not on File report created to assist clerks in finding and entering any absentee applications missed due to the large influx of requests. This report was created, tested, and deployed in less than one week.

The MyVote Wisconsin website is another integral piece of the absentee voting process. MyVote is a public-facing website that provides a central location for voters to submit an absentee ballot request regardless of where they reside in the state. All requests submitted via MyVote are then transmitted to the municipal clerk via an email notification that includes a copy of the photo ID file, if required, and a PDF version of the absentee request that includes election information, delivery method, and separate mailing address, if provided. MyVote reduces the number of misdirected absentee requests and speeds the absentee process by providing a standard email to assist in organizing emailed requests and

automatically assigning them to the correct jurisdiction based on the voter's address. When a photo ID is not required, the MyVote site will create the tracking record in WisVote automatically while still sending the notification, removing the data-entry requirement for these requests. Voters who do not use the MyVote site may send absentee requests to the incorrect jurisdiction, or even the Elections Commission directly, which leads to requests being delayed or even unfulfilled if the misdirected request is received after a statutory deadline.

Commission staff maintains and develops extensive training materials to update clerks on changes to WisVote and MyVote while also allowing new clerks to obtain the necessary training to use these systems effectively. All clerks and their support staff are given access to an elections training site referred to as The Learning Center ("TLC"). The site includes interactive training modules covering the various functions of WisVote and links to all training webinars produced by Commission training staff. Commission staff also publish and update a user manual for WisVote which includes detailed instructions on using the various functions and features of WisVote. Along with these existing materials, Commission training staff produce and record several training webinars during each election cycle to review topics of concern, preview/review recent updates to WisVote and solicit clerk feedback.

b. Processes at Individual Communities

The absentee request and fulfillment process will include many of the same processes regardless of municipal size or circumstances. Requests must be reviewed to determine type and period of request, if the voter is currently registered, within the jurisdiction, and if an acceptable photo ID was required/provided. All municipalities must mail/email/fax any ballot requests themselves and have a supply of envelopes and ballots to do so. Based on request volume and municipality size, clerks may use WisVote to generate mailing labels while other municipalities will opt for hand-written labels. If a clerk is a self-provider, has WisVote access and tracks their own information, they would also enter the necessary information into WisVote. In municipalities where the clerk is not a WisVote user, they will contract with another municipality or county to enter this information on their behalf while reviewing and fulfilling any absentee requests directly.

For a more detailed accounting of how various municipalities handled the absentee process, please see the Case Studies section below.

2. Voting for April 2020

The April 7 Spring Election and Presidential Preference Vote was by all definitions unprecedented. Wisconsin was the only state thus far to conduct a statewide election during a COVID-19 pandemic stay at home order. Wisconsin is also the most decentralized state for election administration, meaning that 1,850 municipal election officials and 72 county election officials had to adapt to significant changes from court rulings, public health guidance and voter behavior shifts towards vote by mail.

The surge in absentee voting was first felt on the MyVote Wisconsin website. On the MyVote website, voters can request an absentee ballot, track when their ballot was sent and received by their clerk,

register to vote online, find their polling place, view a sample ballot, view their voting history, and more. The site was built and updated regularly by WEC staff with extensive usability studies conducted with hundreds of voters to learn how they use the site.

Based on historical data, most voters went to MyVote to find their polling place or to view a sample ballot. Site analytics show this to be true in February 2020, where traffic to the polling place look up tool reached a new record high. Features like requesting an absentee ballot were previously used by voters, but never at the rate they were utilized in the lead up to the April 2020 election. As a result, the look up tools garnered more attention from developers prior to the COVID-19 pandemic.

To accommodate the rapidly evolving environment, WEC staff were required to make more than a dozen changes to the MyVote system in the 60 days prior to the election. Deadlines for online voter registration and for absentee requests were extended multiple times by court actions prior to this election and deadlines for ballots to be returned and witness requirements were also changed initially, but then changed back. Because this information is hardcoded in the MyVote system, each change required extensive reprogramming and testing to avoid unintended consequences.

The other statewide system supporting the absentee process is WisVote. The WisVote database is the system used by almost 3,000 local election officials to administer elections. While WisVote and the WEC do not issue ballots, the clerks use WisVote to record when they send and receive absentee ballots, generate an absentee ballot log, enter voter registrations, and record voter participation. The system was built by the WEC team and launched in 2016.

WisVote was built based on the way Wisconsin conducts elections, which involves mostly voting in-person at the polls and registering to vote at the polls on election day. By mail voting and registration options are accounted for in the system, but most municipalities had never received a large volume of absentee requests for a specific election prior to this election. Clerk activity in WisVote prior to the election was much higher than any prior election because clerks were all entering and issuing record numbers of absentee requests at the same time. The system performed very well but required around the clock monitoring and auditing to handle this unique and unprecedented user behavior and traffic.

Like MyVote, WisVote required several updates to accommodate extended deadlines for absentee requests and online voter registration. These extensions meant changing automation in the system to assign voter records and allow requests to new deadlines and elections. WEC staff also monitored capacity of the system to ensure adequate memory space. Multiple increases of memory were needed to keep pace with absentee requests and attached copies of photo ID's. WEC staff also created two significant new processes to assist local election officials with the new volume of absentee requests.

One change was to create an absentee ballot request report that documents when a voter submits a request that includes a photo ID. This change was significant because it allowed WisVote to view photo ID files within the system. This process is usually completed by email. Photo files are very large, therefore the storage and capacity in WisVote had to be significantly adjusted.

WEC staff also created “poll book” reports or pages so that jurisdictions with consolidated polling places could use the WisVote system to check in voters, produce and print an individual poll book page for them, and record new registrations and participation in real time on election day. These were not processes that had been conceptualized previously and required significant development and testing completed in one week.

As the enormous quantity of absentee ballots began entering the mail system, voters began asking more questions and expressing concerns about ballot deliveries. With nearly six times more ballots in circulation, the number of complaints and concerns increased by a similar amount. Some voters also reported not receiving their absentee ballots while others reported that their completed ballots were not returned to the clerk in a timely fashion. Starting on April 8, municipalities began reporting irregular or illegible postmarks on ballot return envelopes. WEC staff asked clerks to report their postmark and mailing issues to the USPS and the WEC for investigation. Findings from that research is discussed in the Case Studies section below.

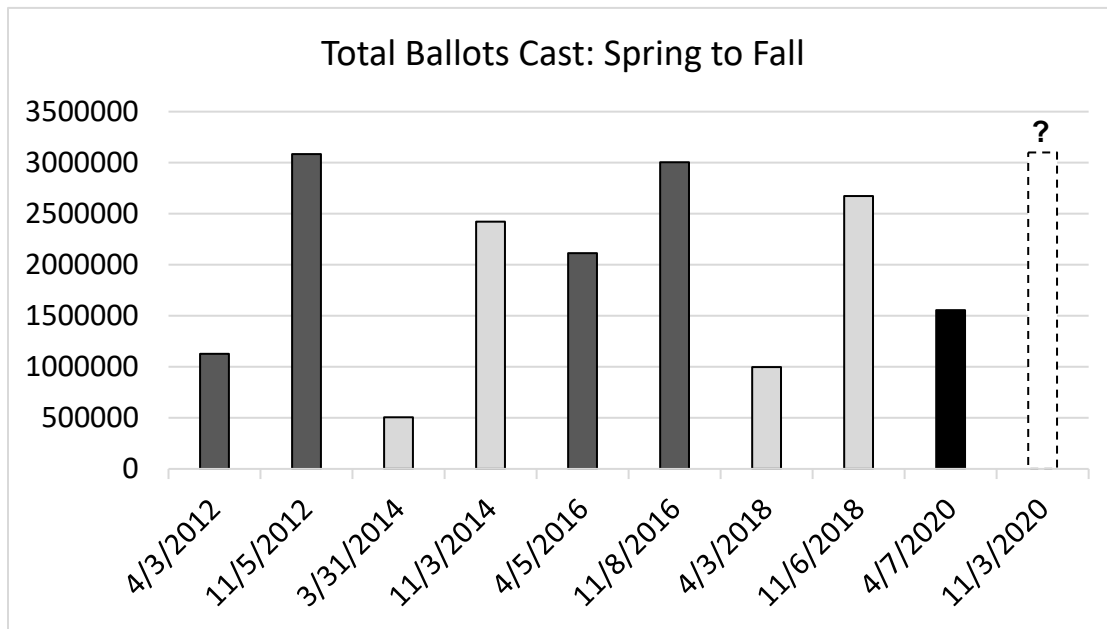
WEC staff also worked with local election officials to understand and collect postmark examples and postal issues. WEC then worked with USPS personnel at the local, state, regional, and national level to get information about the postmark process. Ultimately, USPS provided information that each postal branch made best attempts to postmark ballots on election day, but in the case of missing or illegible postmarks there was no way to determine what date the ballot was marked. WEC staff also sent a letter to local, state, regional, and national USPS representatives asking for them to provide additional information on ballots that were not received and on outgoing ballots that were returned to municipalities without explanation. A response has not yet been received.

Finally, any report on the April 2020 election must include mention of the tremendous support received from partners not typically involved in the elections process. In addition to our regular law enforcement partners, the WEC received exceptional support from the State Emergency Operations Center, Wisconsin Emergency Management, the Wisconsin National Guard, the Wisconsin Department of Health Services, and the federal Cybersecurity and Infrastructure Security Agency. These agencies, working closely with Wisconsin’s 72 county clerks, played a key role in distributing personal protective equipment, sanitization supplies, and even poll workers to more than 2,000 polling places across the State.

3. Other 2020 Elections

Looking ahead to the remainder of 2020, the WEC staff anticipate continued high demand for by mail absentee voting, even if the COVID-19 pandemic begins to subside. November elections generally see high turnout, particularly in presidential election years. The last three presidential general elections all saw more than 3 million ballots cast. If voting patterns from April hold true, the state could see more than 1.8 million requests for absentee ballots by mail. This kind of volume would present terrific challenges for Wisconsin election officials at all levels.

Table 9.



November presidential elections also tend to see a greater proportion of inexperienced voters. That is, voters who vote infrequently or are voting for the first time. These less-experienced voters are more likely to have difficulty navigating the absentee voting process. As a result, the clarification of the process may help voters in November.

B. Specific Case Studies

The absentee voting experiences of voters and election officials were as varied as the 1,850 jurisdictions in the state. Nearly every community experienced unprecedented absentee request volume, and many hired temporary staff to cope with demand. Many small and medium size jurisdictions learned to use WisVote absentee batch processing tools for the first time, having never previously needed any automation assistance to manage their workload. Larger cities, while used to higher volumes, were forced to work around the clock and conduct much larger batch mailings than previously experienced. For all jurisdictions, the statutory requirement to mail ballots within 24 hours of receiving a request presented a significant challenge.

This section examines specific challenges, problems, complaints, and solutions reported by municipal, county, and state election staff.

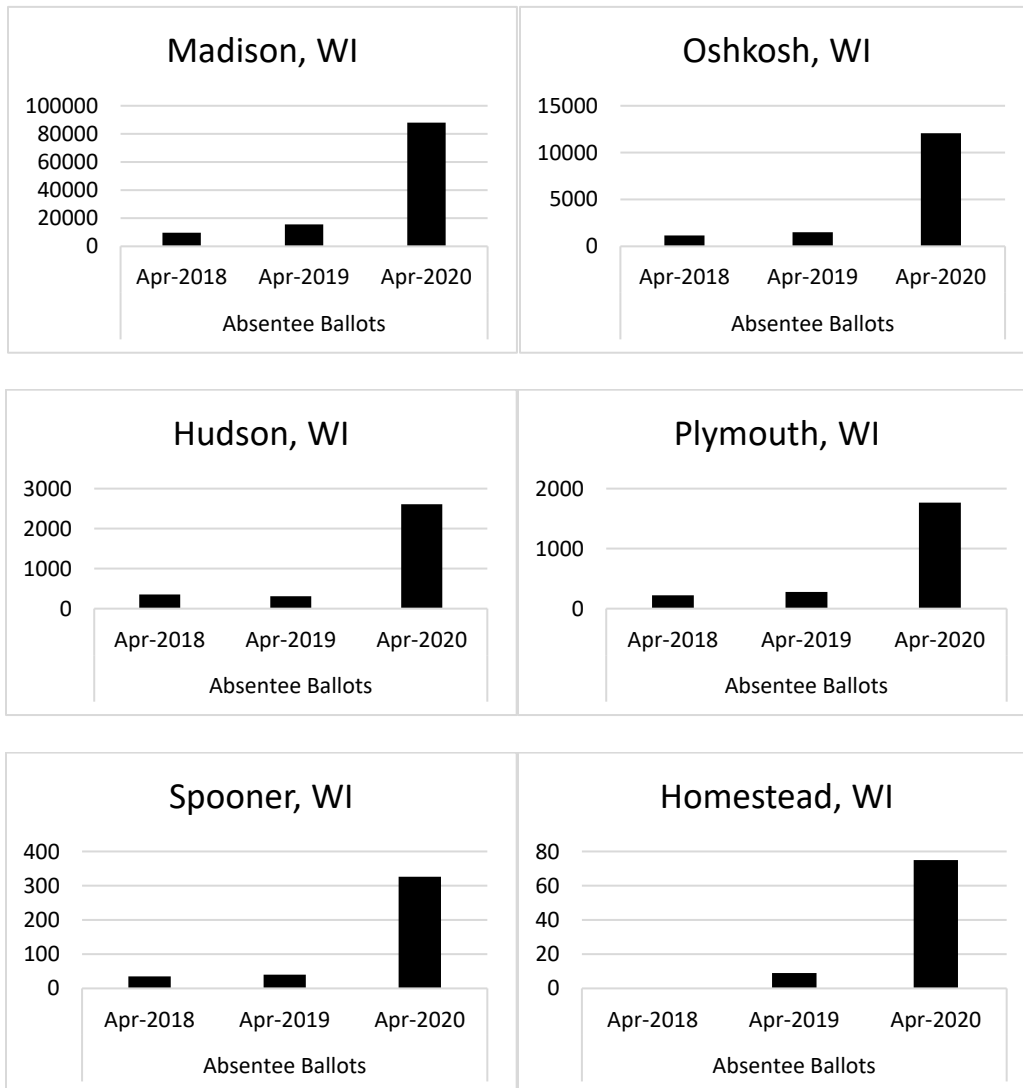
1. Meeting Overwhelming Demand

The most fundamental challenge faced by election officials was simply meeting the unprecedented demand. In addition to keeping up with the requests for mailed absentee ballots, clerks continued to service voters in their office wishing to participate through in-person absentee voting. On top of that, clerks were tasked with providing polling places with equipment on election day to meet appropriate

CDC guidelines, not to mention the challenge of recruiting and training new election inspectors taking the place of long-serving election inspectors, many of whom chose not serve due to their risk category to COVID-19. While meeting the requirements above, clerks had to remain in communication with the WEC on updates and changes applied by all levels of the legal system. Most critically, hundreds of Wisconsin clerks had to complete all the tasks above while working alone and part time.

The increase in demand appeared consistent across the state, with large, medium and small jurisdictions all showing similar patterns.

Table 10.



Rapidly changing guidance further complicated the environment for clerks. Multiple decisions in the weeks leading up to election day required clerks to communicate new deadlines and requirements impacting voters who may have received conflicting information made no longer relevant by late hour court decisions. No city, village, or town was able to avoid these extraordinary challenges presented in

addition to the increased demand for absentee voting – and their efforts navigating all the situations presented by the pandemic should not be overlooked.

For elections prior to the April 7 election, the City of Racine managed ballot requests received by email with just one election staffer who printed and distributed the requests to four additional staff members for entry into WisVote and for the records to be filed according to public records statutes. Once the pandemic hit and absentee request volume grew exponentially, the city quickly adapted by recruiting 20-30 additional city staff members to process absentee ballot requests from printing the request to sending the ballot out the door. Staff are still catching up on filing these documents appropriately.

Some communities, like the Village of Cottage Grove (Dane County), were fortunate to have hired and trained new elections staff just before the pandemic crisis began. Staff were able to manage the demand for absentee ballots by printing off every email notification of an absentee ballot request, whether it required photo ID or not. A staff of three processed each request individually, ensuring the steps of entering the request, issuing the ballot, printing the label, and applying it to the ballot occurred for every printed email. High school students were brought in to assist with the manual work of stuffing envelopes with ballots, while the clerk staff managed work in the voter registration system and fielded calls from voters with limited experience with absentee voting and navigating MyVote. Clerk staff found some success when directing voters to using smartphones (when available) to upload a copy of their photo to complete the absentee ballot request process.

Even the smallest of jurisdictions were not immune from the increased demand. While they did not have to contend with thousands of requests, individual town clerks often worked alone and with limited resources. In the Town of Washington in Shawano County, a part-time clerk went from managing eight absentee ballot requests in February to processing 312 in April. Many clerks were in a similar position of putting in extra hours to scale up their election's operations with no additional compensation, all while balancing a separate full-time job.

To provide clerks adequate time to complete all their election responsibilities, WEC is committed to reducing the administrative burden of data entry required by the current absentee ballot request process. Proposed adjustments to the system include generating a pending absentee request in WisVote that can be approved or denied once photo ID is reviewed. Additionally, WEC hopes to assist clerks with common issues with absentee ballot requests, such as “selfies” submitted as photo ID, by communicating that information back to the voter through MyVote or available email or phone contact information. Finally, the staff recommends conducting voter outreach programs as described in the CARES Grant memorandum associated with this Commission meeting.

2. Concerns about Mail Service

Clerks in some parts of the state encountered issues with absentee ballots reaching voters or being returned to their offices. In some cases, voters expected to receive a ballot when a request was not submitted or not completed. These issues are discussed further under Voter Experience & Education below. After ruling out cases of voter error, there remained cases that could not be explained or could

not be explained definitively. For example, the City of Oshkosh and other Fox Valley communities all reported voters complaining that their ballots were arriving late or not arriving at all. WEC staff investigated each complaint received where enough information was available to identify the voter.

On the morning of April 8, 2020, WEC staff received a telephone call from a Political and Election Mail Coordinator at the Great Lakes Regional office of the USPS in Chicago. The USPS official reported that the post office had located “three tubs” of absentee ballots for the Appleton/Oshkosh area and that the ballots were being processed. The official was unable to confirm how many ballots were in the three tubs but stated that “it could be quite a lot” as they were large two-handled tubs. In a follow up communication, the USPS indicated that there were approximately 1,600 ballots in the batch.

WEC staff attempted to follow up with the USPS to further identify the ballots and determine what happened but did not receive any further information about these ballots. Written inquiries to the USPS did not produce any specific information about these ballots. Wisconsin’s two U.S. Senators have asked the USPS Inspector General to investigate, but WEC staff have been unable to learn anything about the status of the inquiry.

The WEC also investigated reports from the City of Oshkosh suggesting that ballot requests were received but not fulfilled. While many of the cases involved incomplete requests (e.g. no photo ID provided) other records appeared complete. WEC staff researched several dozen Oshkosh area ballot requests that were entirely valid, including those of Assembly Representative Gordon Hintz and his spouse. The ballot records in question were generated as part of a batch on March 24, and analysis of the ballots associated with it showed that a large part of the batch was not returned by voters. Of the first quarter of records generated, more than 90% were returned. Of the remaining three-quarters of records, less than 1% were returned. This suggests that something happened to the ballots in the latter portion of the batch.

WEC and Oshkosh staff could find no evidence of a technical failure. The Oshkosh batch was produced very quickly by the system (two minutes and seven seconds), did not include any unexpected applications, and occurred during normal operating hours when no system maintenance was underway. Furthermore, the City of Oshkosh Clerk reports with confidence that the ballots were mailed to voters. Thus, in this case, there is no evidence of a system error and no evidence of a printing problem. Instead, one of two events are possible: either a user did not apply the mailing labels to ballot envelopes, or these ballots were bundled together and collectively encountered an issue in the mailing process.

As with the larger cities, smaller municipalities also reported issues with ballots reaching residents or being returned to the clerk in a timely fashion. The Village of Fox Point was among them and experienced an unusual chain of events that garnered some media attention. For two weeks, absentee ballots that were supposed to be mailed to Fox Point residents were repeatedly returned to the Fox Point Village Hall by the post office before reaching voters.

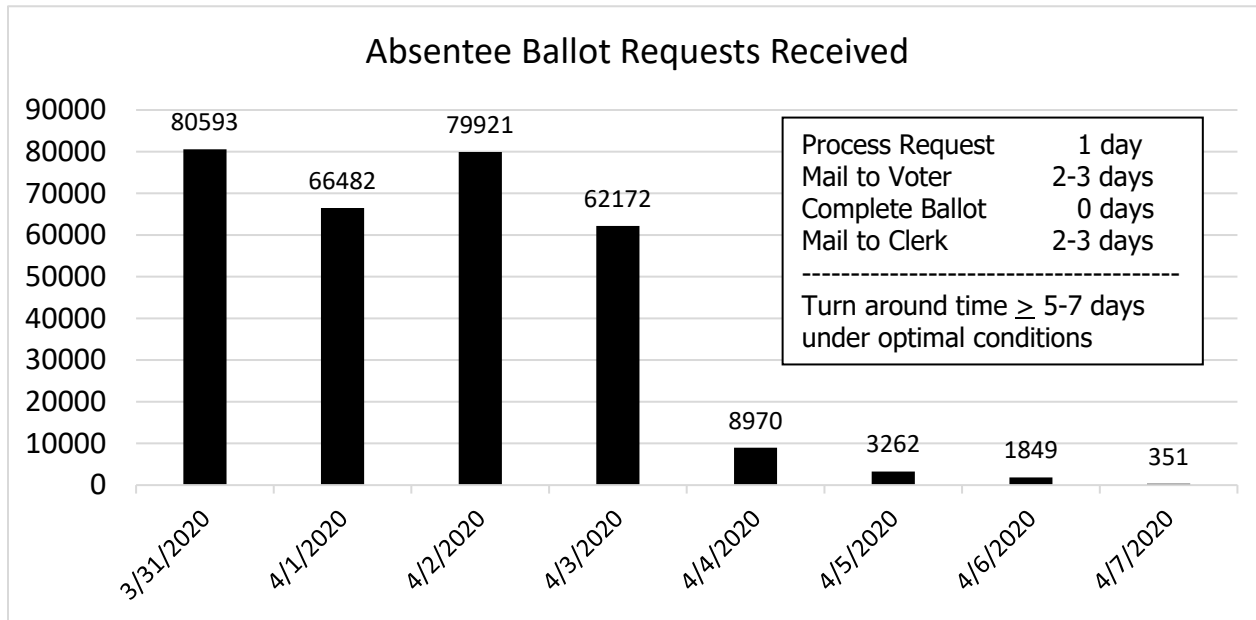
The village reported receiving anywhere from 20 to 50 of these returned absentee ballots per day two weeks ahead of the election. The problem continued to grow as election day neared. In the week prior

to the election, 100 to 150 ballots per day were returned to the village. On the morning of Election Day, Fox Point Village Hall received a plastic mail bin with 175 ballots. In each case, the returned ballots were unopened, unmarked and had not been received by voters. The postage was not cancelled, and no explanation was provided.

Each time they received a batch of absentee ballots, village officials immediately drove the ballots back to the nearest post office. They asked post office supervisors what was wrong with the ballots, but they did not receive any explanation. Fox Point Village Clerk Kelly Meyer reports it is unclear how many voters were affected by the undelivered ballots. Residents who did not receive an absentee ballot in the mail were advised to vote in person at their polling place on Election Day. Residents who called village hall inquiring about their absentee ballot on Election Day could retrieve their ballot from village hall if the ballot still un-sent and the resident could confirm their identity with a photo ID.

Statewide, the volume of absentee requests received remained high in the week prior to April 7th. Clerks received over 60,000 requests alone on the Friday before election day. Even if all these requests were mailed on Saturday, it is unknown how long those ballots took to reach voters. Current capabilities do not permit election officials to monitor the movement of ballots in the mail system. Thus, the next data point available to election officials is the date the completed ballot is returned to them.

Table 11.



The absence of information about ballots in the mail system is a significant concern for voters, clerks, and Commission staff. To improve visibility of these ballots, WEC staff are working to incorporate Intelligent Mail Bar Codes (IMBs) as a tracking tool for future absentee mailings. The IMB is a 65-bar USPS barcode that allows internal tracking information to be shared with the mailer and or recipient.

Although still dependent on the postal service, the IMB allows greater visibility of individual pieces in the mail stream. IMBs and tracking tools are discussed further in the Recommendations section below.

3. Process Improvements

The enormous volume of absentee requests for the April 2020 election magnified the effect of typically small concerns that ordinarily presented minor issues. Complex process flows that were a minor annoyance in prior elections became major headaches for April. Counties faced a particularly difficult challenge of attempting to complete the data entry for multiple relier communities where the absentee voting rates had previously been low. This data entry provides these voters with the opportunity to track their ballot on MyVote.

For example, in Shawano County, the clerk's office typically has three staffers but operated with just two as a result of the pandemic. This reduced staff of just two people was responsible for entering the absentee information for 25 municipalities. The Shawano County staff encountered problems working in the voter registration system, including the inability to pull reports at the county level. Additionally, the ballot count associated to an absentee application does not always immediately update due to allocation of system resources, creating confusion for users looking for confirmation a ballot was created and slowing the processing of information.

Grant County, located in southwest Wisconsin, also provides absentee processing support for its municipalities. Grant County is made up of 52 municipalities, 41 of which rely on the county to enter and update the status of their absentee ballots in WisVote. Previously the volume of absentee ballots was manageable through a simple absentee ballot log passed between the municipality and county. The county clerk's office revamped this absentee ballot log and asked all 41 reliers to stick with the standard format in the weeks leading up to April 7. The log asks for the necessary information to enter it correctly and efficiently in the voter registration system. The county also asks the reliers to highlight any changes from the last time the absentee ballot log had been sent so they could focus on the work to be completed.

Another contributor to processing time is the requirement to individually validate the photo identification of each voter. While validating any one request is quick, the manual nature of the process proved challenging when contending with high volume and simultaneously responding to hundreds of voter inquiries. Compounding the problem was the fact that MyVote shows only complete, accepted requests. Voters with a request pending ID approval are given no indication that their request is on file. Improving feedback to voters, and tools available to clerks, is therefore a top agency priority before the August 2020 election.

4. Technical Problems.

Some voters and clerks have questioned if technical failures caused absentee requests or ballots to be lost. As a result, WEC technical staff spent considerable time researching this possibility both before and after election day. Detailed audits were performed on individual complaints and no technical problems were detected prior to election day. WisVote and its associated systems maintain meticulous

details of each and every transaction occurring in the system, precisely when it occurs to the fraction of a second, and who or what executed the transaction. These highly detailed records allow staff to retrace events, locate errors, and validate system operations. The records enabled staff to review tens of thousands of transactions from hundreds of jurisdictions. This research revealed one isolated and unique incident where technology and volume combined to create an error. Staff found no evidence of any technical error that could have caused an absentee ballot request or a completed ballot to be lost.

The single failure identified came to light after the City of Milwaukee's Election Commission (MEC) conducted a post election review that could only be identified after election participation was entered. Upon investigation, MEC staff discovered that the WisVote record for tracking this voter's ballot had been created in the middle of the night, at a time when MEC staff would not have been creating ballot records. They further determined that the ballot record was associated with a batch. A batch is a WisVote entity that allows clerks to select broad categories of absentee application records and request the system create ballot tracking records and subsequently generate mailing labels for each of those absentee applications. Many of the absentee ballots associated with this batch had been created in the middle of the night, and many of them had not been returned. MEC referred the issue to the WEC for further investigation during the post-election data reconciliation process.

Upon initial analysis of the batch, WEC staff identified trends that appeared similar to the Oshkosh case. As in Oshkosh, there was a sharp decline in ballot return rates for a specific subset of ballots. Of the 5,913 ballot records created on or before 10:42:32 p.m. on March 22, 5,237 were recorded as having returned in some way to the clerk's office. This is an 88.5% return rate. Of the 2,693 ballots generated after 10:42:32 p.m., only one was recorded as returned.

Further investigation disclosed several factors unique to Milwaukee. In particular:

- It was the largest batch processed by WisVote; ultimately including 8,607 absentee ballot request records. The median batch size for the same day was 32 records.
- It started at 5:16 p.m. on March 22 and did not complete until 1:31 a.m. on March 23. Typically, batches complete within a few minutes.
- Of the absentee application records associated with the batch, many were created **after** the batch was generated. Since the first thing the batch does is select the absentee application records that match its criteria, this should not be possible.

Upon review, it was determined that the timeframe of this particular batch overlapped with maintenance on a known server issue. On March 22, WEC staff observed high utilization rates in some WisVote servers that could potentially cause user interface degradation, such as slow page loads or poor performance of some tasks. In consultation with Microsoft, plans were made to implement server improvements to prevent further issues. In the interim, system resources were freed by restarting the servers that process background jobs, called asynchronous servers. Background jobs are intended to be short-running, and by restarting one server at a time during a period when few users would be interacting with the system, staff believed that WisVote's load balancing would shuffle background jobs as needed and there would be no impact. That has been staff's experience in past server restarts, and in

testing no impact was observed. However on subsequent code review it was determined that it is possible, if a batch workflow is restarted, for that workflow to select applicable ballot requests a second time, which would generate ballot tracking records for absentee applications not originally associated with the batch.

It is staff's belief that an extraordinary confluence of events resulted in additional ballot records being generated after MEC staff printed their mailing labels, leading MEC to believe those ballots had already been sent when in fact they had not. First, Milwaukee's extraordinarily large batch of more than 8,000 ballots, exacerbated by the high user load on the system in the run up to the April election, resulted in the processing of this batch taking several hours, instead of a few minutes. Second, unbeknown to MEC, Commission staff conducted an unscheduled restart of the asynchronous servers to address an unrelated issue, interrupting this long-running job. Third, an oversight in the development of this process meant that the system failed to handle the restart gracefully, selecting an entirely new collection of absentee applications instead of continuing from where it had been interrupted.

Since the database contained detailed information tracking batch creation, staff could develop precise criteria to determine the impact and review transactions across the state. As a result, staff can conclusively determine that this restart issue only impacted this one batch in the City of Milwaukee. As a result of this issue, staff believes that 2,693 requested ballots were never sent to City of Milwaukee residents. Of the affected voters, 52.5% voted in the election either on a replacement absentee ballot or at the polls on election day.

Ensuring the voting rights of Wisconsin citizens is a hugely complex task without room for error. It requires, at a minimum, the ability to immediately identify and remedy errors before they affect the voting process. In this instance, detailed records enabled agency staff to retrace these events, but they did not provide information in a proactive manner allowing a system problem to be identified in real time. Neither clerks nor the state would have been able to identify this issue in real-time or based on single voter reports. Staff are now adopting real-time performance tracking tools for IT professionals and building user-friendly audit tools for clerks and other election officials. Measures to identify and avoid technical failures like this one are discussed in the Recommendations section below.

5. Voter Experience & Education

The April 2020 election introduced hundreds of thousands of voters to the absentee process for the first time. Naturally, many were unfamiliar with the process and did not understand the requirements. Common errors included:

- providing a written request (letter or e-mail) with insufficient information
- submitting a personal photograph instead of an acceptable form of photo ID
- not completing the on-line application process

An additional complication resulted from third parties mailing absentee application request forms that did not adequately highlight the photo ID requirement. In these cases, the clerk was unable to fulfill the

request until they could follow up with the voter to obtain a valid photo ID. Most voters do not provide a phone number or email, so the clerk must rely on a mailed notification to the voter that their request is not yet valid. Clerks in these situations were often unfairly blamed for not fulfilling a request that was not valid in the first place.

WEC staff believes that the creation of voter outreach programs to explain the absentee voting process will be beneficial, particularly if demand for absentee ballots remains high.

IV. Recommendations: Proposed Courses of Action

A. Assessment Resources. WEC staff is working with various partners to assess and improve the absentee voting experience. Changes to the voter registration system, public facing websites, and paper forms and envelopes will largely impact individuals outside of the agency, and the Commission should provide opportunities to receive and incorporate feedback from our core users.

In addition to the existing Clerk Advisory Committees, a new Clerk Advisory Committee dedicated to Vote by Mail revisions has been created and is meeting on a weekly basis to provide direction and feedback on staff proposals. The committee is composed of clerks from jurisdictions of various sizes and resources. A separate committee dedicated to “reliers” -- clerks who rely on the county or another municipality to complete some or all of their WisVote work -- will also be convened so that new workflows meet their unique needs.

Staff is also working with non-profits in the elections space who are stepping up their efforts to support the nationwide increase in absentee voting. Staff reached out to the Center for Civic Design for guidance on holding and recruiting inexperienced and first-time voters for remote, video conference usability sessions. The Center for Civic Design has previously trained staff on making user-centered design decisions through holding usability sessions, where voters are asked to test-drive new or updated products such as the absentee ballot request form. Staff is in the process of holding remote video conference sessions with voters.

WEC staff is also working with Democracy Works - a nonprofit that builds software applications to assist voters and election officials. WEC has been working with Democracy Works since 2011 in providing our Voting Information Project data feed, which serves as our alternate means for voters to locate Election Day polling places. Ballot Scout is another Democracy Works product that tracks absentee ballots using information from USPS via their Intelligent Barcode and Informed Visibility mail tracking system. Ballot Scout can be inserted as a "widget" or feature into a website like MyVote, allowing voters and clerks to track a ballot as it travels through the USPS mail system.

Since April 23, USPS Election Mail and Business Mail integration experts and WEC staff have been meeting weekly. The focus of these meetings is to provide WEC staff with guidance on the implementation of intelligent mail barcodes and support in absentee ballot envelope revisions. USPS is committed to building a relationship with our agency with the goal of improving the experience of voting by mail in Wisconsin.

B. Ballot Request Process

Staff, clerks, and voters have provided ample observations on how to improve the absentee ballot request process. Voters are required to submit a written request to their municipal clerk to receive an absentee ballot. Requests can be submitted in a standard format when requested through MyVote and when using the Absentee Ballot Request form (EL-122) or can be submitted in an unstandardized format through an email or mail correspondence. No matter how the voter submits it, any request that gets to the clerk must be entered by hand into the voter registration system. Many first-time absentee voters visited MyVote in the weeks up to the April 7 election to request their ballots where they had to navigate unfamiliar language and requirements such as uploading a photo ID.

In response, WEC staff will focus on three specific improvements to the process of requesting an absentee ballot. First, we recognize that technology and internet is not accessible to all voters. WEC staff is revising the paper Absentee Ballot Request form (EL-122) to be more user friendly and is exploring the opportunity to mail this form to every registered voter without a current absentee ballot request on file for 2020. Additional directions on how to provide a copy of a valid photo ID will be required for this mailing. Second, while hundreds of thousands of voters successfully navigated the absentee ballot request process on MyVote, the process can be improved, particularly in the areas of photo ID upload and confirmation of submission. Finally, information submitted to clerks through MyVote should not require manual data entry into the voter registration system or rely on an email-based process for most users. WEC staff will work with clerks and voters to review new designs before implementation of these three improvements ahead of the 2020 Fall elections.

C. Mailing Process and Ballot Tracking

In its current state, the mailing process for absentee ballot requests allows each jurisdiction flexibility to approach the process in the manner that best meets their needs. As a result, there are situations that lead to less visibility of the ballot's mailing status that may not be ideal. One potential direction for improvements in WisVote is integration of USPS Intelligent Mail Barcodes. Integrating Intelligent Mail Barcodes would allow those who use the Absentee Ballot mailing label features within WisVote to track the delivery status of the absentee ballot.

The USPS has the ability to allow WEC to generate a unique serial number from within WisVote; once the unique serial number is generated, the Absentee Ballot mailing label can be printed using a font that translates the unique number into a bar code used to identify a mail piece as election mail. The bar code also enables scanning and tracking the mail piece as it progresses through USPS facilities. For those who choose to use this function within WisVote once it is developed, clerks will be able to generate and print a label with a barcode that the USPS would then scan once the mail pieces is received at a Postal Service location. Once the mail piece is received, tracking information can be updated as frequently as every hour to track the current location and projected arrival of the mail piece.

With tracking information provided by USPS, WEC can provided specific updates and enhanced transparency into the vote by mail process to clerks and voters. The hope is that with this addition, the

number of calls and emails to clerks will be greatly reduced as voters will be able to track their ballot by accessing MyVote or receiving push notifications to an email or phone number. WEC staff is currently evaluating options for integrating this data and evaluating the effects this may have on existing clerk workflows as well as feasibility and timelines.

While evaluating these options and potential for tracking ballots and their return, we are also very cognizant of WisVote relier clerk access to this information and how reliers may be able to obtain the barcode for their mail pieces. This specific topic requires quite a bit more consideration and input from relier community clerks. WEC staff is actively pursuing input from those clerks in order to carefully assess their current workflow and any potential assistance that could be provided by the intelligent mail barcode tracking as well as any potential unintended workflow requirements that may be imposed on those reliers. Integration of tracking via the intelligent mail barcode will increase the transparency of the mailing process for absentee ballots as they are delivered to voters and as they are returned to their municipal clerk.

D. Reports and Audit Tools

Wisconsin's voter registration system serves many purposes for clerks and voters. It maintains the list of registered voters, the set of candidates and contests assigned to specific districts, tracks absentee ballot requests and ballots, houses the data displayed to voters on MyVote, and generally facilitates the administration of elections in Wisconsin. Due to the current pandemic environment, the administration of elections is changing to occur increasingly by mail and the voter registration system must be adjusted to support that shift.

The voter registration system currently offers multiple methods to manage absentee ballot request and ballot records, originally meant to meet the needs of all sizes of communities in Wisconsin. While meant to be helpful, multiple methods can create confusion among clerk staff using different methods within an office and require WEC staff to adequately train and support all methods. As utilization of absentee voting by mail increases all across the state, WEC staff will work with clerks to identify which method to process absentee ballot requests, ballot records, and absentee address labels is best in managing high volumes of absentees and then popularize and train clerk staff on this method.

Staff intends to implement additional tracing procedures and tools to enable early detection of issues such as the batch that restarted in Milwaukee. This will give technical staff greater insight into the internal processes of WisVote beyond what is presently visible in logs and reports and give near-real-time data on system performance in a more meaningful way. In addition, some tools under WEC evaluation can provide certainty that workflows and system processes are behaving as expected after system deployment and provide staff instant notifications if a change is detected.

In response to clerk and voter feedback, WEC staff is investigating numerous methods to improve the immediacy and accuracy of user feedback. In addition to increasing user satisfaction, improved feedback should reduce the number of incomplete absentee applications from voters and increase

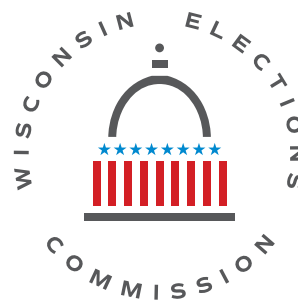
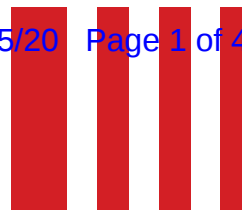
confidence from both clerks and voters that requests are being correctly processed, and ballots are sent out timely.

Additionally, WEC staff will create reports to help clerks manage and audit absentee ballot requests and ballots coming into and leaving their office so that they identify issues, anomalies, and ensure all requests are successfully fulfilled and tracked. WEC staff hopes to provide clerk staff the tools to monitor their data so that they can identify and resolve issues. Maintaining and verifying data in the voter registration system database enables our critical role in providing accurate information to voters.

V. Conclusions

The April 7, 2020 election introduced countless challenges that Wisconsin clerks successfully overcame, enabling a record number of voters to cast their ballots through the absentee process. Moreover, the final election data conclusively indicates that the election did not produce an unusual number unreturned or rejected ballots. Despite the overwhelming success of absentee voting as a whole, the experiences leading up to election day were not trouble-free and illuminated several critical areas for improvement. The absentee voting process in Wisconsin can be complex for some users and the current system favor the technically savvy. Voters and clerks would benefit from more information about the status of their absentee ballots, particularly once they enter the mail system. Finally, clerks and WEC staff need more powerful but easy-to-use tools that will enable them to quickly identify and correct problems. The 2020 CARES Act affords Wisconsin the necessary resources to implement many of these improvements, but long-term sustainment will require additional support. With adequate backing, the challenges of April 2020 should ultimately yield voters, clerks, and WEC staff a much-improved absentee voting process.

Wisconsin Elections Commission
P.O. Box 7984
Madison, WI 53707-7984



You Have Three Ways to Vote in the Election on November 3, 2020



OPTION 1

Voting at the polls

You can cast your ballot at your polling place on Election Day, November 3, 2020. Polls are open from 7 a.m. to 8 p.m. To find your polling place, visit myvote.wi.gov or call 1-866-868-3947.



OPTION 2

In-person voting by absentee ballot

You can cast an absentee ballot in person before Election Day. Contact your municipal clerk's office to learn more about your community's in-person absentee voting options, locations, and hours of operation. To find your clerk, visit myvote.wi.gov or call the Wisconsin Elections Commission.



OPTION 3

Voting absentee ballot by mail

You can request an absentee ballot at myvote.wi.gov. You can also make your request by mail, using the included request form and postage-paid envelope. To learn more, turn to the next page. Your request must be received by the Wisconsin Elections Commission or your municipal clerk no later than 5 p.m. on October 29, 2020.

To learn more about public health and elections, visit our website, <https://elections.wi.gov/covid-19>

MAKE SURE YOUR VOTER REGISTRATION IS UP TO DATE

You must be registered to vote, and your name and address must be current, before you can vote in person or request an absentee ballot. The name and address on this mailer may be your current voter registration information. If you need to check your registration or update your registration you can visit myvote.wi.gov. You can also register to vote by mail, in person at your municipal clerk's office, or at your polling place on Election Day. Every option has its own deadline. Visit myvote.wi.gov or call 1-866-868-3947 to learn more.

NEED ASSISTANCE? WE'RE HERE TO HELP.

Visit myvote.wi.gov or call 1-866-868-3947 (TTY 1-800-947-3529) for assistance.

Para obtener información en Español, llama 1-866-868-3947 o visita myvote.wi.gov/es-es/

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Requesting an Absentee Ballot

Visit myvote.wi.gov to request your absentee ballot online. It's easy, especially when you use a mobile device.

STEP 1
Visit
[MyVote.wi.gov](https://myvote.wi.gov)



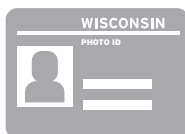
STEP 2
Click
Vote Absentee



STEP 3
Enter your name
and date of birth



STEP 4
Upload a picture or file of
your acceptable photo ID



No internet? No problem.

Don't have easy access to the internet? Use the enclosed absentee ballot request form and postage-paid envelope to make your request.

Here are the three things you have to do:

- ✓ Fill out the enclosed request form.
- ✓ Get a photocopy of your acceptable photo ID.
- ✓ Mail your completed form and the photocopy of your photo ID in the enclosed envelope as soon as possible. It must arrive by October 29.

Don't wait. Request your absentee ballot today.

Your request must be received by **October 29**. It takes time to receive an absentee ballot, and once you receive your ballot you will need to arrange for a witness to observe and to sign your ballot return envelope. **All absentee ballots must be received by your municipal clerk no later than 8 p.m. on Election Day, November 3, 2020.**

YOU NEED A PHOTO ID TO VOTE

No matter how you cast your vote, most voters will need to show an acceptable photo ID, like a Wisconsin driver license or state ID card, US passport, or Veterans ID card. Your photo ID does not need your current address. Visit bringit.wi.gov to see a complete list of acceptable photo IDs and learn how to get a photo ID for free, if you don't have one.

- ★ **At the polls or clerk's office**
Just show your photo ID to receive your ballot.
- ★ **Requesting an absentee ballot online**
Upload a picture of your photo ID. It's easy when you use a mobile device.
- ★ **Requesting an absentee ballot by mail**
Include a picture or photocopy of your photo ID with your application.

ARE YOU INDEFINITELY CONFINED?

If you are indefinitely confined due to age, illness, infirmity, or disability, you may certify your status by checking "indefinitely confined" on the enclosed application. Wisconsin law exempts indefinitely confined voters from the requirement to provide a photo ID when requesting an absentee ballot by mail.



Wisconsin Absentee Ballot Request



- ❗ You must be registered to vote before requesting an absentee ballot.
- ❗ You must provide a copy of your photo ID with this request.
- ❗ You must return this request to the WEC or your municipal clerk so it is received **no later than 5:00 p.m. on October 29, 2020.**
- ❗ This request must be completed by the voter unless assistance is required due to physical disability.
- ❗ If you have questions while completing this request, please contact us at **(866) 868-3947.**

Please complete legibly
Additional instructions on reverse

Voter Information

provide your name and residential voting address as they appear on your Wisconsin voter record

1

First Name _____ Middle Name _____
 Last Name _____ Suffix (Jr. II, etc.) _____
 Street Address _____ Apt/Room # _____
 City/Town/Village of _____ State _____ Zip _____

If you are a military or overseas voter, please check the appropriate box:
 See additional info on back Military Permanent Overseas Temporary Overseas

Where do you want your ballot sent?

2

Mailing address same as above (check box and proceed to section 3).

If you would like your ballot mailed to a different address, provide that information below:
Street Address (or P.O. Box) _____
City/State/Country/Zip _____

Please see the back of this form for information on receiving your ballot by email or fax.

For which election(s) do you want a ballot?

mark only one

3

The General Election on November 3, 2020

For indefinitely-confined voters only: I certify that I am indefinitely confined due to age, illness, infirmity, or disability and request absentee ballots be sent to me automatically until I am no longer confined or I fail to return a ballot.
Anyone who makes false statements in order to obtain an absentee ballot may be fined not more than \$1,000 or imprisoned for not more than 6 months or both. Wisconsin State Statutes sections 12.13(3)(i) and 12.60(1)(b).

X _____
 To certify as indefinitely confined your signature is required here (or an assistant may sign on your behalf if you are unable to sign because of a physical disability).

Make sure you're providing a photocopy of acceptable photo ID

additional info on back

4

Please check this box to affirm that, if required, you are providing a photocopy of acceptable photo ID.

These are common types of acceptable photo ID. Check the box for the type you are including with your request:

| | | | | | | |
|--|--|---|---|---|--|---|
| Wisconsin driver license or state-issued ID card <input type="checkbox"/> | University, college, or tech college ID (with enrollment verification) <input type="checkbox"/> | Military ID card or photo ID issued by the Department of Veterans Affairs <input type="checkbox"/> | U.S. Passport booklet or card <input type="checkbox"/> | Certificate of Naturalization <input type="checkbox"/> | ID card issued by a federally recognized Wisconsin Tribe <input type="checkbox"/> | A receipt for a Wisconsin driver license or state-issued ID <input type="checkbox"/> |
|--|--|---|---|---|--|---|

Please do not include the original physical version of your photo ID when returning your request.

Contact Information

5

Please consider providing your contact information in case the WEC or your clerk need to follow up on your request (optional).

Phone Number () _____
 Email Address _____

Voter Signature

6

I am a registered, eligible voter in the State of Wisconsin and my name and address are up-to-date in my voter registration record.

By signing this absentee ballot request form, I attest that the information provided is true and correct to the best of my knowledge and ability and I have not provided any false information for the purpose of obtaining an absentee ballot. Wisconsin State Statutes sections 12.13(3)(i) and 12.60(1)(b).

X _____
 Voter Signature Today's Date

Assistant

if someone signed this form on your behalf

7

I certify that the application is made on request and by authorization of the named elector, who is unable to sign the application due to a physical disability.

X _____
 Assistant Signature Today's Date

Photo ID requirement: If you have not provided a copy of acceptable photo ID with a prior absentee ballot request, a copy of a photo ID must be attached to this request. You may submit your request and a photocopy of your ID by mail, fax, or email.

The following documents are acceptable photo ID

- State of Wisconsin driver license or ID card
- Military ID card issued by a U.S. uniformed service
- Photo ID issued by the federal Department of Veterans Affairs
- University, college, or technical college ID AND proof of enrollment (examples include a fee receipt, class schedule, or enrollment verification form)
- U.S passport booklet or card
- Certification of Naturalization
- Wisconsin DOT driver license or ID card receipt
- Citation/notice to revoke or suspend Wisconsin driver license
- ID card issued by a federally recognized Indian tribe in Wisconsin

For additional information about photo ID, visit <https://bringit.wi.gov>, or contact the Wisconsin Elections Commission at **(866) 868-3947**.

Indefinitely Confined, Military, Permanent Overseas, and Confidential voters are not required to provide photo ID with this request.

- 1
 - Provide your **name** as you are registered to vote in Wisconsin. If applicable, please provide your suffix (Jr, Sr, etc.) and/or middle name.
 - Provide your **home address** (legal voting residence) with full house number (including fractions, if any).
 - Indicate the municipality. Use the municipality's formal name (for example: City of Ashland, Village of Greendale, or Town of Albion).
 - You may not enter a P.O. Box as a voting residence. A rural route box without a number may not be used.
 - Please indicate if you are an active duty military voter, a permanent overseas voter, or a temporary overseas voter.
 - A military voter is a person, or the spouse or dependent of a person who is a member of a uniformed service or the Merchant Marine, a civilian employee of the United States, a civilian officially attached to a uniform service and serving outside the United States, or a Peace Corps volunteer. Military voters do not need to register to vote.
 - A permanent overseas voter is a person who is a United States citizen, 18 years old or older, who last resided in Wisconsin prior to leaving the United States, is not registered at any other location and has no present intent to return. An adult child of a United States citizen who resided in Wisconsin prior to moving abroad qualifies as a permanent overseas voter. Permanent overseas voters will receive ballots for federal offices only and must be registered prior to receiving a ballot.
 - A temporary overseas voter is a person who is eligible to vote in Wisconsin and has a present intent to return. They will receive the full ballot and need to be registered to vote prior to receiving a ballot.
- 2
 - Mark the first box if you would like the ballot mailed to the address listed in section 1.
 - If you would like your ballot mailed to a different address than the address in section 1, please list this address or P.O. Box here.
 - If no preference is indicated, your absentee ballot will be mailed to the address you provided in section 1.
 - If you would like to receive your ballot by email or fax, please contact us at (866) 868-3947 for additional information.
 - Voters who request their ballots by email or fax will require access to a printer and must provide their own envelope and postage to return their ballot.
- 3
 - Mark the first box if you would like to receive a ballot for the November 3, 2020 General Election.
 - Mark the second box only if you are indefinitely confined due to age, illness, infirmity, or disability and wish to request absentee ballots for all elections until you are no longer confined or until you fail to return a ballot. **Indefinitely confined voters are not required to provide photo ID with this request.**
- 4
 - Please confirm that you are attaching a copy of acceptable photo ID to your absentee ballot request.
 - There may be delays in receiving your absentee ballot if you do not attach a copy of acceptable photo ID to your request.
- 5
 - Consider providing your phone number or email address so the Wisconsin Elections Commission or your municipal clerk can contact you about your request if necessary. Providing this information is optional and, if included, your contact information will be subject to public records requests.
- 6
 - By signing this absentee ballot request form, you certify and attest that the information provided is true and correct to the best of your knowledge and ability, and that you have not provided any false information for the purpose of obtaining an absentee ballot. Anyone who makes false statements in order to obtain an absentee ballot may be fined not more than \$1,000 or imprisoned for not more than 6 months or both. Wisconsin State Statutes 12.13(3)(i) and 12.60(1)(b).
 - You must be registered to vote before you can request an absentee ballot. Please check this box to confirm that you are registered and that your name and address are current in your voter registration record.
 - To confirm that you are registered to vote and that the information in your registration record is up-to-date, please visit <https://myvote.wi.gov> or contact us by phone at (866) 868-3947.
- 7
 - In the situation where the elector is unable to sign this form due to a physical disability, the elector may authorize another elector to sign on his or her behalf. Any elector signing an application on another elector's behalf shall attest to a statement that the application is made on request and by authorization of the named elector, who is unable to sign the application due to a physical disability.

! This request must be received by the WEC or delivered to your municipal clerk no later than 5:00 p.m. on October 29, 2020.

Return your request by mail to the WEC:

**Wisconsin Elections Commission
P.O. Box 7984
Madison, WI 53707-7984**

**or To find contact information for your municipal clerk,
visit <https://myvote.wi.gov>**