

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 III OF III**

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EXHIBIT 28



WISCONSIN ELECTIONS COMMISSION

Administering Wisconsin's Election Laws

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Update on Commission Actions 5/27- COVID-19

Priority

High Priority

Date

May 27, 2020 - 9:00pm

To

Wisconsin County Clerks
Wisconsin Municipal Clerks
City of Milwaukee Election Commission
Milwaukee County Election Commission

From

Meagan Wolfe, Administrator

Municipal and County Clerk Partners:

Today, the Commission passed the following three motions regarding the spending plan for the federal 2020 CARES Act Grant funds for elections.

More detailed information about each item will be forthcoming, but we did want to let you know right away so that you can begin preparations accordingly. Materials for this evening's meeting can be found here: <https://elections.wi.gov/node/6912>

Here are the motions that were approved by the Commission:

Motion #1: *The Commission directs WEC staff to administer a CARES Act sub-grant to local election officials with a base grant of \$200, and then an additional rate of \$1.10 per registered voter not to exceed a total cost of more than \$4,126,528.*

More information about this grant and how to apply for your funds will be provided to all clerks in the coming days.

Motion #2: *The Commission directs staff to prepare a draft mailer for the Commission's review and approval at the June 10 meeting. The Commission further directs staff to prepare for the mailing to be sent to all voters without an active absentee request on file (excluding ERIC movers and others who may not be eligible) for a total cost not to exceed \$2,252,035.*

This proposal also includes completed absentee applications being returned to WEC staff and data entered by WEC staff for approval/denial by municipal clerks. More information on this initiative will be provided after the Commission's June 10th meeting.

Motion #3: *The Commission directs staff not to pursue the redesign of the absentee ballot certificate envelope in 2020 and further directs staff to incorporate intelligent mail barcodes into the existing design and to issue best practices to local election officials on how to maximize the usability of the current envelope design.*

Clerks should proceed with envelope orders of the current design. More information on customization to consider with your print order (and using grant funds if so chosen) will be provided in a follow-up communication.

Thank you to the many clerks who have worked with us over the past few months to provide feedback on changes to the absentee process. Again, this is just a preliminary communication to inform you of the Commission's decisions, detailed information on each initiative will be provided in the coming days.

[clerks](#)

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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 29



WISCONSIN ELECTIONS COMMISSION

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WEC Prepares for Fall Elections by Approving Block Grants to Municipalities and Mailing to Voters - COVID-19

Date: Fri, 05/29/2020 - 10:15

MADISON, WI – The Wisconsin Elections Commission has approved spending \$7.2 million in federal CARES Act funding, including a \$4.1 million block grant program to help local election officials and voters prepare for Fall 2020 elections amid the COVID-19 pandemic.

“Wisconsin voters and election officials need to be ready for anything this fall,” said Meagan Wolfe, administrator of the WEC. “We are using the lessons we learned from the Spring Election in April and the federal grant funds to ensure we are prepared for November.”

The \$4.1 million block grant program will help municipalities deal with significant unbudgeted expenses for fall elections like postage and envelopes due to high demand for absentee ballots at the Spring Election, when nearly 1.16 million ballots were cast by mail.

In addition to giving block grants to municipalities, the WEC will send an informational mailing to approximately 2.7 million registered voters later this summer about their voting options for November, including an absentee ballot request form and a return envelope. The Commission will consider final plans for the mailer at its June 10 meeting.

The voter mailing is designed to inform voters who have not already requested an absentee ballot for November about their three voting options, including absentee voting by mail or in-person at the clerk’s office and voting at the polls on Election Day, Wolfe said.

“We want voters to know what their options are, and for anyone who is considering voting by mail to make their request as soon as possible so clerks are not overwhelmed right before the election,” Wolfe said.

For most voters the [MyVote.wi.gov](https://myvote.wi.gov) website is the easiest way to make their absentee ballot request any time prior to October 29, 2020, while for other voters who are not comfortable with or do not have access to technology having access to a paper form will be their best source of information. [MyVote.wi.gov](https://myvote.wi.gov) is also where voters can register to vote, find their polling place, view a sample ballot, or contact their municipal clerk to learn about in-person absentee opportunities.

Questions and Answers about Wisconsin’s Readiness Plan for Fall Elections

Is the WEC mailing absentee ballots to everyone? Will Wisconsin become an all-vote-by-mail state?

No, changes such as these would require the legislature to pass and amend existing law, and the Wisconsin Elections Commission does not have the authority to make these changes. Under the current law, all Wisconsin voters have three options to vote – voting at the polls on Election Day, voting absentee in-person at the clerk’s office or voting absentee by mail. State law requires registered voters to request an absentee ballot and any voters who receive the mailing will receive information about voting and an absentee request form, but each voter must still request a ballot from their municipal clerk. By state law, absentee ballots cannot be sent automatically. Voters must also be registered to vote in Wisconsin before they request an absentee ballot. All voters must submit a copy of their statutorily acceptable photo ID with their first by-mail request, with the exception of military and overseas voters and indefinitely confined voters.

Do absentee voters have to provide a photo ID just like voters at the polls?

Yes, with limited exceptions. Registered voters requesting an absentee ballot online can upload a picture or scan of their photo ID at [MyVote.wi.gov](https://myvote.wi.gov). Those making the request by mail must provide a physical copy of their photo ID – a paper photocopy or even a photograph.

Wisconsin’s photo ID law contains an exception for absentee voters who are indefinitely confined to their homes due to age, disability, illness or infirmity. This exception was designed for voters with disabilities, seniors and others who do not have access to an acceptable photo ID or whose photo IDs may have expired, but it can also apply in other cases. For more information about limited exceptions to Wisconsin’s photo ID law, visit our photo ID website: <https://bringit.wi.gov>.

Will absentee ballots have tracking barcodes on them?

No, that is a misunderstanding. The WEC will soon start using USPS Intelligent Mail Barcodes (IMB) for absentee ballot envelopes, not the ballots. IMBs will let voters and clerks track where a ballot is in the postal system as it travels from the clerk's office to the voter's home and back to the clerk's office, just like they track packages from online retailers.

Will people who are dead or who moved get the mailer?

Every month the WEC gets death records from the State and helps local clerks remove those voters from the registration list. Excluded from the 2.7 million registered voters who will get this mailing are voters on the "ERIC Movers mailing list" who have not either reregistered at a new address or confirmed that they have not moved. The same is true for other ineligible voters. Local election officials regularly receive list maintenance updates and deactivate voters who are on felon status, have moved out of state, or are otherwise ineligible.

How much will everything cost and where does the money come from?

The Wisconsin Elections Commission has received a \$7.3 million federal CARES Act grant designed to help cover unbudgeted election expenses due to the COVID-19 pandemic.

All 1,850 Wisconsin municipal clerks can apply for block grants to cover unbudgeted expenses due to the pandemic, including postage, envelopes, extra help, supplies, etc. Each municipality can receive a base grant of \$200 plus \$1.10 per registered voter.

Program	Expense
Block Grants to Local Election Officials	\$4,126,528
Voter Information Mailer	Not more than \$2,252,035
Sanitation and PPE Supplies	Not more than \$500,000
WEC staff, development costs for USPS IMB, and reserve fund for April/May costs.	Not more than \$400,000
Total	\$7,278,563

Much more information about the grants to municipalities is available on the WEC's website:

<https://elections.wi.gov/node/6916>.

How can clerks apply for a block grant?

The WEC will be contacting clerks with information about how to apply for grants and intend to conduct informational webinars on this topic in June.

What's next?

At their regular meeting on June 10, the six, bipartisan members of the Wisconsin Elections Commission are scheduled to review and approve details of the mailer before it can be sent for printing.

The exact date the voter information mailer will be sent has not been determined, but it will be sometime after the August 11, 2020 Partisan Primary but before September 1, 2020. The deadline for municipal clerks to send absentee ballots to voters with valid requests on file for the General Election is September 17, 2020, which should give voters a few weeks to make requests before ballots must be sent. Ballot requests received after this deadline will be fulfilled by local clerks on an ongoing basis.

Attachment	Size
NR Elections - WEC Approves Grants and Mailing for Fall Elections 05-29-2020.pdf	202.24 KB

For more information, contact

Reid Magney, public information officer, 608-267-7887, or reid.magney@wi.gov.

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tele (608) 266-8005 | fax (608) 267-0500 | tty 1-800-947-3529 | e-mail elections@wi.gov

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UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604



Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

ORDER

September 28, 2020

By the Court:

Nos. 20-2835 & 20-2844	<p>DEMOCRATIC NATIONAL COMMITTEE, et al., Plaintiffs - Appellees</p> <p>v.</p> <p>MARGE BOSTELMANN, et al., Defendants</p> <p>and</p> <p>WISCONSIN STATE LEGISLATURE, et al., Intervening Defendants- Appellants</p>
Originating Case Information:	
<p>District Court Nos.: 3:20-cv-00249-wmc, 3:20-cv-00278-wmc, 3:20-cv-00340-wmc, & 3:20-cv-00459-wmc Western District of Wisconsin District Judge William M. Conley</p>	

The following are before the court:

1. **WISCONSIN LEGISLATURE'S EMERGENCY MOTION TO STAY THE PRELIMINARY INJUNCTION**, filed on September 23, 2020, by counsel for appellant Wisconsin State Legislature.
2. **EMERGENCY MOTION OF REPUBLICAN NATIONAL COMMITTEE AND REPUBLICAN PARTY OF WISCONSIN TO STAY THE PRELIMINARY INJUNCTION**, filed on September 24, 2020, by counsel for appellants Republican National Committee and Republican Party of Wisconsin.

3. **OPPOSITION OF PLAINTIFFS-APPELLEES JILL SWENSON, MELODY MCCURTIS, MARIA NELSON, BLACK LEADERS ORGANIZING FOR COMMUNITIES, AND DISABILITY RIGHTS WISCONSIN TO MOTION TO STAY THE PRELIMINARY INJUNCTION IN CASES NO. 20-CV-249; 20-CV-278; 20-CV-340; AND 20-CV-459**, filed on September 25, 2020, by counsel for the appellees Jill Swenson, Melody McCurtis, Maria Nelson, Black Leaders Organizing for Communities, and Disability Rights Wisconsin.
4. **OPPOSITION OF PLAINTIFFS-APPELLEES DEMOCRATIC NATIONAL COMMITTEE AND DEMOCRATIC PARTY OF WISCONSIN TO EMERGENCY MOTION FOR STAY OF THE DISTRICT COURT'S PRELIMINARY INJUNCTION**, filed on September 25, 2020, by counsel for appellees Democratic National Committee and Democratic Party of Wisconsin.
5. **EDWARDS PLAINTIFFS' CONSOLIDATED OPPOSITION TO WISCONSIN LEGISLATURE'S EMERGENCY MOTION TO STAY PRELIMINARY INJUNCTION AND REPUBLICAN NATIONAL COMMITTEE AND REPUBLICAN PARTY OF WISCONSIN'S EMERGENCY MOTION TO STAY THE PRELIMINARY INJUNCTION**, filed on September 25, 2020, by counsel for appellees Chrystal Edwards, Terron Edwards, Kileigh Hannah, Todd Graveline, Jon Graveline, Jean Ackerman, John Jacobson, Kristopher Rowe, Katie Rowe, Douglas West, Angela West, Charles Dennert, and William Laske.
6. **GEAR v. BOSTELMANN PLAINTIFFS-APPELLEES' OPPOSITION TO INTERVENOR-DEFENDANTS-APPELLANTS' EMERGENCY MOTION TO STAY DISTRICT COURT'S PRELIMINARY INJUNCTION**, filed on September 25, 2020, by counsel for appellees Sylvia Gear, Wisconsin Alliance for Retired Americans, Claire Whelan, League of Women Voters of Wisconsin, Katherine Kohlbeck, Diane Fergot, Gary Fergot, Bonibet Bahr Olsan, Sheila Jozwik, and Greg Jozwik.
7. **WISCONSIN LEGISLATURE'S REPLY TO EMERGENCY MOTION TO STAY THE PRELIMINARY INJUNCTION**, filed on September 26, 2020, by counsel for appellant Wisconsin State Legislature.
8. **REPLY IN SUPPORT OF REPUBLICAN NATIONAL COMMITTEE'S AND REPUBLICAN PARTY OF WISCONSIN'S EMERGENCY MOTION**

Appeal Nos. 20-2835 & 20-2844

Page 3

TO STAY THE PRELIMINARY INJUNCTION, filed on September 26, 2020, by counsel for appellants Republican National Committee and Republican Party of Wisconsin.

IT IS ORDERED that the district court's injunction is **STAYED** pending further order of this court.

form name: **c7_Order_BTC**(form ID: 178)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DEMOCRATIC NATIONAL COMMITTEE, ET AL.,

Plaintiffs,

-vs-

Case No. 20-CV-249-WMC

MARGE BOSTELMANN, ET AL.,

Defendants,

Madison, Wisconsin
August 5, 2020
9:00 a.m.

and

REPUBLICAN NATIONAL COMMITTEE, ET AL.,

Intervening Defendants.

SYLVIA GEAR, ET AL.,

Plaintiffs,

-vs-

Case No. 20-CV-278-WMC

MARGE BOSTELMANN, ET AL.,

Defendants,

and

REPUBLICAN NATIONAL COMMITTEE, ET AL.,

Intervening Defendants.

STENOGRAPHIC TRANSCRIPT OF VIDEOCONFERENCE INJUNCTIVE HEARING
HELD BEFORE U.S. DISTRICT JUDGE WILLIAM M. CONLEY

Jennifer L. Dobbratz, RMR, CRR, CRC
U.S. District Court Federal Reporter
United States District Court
120 North Henry Street, Rm. 410
Madison, Wisconsin 53703
(608) 261-5709

CHRYSTAL EDWARDS, ET AL.,

Plaintiffs,

-vs-

Case No. 20-CV-340-WMC

ROBIN VOS, ET AL.,

Defendants.

and

REPUBLICAN NATIONAL COMMITTEE, ET AL.,

Intervening Defendants.

JILL SWENSON, ET AL.,

Plaintiffs,

-vs-

Case No. 20-CV-459-WMC

MARGE BOSTELMANN, ET AL.,

Defendants,

and

REPUBLICAN NATIONAL COMMITTEE, ET AL.,

Intervening Defendants.

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1 (On the record at 9:00 a.m.)

2 THE COURT: All right. It seems we have everyone on.
3 I appreciate everyone's promptness. I'm going to ask the clerk
4 to call the case, and then we'll hear appearances.

5 THE CLERK: The United States District Court for the
6 Western District of Wisconsin is now in session. District Judge
7 William M. Conley presiding.

8 Cases numbered 20-CV-278, 20-CV-459, 20-CV-249, and
9 20-CV-340, *Sylvia Gear and others v. Dean Knudson and others*,
10 called for an injunctive hearing.

11 May we have the appearances, please.

12 THE COURT: Why don't we do this in order, as we have
13 in the past, beginning with the DNC plaintiffs.

14 MR. DEVANEY: Good morning, Your Honor. John Devaney
15 for the DNC along with my colleague, Michelle Umberger.

16 THE COURT: And then for the Gear plaintiffs.

17 MR. SHERMAN: Good morning, Your Honor. Jon Sherman
18 for the Gear plaintiffs, and joined with me is Doug Poland.

19 THE COURT: For the Swenson plaintiffs.

20 MS. DUBIN: Good morning, Your Honor. Yaira Dubin for
21 the Swenson plaintiffs. With me is Jason Zarrow and Molly Lens.

22 THE COURT: And then for the Edwards plaintiffs.

23 MR. LEITNER: Good morning, Your Honor. Mark Leitner.
24 Also appearing for the Edwards plaintiffs is Stacie Rosenzweig.

25 THE COURT: Then we'll turn to the defendants,

1 beginning with the WEC.

2 MR. LENZ: Good morning, Your Honor. Attorney Daniel
3 Lenz for the WEC and Ms. Wolfe. Along with me is my colleague,
4 Daniel Bach.

5 THE COURT: For the Legislature.

6 MR. TSEYTLIN: Good morning, Your Honor. Misha
7 Tseytlin and with me, my colleague, Robert Browne.

8 THE COURT: Very good. We have a -- I'm not sure
9 there's certain -- this can be adjusted, but given my screen,
10 Mr. Tseytlin did not appear in the top nine. If there's any way
11 to rearrange that, we'll do it, but otherwise I'll go to voice
12 activation shortly so I have the correct lawyer in front of me.

13 And then, finally, for the Republican National Committee
14 and the Wisconsin -- Republican Party of Wisconsin.

15 MR. STRAWBRIDGE: Good morning, Your Honor. Patrick
16 Strawbridge for the Republican National Committee and the
17 Republican Party of Wisconsin.

18 THE COURT: Very good. We are here for a hearing on
19 the plaintiffs' motions for preliminary injunction, and I have
20 the benefit of substantial briefing as well as other lengthy
21 proposed findings of fact submissions, and so I'm not going to
22 expect any sort of general summary of facts or general
23 statements of the law. I am very interested in the standard of
24 review that applies with respect to the two categories that
25 we'll be discussing, beginning with those related to relief from

1 deadlines established that the WEC has determined they do not
2 have the power to change, but then obviously also with respect
3 to the specific voter limitations that have been challenged in
4 the case.

5 I do have a couple of housekeeping matters I need to
6 address at the outset. While I have the parties' exhibits and
7 objections and I have a few exhibits provided by the plaintiffs,
8 DNC, which were objected to -- I think there were four of
9 them -- I don't have a copy of all of the exhibits. And at our
10 last status conference we discussed providing those in advance
11 by zip drive or otherwise, and I'm not sure who for each side
12 can address where that stands, but I'll start with you,
13 Mr. Devaney, if you know what the process was for getting those
14 on file so that before the end of the hearing today we can
15 address objections.

16 MR. DEVANEY: Your Honor, I thought that our submission
17 with the response to the objections had the exhibits attached to
18 it.

19 THE COURT: All of the exhibits?

20 MR. DEVANEY: Yes. Just the exhibits that were in
21 dispute.

22 THE COURT: That's right as to yours, but there are
23 other disputes, and perhaps I'm mistaken, but I thought there
24 were -- I only noted four attached exhibits, and perhaps I've
25 missed something. You believe that all of those exhibits that

1 were objected to are now available as an attachment to your
2 objections or just the objections for the DNC defendants?

3 MR. DEVANEY: Just for the DNC. And, Your Honor, we
4 withdrew two exhibits in response to the objections.

5 THE COURT: All right. So I have yours. Can the other
6 plaintiffs advise whether you've filed the exhibits that you're
7 disputing?

8 MR. SHERMAN: Your Honor, for the Gear plaintiffs, this
9 might have been our misunderstanding. Because all of those
10 exhibits had either been filed on the docket or submitted as
11 native files, we thought Your Honor had what was needed, but we,
12 of course, will get those on file if you want them in one place.

13 THE COURT: Yeah. And we talked about this a little
14 bit. I was under the impression that someone was going to be
15 filing -- and this might have been my error in our last
16 discussion -- filing all of the exhibits so I could put it on a
17 drive and then I can just call it up and address it. If it's
18 possible before the end of the hearing for someone to do that so
19 that I can call them up easily, that would be preferable, but if
20 we have to hunt around the docket, we can do that as well. I
21 don't know if there's someone who's able to take that on for the
22 parties. Obviously it would be ideal if I simply can walk
23 through each of them, but if we can't, we'll do it the other
24 way.

25 MR. SHERMAN: Your Honor, I think, with apologies for

1 that, I think we could be able to get it done over the lunch
2 break.

3 THE COURT: That would be perfect. All right. And
4 I'll just leave that to the parties to coordinate so that
5 hopefully by the -- after the afternoon session and towards the
6 end of the hearing we can simply address those objections and
7 finalize the record.

8 The other preliminary is I just wanted to make a couple of
9 observations for the benefit of both sides. First, with regard
10 to a lot of the what I'll just describe as hyperbole or
11 tangential matters that are mentioned in the briefs, I really do
12 not care to hear from either side about the other side's
13 motives, their beliefs, their resources. I do not care to hear
14 sweeping adjectives such as "unmitigated disaster" with respect
15 to the April election or "sweeping success" with respect to the
16 April election. I think it was a mixed bag, and I think even
17 the impact of the Court's rulings is arguably a mixed bag,
18 although I know that the plaintiffs want to suggest that I
19 vindicated an untold number of voting rights. I don't think
20 it's clear, but I also don't think that it can just be
21 dismissed, as defendants do, that, you know, we really don't
22 know what would have happened. I think it's a mixed bag.

23 In terms of speculation as to what's going to happen in
24 November, I also think that's a mixed bag. You know,
25 suggestions that people know what's going to be the situation

1 with respect to COVID-19 or what we know about the virus, we're
2 still a ways out. Having said that, obviously the plaintiffs
3 are right to point out that there is a window here to vindicate
4 voters' rights, and the defendants have identified either the
5 horns of the dilemma alternatively as they've made their
6 arguments: On the one hand, if it's too soon, if I'm acting on
7 insufficient evidence of a substantial problem with voters'
8 abilities to register or vote with absentee ballot, then that's
9 problematic, so I have to have substantial evidence. If it's
10 too late, we run into the prohibitions on upsetting the process
11 for election.

12 And so we are all struggling with the question as to
13 whether there is sufficient evidence to do some things without
14 endangering the overall election or disrupting the processing of
15 the election. We have a Commission that is charged with the
16 responsibility for running those elections but by design is
17 hamstrung for political reasons to make any adjustments, and the
18 question is whether or not it's appropriate for this court to
19 step in. With respect to the deadlines, I view that as purely a
20 question of COVID-19 and the impacts that that will have on
21 in-person registration in particular but also, obviously, on the
22 counting of absentee ballots.

23 I do want to emphasize one aspect of this that I think is
24 the elephant in the room, but it is the parties' elephant -- it
25 is not the Court's -- and that is the role of Wisconsin in the

1 overall presidential election as a swing state or the narrow
2 margins that are expected to decide that result. I realize
3 that, as I say, that's for the parties, and, in fact, it wasn't
4 just the elephant in the room, it was emphasized repeatedly by
5 both sides in briefing, and it is not something that I intend to
6 discuss, and I do not expect the parties to tell me about it.
7 The questions here are purely ones of whether or not COVID-19 is
8 impacting the ability of election officials to conduct this
9 election and vindicate the rights of voters, whether vindicating
10 the rights because of deadlines or because of specific
11 limitations by some voters. And I hope no one is going to get
12 on a grandstand and tell me about the larger implications for
13 the presidential election, because that's not before me.

14 With that said, I am very interested in comments of
15 counsel. I'm assuming that, because you've worked so well
16 together to date, that there's been some discussion about who
17 will speak with respect to the principal issues, and this
18 morning we will break at 10:20 and then reconvene at 10:30 to
19 proceed with questioning of Administrator Wolfe, but until then
20 I'll try to allocate equal time to both sides. And I'll hear
21 from the plaintiffs as to how you propose addressing your
22 portion of opening statements.

23 MR. DEVANEY: Thank you, Your Honor. John Devaney for
24 the DNC. Your Honor, we have talked among the plaintiffs'
25 groups and divided up responsibility, and I will just briefly

1 give you an overview of how we intend to proceed, if that's
2 acceptable to you.

3 Our goal here is to try to avoid repetition, and with that
4 in mind, I will begin on behalf of the DNC and the Democratic
5 Party of Wisconsin by addressing the election day receipt
6 deadline, the registration deadlines, and then, relatedly, the
7 context in which we believe these issues and other issues in the
8 case ought to be considered, including, of course, the pandemic.

9 And then following me this morning, the Swenson plaintiffs
10 will be addressing their claim relating to canvassing deadlines,
11 and I suspect they may have a few comments about the deadline
12 issues involving election day receipt or -- at least election
13 day receipt, although we will, of course, try to minimize any
14 duplication.

15 And then in the afternoon, Your Honor, with respect to
16 the -- what we call the safety net issues, the division will be
17 among the Swenson, Gear, and DNC plaintiffs, and we divided up
18 responsibility for each of those separate issues, which we can
19 describe later.

20 At some point, Your Honor, if Your Honor is interested, the
21 Swenson plaintiffs have a presentation on the *Luft* decision. Of
22 course, that will be probably interwoven into some of our
23 discussion of the issues, but toward the end of the day, if Your
24 Honor is interested in that, we would have --

25 THE COURT: I'll leave that to your discretion in your

1 closings if you think that's necessary. I think the parties
2 have substantially briefed that -- the impact of that decision,
3 as I invited, so I think I have a pretty good perspective on the
4 parties' views and my own thoughts, but I'm certainly not going
5 to preclude that from being addressed in the closings.

6 Why don't we then just plan on 30 minutes a side, beginning
7 with plaintiffs, because I do want to take a short break at
8 10:20 before we bring on the administrator.

9 And you may proceed, Mr. Devaney.

10 MR. DEVANEY: Thank you, Your Honor. I should mention
11 too the Edwards plaintiffs have graciously ceded their time to
12 the other plaintiffs.

13 THE COURT: And that's appreciated, and, again, I'm
14 very much appreciative of the efforts the parties have made to
15 coordinate both among the sides as well as between the two
16 sides.

17 And you may proceed, Mr. Devaney.

18 MR. DEVANEY: Thank you, Your Honor. And recognizing I
19 have 30 minutes and the Court's understandable desire for
20 succinctness, I will try to be as to the point as possible.
21 And, Your Honor --

22 THE COURT: And when I say you have 30 minutes, if
23 others want to speak, you may want to limit yourself.

24 MR. DEVANEY: Understood.

25 THE COURT: But you're right, your group has 30 minutes

1 on this subject. Go ahead.

2 MR. DEVANEY: Understood.

3 Your Honor, the deadline issues, like all the issues in
4 this case, must be considered in the context of the pandemic.
5 As this court recognized in its April decision four months ago,
6 we are in the midst of what everyone knows is a lethal, at least
7 once in a century pandemic. And what has happened since then,
8 it has only gotten worse. We have epidemiology testimony before
9 the Court that is unrebutted and, frankly, I don't think can
10 seriously be contested about the current state of the pandemic
11 and the very probable likelihood that it will still be with us
12 in less than three months from now when the election will be
13 taking place and --

14 THE COURT: And conceding that it will certainly still
15 be with us, although Republicans -- the defendants can argue
16 otherwise, it is clear that we have more information than we did
17 at the time I made the decision in April. There appears to be
18 some substantial evidence that certainly social distancing and
19 wearing of masks can reduce the risk of its transmittal, and
20 while that creates problems at the ballot box, Wisconsin has
21 chosen in-person voting as the principal method for deciding
22 elections. And my question is, unlike the few weeks that I had
23 before me in April, whether there is enough time for steps to be
24 taken so that in-person voting is more practical, conceding that
25 the WEC has already made clear they're trying to encourage

1 absentee voting, and so I've got that to weigh, but I'm not sure
2 that the situation is as uncertain as it was. Granted, it
3 could -- things could worsen, but also it's possible that things
4 may improve in our state, particularly if people start to more
5 universally accept the limitations that are necessary to prevent
6 spread. So as I alluded to in my initial remarks, I feel as
7 though I'm in more of an area of uncertainty as to the actual
8 impacts of COVID-19 by the time election day arrives.

9 MR. DEVANEY: Your Honor, a few responses to that.

10 First --

11 THE COURT: Yeah.

12 MR. DEVANEY: -- just for the record, the current state
13 of the virus, which is, one would logically think, is at least
14 somewhat predictive of the future state of the virus, is that
15 yesterday in Wisconsin 728 new cases were diagnosed. Your Honor
16 I'm sure is aware of all the --

17 THE COURT: Yeah --

18 MR. DEVANEY: -- statistics --

19 THE COURT: -- I am, and, you know, I'm aware, as you
20 say, of the epidemiological issues, and I think you did a
21 reasonable job through your experts of describing the risks.
22 What I'm suggesting to you is that we don't know now three
23 months from today whether or not the same risks will apply. I
24 absolutely agree with you, and this is where we get into the too
25 little/too late challenge --

1 MR. DEVANEY: Right.

2 THE COURT: -- that there's a substantial possibility
3 that we'll continue to be in the throes of the epidemic. If the
4 percentages of positives started to dramatically decline, the
5 indications are, the best indications are, that with social
6 distancing and wearing of masks the risk of a substantial spread
7 will not be great. If the percentages climb of positives and
8 the overall indication is that there's no progress in
9 controlling the virus, then I agree with you. If that's what
10 develops, then it's going to be very problematic to hold a safe
11 election.

12 But I'm not sure, given the amount of time that we have
13 leading up, that it isn't the role of the state to take the
14 steps they need to take to improve the situation with COVID-19
15 as well as prepare for election day and safe voting. And it
16 appears, unlike in April, that some of that is occurring across
17 the state, that there is an effort to increase the number of
18 polling stations that will be open, to increase the number of
19 workers. I'm not saying that will happen, and I am concerned
20 and I think legitimately as a court have an obligation to step
21 in if the WEC and the local polling stations under its guidance
22 are not taking the necessary steps to prepare, but I'm not sure
23 I can at this point -- and this is part of what I want to
24 discuss with the WEC administrator -- make that determination
25 and exercise a substantial step of relieving those deadlines

1 when we have more time to see how this develops.

2 MR. DEVANEY: Your Honor, a couple of points in
3 response. One is I believe that there's a duty on the part of
4 all who have the ability to influence this election to prepare
5 for the virus still being a factor. Of course, none of us has a
6 crystal ball, and we can't be --

7 THE COURT: But the WEC has indicated that they are
8 preparing. They are encouraging municipalities to prepare.
9 There is evidence that in the two greatest areas of concern,
10 Green Bay and Milwaukee, that steps are being taken to improve
11 and increase the number of polling places. Again, understanding
12 that a federal court has a limited role in these matters and
13 having more time, I'm not sure that I'm at a point where I can
14 say that in-person voting won't be practical. Again, I'm
15 weighing that against the fact that even the WEC is very
16 concerned and looking at and encouraging absentee voting, so to
17 that extent it seems to me that we need to make sure that, since
18 absentee ballots are being encouraged, that there is a practical
19 way for everyone to be able to use the absentee ballot.
20 Otherwise it's not a fair -- it's not fair to voters as a whole.
21 But I'm not sure that the current status of COVID-19 gets you
22 there.

23 MR. DEVANEY: Well, Your Honor, the two points I wanted
24 to emphasize are, first of all, we have some very recent
25 experience, literally as of yesterday. There is a primary

1 taking place, as we all know, in Wisconsin next week. We can
2 ask Ms. Wolfe about it this morning, but yesterday she issued
3 a -- I'm mindful of not engaging in hyperbole, Your Honor, but
4 to me it seemed like an urgent plea for poll workers, and as of
5 yesterday the state was more than 900 poll workers short for
6 next week's primary. Ms. Wolfe explained that the average poll
7 worker's age is somewhere in the 60s or 70s, a particularly
8 vulnerable population for COVID, and that people were canceling
9 and they were not showing up, and that's very fresh evidence,
10 you know, literally happening as we speak about the --

11 THE COURT: And I agree. And, you know, it's an
12 unfortunate fact that we're doing this argument just before the
13 August election, and one possibility is that my timing, which
14 was intended to make sure we addressed all of this as soon as
15 possible so that if I did make any adjustments there was time to
16 implement them effectively, but perhaps, as you say, the best
17 evidence will be evidence that we don't quite have in front of
18 me, and I suspect that's what the administrator is going to tell
19 me as well.

20 MR. DEVANEY: Well, Your Honor, I guess I was
21 suggesting that the evidence is in front of us because there's a
22 plea right now for more than 900 poll workers. And then, in
23 addition, the fact that the WEC has sent voting-by-mail flyers
24 to 2.7 million voters containing requests to return forms to
25 request absentee ballots coupled with the fact that we saw

1 almost a million absentee ballots cast in April tells us that
2 there is going to be a very, very high volume of vote-by-mail
3 ballots. I think the evidence is quite persuasive in that
4 regard.

5 THE COURT: And I agree with you. That's where I think
6 the issue as to unnecessary relief is more clear, and that is
7 that since the WEC has taken steps to strongly encourage
8 absentee voting, then we need to take steps to make sure that
9 there's an ability to address that, and since that deadline for
10 requests of absentee ballot goes to five days before the
11 election, that's where I think the dominos fall but -- and so I
12 take your point there. It's a little clearer. I'm not sure it
13 is quite so clear with respect to the registration, but I'm
14 happy to hear any argument you have as to the need to move that
15 deadline.

16 MR. DEVANEY: Your Honor, could I add a little more on
17 the election day receipt deadline?

18 THE COURT: Yes. I'm sorry. I apologize. As you
19 know, I'm wont to interrupt too often, and I'll let you complete
20 your thought.

21 MR. DEVANEY: You're obviously, not surprising, very
22 familiar with our arguments on it, so I'll try not to be
23 repetitive, but a couple of points I do want to make that go to
24 the context of that issue relate to the postal service. You
25 know, we just talked about the fact that there is going to be

1 this huge increase in volume of voting by mail. We're seeing it
2 in states around the country. On our status conference on
3 Monday, you suggested that I could show you newspaper articles
4 about more recent problems with the postal service, and my
5 morning cup of coffee this morning, I picked up *The Washington*
6 *Post*, and the headline says "In a Bad Sign for Fall, Mail Delays
7 Mar Voting," and this relates to --

8 THE COURT: Yeah. I don't know that I actually
9 encouraged you to start quoting newspaper articles.

10 MR. DEVANEY: Sorry.

11 THE COURT: I think that's a bit of a liberty, but I
12 think there's ample evidence in the record already that,
13 particularly if we get a large number of requests for absentee
14 ballots five days before the election, they are not going to be
15 able to accomplish the turnaround, particularly because it can
16 only be done by mail. It's just -- I mean, even the best
17 scenarios of three to four days gets you to six to eight days by
18 the time the ballot returns, and it's just not going to happen.

19 MR. DEVANEY: Your Honor, I had two pages of notes on
20 that point that I will now skip because I'm fully, obviously, in
21 agreement. And I would cite Your Honor to the declaration of
22 Mr. Stroman, who was the number two official at the postal
23 service for nine years, just stepped down, and he talks about --

24 THE COURT: Right.

25 MR. DEVANEY: -- the resource shortages, the delays in

1 delivery --

2 THE COURT: Yeah. I don't think there's any reason to
3 think that the situation has improved since April, and we saw
4 what happened in April. Now, I understand there's -- there
5 could be some argument as to whether all of the absentee ballots
6 could have been accomplished by in-person return, but since the
7 WEC is committed to absentee ballots, I don't know that that
8 really is a material distinction.

9 So with that said, go ahead.

10 MR. DEVANEY: The other side of the coin after we
11 recognize the fact that ballots are inevitably going to arrive
12 late under the scheme that we just talked about, the other side
13 of the coin, of course, is what is the state interest in the
14 deadline under *Anderson-Burdick*, and, Your Honor, we briefed
15 this extensively. The purported state interest is to have
16 prompt election results that are canvassed and certified to
17 comply with the deadlines relating to that so there is some
18 certainty about the results in the election. That's what I
19 understand to be the primary state interest.

20 The facts relating to that are when Your Honor extended the
21 deadline in April, absolutely local officials had to work hard
22 to meet the canvassing and certification deadlines, but as Ms.
23 Wolfe testified, they met them. Relatedly, for multiple years
24 before this deadline went into effect in 2016, the state had a
25 postmark deadline, and so ballots were counted after the

1 election. They never had any problems, to our knowledge, of
2 meeting canvassing deadlines and certifying election results --

3 THE COURT: There was a second argument aside from the
4 pressures put on the local polling locations to also certify the
5 election while they're engaged in the calculation of the ballot,
6 and that is there's the larger question as to the need in a
7 national election like this one to get results finalized, which
8 as a federal court it seems to me is probably appropriate for me
9 to consider in particular. Can you help me understand what is
10 likely to be the impacts across the country? Because I've seen,
11 depending on submissions, 14 to 18 states have a postmark date
12 of election for absentee ballots, and in the past do you know
13 what the experience has been with those states reporting?
14 Because I don't recall that being an issue in past presidential
15 elections, that there was a delay, and I suspect it's because
16 the number of absentee ballots weren't significant enough to
17 likely move the outcome and everyone could recognize that, but I
18 don't know that. I wondered if you did.

19 MR. DEVANEY: Your Honor, I don't have the facts
20 specific to those states and how they addressed announcing
21 results after presidential elections. What I can say is, like
22 you, I don't recall any issues with that. Certainly you're
23 right that it's going to be a higher number of mailable ballots
24 this year. It may take -- there will be more counting to do,
25 but I guess the point is that there's no evidence that the state

1 will be unable or election officials will be unable to meet the
2 canvassing and certification deadlines that are in place if they
3 had historically done that --

4 THE COURT: But there is reason to think that there's
5 going to be a problem. And I guess that also raises the other
6 problem that's created by adopting the United States Supreme
7 Court's solution of a postmark date, and that is what's the
8 standard that should be applied to determining whether or not a
9 ballot was sent when we know, barcodes or not, there's going to
10 be issues as to whether the local official can determine when
11 the ballot was placed, in other words, that it was placed by
12 election day, and the standard that should be applied by clerks.

13 MR. DEVANEY: Your Honor, that issue is largely taken
14 care of by the WEC's adoption of intelligent mail barcodes, and
15 I would refer you to the declaration of Mr. Stroman, who makes
16 it clear that -- and Ms. Wolfe made this clear too -- that
17 that tells --

18 THE COURT: I read Ms. Wolfe's testimony. She does not
19 make it clear, but tell me what you think is clear.

20 MR. DEVANEY: Well, I'll address Ms. Wolfe, but with
21 Mr. Stroman, who obviously is very familiar with intelligent
22 mail barcodes, you can tell from those barcodes when the ballot
23 was received by the USPS, which is the function --

24 THE COURT: Oh, absolutely, but the local poll worker
25 staring at a barcode is not going to be able to tell.

1 MR. DEVANEY: Well, they should have the equipment
2 necessary to read that --

3 THE COURT: Every -- 1,800 poll stations are going to
4 have the equipment to determine that? That's not what Ms. Wolfe
5 indicated.

6 MR. DEVANEY: She -- and she indicated there may be
7 some rural places that can't --

8 THE COURT: I'm just -- you're living in a different
9 world than is on this record. In any event, I think -- that's a
10 real concern for the Court, and I would encourage both sides to
11 think about how I should set a standard. It occurs to me one
12 standard might be that absent a postmark indicating that it was
13 late or some other clear indication that it was put in the mail
14 after election day, there should be a presumption of counting
15 the vote, which I assume the plaintiffs would agree would be an
16 appropriate standard to vindicate the rights of voters.

17 MR. DEVANEY: That is correct, Your Honor.

18 THE COURT: Absent that, this notion that somehow the
19 bar -- I mean I don't think they -- maybe Ms. Wolfe will
20 disabuse me of this, but other than the fact that they've
21 created barcodes, I'm not sure how that's going to help the work
22 that has to be done at the local level to determine the
23 timeliness of the ballot.

24 MR. DEVANEY: Well, Your Honor, certainly the standard
25 you put forth for postmarks is one we would endorse, but, in

1 addition, it was my understanding that you can actually read --
2 election officials can read the information on the barcodes to
3 determine when a ballot was received by the postal service, but
4 we can, I guess, explore that with Ms. Wolfe.

5 THE COURT: Yeah. That's fine.

6 You have about 12 minutes left, and you haven't addressed
7 the registration deadline and moving the registration deadline.

8 MR. DEVANEY: Yes. And I want to certainly protect
9 time of my colleagues, so I will try to do that very quickly.

10 The Court knows that approximately 57,000 voters were able
11 to register because of your extension of the online registration
12 period for the April election and --

13 THE COURT: But the question is now, with so much more
14 time and knowledge, the benefits of voting online, whether the
15 same necessity exists here as did with very short notice.

16 MR. DEVANEY: And, Your Honor, that goes back to the
17 pandemic and the challenges for many people of registering in
18 person, and the truth of the matter is that voters do wait until
19 weeks before the election to register. History proves that.
20 Statistics prove that. And to truncate registration in a manner
21 that doesn't require in-person registration three weeks before
22 the election in the context of the pandemic is illogical.
23 There's no state interest in truncating that. Allowing mail
24 registration/online registration for the same time period as
25 in-person registration will allow more people to register during

1 the pandemic, and there's really no countervailing state
2 interest in not permitting --

3 THE COURT: Well, there would be if I extended it to
4 mail, and so I think I'm facing the same set of concerns that
5 existed in April. It seems like, and, again, there's some
6 dispute about this, but it seems as though it was doable to
7 extend it online, but then it becomes much more problematic when
8 we start creating other options.

9 MR. DEVANEY: Your Honor, the only issue with mail
10 is -- it goes back to the postmark issue, and basically, you
11 know, if we take registration by mail up to close to election
12 day, then some registrations may come in just before or even
13 after election day. As we say in our brief, that problem could
14 be solved by using a postmark deadline for those mail-in
15 registrations --

16 THE COURT: But then we've created a whole nother
17 postmark problem, and what would be the postmark deadline? Five
18 days before election? Which doesn't leave time because now
19 you've added a third round of mailing, a mailing by the voter to
20 register, then hoping against hope that during that short
21 window -- I just think it creates a lot of problems and may well
22 be counterproductive to getting voters registered. And I don't
23 know if you have an alternative to five days before the election
24 with respect to mail-in registration.

25 MR. DEVANEY: Your Honor, the alternative would be

1 something along the order of ten days before the election,
2 whatever is going to enfranchise more voters, and obviously the
3 further we move away from the election, the less the timeliness
4 problems that you and I have just discussed. And certainly with
5 online registration, those issues don't exist. We saw the
6 enfranchising effects of extending online registration from your
7 April order, and there just isn't a compelling state interest in
8 not extending. So for those -- and as we saw in April, too, the
9 Commission was able to implement in a couple of days, two or
10 three days, your extension of online registration. Now there's
11 plenty of time to do that, and the franchising effects are
12 obvious from that. We ask the Court to consider doing so.

13 THE COURT: Thank you very much, Mr. Devaney. And I
14 take it you wish to cede your remaining seven minutes.

15 MR. DEVANEY: Yes. Thank you, Your Honor.

16 MR. ZARROW: Good morning, Your Honor. Jason Zarrow on
17 behalf of the Swenson plaintiffs. The issue I'd like to address
18 today I think dovetails quite nicely with your discussion with
19 Mr. Devaney, and that is lifting the prohibition on early ballot
20 processing. To the extent there's any concern for the Court
21 that the clerks will be able to process ballots in time, we
22 agree with Mr. Devaney that there is absolutely no record
23 evidence that suggests they're not -- the clerks won't be able
24 to meet certification deadlines. But what we're looking for
25 here is to allow clerks to process ballots before election day,

1 which means verifying that they're validly voted, the
2 certification is right, the voter is not a felon
3 disenfranchised, the voter resides in the district, and placing
4 them in the tabulating machine or the ballot box but not, and I
5 think this is really important, not running a final tally so
6 there's no risk at all of a leak. Essentially you put the votes
7 in the machine, but you don't push the button that spits out the
8 election results. In the WEC's April 6th memo implementing this
9 court's earlier order, the WEC said, "Count the ballots, not the
10 votes," and that's exactly what we'd like to see happen.

11 And there are three reasons that we'd like to see that
12 happen. The first is to provide ample time to give notice and
13 an opportunity to cure or correct errors. I'd like to identify
14 for the Court a decision that came out just yesterday from the
15 Middle District of North Carolina finding that voters there had
16 the right to notice and opportunity to cure for absentee-by-mail
17 ballots, and that decision, to address one of the Court's
18 previous questions, that decision said this issue arises under
19 federal due process and, therefore, didn't address it under
20 *Anderson-Burdick*. We agree --

21 THE COURT: Yeah. I guess I realized that this was
22 going to come up. I understand and will consider whether there
23 may be rare circumstances, but until this North Carolina
24 decision, no one had cited to me a case drawing a distinction
25 between those two. It's one thing to say it was decided under

1 the due process standard. It's another thing to say it would
2 have come out differently under the alternative standard. So
3 I'm still skeptical about that, but having said that, I take
4 your point. And the name of the case or --

5 MR. ZARROW: Right. So I don't actually think it's
6 even available yet on Westlaw, but I have the citation for you.
7 It's 1 --

8 THE COURT: Let's do this: Why don't you just --

9 MR. ZARROW: We'll submit it.

10 THE COURT: -- file the slip opinion --

11 MR. ZARROW: We'll submit it.

12 THE COURT: -- and at least I'll then have access to
13 that.

14 MR. ZARROW: I should note also --

15 THE COURT: Is the quid pro quo for that there should
16 be less time at the other end?

17 MR. ZARROW: No, no, no. No. So we've heard from the
18 clerks actually in this case. This is Milwaukee, their
19 30(b)(6); Green Bay, their 30(b)(6); the City of Madison, this
20 is docket entry 39 in the earlier iteration of this case. They
21 feel that they need this time on the front end so that they can
22 start processing these absentee ballots early. A lot of other
23 states do this essentially, one, to give notice and opportunity
24 to cure, but also because it reduces errors on election night
25 when they're trying to process all these ballots really quickly.

1 They say it's going to be just a --

2 THE COURT: And you may be responding, but I'm not
3 following it. What I'm saying is that if there is going to be
4 fewer ballots to process at whatever deadline I establish,
5 should I move up that deadline?

6 MR. ZARROW: No.

7 THE COURT: The only reason not to do that would be
8 that there are still some ballots coming in the mail, but given
9 the other factors, maybe that should be adjusted as well then
10 because it won't take much time to count the ballots.

11 MR. ZARROW: So I'm sorry. I think I did misunderstand
12 your question. But the answer is no. These two remedies that
13 we're asking for are complementary. Even if you count early, it
14 doesn't alleviate the problem of late-arriving ballots through
15 no fault of the voter.

16 THE COURT: And I think that's the response.

17 MR. ZARROW: Yeah. They're just different issues.

18 THE COURT: Understood.

19 MR. ZARROW: Yeah. And the third point -- we also
20 heard this from the clerks, and this goes to something that Your
21 Honor mentioned earlier -- is if they're allowed to start
22 processing earlier, as happens in other states, they can get the
23 results to the public sooner. So that's a public interest that
24 favors in the *Matthews v. Eldridge* balancing test doing this
25 early.

1 So there's essentially three reasons: One, it gives time
2 for notice and opportunity to cure; two, it leads to a more
3 accurate count, and the clerks say they need this for a more
4 accurate count; and three is it allows the public to get
5 election results on election night, and I don't think any of the
6 evidence in this case is disputed on any --

7 THE COURT: Well, is that correct? So that you would
8 be -- they're not going to get results on election night if I
9 extend the time for counting absentee ballots.

10 MR. ZARROW: So they can get partial returns --

11 THE COURT: No. You just got done telling me -- that's
12 not how it works. Either there's going to be a disclosure of
13 the vote or there's not going to be a disclosure of the vote.
14 I'm not going to let it play out, or at least we didn't in
15 April. We simply said they shouldn't be reporting until the
16 deadline, and part of the reason was that -- is because we were
17 concerned about what the implications of that would be. Then I
18 am asking you the same question, which is --

19 MR. ZARROW: Sure.

20 THE COURT: -- so then I should allow them to report
21 actual results that evening, including absentee ballots
22 received, with the understanding that some additional ballots
23 may be making their way in and that those will have to be
24 counted later.

25 MR. ZARROW: Yeah.

1 THE COURT: That's what you're proposing.

2 MR. ZARROW: That's what we're proposing. I don't
3 think adopting this relief depends on that proposal, as is what
4 happened in April, but that is what we're proposing, and I
5 believe, Your Honor, that's what states like California and
6 Arizona do. You get the first batch of early absentee votes,
7 it's posted, and then things trickle in as late-arriving ballots
8 come in and they get counted. I don't think --

9 THE COURT: All right. Anything else that plaintiffs
10 wanted to raise with respect to the deadlines in your full
11 minute?

12 MR. ZARROW: Yeah. So I just do want to mention very
13 briefly we're asking the Court to enjoin Section 6.855(1), which
14 is the prohibition that's already past on moving in-person
15 absentee voting places. The state allows those places to be
16 moved by municipalities for election day, election day voting
17 sites, but not for in-person absentee voting sites, and we think
18 the distinction between the two types of voting is arbitrary and
19 can't be sustained by any state interest.

20 THE COURT: Thank you.

21 All right. I will now hear -- I'm sorry, Mr. Devaney, was
22 there something you wanted to add?

23 MR. DEVANEY: Ten seconds, Your Honor. On the
24 extension of the mail registration deadline, I suggested a
25 postmark deadline for that. I meant to say a receipt

1 deadline -- I just wanted to clarify that point -- as a possible
2 alternative.

3 THE COURT: Understood. Then let me hear from the
4 defendants.

5 MR. LENZ: Your Honor, I'll go first on behalf of the
6 WEC defendants, very, very shortly. As you know, the WEC's
7 position is that it's bound by state law and does not have the
8 authority to waive a rule --

9 THE COURT: Yeah. I'm not sure there's much more to
10 add for the WEC --

11 MR. LENZ: Thank you, Your Honor.

12 THE COURT: -- defendants unless you want to address
13 the specific concerns as to the impacts of any specific relief.

14 MR. LENZ: We only ask that the Court be mindful of the
15 canvassing deadlines in addressing any relief, but we don't take
16 a specific position one way or the other on the relief
17 requested. Thank you.

18 THE COURT: Understood. Thank you.

19 MR. TSEYTLIN: Your Honor, Misha Tseytlin for the
20 Legislature. I will discuss --

21 THE COURT: It's nice to see you. I'm sorry. Until
22 now you weren't on my screen. I'm wondering if now you'll come
23 up. Nope. You're still not in the priority, but I have you on
24 my screen based on voice activation, so please continue.

25 MR. TSEYTLIN: Excellent. So this morning I'll discuss

1 the registration and ballot receipt deadline issues, and, if
2 necessary, Mr. Strawbridge for the RNC will discuss the issues
3 that were mentioned briefly by the Swenson plaintiffs there at
4 the end.

5 Now, since Your Honor started talking about the uncertainty
6 with the virus, that's, I think, where I'm going to begin and to
7 discuss for a little bit the too little/too late issue that Your
8 Honor referenced here and with regard to some earlier motions
9 that were decided. The Legislature has never expressed in this
10 case any confidence that the virus would, quote, "go away." We
11 have only highlighted that there is grievous uncertainty about
12 what the status of the virus is going to be come November, what
13 the status of the adjustments to the election administration
14 will be come November. There is, I think, as Your Honor
15 recognized in your comments at the beginning of this hearing,
16 very real uncertainty. Now, we would respectfully submit that
17 uncertainty --

18 THE COURT: Grievous uncertainty. I'm not sure what
19 grievous uncertainty is, but certainly uncertainty.

20 MR. TSEYTLIN: Uncertainty with a bold and italics, I
21 guess I would say. And I would say that uncertainty as a legal
22 matter must be resolved in favor of the Court staying its hand
23 for two reasons. One is the issue of ripeness as a
24 jurisdictional and, two, that states' laws must be presumed to
25 be constitutional so --

1 THE COURT: Let me suggest what's not uncertain:
2 Absentee ballots requested five days before this election, which
3 is what Wisconsin law allows, are simply not going to get turned
4 around and back into the hands of the voter, much less back to
5 the election officials, to be counted by election day. There's
6 just no -- I mean, there's compelling evidence -- there's
7 grievous evidence that that's not going to happen.

8 MR. TSEYTLIN: Well, Your Honor, I have a couple
9 responses to that point --

10 THE COURT: Yeah. I'd be interested.

11 MR. TSEYTLIN: First, the Supreme Court in the RNC
12 case, the one that came up from this court in April, said, and
13 this is a direct quote, "Even in ordinary elections, voters who
14 request an absentee ballot at the deadline for requesting
15 ballots will usually receive their ballot on the day before the
16 election or on election day." So the Supreme Court already
17 recognized that, even COVID aside, you would have this situation
18 given that Wisconsin's decided to set the deadline at five days
19 and --

20 THE COURT: Right. So they would have received it on
21 or about election day, and the Supreme Court's solution was make
22 a postmark deadline of election day. Are you advocating that as
23 a solution here so that voters should be relieved, since
24 Wisconsin allows you to request an absentee ballot five days
25 before the election by mail that --

1 MR. TSEYTLIN: Well, Your Honor -- sorry.

2 THE COURT: Well, you understand the implication. Even
3 the United States Supreme Court seems to say that under those
4 circumstances it would be appropriate to allow postmark.

5 MR. TSEYTLIN: Your Honor, I would very strongly
6 disagree that that is the implication.

7 THE COURT: Yeah. I suspected you would, and I want to
8 hear why.

9 MR. TSEYTLIN: And so what I read the Supreme Court to
10 be doing there, since we did not challenge that aspect of Your
11 Honor's order, frankly, because voters had already relied on
12 that order, and we did not think it would be fair for those
13 voters who relied on Your Honor's order, given the time it took
14 to get to the Supreme Court, to ask for that relief, so we
15 limited our relief, and the Supreme Court was very clear that it
16 was not ruling on that issue.

17 Now --

18 THE COURT: But what -- I'm sorry. But what is the --
19 when you say you didn't challenge the relief, what is the relief
20 that you think I gave with respect to requesting an absentee
21 ballot by mail five days before the election?

22 MR. TSEYTLIN: Well, Your Honor created a receipt
23 deadline of --

24 THE COURT: Right.

25 MR. TSEYTLIN: -- ten days out, and we understood that

1 if we sought to the Supreme Court to reverse that decision in
2 whole, there were certain voters that may have relied on it in
3 the short period of time it took to get to the --

4 THE COURT: Okay. Well, let me put it a different way
5 to you. If, as seems to be the case, whatever else happens with
6 COVID-19, there's going to be a large percentage of the
7 electorate who will be nervous about voting in person, a
8 nervousness promoted by the Wisconsin Election Commission
9 encouraging people to vote absentee, and they avail -- which
10 would mean that there would be an unusually high number of
11 individuals availing themselves of the absentee ballot right
12 five days before the election, don't we have exactly the same
13 situation that prompted the initial relief here?

14 MR. TSEYTLIN: Not at all, Your Honor, and here I'll
15 quote Your Honor's language, docket 170, page 38: Quote, "Even
16 the most diligent voter may be unable to return his or her
17 ballot in time to be counted." Now, the most diligent voter,
18 those voters who as a personal matter decide they don't want to
19 vote on election day -- because a lot of people feel comfortable
20 voting on election day and are planning to do so. We understand
21 that some people are not comfortable with that -- for those
22 voters, the most diligent voter or even a reasonably diligent
23 voter, the voter that knows they don't want to vote on election
24 day, which is an option that a lot of voters will choose, can
25 and should exercise reasonable diligence to request their

1 absentee ballot early and return it early. That is what a
2 diligent voter would do under the *Luft* case and the *Frank* case.
3 That is reasonable effort.

4 Again, Your Honor said that --

5 THE COURT: But isn't there a bit of a catch-22 for the
6 voter who's looking at the statute and saying, "I have five days
7 before the election to seek an absentee ballot," only to
8 discover in reality that that wasn't enough time?

9 MR. TSEYTLIN: Your Honor, as I read *Luft* and the *Frank*
10 cases, the state's generosity in allowing that five-day rule
11 cannot be held against them in a constitutional analysis or it
12 can't --

13 THE COURT: I'm not holding it against them. I'm just
14 saying that if -- and one possibility was we could just wait and
15 see in the week leading up to that deadline if there are tens of
16 thousands of Wisconsin voters who maybe, as you suggest, because
17 they're procrastinators, who were not the most diligent voter,
18 we know that they haven't acted quickly enough even though
19 they've acted within the deadline established by Wisconsin to
20 get their ballots and get them back, would you disagree that at
21 that point I should give the relief so that tens of thousands of
22 votes are not lost because voters foolishly believed that there
23 would be time -- that the deadline was sufficient to allow them
24 to get their ballot and send it back?

25 MR. TSEYTLIN: Your Honor, so just a little kind of

1 rewinding back to March when we had this in front of us.

2 THE COURT: Yeah.

3 MR. TSEYTLIN: At that point when the COVID-19 crisis
4 kind of blindsided everyone --

5 THE COURT: You know, I'm not -- I'm not -- Mr.
6 Tseytlin, I know -- look at, I'd like you to answer my question.

7 MR. TSEYTLIN: Your Honor --

8 THE COURT: Regardless of what -- the much more
9 difficult position voters were in with a few weeks left, now
10 they have warning that COVID-19 is a problem. There's been at
11 least some advertising that the postal service hasn't been
12 very -- hasn't been able to turn these around quickly. So
13 there's a general notice among some voters, but certainly not
14 all voters, that that turnaround time is not going to be
15 sufficient, and nevertheless tens of thousands of voters end up
16 submitting requests for ballots in the few days up to five days
17 before the election. At that point isn't it appropriate to
18 provide some relief to accommodate for the problems with the
19 postal service and general turnaround time? Are you saying
20 because they were not, quote, "the most diligent voters,"
21 they're just out of luck under our Constitution and I have no
22 power to remedy that situation?

23 MR. TSEYTLIN: I wouldn't say they're not the most
24 diligent voters. I think the legal standard -- that was just
25 your language from --

1 THE COURT: All right. They're the least -- they're
2 the least diligent voter and that that standard is such that I
3 just allow those votes not to be counted, and that's appropriate
4 under your reading -- and are you pronouncing it *Luft* or *Luft*?

5 MR. TSEYTLIN: *Luft*. I went --

6 THE COURT: All right. You win. No, no, no. You win.
7 You're the first lawyer to bring it up. *Luft* it is. With that
8 said, that's your reading of *Luft*, that the State of Wisconsin
9 created a situation that results, even in the best of
10 circumstances without COVID-19 in the way, the possibility that
11 some ballot requests won't even be received, much less returned,
12 in time to vote and get them back before election day in person.
13 They're just out of luck, and that's how the legislature set it
14 up -- or I should say the State of Wisconsin set it up -- and
15 that's how we should view that.

16 MR. TSEYTLIN: Your Honor, if I could have a minute to
17 just answer your question, because it was multiple parts.

18 Our position is that the standard isn't the most diligent
19 voter standard. It's a reasonable effort standard. And our
20 position is that a voter who knows that he or she does not wish
21 to vote on election day, that voter -- a reasonable, diligent
22 effort means not waiting until the last minute, because even as
23 the -- and this is the evidence that the Gear plaintiffs
24 submitted with their supplemental statement of fact. Even
25 before COVID, the five days was not always enough to get that

1 turned around, and so --

2 THE COURT: Agreed.

3 MR. TSEYTLIN: But I think nobody had sought that as
4 being unconstitutional -- arguments just that it was
5 unconstitutional because people can, of course, go vote in
6 person. So now if a voter believes that they don't personally
7 feel comfortable voting in person because of COVID, it is, under
8 the *Luft/Frank* reasonable effort standard, they should, in fact,
9 request the absentee ballot and return it well in advance of
10 that deadline. If somebody, however, is comfortable voting in
11 person, which a lot of people will, they are -- they can go
12 ahead and wait, take their chances. If they don't get it in
13 time, go vote in person. So those are the two categories.
14 Those who don't feel comfortable voting in person, you've got to
15 do it earlier to be sure. If you are comfortable --

16 THE COURT: And what if, because of COVID-19, rather
17 than a few thousand such individuals, there's going to be tens
18 of thousands? It doesn't matter because they didn't make
19 reasonable efforts, and they're just out of luck.

20 MR. TSEYTLIN: That's right, Your Honor. But, again, I
21 think I just want to highlight and emphasize: It's for the
22 voters who are not comfortable voting in person. Those are the
23 only ones to which this is a problem. If you're comfortable --

24 THE COURT: I understand.

25 MR. TSEYTLIN: -- voting in person, then take your

1 chances, submit it five days before. If it doesn't come, go
2 vote in person. If you don't feel comfortable, then, by all
3 means, do it early. That's reasonable effort, and that's the
4 legal standard. The most diligent voter standard is not the
5 standard. It's the reasonable effort standard, and I would
6 submit any person who feels uncomfortable voting in person, it's
7 perfectly reasonable for them to say, yes, Wisconsin allows that
8 five day, but that's understanding that there is the in-person
9 option. "I personally do not feel comfortable with in-person
10 voting" -- not me personally but this hypothetical voter -- for
11 that voter it is reasonable to expect a citizen who personally
12 feels they don't want to vote in person to request a ballot and
13 return it early. That is our legal position.

14 THE COURT: Understood.

15 Maybe this is a reasonable time to switch to the
16 registration deadline.

17 MR. TSEYTLIN: Absolutely, Your Honor. With regard to
18 that, I mean, my answer to that is kind of largely similar.
19 People have a large amount of time to register now. Any
20 reasonable voter now -- back in March we actually didn't oppose
21 Your Honor's granting that relief because we understood the
22 situation. It hit everyone unexpectedly. Now any voter can
23 register today. Certainly any plausible understanding of the
24 reasonable voter standard would fall on our side. I heard
25 counsel for the DNC say, well, there's no -- you know, it would

1 be a better policy to allow registration until election day.
2 That's a policy judgment, Your Honor.

3 THE COURT: I think his argument was there's no
4 compelling interest by the state not to allow it.

5 MR. TSEYTLIN: Right, Your Honor, and I think *Luft*
6 makes it fairly clear that that's not the way to conduct that
7 analysis. The analysis conducted under the reasonable voter
8 standard, everyone has the opportunity to register now or not in
9 a situation where the pandemic has blindsided any voter, and so
10 it's clearly reasonable to expect them to register now in
11 between the statutory deadline.

12 THE COURT: Unless there's something about COVID-19
13 which changes that calculus, particularly -- and this is the
14 part where I guess I'm most concerned in the practical aspect of
15 voting that day. For those who are not diligent and have not
16 been registered -- they're new voters -- who go to the polls on
17 election day, that's going to be the most challenging group for
18 poll workers to deal with. It's going to take more time to
19 process them. It's going to require more face-to-face
20 discussion. They're going to put poll workers and themselves at
21 greater risk because of that increased period of interaction,
22 and while social distancing and mask wearing is going to be a
23 positive step, we've -- the Wisconsin Election Commission has
24 now gone out of their way to encourage absentee balloting among
25 registered voters, or they will when they send out their mailing

1 on around September 1st. But these new voters are not going to
2 have the same information provided to them. There is no way to
3 identify them. There's no way to get word to them that the need
4 to register is going to be fundamentally important as a matter
5 of a health concern, and so the argument would be that in light
6 of COVID-19, we should give them more time to complete that
7 process so that we don't have nightmares of lengthy registration
8 lines on election day.

9 MR. TSEYTLIN: A couple of points on that, Your Honor.
10 First, you know, in order to register in person, for those of us
11 who have done it, just bring -- you bring a utility receipt.
12 You've got to show a photo ID to do it anyway, so it doesn't
13 actually lead to --

14 THE COURT: Well, you say that cavalierly, but the fact
15 is that there -- and I guess we'll be getting into this this
16 afternoon, but there could be safety valves. There could be
17 extra steps that could be taken by certain voters, and those are
18 the people who will slow down the registration line. I agree
19 with you, for the typical person who has an ID, whether it's a
20 driver's license or a state ID, and some proof of residence, it
21 should be a fairly quick process, but that's not everybody, and
22 there are people who arrive at the polls -- and I'm concerned if
23 we close out registration on the typical deadline without
24 COVID-19, we're going to be pushing a large number of those
25 individuals who will have the biggest problems and create

1 problems for poll workers on election day.

2 I mean, you've said you voted in person. I have many times
3 as well. And it's inevitable you have the people who are
4 preregistered move quickly, go through, vote, and they're done.
5 And there's a long line -- you can see the sadness on people's
6 faces when they realize, oh, I'm in the nonregistration line.
7 So I can't completely minimize the likelihood, substantial
8 likelihood, that to the extent people have not registered online
9 or by mail in advance, that that's going to become a problem on
10 election day.

11 MR. TSEYTLIN: Your Honor, just two quick points. One
12 is I don't --

13 THE COURT: Yeah.

14 MR. TSEYTLIN: I mean, I understand Your Honor
15 discussing your experience. I think I had a different
16 experience --

17 THE COURT: No, no. It's not just my experience. This
18 has also been a point made generally about the risk of voting in
19 person by an epidemiologist expert in this case but also by many
20 others, and I'm not relying on my own individual experience.
21 It's just meant to be anecdotal. But there's no question that
22 there's going to be -- I mean, the standard for me is, in a
23 civil case, more likely than not. More likely than not what
24 obviously is where the standard may be higher, but it's more
25 likely than not that if we don't get sufficient registrations in

1 advance, that there's going to be increased problems at the
2 polls on election day.

3 MR. TSEYTLIN: I mean, I would just say that there
4 is -- I mean, I don't -- I mean, obviously the record here is
5 voluminous. I don't think I have seen any record on the issue
6 that you're discussing of more problems with someone having to
7 show a utility and a photo ID rather than just a photo ID, so I
8 just don't think there's a record --

9 THE COURT: Well, no, of course there is. I mean, even
10 when you're registering online that's a problem. That's a whole
11 nother argument we're going to have this afternoon is what
12 safety valve should be available for those who can't meet those
13 standards.

14 So, anyway, what's your second point?

15 MR. TSEYTLIN: My second point is, again -- and you
16 said more likely than not what? The more likely than not based
17 on the reasonable -- the reasonable voter would not be able to
18 register between now and the statutory deadline. With respect,
19 I don't think it's a close question that somebody who is a
20 reasonable voter can register between now and the statutory
21 deadline. Registering to vote is easy the Seventh Circuit has
22 said, and it remains easy today, and the only issue here is
23 whether that easy path will be exercised now or two weeks before
24 the election. Certainly --

25 THE COURT: Or on election day, which is the primary

1 manner for registration in Wisconsin, and what I'm suggesting to
2 you is that may be where the problem is. Now, I don't know
3 that -- you certainly reasonably argue that there isn't
4 evidence -- there's insufficient evidence that that will be a
5 big enough problem for me to step in and change the calculus
6 that has already been created by the state. I hear you on that,
7 but I'm not sure that the reasonable voter who has never
8 registered, who is going to be less sophisticated, is going to
9 realize the problems that they're going to face on election day
10 and that we won't be discouraging voters because of COVID-19
11 that we could otherwise -- the State of Wisconsin could
12 otherwise easily address by extending the registration deadline.

13 MR. TSEYTLIN: Your Honor, I don't want to kind of beat
14 a dead horse.

15 THE COURT: Yeah.

16 MR. TSEYTLIN: I made my points the best I can on that.

17 THE COURT: All right. Very good. Anything else you
18 want to address in your seven or so minutes?

19 MR. TSEYTLIN: No. That will be it, Your Honor.

20 THE COURT: All right. Were there others who wanted to
21 be heard do you know, Mr. Tseytlin, for the defense?

22 MR. STRAWBRIDGE: Your Honor, this is Patrick
23 Strawbridge for the Republican Party groups. I just was going
24 to address briefly, and I can make it as brief as Your Honor
25 wants, on the canvassing question --

1 THE COURT: No, no. You've got all of seven minutes.
2 Take your time.

3 MR. STRAWBRIDGE: I probably don't need it, but we'll
4 see how this goes.

5 I think I just want to make a few points on that. I won't
6 address this new North Carolina case. We'll review it, as I'm
7 sure Your Honor will review it, the debate over the significance
8 of the procedural due process argument versus *Anderson-Burdick*.
9 I'll just set that aside. We can both read the cases and decide
10 how we want to handle it.

11 I think that on the merits, regardless of how you look at
12 it though, I think there are some problems with what the
13 plaintiffs are proposing, and let me just kind of walk through
14 their three sort of concerns, the evidence they highlighted to
15 suggest them. First they said they wanted relief from the
16 requirement that absentee ballots, you know, not be canvassed
17 before election day because it would give voters an opportunity
18 to cure defects in their absentee ballots. But the evidence in
19 the record and the process in Wisconsin already provides an
20 opportunity if the clerks reach out to voters and there's enough
21 time. Clerks can review absentee ballots as soon as they come
22 in. They can see whether or not it's missing a necessary
23 signature or otherwise not compliant on its face. And if
24 there's time, the statute allows them to reach out and contact
25 voters. So I don't think that suspending the statutory

1 requirement would change anything, I guess, is my first point on
2 that. Certainly I don't read the plaintiffs to have asked that
3 this court order all of the municipal clerks across the state of
4 Wisconsin to engage in some sort of mandatory notice and
5 opportunity to cure period, and that would raise a whole host of
6 issues that haven't been briefed and haven't been presented in
7 this case.

8 The other evidence they highlighted was concerns that this
9 would make it easier for the clerks working in the office on
10 election night or the electors to tabulate the vote. And I
11 think there's actually reasons to question that for a couple.
12 First of all, the Wisconsin statute already allows
13 municipalities to designate a central processing facility for
14 absentee ballots, which is one way they can achieve efficiency
15 on election night if they so desire. In fact, Milwaukee has
16 taken advantage of that, I believe.

17 The second point with respect to that concern is the
18 arguments made by all the parties in this case seem to presume
19 that there's going to be a lot more absentee ballots than
20 in-person ballots than there has been in the past, and if that's
21 true, it's not clear to me how which stack is getting counted
22 actually appreciably affects the workload on the clerks on a
23 given night. What matters is that --

24 THE COURT: And you've -- you've lost me.

25 MR. STRAWBRIDGE: Let me try again. Let me try to

1 rephrase.

2 THE COURT: Yeah. I didn't get the distinction
3 because -- just stay with me. I think almost certainly there
4 will be many more absentee ballots to count. The WEC is sending
5 out 2.7 million opportunities to request them to every
6 registered voter. There's going to be a strong push, even if it
7 weren't for COVID-19, to try to encourage absentee ballots, but
8 the voters are also going to have incentives to vote absentee.
9 So I don't think there's any question, whether they mail it back
10 or they deliver it, by election day there's going to be a lot of
11 absentee ballots.

12 I take your first point that the clerks are free now to
13 check for defects and address those. I think that's an
14 excellent response, but I don't get how we -- if you assume a
15 large number of absentee ballots, there isn't some relief for
16 clerks, some clerks who are asking for it, to begin the process
17 of counting ballots in advance, particularly if I were to allow
18 a disclosure of the election returns without counting
19 late-arriving absentee ballots.

20 MR. STRAWBRIDGE: So I'll address both those points.

21 THE COURT: Yeah.

22 MR. STRAWBRIDGE: On the first one, I was not disputing
23 and I did not mean to dispute the fact that there will be more
24 absentee ballots. In all prior elections, because of the way
25 that Wisconsin law works, at least the way it currently works --

1 THE COURT: Right.

2 MR. STRAWBRIDGE: -- the clerks had to tabulate all of
3 the ballots, whether they were received by absentee or had to
4 cancel because they were received by absentee --

5 THE COURT: Right.

6 MR. STRAWBRIDGE: -- or in person, on election night.
7 So the fact that there might be more ballots in one stack rather
8 than the other on this coming election night isn't going to
9 appreciably change the workload level compared to prior
10 elections.

11 THE COURT: I think that assumes, especially in large
12 polling locations that have electronic voting in person, that
13 the same thing applies with respect to the absentee ballots, and
14 that's not the case because they won't be able to start counting
15 those, putting them through the election machines, until the
16 close of voting. And so if you've got 10,000 absentee ballots
17 versus the usual 100, yes, that's going to be substantially
18 greater. I don't understand your point.

19 MR. STRAWBRIDGE: Your Honor, if you're thinking of a
20 large --

21 THE COURT: It's a very different calculus if there's a
22 large number of absentee ballots. It's not the same thing as
23 if, you know, there's 90 percent absentee and 10 percent
24 in-person voting that day for the burden on the poll workers.

25 MR. STRAWBRIDGE: All right. Be that as it may, I

1 won't engage on that point any further other than to point out
2 the option still remains to any municipality to set up a central
3 processing facility for absentee ballots if they so desire.

4 THE COURT: Yeah. But 1,800 poll locations, many of
5 them rural, that's not going to happen.

6 MR. STRAWBRIDGE: It's available --

7 THE COURT: It's a theoretical option for most of our
8 small polling locations in Wisconsin.

9 MR. STRAWBRIDGE: I think -- I mean, I think the
10 statute doesn't discriminate. It makes it available to all
11 municipalities. Whether they want to take care of it or not is
12 up to them obviously.

13 I guess the third point I want to make about this, and this
14 goes to what Your Honor's point was, is that, I mean, the
15 Supreme Court's decision itself in the case that went up here
16 raised concerns about the possibility of early announcement or
17 tabulating of ballots, so I think the Court should be cautious
18 about taking any steps in that direction. I think that the
19 state interest in preserving, you know, the integrity of the
20 process or preventing the early reporting, as this court
21 recognized when it issued its supplementary injunction last
22 time, are substantial, and the Court should certainly be
23 cautious about accepting that invitation to release --

24 THE COURT: And -- and I agree with you. I think the
25 response is a fair one, which is that a number of states already

1 allow this. I would think that our poll workers would be every
2 bit as responsible as poll workers in those states that allow it
3 and would be circumspect about releasing numbers.

4 The other thing is that, unlike the April election, there's
5 going to be an election going on nationwide. There's going to
6 be early returns on the east coast even before -- or at least
7 projections based on exit polling, so I'm not sure that the same
8 concerns exist for this election as they did when we were simply
9 dealing with the state of Wisconsin at that time.

10 MR. STRAWBRIDGE: My time is short. I don't want to
11 get led down the path --

12 THE COURT: No, no. You're fine.

13 MR. STRAWBRIDGE: -- that Your Honor didn't want me to
14 go, which was Wisconsin's relative importance in the national
15 election, so --

16 THE COURT: Yeah.

17 MR. STRAWBRIDGE: -- all I'll say is that other
18 states --

19 THE COURT: Maybe that's a fair response in the overall
20 scheme of it. Thank you very much.

21 MR. STRAWBRIDGE: Other states -- okay. I'm sorry.

22 THE COURT: I'm sorry. Was there some other point you
23 wanted to make?

24 MR. STRAWBRIDGE: Give me -- if you can give me 30
25 seconds, I'll wrap up.

1 THE COURT: Sure. Yeah, yeah.

2 MR. STRAWBRIDGE: I was going to say other states
3 certainly may have made different decisions about that, but
4 Wisconsin has made these decisions. I think the Seventh Circuit
5 and other courts have made clear that that's within Wisconsin's
6 purview.

7 I guess the only other point that I wanted to make is the
8 state of the evidence. I will encourage Your Honor to read the
9 depositions from Milwaukee and Green Bay. There are concerns
10 that people might make mistakes. I don't think they rise to the
11 level of the type of concern, especially with respect to a
12 burden on voter rights, that would justify relief. That's all
13 I'll say about it on that point.

14 THE COURT: Very good. I want to thank you all for
15 your patience with me in this first round of discussion on the
16 deadlines. We are going to take a break now. We'll reconvene
17 at 10:30 or as soon thereafter as Administrator Wolfe -- I
18 suppose it's possible we already have her, but as soon as she's
19 available to proceed at 10:30, we will proceed with questioning.
20 And then we will -- I will allow, after I've completed
21 questioning, allow follow-ups on the subjects that I've opened
22 up or raised, and then we will allow her to get back to her
23 important work on the August election. At that point I would
24 anticipate that we would break for lunch and then come back and
25 address the deadlines at 1:00 p.m.

1 Before I take the break, any pressing matters for the
2 parties?

3 Hearing none, we will break at this time. I would suggest
4 that you just keep your videos open and come back at 10:30. We
5 are in recess. Thank you.

6 (Recess at 10:23 a.m. until 10:30 a.m.)

7 THE COURT: All right. We are back on the record.
8 Hopefully those who have not joined us already will do so
9 momentarily, but I want to recognize at the outset Ms. Wolfe and
10 thank you for making yourself available, understanding that you
11 only have limited time and probably have no time if we were
12 really looking at your overall responsibilities and the small
13 number of people in your office. I will try to be as direct as
14 I can with my questioning, keeping in mind that you've addressed
15 an awful lot of this in two depositions, and I appreciate your
16 efforts.

17 My principal reason for wanting to hear from you directly
18 is to get a sense of what the impact would be if I were to grant
19 any specific relief, and I think the best way to do that is to
20 start with the relief from deadlines. As you may recall, before
21 the April election at the -- truly the deadline for online
22 registration, I extended that, and we ended up with something
23 like 57,000 additional registrants, unlike what the impact of my
24 changing the absentee ballot deadline or accounting or receipt
25 of it. I think that's true -- it's true we know that 57,000

1 additional people were able to register online. Would you agree
2 with that statement?

3 MS. WOLFE: Yes, Your Honor. I believe that that is
4 true. I don't have the exact number in front of me, but I
5 believe that is true, yes.

6 THE COURT: With that said, this time we have the
7 luxury -- that's probably an extreme word -- we have additional
8 time to think about the implications of this, and one argument
9 is that people now know about the risks of COVID-19. They ought
10 to be acting accordingly if they don't want to vote in person,
11 beginning with early registration rather than having to do it in
12 person in the days -- through absentee in person or on election
13 day.

14 And what I'm struggling with is because we're -- the WEC
15 has made a concerted effort to get the word out to registered
16 voters, whether the word would have gotten out adequately of
17 this deadline and the need to act by the statutory deadline, and
18 I know -- and I'm not asking you to speculate, but I am trying
19 to weigh those relative concerns because new voters and
20 unregistered voters have a right -- the same right to vote, and
21 whether or not, since there's this obvious push for the first
22 time ever really to get absentee ballots in and to make absentee
23 voting -- absentee ballot voting the preferred method to reduce
24 risk and problems on election day, whether or not you would view
25 it as a benefit for arguably the least sophisticated voter to

1 have some additional time to accomplish the registration step
2 and avoid having to do it in person given COVID-19.

3 MS. WOLFE: Thank you. So I think to your point,
4 messaging is always a challenge to even convey the statutory
5 requirements, and then when there are changes, we have to take a
6 look at all the materials, the outreach efforts that we've done,
7 to ensure that they're providing correct, current information in
8 light of changes. And so that always is a challenge, that even
9 if there is a change, how do you communicate that effectively.
10 I think there's things we can do to build relationships to try
11 to make sure that we're able to spread the word in the event of
12 any change, but, yes, I recognize that as a challenge that we
13 face anytime there is an adjustment.

14 In terms of additional time to register to vote, as you've
15 said, this was all a new form of voter behavior in terms of
16 registration and absentee balloting. As we've seen in the past,
17 there's something like 80 percent of the records -- voter
18 records that are currently in our system have been impacted by
19 election day registration at some point, and so it is a very
20 utilized option for Wisconsin voters under normal circumstances.
21 So in light of the changes and the shifts to voters using
22 absentee, I think that is certainly something to look at and,
23 you know, address how the change in voters not going to the
24 polls on election day may also impact their options for
25 registering to vote.

1 THE COURT: And help me again, the 80 percent number is
2 those impacted -- you mean at some point 80 percent of voters
3 end up registering in person? That's the typical way
4 historically registration has occurred in Wisconsin; is that
5 what you're saying?

6 MS. WOLFE: Yes, that's correct, and that number is
7 from an analysis we did a number of years ago but where, you
8 know, about 80 percent of the records that are in the system,
9 the current, active voter registrations, either someone created
10 them using an election day registration or someone at some point
11 has changed their name or their address using election day
12 registration.

13 THE COURT: And does that suggest to you, as it does to
14 me, that voters don't -- they're just not generally thinking
15 about the need to register until they get closer to the
16 election, and by then the deadline has passed so they end up
17 doing it in person?

18 MS. WOLFE: I think that's a fair statement, that
19 there's a tradition, a cultural tradition, here in Wisconsin
20 where election day is just where you did all those things.

21 THE COURT: Yeah.

22 MS. WOLFE: Not to get into the weeds, but we're an
23 NVRA-exempt state, and so that means there's -- the
24 opportunities are different with how voters interact with the
25 registration process here than they may be other places, and I

1 think culturally registering to vote on election day is part of
2 our tradition here.

3 THE COURT: And has there been any effort to get the
4 word out to the public generally by the WEC about the
5 registration deadline?

6 MS. WOLFE: Specific to the registration deadline, we
7 are working right now on putting together outreach materials on
8 the mechanics of interacting with the process. So, yes, there
9 are outreach materials, and we are working that into some of the
10 videos and other materials that we're producing right now,
11 social media plans for our agency and for the clerks to inform
12 them about those deadlines. We have --

13 THE COURT: And I want to talk about -- I want to talk
14 about that a little bit in a second, but those would be voted on
15 in early September by the WEC commissioners? Or will they be
16 completed by then?

17 MS. WOLFE: They should be completed by then. The
18 Commission directed us to pursue putting together these
19 materials --

20 THE COURT: Right.

21 MS. WOLFE: -- but the practice is not for them to
22 approve every individual work product.

23 THE COURT: So in your view you already have the
24 authority to circulate these additional materials and videos
25 from the Commission, and as soon as they're completed, you'll

1 start that process.

2 MS. WOLFE: That's correct. We'll make them available
3 to voter groups, to clerks, to legislators, really to anyone
4 that would like to utilize those resources to help us spread the
5 word about the mechanics and the deadlines surrounding voting.

6 THE COURT: Right. Before we get off registration, one
7 last question: My impression and the impression of -- left by
8 some of the requirements for proof of residence to get
9 registered is that in-person registration tends to be a more
10 time-consuming process in person on election day than those who
11 are pre-registered -- or I should just say registered and can
12 move more closely. I just think, you know, anecdotally the two
13 lines tend to be very different, and people who suddenly
14 realize, "Oh, I'm not registered," get very concerned because it
15 means they're getting behind a much longer line, having sat in
16 the original line to begin with.

17 Is that your impression as well, that -- and I guess, most
18 importantly, that there's going to be longer interactions
19 between the poll worker and the prospective voter if they're not
20 registered in advance?

21 MS. WOLFE: It certainly is an additional step, an
22 additional transaction, so, yes, just like you described, if
23 they're not registered or they need to change their name or
24 address, they're going to be sent over to the registration line,
25 which, depending on, you know, what traffic looks like, may take

1 a while to be in that line, and then it is an additional
2 interaction that you wouldn't have to do if you had registered
3 or updated your information prior to election day.

4 THE COURT: Which for purposes of COVID-19 becomes more
5 problematic than it would be in a normal election. I think
6 that's a fair statement as well.

7 MS. WOLFE: Yeah. We did develop some guidance on how
8 to conduct registration in a way that was reviewed by a public
9 health official. So the voter could set down their proof of
10 residence, step away, allow the poll worker to step up, view the
11 proof of residence, and then step away so the voter can retrieve
12 it. But, yes, those additional steps and measures also add to
13 the time the voter would be spending registering.

14 THE COURT: Which is why, I would assume, that
15 registration would be preferable while we had this COVID-19
16 problem -- if it were possible under the statute, you would want
17 to be promoting registration or keeping open registration
18 opportunities longer than you would under normal circumstances.

19 MS. WOLFE: Yes. As we've talked about previously, you
20 know, there are some challenges, of course, the closer you get
21 to election day. You're running into things like printing the
22 poll books and having to have that --

23 THE COURT: And you've anticipated my question.
24 Ideally when would those dates apply? I know that mail-in
25 requests are more of a problem than online. We went through

1 that last time, and it's one of the reasons why I didn't order
2 an extension of the mail deadline for registering. Do you have
3 in mind, given the pressures on your -- not just the Commission
4 and your employees but also the local municipalities, what
5 timing would be efficient if we've moved to this absentee ballot
6 world?

7 MS. WOLFE: Thank you. So this is not a particular
8 question the Commission has considered.

9 THE COURT: Right.

10 MS. WOLFE: That being said, I've heard from clerks
11 about their process to print and distribute poll books to their
12 jurisdictions. Larger jurisdictions have expressed that they
13 typically do that about two weeks out from the election, where
14 they're going to be printing those poll books and then receive
15 them, and then they need enough time to get it out to all their
16 locations and make sure they have everything in order. So
17 currently the online voter registration portal closes by statute
18 less than 20 days before the election.

19 THE COURT: Yeah.

20 MS. WOLFE: Yep. And so there might be a little room
21 in that week before they need to start printing and
22 distributing.

23 THE COURT: And when you say "a little room," if it was
24 online, I suppose it could go right up to just two weeks before
25 the election, although if they want to print it out that day,

1 then I guess it would have to be at least the day before that.
2 And if we're talking about mail-in, you're probably stuck with
3 the same three weeks in advance that we have now.

4 MS. WOLFE: I think it may be troublesome to allow mail
5 for a longer period because of the issues we've talked about --

6 THE COURT: The delay.

7 MS. WOLFE: -- and the multiple transactions, yes.

8 THE COURT: With the -- what I did in April was move it
9 up to five days before the election, make it the same as for
10 absentee ballot requests, and obviously that created some real
11 challenges for poll workers, as you've just described, because
12 it meant people were registering sooner. Yet it seemed like on
13 election day that did improve the processing -- reduce the
14 number of people who had to register, so somehow the poll
15 workers were able to get that information -- I should say the
16 municipalities were able to get that information to the poll
17 workers by election day. Was that just by hook and crook that
18 they managed that or was there some reason why that was possible
19 or am I misinformed and is it your impression that it didn't
20 assist; it made things worse?

21 MS. WOLFE: You bring up a good point. I'm not aware
22 of there being any additional issues on the registration
23 process, not that's come to my attention --

24 THE COURT: Right.

25 MS. WOLFE: -- personally, and I think the supplemental

1 poll book process is probably what allowed the clerks to see any
2 of the registrations that were made in those -- in that final
3 week so that they were still able to verify that, indeed, the
4 voter was registered at their current address or name and able
5 to issue them a ballot without having to have them re-register.

6 THE COURT: Got it. All right.

7 Moving away from the registration aspect and going to the
8 deadline for absentee ballots, as you know, the deadline was
9 moved to allow ballots to arrive later after the fact in the
10 April election, and my understanding is that hasn't occurred for
11 the August election that you're in the midst of preparing for.
12 But I would assume in November that, for voters who rely upon
13 the five-day deadline to seek an absentee ballot, that they're
14 likely to be out of luck. If they do it by mail, it may not
15 even be received by the poll -- by the local municipality. It's
16 very unlikely to get back to them before election day, and if
17 they rely on the mails to ballot, it's clearly going to be after
18 the fact. One of the things I'm struggling with is whether that
19 by definition, if we're in a world where we're relying on
20 absentee ballots, that five-day deadline becomes a likely source
21 of disenfranchisement for those who rely upon it.

22 Now, one response, and a reasonable response, is, well, a
23 diligent voter, maybe even a reasonable voter, would recognize
24 the mail problems that exist and would not rely on that kind of
25 a quick turnaround. But in April it became pretty clear a lot

1 of voters were oblivious to that problem, some of it caused by a
2 problem with the postal service but others just caused by the
3 practicalities. And one of my responsibilities is to try to
4 figure out if I should be giving some relief, since I can't move
5 the five-day deadline before voting, so that we don't have the
6 same situation for those who are afraid to go to the polls and
7 relying on the mail, and I suppose there could be even some, you
8 know, who mail in before the five-day deadline, but, as we've
9 seen, have problems with the mail.

10 I know that the Commission has taken no official position
11 one way or the other, and I'm not asking you to do so, but in
12 your deposition when you were repeatedly asked about the some
13 86,000 people whose votes were counted because we extended to a
14 postmark date on election day, what is your thinking as to
15 whether there won't be a substantial number of those people
16 again this time, understanding that we don't -- and I took your
17 point from the deposition. We really don't know if they didn't
18 have that extension, maybe they wouldn't have relied on that,
19 and maybe they would have shown up at the polls I guess is one
20 possibility, although with COVID-19 not an ideal one for anyone,
21 including the perspective of the poll workers. What would be
22 the other ways in which they would have been able to vindicate
23 their vote other than, when they didn't get the absentee ballot
24 or they were afraid it wasn't going to get there in time,
25 showing up in person?

1 MS. WOLFE: Thank you, Your Honor. I think, yes, you
2 know, unfortunately, there's not a whole -- there's no precedent
3 for --

4 THE COURT: Right.

5 MS. WOLFE: -- the voter behavior that we're seeing
6 now, so it's difficult to know, you know, if, because voters
7 were given an additional time period, if they, therefore, chose
8 to utilize that or if they would have done things like dropped
9 the ballot off in person. Some locations had things like
10 curbside pickup, so someone could drive up to the clerk's office
11 and deliver their voted ballot. And so, you know, it's
12 difficult to say if they would have used those other options had
13 they had a strict time frame of having to deliver it by election
14 day or if those ballots would have gone undelivered and
15 uncounted.

16 THE COURT: Right. If I were to wait until election
17 day, would the system in place with the barcodes permit you to
18 determine how many ballots have not been returned?

19 MS. WOLFE: It would not necessarily. So the
20 intelligent mail barcodes right now for August are on the
21 outgoing ballots to the voter.

22 THE COURT: Right.

23 MS. WOLFE: And on the return ballots, again, this is
24 an option for the jurisdictions, but, you know, if they are
25 going to use them for November for the return ballots, it would

1 allow them to see some milestones in the journey, but it
2 wouldn't necessarily let them see clearly when it was received
3 by the local postal branch because not all rural local postal
4 branches have the equipment needed to make that initial scan.
5 So it may not start tracking until it hits a sorting center or
6 somewhere where they have that type of equipment. So I don't
7 know --

8 THE COURT: Will -- I'm sorry. Will all the polling
9 stations have the ability to read the barcode and determine when
10 the mail was sent?

11 MS. WOLFE: Thank you, Your Honor. So they will not
12 have the ability to scan them. What happens is the intelligent
13 mail barcodes are tracked in the voter record in the statewide
14 voter registration database. So that information is in the
15 database, and so a clerk would be able to log into our system
16 and would be able to see that ballot's journey through the
17 postal service.

18 THE COURT: And that's, I guess, what I wanted to ask
19 specifically because, as you know, because of the Supreme
20 Court's suggestion, we relied on the date stamp, the mail date
21 stamp, which, as it turned out, proved problematic because
22 sometimes it didn't appear clearly. Sometimes it wasn't there
23 at all. Is that solved by the barcodes? In other words, when
24 there's a -- it's not clear on the stamp, the date stamp, when
25 it was mailed, will it now be possible for local clerks to

1 resolve that by using the barcode?

2 MS. WOLFE: It may be possible, but it will not be
3 consistent. So not -- we have no authority to force the
4 jurisdictions to use intelligent mail barcodes.

5 THE COURT: Right.

6 MS. WOLFE: Especially for the return ballots, we can
7 build the system, but it requires when they're sending out the
8 ballots that they put a third label on the return envelope with
9 the intelligent mail barcode, and some jurisdictions have
10 expressed to us they don't have the time or the desire to embark
11 on that additional step. And so it will for some jurisdictions
12 allow them to get that data on the return ballots, but another
13 challenge is even if a jurisdiction chooses to use the barcodes
14 on the return ballots, not all of the postal branches have the
15 equipment needed --

16 THE COURT: Right.

17 MS. WOLFE: -- to do an initial scan --

18 THE COURT: So it's a combination of both the local
19 postal service --

20 MS. WOLFE: Right.

21 THE COURT: -- plus the individual poll worker's
22 station. And do they at least have the money to buy that
23 machine? Is that financed through the recent legislation so
24 that it doesn't fall on the local polling station or the
25 municipality to come up with the money to get that equipment?

1 MS. WOLFE: So the equipment would be needed on the
2 side of the postal service. So the rural postal --

3 THE COURT: No, no. I'm sorry. I agree. The postal
4 is a different question, but you mentioned that not all local
5 polling stations would have the ability to read it either
6 because you can't force them to buy that equipment or to have
7 that equipment. But is it being financed through the CARE Act
8 or otherwise?

9 MS. WOLFE: Thank you for the clarification. So, yes,
10 we have provided subgrants to the jurisdictions for funding to
11 address any of the needs they have for the new demand for
12 by-mail absentees, and that would include them being able to
13 purchase the additional labels needed for the intelligent mail
14 barcodes. It could also cover things like bringing in
15 additional staff to be able to print out --

16 THE COURT: Process it.

17 MS. WOLFE: -- and put on the labels. Yes, uh-huh.

18 THE COURT: Right. And I guess at the end of the day
19 that's -- that will be up to them as the most efficient
20 allocation and what they prioritize, so they may or may not use
21 the money for the specific purpose of getting a reader.

22 MS. WOLFE: Correct, uh-huh.

23 THE COURT: All right. Related question: If I --
24 could you see a benefit to relieving, as some municipalities
25 have identified, relieving them from waiting until election day

1 to read the absentee ballots? What was suggested is they would
2 read them in but not actually keep a tabulation of results, as
3 is done in some jurisdictions. And can you see that as
4 relieving the burden on poll workers on election day?

5 MS. WOLFE: So there actually, over the course of the
6 last few years, have been two bills that have been circulating
7 that the clerks have been working on themselves through their
8 professional organizations.

9 THE COURT: Right.

10 MS. WOLFE: And they've provided extensive testimony.
11 One is on the opportunity for a voter to be able to cast their
12 ballot into the machine during in-person absentee, and the other
13 is about processing ballots beginning on the Monday before the
14 election. And, you know, I can relate to you that the messaging
15 and the feedback from the clerks is very mixed, especially when
16 it comes to the Monday processing bill. Some clerks indicate
17 that this would be a huge improvement for them to be able to
18 have that opportunity. Other jurisdictions have expressed that
19 this would not help improve the process for them, and so I think
20 being --

21 THE COURT: Does that -- do you know, in your
22 impression, does that divide between large polling districts and
23 smaller ones by population? In other words, it seems like the
24 larger ones, at least that I saw in the record, were seeking
25 that kind of relief because of the sheer number of absentee

1 ballots that they're likely to have to process.

2 MS. WOLFE: I think that would be fair. There were
3 some -- you know, again, this is relying on the testimony and
4 feedback I've received from the clerks. There were many
5 mid-sized jurisdictions that expressed concern with the Monday
6 processing option. However, I will also note that they may have
7 seen it as an either/or. They may have seen --

8 THE COURT: Yeah.

9 MS. WOLFE: -- the one bill as an option that would
10 override the other and that's why they were providing feedback
11 about not preferring the Monday processing bill.

12 THE COURT: And on the day of election, it's been
13 suggested that whether you have 80 percent absentee ballots
14 or -- and 20 percent in-person voters or the reverse, it still
15 comes out to the same number of voters, or let's assume that's
16 the case, that the processing of absentee ballots isn't any more
17 work than people coming in and voting, and so there really isn't
18 an increased burden on the day of voting. Would you agree with
19 that?

20 MS. WOLFE: Well, actually, there's specific absentee
21 ballot canvassers, so the regular poll workers that are doing
22 registration or issuing ballots on election day, they may not
23 have the expertise or qualify to be absentee ballot canvassers.
24 There's also central counts in a lot of jurisdictions where the
25 ballots go to a central location to be processed, and so it's a

1 completely different set of people that are there doing that
2 process as well.

3 THE COURT: So the volume does matter. It is an
4 increased burden the more absentee ballots you have.

5 MS. WOLFE: It does. You know, in some ways it's
6 almost like running three different elections. You're
7 running --

8 THE COURT: Yeah.

9 MS. WOLFE: -- the election with the absentee ballots,
10 the in-person, and the in-person absentee, and all of them still
11 have to have resources allocated to them. You really can't
12 divert resources from one to the other in a lot of instances.

13 THE COURT: All right. Before I get off the deadlines
14 for registration and for submission of absentee ballots by mail,
15 let me just ask as to the registration deadline, you may recall,
16 probably better than I, the challenge that was created by the
17 fact that the online registration system had been, quote,
18 "turned off" and then had to be turned on. I'm assuming if I
19 were to extend the time for online registration, it's much
20 easier to do that if you never turn it off so that you would
21 need to know before -- or as soon as possible before the
22 deadline so that that doesn't occur. Is that a fair statement?

23 MS. WOLFE: Yes, Your Honor. Thank you. I think any
24 time we have is very much appreciated because more than anything
25 it allows us to do additional testing to ensure that we don't

1 put a quick fix in and then develop some other problem down the
2 line that could undermine voters' confidence in the process or
3 creates confusion. And so testing, I think, is the thing that
4 we need the most time to be able to accomplish well.

5 THE COURT: One thing I'm struggling with is how --
6 whether -- I don't want to discourage people from acting sooner.
7 Obviously it's good for everybody if we get as many registrants
8 as we can within the three-week deadline, and yet if, human
9 nature being what it is, there are people who don't appreciate
10 that deadline, only discover it afterwards, are hesitant to
11 register in person, whether it makes sense to give some
12 additional window, at least online if not by mail.

13 So it's hard to -- I'm almost asking about a sweet spot for
14 your purposes, and I know you can't really give me one, but
15 would you say a week before the three-week deadline, days
16 before? If I notified you that that was a possibility and we're
17 going to be tracking registrants to try to use some metric to
18 determine whether there seems to be a large number that are
19 still going to be attempting -- for example, if we're seeing a
20 ramp-up each day of the deadline, that would suggest that at
21 least people are aware of it. Is there any time line you would
22 suggest in terms of when -- other than sooner the better for
23 that kind of relief if I decide it's appropriate?

24 MS. WOLFE: From my perspective, having, you know,
25 managed that team and worked heavily on the development of that

1 website, I think that it would be best if we knew prior to the
2 shut-off of online voter registration, so prior to the 20 days
3 before the election. That way we could keep that path sort of
4 open, and that's an oversimplification of how it works but --

5 THE COURT: No, no, I know. And I don't mean -- I
6 appreciate that you're not -- you have it set in the software to
7 close, so it's not a simple matter of just saying stay open.
8 You have to track the software, but it's easier to do if I
9 instruct you to do it before you actually -- before the software
10 has actually implemented the cut-off.

11 MS. WOLFE: Correct, yes. Thank you.

12 THE COURT: I get it. And as to the absentee, correct
13 me if I'm wrong, but if we're trying to encourage early absentee
14 voting, we probably could go up to the deadline and still make a
15 decision to instruct the poll workers that, all right, it's
16 clear there's going to be tens of thousands of additional
17 absentee ballots that are not going to be received by the
18 deadline, and so I could even let that deadline play out and
19 then decide whether, in order to vindicate voters' rights, there
20 should be some additional number that the individual polls are
21 told through one of your urgent messages that they should still
22 count if, for example, it has the stamp of the election on it --
23 or I should say stamp of voting -- of mailing by the election
24 date.

25 MS. WOLFE: You know, I think procedurally in terms of

1 letting the poll workers know how to treat those ballots, we
2 would be able to convey that message to them. My concern in
3 that scenario that was presented is communication to voters.

4 THE COURT: Exactly.

5 MS. WOLFE: Making sure that all of our resources are
6 updated and that they know what their options are and what the
7 expectation of them is.

8 THE COURT: Yeah, I agree, and I realize this is again
9 a too soon/too late issue, but I appreciate your comments.

10 On a different set of topics -- and I don't have much more,
11 but I do want to make sure I get an understanding -- as to
12 the specific requirements that are being challenged in these
13 lawsuits, starting with the witness signature requirement, as
14 you were asked about during the course of the deposition, there
15 is some suggestion that there should be we'll call it -- the
16 plaintiffs like to call them safe havens. I think that's
17 probably a fair description. There should be a safe haven for
18 those who can't accomplish the actual in-person witnessing of
19 signatures, and, in fact, the Seventh Circuit did suggest at
20 least one possible solution where you wouldn't witness it live
21 but -- or you could witness it by video, watch the voter mark
22 the ballot through a window or by video chat, and then provide
23 it after the fact. I assume, because it wasn't in place yet,
24 that the Commission still hasn't adopted language that would go
25 out with the absentee ballot identifying those alternatives for

1 people who may have an issue because of COVID-19 in
2 accomplishing in-person witnessing.

3 MS. WOLFE: The Commission did recently review and
4 adopt new language for the uniform instructions for absentee
5 ballots. It does not include alternatives --

6 THE COURT: Right. That's what you said at your
7 deposition. And, unfortunately, it sounds like you've already
8 printed those.

9 MS. WOLFE: No, they have not been printed yet. The
10 mailer that's set to go out on September 1st has been printed,
11 but the uniform instructions are something that's printed by the
12 local clerks. We actually haven't put out the new version yet
13 for them to start printing. We plan to do that shortly after
14 the August election.

15 THE COURT: Which brings me to my question: If I were
16 to instruct that alternative language be included, and I
17 don't -- I don't want to make this worse for the poor absentee
18 ballot who gets all these instructions with their ballot, but
19 starting with this witness signature safe haven, if you will, is
20 that something that could still reasonably be accommodated as
21 long as you got an instruction timely to include it so that, I
22 don't know, for example -- I'm just thinking and thinking out
23 loud very much, and I want your reaction -- you had a heading
24 which said "Problems," and then below it you'd say, "I'm afraid
25 to have an in-person witness." And then you say, "If so, here

1 are some alternatives that will be acceptable." Is that a
2 practical solution that we could implement before ballots start
3 going out, absentee ballots start going out?

4 MS. WOLFE: A language change to the form certainly is
5 something that there's still time to include that. One thing I
6 might point out, if I may, is --

7 THE COURT: Yes, please. That's what this is for.

8 MS. WOLFE: -- is, you know, one of the challenges,
9 especially with the witness requirements, and we saw this in
10 April, is that if voters return their ballots based on the
11 instructions that are true the day that they return their ballot
12 and those change, their opportunities to remedy or correct their
13 ballots or provide a witness under the new ruling, like we saw
14 in April, that door is closed. So after the deadline to request
15 a new absentee ballot --

16 THE COURT: Right.

17 MS. WOLFE: -- if you have returned your ballot, even
18 if you returned it thinking that you complied with the law at
19 the time, if that requirement then changes, you do not have any
20 additional options --

21 THE COURT: And you and I are thinking along the same
22 lines. That's why I'd like to just have one -- I'm not even
23 going to call it a change because it seems like the current law
24 allows for some alternatives for people who are really afraid.
25 I'd like to just have that uniform in the printout that goes

1 with every absentee ballot for November, and I think you're
2 saying the same thing: Let's make sure we get it right and not
3 have to change it. So when would you need that direction?
4 Particularly because you probably would want to be doing some of
5 the wordsmithing to make it as clear as possible for the benefit
6 of the voter.

7 MS. WOLFE: Yes, Your Honor. I think if we were able
8 to have any additional language for consideration certainly
9 prior to ballots going out for November, which happens in
10 mid-September. And as you mentioned, we also have a strong
11 commitment to usability, so we would want to --

12 THE COURT: Right.

13 MS. WOLFE: -- run that language past some voters to
14 make sure it's understandable as well.

15 THE COURT: So, again, sooner -- the sooner the better.

16 MS. WOLFE: Yes, yes.

17 THE COURT: And that brings me to the next category,
18 which is the photo ID requirement. There seems to be confusion
19 among -- well, there's confusion among election workers, much
20 less the average voter, as to what "indefinitely confined"
21 means, and based on your deposition I got the impression that
22 that still is not being defined in the printout. If I were to
23 conclude that some guidance needs to be given to the voters, is
24 that -- we'd be running on the same time line and that would be
25 included under the "Problem" category as well in the printout?

1 MS. WOLFE: In the uniform instructions, yes, but in
2 the uniform instructions for an absentee ballot, this is already
3 beyond the point where the voter has made that certification
4 they're indefinitely confined. So perhaps what you're
5 referencing is the mailer that we plan to send out on September
6 1st, which does talk about the indefinitely confined and what
7 the statutory definition is.

8 THE COURT: But it doesn't give any other guidance as
9 to whether it's applicable. It just says you'll need to make
10 that decision?

11 MS. WOLFE: It says that if for reasons of age,
12 infirmity, or disability you are unable to appear at the polls,
13 that you are able to request your absentee without providing a
14 photo ID.

15 THE COURT: But it doesn't really say how to accomplish
16 that in a way that would be accepted at the polling station.

17 MS. WOLFE: Well, it's not -- it's not a process that
18 can be used at the polls, so the indefinitely confined
19 indication is really just when you're making your absentee
20 ballot application on that --

21 THE COURT: Would it be possible -- would it be
22 possible through your counsel to get me the current printout --
23 I didn't see that it was provided to me by any of the parties --
24 for the September 1st photo ID requirement and the current draft
25 for the mid-September mailing that would -- or cover that would

1 go with the absentee ballot?

2 MS. WOLFE: Absolutely.

3 THE COURT: And I would just ask your counsel -- no
4 need to affirm it at this time -- that you work to get that to
5 me. Put it on file as soon as possible. Understanding you have
6 other priorities, if you could get that to me as soon as
7 possible, it would be informative.

8 As to proof of residence, current instructions for what
9 constitutes proof, does that include alternatives to the
10 driver's license and the state ID? In other words, is that safe
11 haven, if you will, spelled out in the registration materials?

12 MS. WOLFE: So for proof of residence there are a
13 number of options. If someone registers to vote online, they do
14 not need to provide proof of residence because the match with
15 their DMV record fulfills that requirement. For --

16 THE COURT: Right. So I'm talking about those who
17 don't -- who can't accomplish that.

18 MS. WOLFE: So for someone registering by mail perhaps?

19 THE COURT: Yeah, probably.

20 MS. WOLFE: So for someone registering by mail, there
21 is a list of proof of residence options, but they do have to
22 provide something. So it could be their driver's license if it
23 has a current address on it. It could be --

24 THE COURT: Right, a utility bill.

25 MS. WOLFE: -- a utility bill. Right. And they

1 wouldn't have to make a copy --

2 THE COURT: That is spelled -- that is spelled out
3 where for the registrant?

4 MS. WOLFE: So that's spelled out on the voter
5 registration form. It's also spelled out on the -- there's a
6 workflow on the MyVote website where, if you can't make a match
7 with DMV, you can still fill out an application and mail it in,
8 and you're given those instructions there as well.

9 THE COURT: All right. Let me just check my notes.

10 It has been suggested that there's been a substantial
11 shortage of workers for August and that there's been -- you put
12 out an urgent request for more poll workers. Can you tell me a
13 little bit about that and whether you think that presages a
14 similar problem in November?

15 MS. WOLFE: Yes. Thank you, Your Honor. We surveyed
16 the clerks, like we did in both April and for the May 7th
17 Congressional District, to understand what their needs were for
18 poll workers, and so on this survey to all 1,850 municipalities,
19 we asked them to identify a critical or a serious shortage of
20 poll workers, critical meaning that they're not able to open all
21 their polling places in accordance with statute, serious meaning
22 that they think they're going to have a hard time doing that or
23 they're, you know, not able to open it under sort of the ideal
24 circumstances but they think they can open a poll.

25 And so for April they indicated a shortage of about 7,000

1 for the April election. For the May election I believe they
2 indicated a need of about 300, and then for August they have now
3 indicated a need of about just over 900 in terms of critical and
4 serious shortages. And we've also asked in this particular
5 survey for August that they indicate to us what measures they
6 have taken to recruit poll workers in their jurisdiction and
7 also to describe to us sort of what would happen if they cannot
8 find or if the state can't provide any additional poll workers,
9 what is their contingency plan, what is the impact on their
10 municipality.

11 And so we used that survey then to submit a ticket through
12 the state emergency operations center, which is where we work
13 and coordinate with the National Guard, the governor's office --

14 THE COURT: And I remember some of this from the April
15 election, and it sounds like you're doing the same thing, and it
16 sounds like --

17 MS. WOLFE: Yes.

18 THE COURT: -- the problem is not as great, although
19 realizing the August election is a smaller subset of the entire
20 state, so it's not apples to apples, but it doesn't look to be
21 quite as severe. And yet despite the advance warning, the
22 greater time to plan for people who will opt-out because of
23 COVID-19, local municipalities are still having problems filling
24 all their polling stations.

25 MS. WOLFE: Yes. That's what they're relaying to us.

1 That's correct.

2 THE COURT: Okay.

3 MS. WOLFE: And I echo your same observations about the
4 August election. It's a much smaller turnout election.

5 THE COURT: So does that suggest to you that there's
6 going to be continued problems with sufficient polls being open
7 for easy in-person voting, particularly with the other demands
8 on social distancing and mask wearing and other steps that will
9 have to occur on election day?

10 MS. WOLFE: I do believe that finding poll workers will
11 be a challenge as we head into November, and I know we're
12 hearing that across the country, that recruiting and maintaining
13 poll workers for November when there's still uncertainty is, you
14 know, is the thing I probably worry about the most as we head
15 into November is that, you know, will we have enough poll
16 workers. Even if we do great recruitment efforts, will those
17 people actually show up to work the polls in November on
18 election day.

19 THE COURT: Which I take it is one of the reasons why
20 the Commission is pushing the use of absentee ballots to the
21 extent you can encourage registered voters to do so.

22 MS. WOLFE: Yes. I think the Commission has, you know,
23 made it very clear that they want voters to be aware of all
24 three of their options to vote and to choose what's the best
25 option for them.

1 THE COURT: Right. Understood.

2 That's all I have, but I did indicate to the parties that
3 they could ask follow-up questions. Understanding they've had
4 an opportunity to ask you a lot of questions, it will be
5 limited, but I am going to let each side have about 20 minutes
6 and no more, and we'll begin with the plaintiffs. Hopefully
7 there's been some discussion as to who would ask -- be doing the
8 questioning.

9 MS. WOLFE: Thank you, Your Honor.

10 MR. DEVANEY: Your Honor, I think Ms. Lens for the
11 Swenson plaintiffs will be --

12 THE COURT: That's fine.

13 MR. DEVANEY: -- taking the lead. I may have one or
14 two follow-ups if that's --

15 THE COURT: That's fine if it's in the 20 minutes. You
16 should keep track of that, but go ahead.

17 MS. LENS: Your Honor, could you give me one --

18 THE COURT: Ms. Lens.

19 MS. LENS: Yes. Thank you.

20 Your Honor, could you give me one minute to 30 seconds to
21 collect my thoughts, and then we'll begin?

22 THE COURT: You can take as much time as you want.
23 It's coming out of your 20.

24 MS. LENS: (Unintelligible) -- to collect my thoughts.
25 Understood, Your Honor.

1 THE COURT: Yes. Take a moment.

2 EXAMINATION

3 BY MS. LENS:

4 Q Good morning, Administrator Wolfe. My name is Molly Lens.
5 I'm outside counsel for the Swenson plaintiffs in this case. We
6 haven't had an opportunity to meet, so nice to meet you across
7 the screen. We appreciate your time this morning.

8 In response to questions from the Court, you confirmed that
9 some clerks have advised that the extra time that they were
10 provided to count absentee votes in April was beneficial to
11 them, correct?

12 A You'll have to forgive me. I think the line of questioning
13 was about process -- their feedback on the potential to process
14 ballots prior to the election. I don't know that we had that
15 conversation about after the election.

16 Q Okay. So let's start there. With respect to prior to the
17 election, you confirm that some clerks had confirmed that that
18 additional time was helpful to them? Is that your testimony?

19 A That they indicated that it could be helpful to them in
20 light of some of the bills that had been drafted, that that's
21 some testimony that clerks have provided over the last few years
22 about having the option to process ballots beginning on the
23 Monday before the election.

24 Q And it's up to the clerks' discretion whether they begin to
25 process absentee ballots prior to election day, correct?

1 A No. That is currently not an option offered to them under
2 the statute. It is just a bill that has been circulating that
3 they've testified on, but the statutes only allow clerks to
4 begin counting absentee ballots starting at the opening of polls
5 on election day.

6 Q Okay. I think you and I might be talking past each other a
7 little bit. With respect to reviewing ballot -- absentee
8 ballots for error, that is left to the clerks' discretion
9 whether they do that in advance of election day, correct?

10 A The absentee certificate, not the ballot themselves. They
11 can't open or process ballots before --

12 THE COURT: Yeah. But she's talking about they have
13 the discretion to review -- without opening the ballot, they
14 have the discretion to review the ballot and to see if it meets
15 the requirements so that they can go back to a voter and talk to
16 them about any problems.

17 MS. WOLFE: Yes. Yes. That's correct.

18 MS. LENS: Thank you. I appreciate that, and please
19 bear with me on the terminology. You're obviously the expert
20 here.

21 BY MS. LENS:

22 Q And whether the clerks begin the review of the
23 certification in advance of election day depends, of course, on
24 whether they have time to do so, correct?

25 A Yes. It's completely to their discretion, yes.

1 Q And for the upcoming November election, the clerk would
2 have -- clerks would have to have time to begin to review this
3 absentee ballot certification for what's anticipated to be an
4 unprecedented number of absentee ballots, Ms. Wolfe; is that
5 correct?

6 A Yes. We don't really have an accurate prediction of, you
7 know, what the absentee ballot traffic will be for November, but
8 based on that assumption, yes, that's correct.

9 Q Understanding that we don't know or have an exact number,
10 would you agree with me that it's reasonable to anticipate that
11 there are going to be an unprecedented number of absentee
12 ballots cast in the November election?

13 THE COURT: And maybe I can assist. That's going to be
14 the Court's assumption, whether or not it is this witness's
15 assumption, so we can move on.

16 MS. LENS: Fair enough. Turning to --

17 THE COURT: The only reason I make that point is you
18 spent hours in the deposition trying to get the witness to give
19 you her personal opinion, and I don't want to spend any more
20 time on that.

21 MS. LENS: No, I appreciate the streamlining, Your
22 Honor, especially given the timing constraints faced by both us
23 as well as Administrator Wolfe with the forthcoming election.

24 BY MS. LENS:

25 Q So turning to the very related subject of actually, however

1 you want to term it, actually counting the ballots, that, under
2 the current statutory scheme, cannot occur until election day,
3 correct?

4 A Yes, that's correct.

5 Q Okay. And with respect to that subject, you have heard
6 from clerks that the extra time -- the extra time to count those
7 absentee ballots was beneficial for them in the November --
8 excuse me, in the April election; is that correct?

9 A So they did not have the option to start early in April.
10 They had an extended period beyond election day. But I've heard
11 from them -- mixed feedback from clerks that having the option
12 to begin processing before election day could be useful, yes.

13 Q Okay. Thank you. I appreciate that. And in addition to
14 hearing from clerks that giving them additional time in advance
15 of election day would be helpful, as you just confirmed, you've
16 similarly heard that the extra time that they were provided on
17 the back end to count in April was beneficial to them, correct?

18 A Yes, that's correct.

19 Q And, in fact, as you testified, some of the clerks conveyed
20 that it was not only beneficial, but that it was necessary just
21 given the, again, unprecedented number of absentee ballots cast
22 in that April election, correct?

23 A Yes, correct. I think they also conveyed some challenges
24 with that extended time period that we had to work through as
25 well, but, yes, correct.

1 Q Changing subjects, and understanding that we are bouncing
2 around a fair amount here due to time constraints, do you agree
3 that it would be a benefit for municipalities, and, of course,
4 assuming appropriate notice to voters, that municipalities be
5 able, depending on the circumstances of the pandemic, to be able
6 to move absentee voting sites?

7 A I don't have any information, I don't think, that would
8 allow me to answer that question. I'm not sure. We haven't
9 collected that from clerks nor has the Commission taken a
10 position on that.

11 Q Am I correct in understanding that the deadline for
12 November for designating those in-person absentee voting sites
13 however has already passed?

14 MR. LENZ: Objection. This is beyond the scope of
15 the --

16 THE COURT: No, no. I'm going to allow it,
17 although it -- it was a subject of the depositions, and it
18 wasn't something that I raised specifically. If you want to
19 spend your time just to confirm that that time is gone to your
20 understanding -- is that correct, Ms. Wolfe?

21 MS. WOLFE: Yes. That's correct.

22 THE COURT: Next question.

23 MS. LENS: Thank you, Your Honor.

24 BY MS. LENS:

25 Q Currently under the statutory scheme, unlike in-person

1 absentee voting locations, municipalities do have the
2 flexibility, in light of the pandemic and otherwise, however, to
3 change the locations for election day in-person voting, correct?

4 A They're still within that time frame, yes.

5 Q And returning to a subject that I know was covered by the
6 Court just a few minutes ago with respect to the WEC's news
7 release just yesterday that there are some 900-plus poll worker
8 shortages for the August election -- do you recall that
9 discussion?

10 A Yes.

11 Q And just to confirm, do I understand correctly that that
12 900-plus poll worker shortage for the upcoming election next
13 week is a much smaller election than that anticipated in
14 November?

15 A Yes, that's correct.

16 Q Meaning that even more poll workers will be required for
17 November --

18 THE COURT: Yeah, Counsel, we just went through that.
19 I know you want to underscore it, but I get that.

20 Anything else?

21 MS. LENS: Thank you. Let me just briefly look at my
22 notes, if you'll humor me, Your Honor.

23 THE COURT: Sure. No, no, that's fine. You've
24 actually -- I'm going to give you a little bit more time because
25 my math wasn't very good. If you -- I'll give plaintiffs until

1 11:44, so you've got about roughly 16 minutes.

2 MS. LENS: At this point I will, if it's acceptable to
3 the Court, I will cede time to co-counsel, and to the extent
4 that there is additional time at the end --

5 THE COURT: Sure.

6 MS. LENS: -- I will reserve the right to resume.

7 Thank you.

8 THE COURT: Very good.

9 MS. LENS: Thank you for your time, Ms. Wolfe.

10 MS. WOLFE: Thank you.

11 THE COURT: Mr. Devaney, or whoever else was in queue.

12 MR. DEVANEY: Yes. Thank you, Your Honor.

13 And hello, Ms. Wolfe. It is good to see you again.

14 Your Honor, I'm going to be asking a question in a few
15 minutes related to Exhibit C to the June 25th WEC status report.
16 I just thought I'd mention that to see if it would be possible
17 to pull that up?

18 THE COURT: Yeah.

19 MR. DEVANEY: Before I get to that though, I'll ask a
20 couple of other questions on unrelated topics just to keep
21 things moving, if that's acceptable.

22 THE COURT: Please.

23 EXAMINATION

24 BY MR. DEVANEY:

25 Q Ms. Wolfe, I wanted to just go back to the issue of

1 intelligent mail barcodes, and when you and I met on July 3rd
2 for a couple of hours, at that time in your deposition you told
3 me that you expected that most jurisdictions would use
4 intelligent barcodes. Is that still your view? Has anything
5 changed since then?

6 A We have certainly learned a lot about the mail process now
7 that we are utilizing them for the August election. So I
8 believe on outgoing ballots, so ballots going from the clerk to
9 the voter, I still believe that the majority of the clerks will
10 choose -- opt to utilize the intelligent mail barcodes, but on
11 return ballots I don't -- I don't foresee there being the
12 majority of the clerks that choose to use that process because
13 they'll have to use an additional label. That's the feedback
14 they've provided.

15 THE COURT: So, in other words, the ballots actually
16 returned won't have a smart code on it.

17 MS. WOLFE: Right, correct.

18 THE COURT: Or barcode.

19 MS. WOLFE: Uh-huh.

20 BY MR. DEVANEY:

21 Q How about -- How about --

22 THE COURT: Go ahead. I'm sorry, Mr. Devaney. Go
23 ahead.

24 MR. DEVANEY: Sorry, Your Honor.

25 BY MR. DEVANEY:

1 Q How about in the larger jurisdictions, Ms. Wolfe? Are the
2 larger jurisdictions planning to use barcodes for the return of
3 ballots?

4 A To my knowledge, Milwaukee and Madison plan to. Beyond
5 that I don't have any firsthand knowledge about who plans to
6 utilize it for sure, and, you know, they would be able to change
7 their minds. There's nothing locking them into that.

8 Q Okay. But just to be clear, as of now, it's your
9 understanding that Milwaukee and Madison intend to use barcodes
10 for return ballots. Are there any other jurisdictions that
11 you're aware of that do intend to use the barcodes for return
12 ballots?

13 A Oh, I'm sorry. If I could correct my previous statement.
14 I thought we were just talking about barcodes in general.
15 Outgoing barcodes, I know Madison and Milwaukee and other
16 jurisdictions have said that they will be doing that. For
17 return barcodes, I think they're still making a decision on
18 whether or not that's something that they are going to use.

19 Q Just to be clear, when you say "they," you're referring to
20 Milwaukee and Madison?

21 A That's correct. Those are the only two I'm aware of that I
22 had recent discussions with.

23 Q Okay. And then with respect to the equipment the postal
24 service needs to read the barcodes, if I'm understanding it
25 correctly, is it mostly the rural post offices that may not have

1 that equipment?

2 A That's my understanding.

3 Q Okay. Changing topics -- I'll try to move quickly here --
4 this does still relate to the postal service. I saw something I
5 think yesterday where you were telling voters to plan on mailing
6 their ballots at least seven days before election day. Do I
7 have that right, that you issued that instruction very recently?

8 A Yes. That was the press release that was issued yesterday.

9 Q Okay. And was that instruction based on any new
10 information that you've obtained about postal delivery times?

11 A That has actually been our consistent message for the last
12 few years is that mail could take up to a week to reach its
13 intended end point.

14 Q And then just to follow up on that, does that mean it could
15 be a two-week round trip from the clerk's office to the voter
16 and from the voter back to the clerk's office?

17 A It has been our understanding that, yes, each leg of the
18 postal journey could take up to a week, so a round trip could be
19 up to two weeks.

20 MR. DEVANEY: Thank you, Ms. Wolfe.

21 Your Honor, I now -- I would like to ask a question. I
22 apologize. I'm not able to pull it up myself.

23 THE COURT: I'm not sure if we'll be able to pull it up
24 for the witness, but I can pull it up for myself.

25 But it's possible that, Joel, you could do that.

1 But you're going to need to give me a docket number and a
2 specific exhibit number. Are we on 515?

3 MR. DEVANEY: Sorry. I'm looking at an email from --

4 THE COURT: Try it a different way. Tell me what it
5 is -- what exhibit is it?

6 MR. DEVANEY: Your Honor, it's the instructions to
7 voters with respect to indefinitely confined.

8 THE COURT: And is that among the exhibits we have?

9 MR. DEVANEY: Ms. Wolfe, maybe we can do this without
10 the exhibit. I'll see if we can.

11 THE COURT: Part of the problem -- actually, let me
12 clarify something. Are the exhibits now in docket 518, No. 1,
13 Exhibit CDC? Have the exhibits been filed now?

14 MS. UMBERGER: Your Honor --

15 THE COURT: Hearing nothing, I think, Mr. Devaney, your
16 alternative is better. Go ahead.

17 MR. DEVANEY: Okay.

18 BY MR. DEVANEY:

19 Q Ms. Wolfe, with respect to instructions to voters, there is
20 discussion -- first of all, what is the status of the
21 instructions to voters? Have they been finalized?

22 A Could you --

23 Q For the November election?

24 A Could you clarify --

25 THE COURT: Are you talking about for registration or

1 for a ballot?

2 MR. DEVANEY: For ballots. Sorry.

3 MS. WOLFE: So the uniform instructions that go with
4 the absentee ballots or the mailer that we're sending to the
5 voters about absentee voting?

6 BY MR. DEVANEY:

7 Q Let me ask you this: Where is indefinitely confined
8 defined? Which document is that defined in?

9 A So it's defined in any documents that have to do with
10 applying for an absentee ballot, so the absentee ballot form,
11 absentee ballot instructions. It would be on also the mailer
12 that we're going to be sending out to voters on September 1st
13 instructing them about their options for voting and how to
14 request an absentee ballot. It's also on there.

15 Q Thank you. Thank you for your help with that. And I think
16 you testified earlier that for indefinitely confined status,
17 it's up to the voter to determine, based on their own
18 circumstances, whether they qualify as indefinitely confined; is
19 that correct?

20 A Yes, that's correct. The voter certifies that they qualify
21 under the statutory definition of indefinitely confined, and
22 they're required to check that, and then on the revised
23 application that's being sent as part of the mailer, they would
24 also have to sign certifying that they qualify as indefinitely
25 confined.

1 Q And, Ms. Wolfe, my understanding is that the instructions
2 we just talked about do not tell the voter that it's up to them
3 to determine whether they're indefinitely confined; is that
4 correct?

5 A I don't have the exact language in front of me, but it does
6 say something to the effect of if you are unable to go to the
7 polls due to age, illness, infirmity, or disability, you're able
8 to make that certification on this form.

9 Q And the instructions do not tell the voter that a claim of
10 indefinitely confined status does not require permanent or total
11 inability to travel outside their residence, correct?

12 A It just contains the statutory language. It defines what
13 it is, but it doesn't discuss, you know, exceptions or other
14 information on that particular mailer. We certainly have other
15 documents that go into more detail about indefinitely confined.

16 Q So just to be clear, in response to my question, the
17 instructions we've been talking about do not tell the voter that
18 indefinitely confined status does not require permanent or total
19 inability to travel outside of one's residence, correct?

20 A Correct, it does not make that statement.

21 MR. DEVANEY: Thank you, Ms. Wolfe. That's all I have.
22 Thanks much for your service.

23 MS. WOLFE: Thank you.

24 THE COURT: All right. Ms. Lens, do you have some
25 follow-up?

1 MS. LENS: I do not, Your Honor.

2 THE COURT: Okay.

3 MS. LENS: Thank you.

4 THE COURT: Very good.

5 Was there anyone else for the plaintiffs who had any
6 questions?

7 MR. SHERMAN: No, Your Honor. Thank you.

8 THE COURT: All right. Then we'll hear from
9 defendants. Any qualifications or clarifications you wish to
10 make or other questions?

11 MR. BROWNE: Your Honor, this is Robert Browne on
12 behalf of the Legislature. I just have a few questions for Ms.
13 Wolfe.

14 THE COURT: Sure.

15 EXAMINATION

16 BY MR. BROWNE:

17 Q Ms. Wolfe, the Court talked to you about the in-person
18 registration process for nonregistered voters. Do you recall
19 that?

20 A Yes.

21 Q Okay. Is the interaction for nonregistered voters to
22 register, showing photo ID, proof of residency, much different
23 than the interaction that a registered voter would have when he
24 shows voter ID on election day?

25 A Well, they are two different processes. So if you are

1 already registered, you go to the poll book, you state your name
2 and address, you show your photo ID, and you receive a ballot.
3 If you need to register, you may go up, state your name and
4 address, show your photo ID. They'll point you to the poll
5 book, and if you see there's some kind of issue or if you're not
6 registered, you're sent to the registration table where you have
7 to complete the registration form and provide a proof of
8 residence document as part of that process, and then once that's
9 done you go back to the poll book, where you now have your
10 supplemental information, to show your photo ID, state your name
11 and address, and receive a ballot.

12 Q (Inaudible) done any studies or have any evidence that
13 registration of nonregistered voters creates long lines at
14 polling places on election --

15 THE COURT: Mr. Browne, I apologize, but you kind of
16 broke up early, so maybe you could start your question again.

17 MR. BROWNE: Sure, sure. And I apologize, Your Honor.

18 BY MR. BROWNE:

19 Q Ms. Wolfe, has the Commission done any studies or have any
20 evidence that the registration of nonregistered voters creates
21 long lines at polling places on election day?

22 A I don't believe that's data that we have collected or
23 analyzed, no.

24 Q Okay. Ms. Wolfe, wouldn't you agree if there is a larger
25 number of absentee voters, that there probably will be less

1 chance of long lines at polling places on election day?

2 A Without speculating, I'm not sure. Again, we don't know
3 what voter behavior is going to look like, if absentee, you
4 know, draws a new pool of voters and then the same pool will
5 still vote in person on election day. We just really don't know
6 how that trend impacts in-person election day.

7 MR. BROWNE: Thank you.

8 Your Honor, I have nothing further.

9 THE COURT: All right. Let me just -- one clarifying
10 question, Ms. Wolfe. I know there hasn't been any studies, but
11 I got the impression that you were in agreement, based on
12 overall experience, that registration -- same-day registration
13 is a more time-consuming process than the typical registered
14 voter because it involves two steps and a separate line to
15 address the registration portion.

16 MS. WOLFE: Correct. I mean, just by its nature you
17 would spend more time at the polls because you need to go do an
18 additional step that you don't have to do if you're already
19 registered.

20 THE COURT: All right. Any final clarifying questions
21 for the plaintiffs?

22 MR. DEVANEY: Your Honor, just for the Court's
23 reference, the document I was trying to refer to earlier is ECF
24 Docket No. 227 --

25 THE COURT: That's fine. And unless you're going to

1 ask questions of the witness, you can make that record without
2 taking up her time.

3 MR. DEVANEY: Okay.

4 THE COURT: Any other clarifying questions for the
5 defendants?

6 MR. LENZ: No, Your Honor. Thank you.

7 THE COURT: All right. Ms. Wolfe, I don't expect any
8 gratitude, but anytime lawyers manage to come in under their
9 predicted time, it's an accomplishment. I'm sorry that we did
10 take you away from the August election. We may have some very
11 specific questions related to that at some point, but I'm very
12 appreciative, as I have said before, of all the efforts you and
13 your office is making, and I want to let you go as soon as
14 possible, so I thank you for your time, and you are relieved of
15 any further testimony. Thank you very much.

16 MS. WOLFE: Thank you very much, Your Honor.

17 THE COURT: One minor reminder, which is with your
18 counsel just to be sure to file those two mailings, the
19 September -- early September, September 2nd, and the
20 mid-September in their current form, in their draft form. Thank
21 you very much.

22 MS. WOLFE: Thank you.

23 THE COURT: And you may log off at your leisure.

24 Mr. Devaney, you said you wanted to make a record as to the
25 exhibit?

1 MR. DEVANEY: Yeah. Sorry for that interruption, Your
2 Honor.

3 THE COURT: No, no. That's fine.

4 MR. DEVANEY: I just wanted to point out the ECF docket
5 number of the document I was attempting to ask Ms. Wolfe about.

6 THE COURT: Yeah.

7 MR. DEVANEY: It's 227-3.

8 THE COURT: Very good.

9 MR. DEVANEY: And if I could address just one or two
10 other housekeeping matters. We, as Your Honor may know,
11 submitted 116 declarations from voters affected by the April
12 election. One of our declarants was unable -- unavailable to be
13 deposed, and so we agreed to withdraw her declaration. It's
14 Ms. Mann, M-A-N-N, and I just wanted to state that for the
15 record.

16 And then while I have the floor, we've been told by counsel
17 for the ACLU in Milwaukee who represents Justin Luft that, in
18 fact, it is Luft, not Luft.

19 THE COURT: Well, it was worth a shot. Luft it is.

20 I was with you a hundred percent, Mr. Tseytlin. I was
21 willing to go with you, but we'll go with Luft at this point.

22 Anything else, any other housekeeping matters for the
23 plaintiffs?

24 Mr. Devaney, I'm just going to ask you to clarify. I'm on
25 Docket No. 227. There are three exhibits. Which of it is the

1 reference?

2 MR. DEVANEY: I may have to rely on a colleague for
3 that. I believe --

4 THE COURT: It looks like Exhibit 3 -- or actually
5 Exhibit C, Docket No. 3, is a mailer, an absentee request form.
6 I assume that's the one we're talking about?

7 MR. DEVANEY: That is it. Thank you, Your Honor.

8 THE COURT: Very good. Let me hear from the defense if
9 there's any other housekeeping matters.

10 MR. LENZ: Briefly, Your Honor, I just want to make
11 sure that I'm going to resubmit the right documents. So we're
12 looking for the September 1st mailer that's going to all voters
13 who don't have an absentee request on file and then --

14 THE COURT: I think it's all registered voters who
15 don't have an absentee request on file, but we're on the same
16 page. Yes, that's the first.

17 MR. LENZ: Okay. And then second is the current draft
18 of the uniform instructions that will accompany the absentee
19 ballots?

20 THE COURT: Exactly.

21 MR. LENZ: Okay. Very good. Thank you.

22 THE COURT: Thank you. Anything else for the defense?
23 Any other housekeeping matters?

24 MR. STRAWBRIDGE: Your Honor, I had one, and at the
25 risk of devolving into minutia, we got designations of the

1 RNC/RPW 30(b)(6) witness last night from the Swenson plaintiffs.
2 I think you had given us until noon tomorrow to get our
3 counter-designations on file, and my intention was to annotate
4 those counter-designations in a different color of highlighting
5 on the same document just so the Court would have it all on one
6 document. That's all.

7 THE COURT: That would be greatly appreciated.

8 Anything else for the defense at this time?

9 I'm going to end then with instructions from our clerk --
10 actually our deputy clerk for the court as a whole and our IT
11 guru. Mr. Turner, can you tell me whether or not it's
12 appropriate for us to just all log off and then log back in on
13 the same link at 1:00 p.m.?

14 MR. TURNER: So, Judge, I just want to make sure you
15 can you hear me.

16 THE COURT: Yes.

17 MR. TURNER: Great. So what I would recommend to all
18 the participants at this time is to not log off the call. You
19 can turn your audio and -- you can mute your audio, turn off
20 your video, keep your call open. At about ten minutes -- five
21 to ten minutes before, turn everything back on when Judge Conley
22 indicates we're going to resume court just to make sure that we
23 can see and hear you again, and then we will start back up.

24 For those listening on the YouTube audio stream, we will be
25 going silent. The stream will stay up, so you can also keep

1 that up on your computers and other audio devices.

2 THE COURT: Perfect. Then I will see everyone, or at
3 least all the participants, at 1:00 p.m. to take up the
4 individual voter challenges.

5 And with that, we are off the record. Thank you, all.

6 THE CLERK: This Honorable Court stands in recess.

7 (Recess at 11:47 a.m. until 1:00 p.m.)

8 THE COURT: All right. It appears we have everyone,
9 and we're back in session. As I indicated, my hope is that we
10 can address these individual voter relief as it may apply to
11 restrictions on voting, whether they're absentee ballot related
12 or registration related as well as ultimately in-person related.
13 I realize that the defendants have -- we have to look at these
14 as a whole, and I'm not ignoring that, but I would expect that
15 could be addressed by the parties -- I mean, it's already been
16 fully addressed in the briefing, but if at all, to address that
17 in closing arguments.

18 I would propose that we go back and forth as to each of the
19 restrictions because I think it may make this discussion a
20 little bit more manageable, again understanding that I may have
21 an obligation to view these restrictions as a whole ultimately,
22 and you'll have a chance to make that point. And I don't have
23 any particular order in mind. If people want to start with the
24 witness signature requirement or someplace else, that's fine.
25 Just understand that I'll probably give the other side a chance

1 to comment on it.

2 My goal will be to get through this in an hour or so, but
3 perhaps it will take a little bit more, and then, whenever we
4 complete that discussion, to move on to addressing the parties'
5 objections to exhibits. At that point we'll probably take about
6 a ten or 15 minute break, and I'll come back to hear the
7 parties' closing arguments. Understanding that there's a lot of
8 material, I'll try to be a little bit more limiting in my
9 interruptions, but I can't guarantee much because at the end of
10 the day my strong view is I want to give you an opportunity to
11 respond where I'm having problems, but you should use that as an
12 opportunity to raise any of the other numerous issues that you
13 believe are important for the Court to consider in addition to
14 those that we've addressed in these two specific arguments.

15 With that said, I'm going to let the plaintiffs go first
16 with respect to whatever voter restriction on registration,
17 absentee ballot, or -- well, let's leave in-person to the end,
18 but as to those restrictions you want to discuss first.

19 MR. DEVANEY: Your Honor, John Devaney. I'll see if I
20 can sort of set the stage here a little bit.

21 THE COURT: Sure.

22 MR. DEVANEY: The plaintiffs have conferred, and we
23 have divided up the issues among us, and maybe this would
24 provide a logical order also. I was going to handle, on behalf
25 of the DNC, witness certification, photo ID, and the document

1 residence requirement. And then counsel for the Gear
2 plaintiffs, Mr. Sherman, was going to handle receipt of absentee
3 ballots. And then the Swenson counsel were going to handle the
4 ADA issues, drop box, and in-person voting. So that's how we
5 had divided it up, and my colleagues can correct me if I'm
6 wrong, but I think it was roughly in that order that I just
7 outlined.

8 THE COURT: That's fine. What aspect -- because I sort
9 of felt like we've already discussed the receipt of absentee
10 ballots, I'm going to give the Swenson -- I guess who was it who
11 was going to be addressing that?

12 MR. SHERMAN: Sorry, Your Honor. Mr. Devaney I think
13 meant to say absentee ballot delivery.

14 MR. DEVANEY: Sorry.

15 THE COURT: I'm with you now. Okay. Never mind.

16 So I've got the order and the rough allocation, and you may
17 begin, Mr. Devaney.

18 MR. DEVANEY: Thank you, Your Honor. And I know that
19 we're going to be reserving a deeper discussion of *Luft* until
20 later in the closing, but I did want to establish that -- a
21 little bit of legal framework for consideration of the witness
22 certification issue, beginning with *Frank II* and *Frank III*
23 and --

24 THE COURT: And that was heavily briefed. If you want
25 to tell me what -- not the big windup but what you believe to be

1 the standard, that's fine.

2 MR. DEVANEY: Bottom line, Your Honor, is that the
3 right to vote is personal and that --

4 THE COURT: Yeah, and so we're clear, I agree with
5 that. I agree that there's a different standard with respect to
6 the individual voter, what has been referred to in the brief as
7 "the one percent." I do think that there is a requirement
8 for -- I think you call it a fail-safe -- there's a requirement
9 for an alternative option where there is a legitimate concern
10 that individual voters are going to be denied their right to
11 vote. To the extent that defendants argue that *Luft* requires
12 overall examination, I think that that's true, but whether that
13 means for individual voters, I'm not sure that's true at all,
14 and I think for that individual voter there is a requirement to
15 have a meaningful right to vote.

16 And with that said, you can go wherever you wish.

17 MR. DEVANEY: Well, thank you, Your Honor. That saved
18 me quite a bit of time.

19 And I'll emphasize just a few things then to try to make
20 this very practical, which is that notwithstanding references in
21 the intervenors' brief to hypothetical voters and the like, this
22 is a very real issue. There were 14,000-plus voters who could
23 not comply with this requirement in April alone --

24 THE COURT: And when you say "this requirement," you're
25 talking about the witness requirement?

1 MR. DEVANEY: I am. Yes, Your Honor.

2 THE COURT: Because it's a little unclear in the
3 record. It's certainly clear that there was a problem with the
4 witness requirement for some of the voters. It's not completely
5 clear that all 14,000 absentee ballots were rejected on that
6 basis alone. There seems to be conflicting statements in the
7 record as to what percent involved a specific problem with the
8 witnessing. What we do know is that -- we do know they were
9 voided.

10 MR. DEVANEY: Yeah. I think we can at least say it's
11 thousands of voters, so there's nothing hypothetical about this
12 I guess is the fundamental point.

13 THE COURT: Yeah.

14 MR. DEVANEY: And, Your Honor, we also described this
15 in our papers, and I won't belabor it, but the fundamental point
16 is that we believe that in your decision that you recognized the
17 safety net and that, in our view, you did a very good job of
18 creating one. Obviously the Second Circuit had some quibbles
19 with that and --

20 THE COURT: They may have had quibbles, but certainly
21 the Seventh Circuit had problems with it.

22 MR. DEVANEY: Yeah. Right, but --

23 THE COURT: I don't doubt that other circuits have been
24 critical as well. Regardless, you're right, they put a nuance
25 on it that seemed to still, as your brief argued, leave an

1 opening for some relief for avoiding the requirement of an
2 in-person witness, and it seems to me that the options that we
3 talked about already with Ms. Wolfe probably ought to be set
4 forth in some clearer way for those who might run into a
5 problem. And I assume you guys -- well, you actually did make
6 some proposals. Do you have any language in particular as to
7 what should be offered those who have trouble with the signature
8 because of COVID-19 or other reasons?

9 MR. DEVANEY: Well, we didn't provide specific
10 language, Your Honor, but we did spell out a suggestion that a
11 form be used, perhaps leaving it to the WEC to establish the
12 specific language of that form but --

13 THE COURT: And I'm concerned about moving that issue
14 along. One thing I am thinking about is just asking the
15 parties -- the plaintiffs to make a proposal and defendants to
16 respond and then to forward something for the WEC to craft, as
17 they described it, in a voter-friendly way, but the essential
18 suggestions that the option for an individual may be to have the
19 voter mark the ballot through a window or by video chat. Is
20 there something else that you thought should be within the
21 language?

22 MR. DEVANEY: Well, Your Honor, we actually were
23 suggesting that if there is an inability for a voter to obtain a
24 witness certification, that there be a form the voter could
25 complete to demonstrate that inability, which would -- with

1 specific language on the form to address the types of concerns
2 the Seventh Circuit was concerned about in *Luft*, and so in
3 particular the form could be signed under penalty of perjury.
4 The voter would provide contact information to enable local
5 officials to follow up with any questions. The state would have
6 to conduct an educational campaign and, importantly, would have
7 to publicize the ability to --

8 THE COURT: When you say a "campaign," there's a ballot
9 that's going to go out. We also have, thanks to you, a copy of
10 their current mailing to registered voters, or at least what's
11 posted on their website, which may have to be expanded. But I'm
12 a little concerned, first of all, whether an affidavit under
13 perjury, notwithstanding the Seventh Circuit's suggestion, is
14 enough, and I'm concerned with the timing we have available to
15 us to choose something that is clearly sufficient. So I'm not
16 going to order a general campaign of education. There isn't
17 time, and it isn't practical.

18 MR. DEVANEY: Right.

19 THE COURT: Particularly with the number of matters
20 that need to be informed, but I certainly think it would be
21 appropriate online for there to be an explanation. If there's
22 any other mailings, including the September I guess it's 2nd or
23 3rd mailing and the mid-September mailing of the -- or
24 finalization of the information in the ballot should include
25 information, but beyond that I think we're limited, at least I

1 feel limited to impose further burdens on the WEC.

2 MR. DEVANEY: I understand that concern, Your Honor,
3 and the types of publicity you've just described in forms
4 probably is adequate, but clearly there needs to be -- the
5 voters need to be informed of these alternatives to the witness
6 certification requirement, and I guess we would suggest what we
7 provide in our brief, which is having a form that a voter could
8 actually complete and swear to under perjury, which would, I
9 think, go some distance in addressing what I understand the
10 Legislature's concern to be about potential fraud -- and, by the
11 way, there is no evidence of fraud in the record --

12 THE COURT: I understand.

13 MR. DEVANEY: -- but having a sworn statement under
14 perjury. So I tried to be practical and cut to the chase, and
15 I'll stop there.

16 THE COURT: I appreciate that. Let me hear from the
17 defendants on this -- on the witness signature requirement and
18 the proposed solution for the small percent of those who will
19 not be able to accomplish the strict requirements of the
20 statute.

21 MR. TSEYTLIN: Did the WEC want to say something before
22 we spoke?

23 MR. BACH: Your Honor --

24 THE COURT: No, I know your position. I'm not sure why
25 we're -- your position is you have to follow the statute.

1 MR. BACH: Right.

2 THE COURT: So, no, I don't need that unless there's
3 some modification of that position, which has been consistent
4 throughout.

5 MR. BACH: No. I think I'll be pretty quiet this
6 afternoon.

7 THE COURT: I mean, you're welcome to speak up, but
8 Mr. Devaney -- I've heard from Mr. Devaney, and I'd like to hear
9 from Mr. Tseytlin or whoever else wants to speak on behalf of
10 defendants.

11 MR. TSEYTLIN: Thank you, Your Honor.

12 So we think that any relief on the signature requirement is
13 both -- prohibited by both the law and the facts. On the law, I
14 think the Seventh Circuit and Supreme Court could not have been
15 clearer that they do not think COVID is a reason for the courts
16 to do anything on signature requirements --

17 THE COURT: Well, then why did the Seventh Circuit
18 suggest alternatives to what I permitted, including doing
19 something, as was suggested, making a statement under penalty of
20 perjury or apparently alternatives to having the witness
21 actually present with the voter?

22 MR. TSEYTLIN: Well, first of all, I do not think they
23 made any suggestions about the penalty of perjury point. I
24 think that is --

25 THE COURT: Well, that could have been the Supreme

1 Court, but some court suggested that as a possibility.

2 MR. TSEYTLIN: Certainly not the Seventh Circuit or the
3 Supreme Court.

4 With regard to the actual physical signature, this is the
5 language of the Seventh Circuit's decision: Quote, "It is best
6 to leave these decisions and any more particular prescriptions
7 to the Commission, as it is best positioned to know what
8 additional alternative suggestions they are able to
9 accommodate." So I think the Seventh Circuit --

10 THE COURT: Well --

11 MR. TSEYTLIN: (Unintelligible.)

12 THE COURT: Hang on, Counsel.

13 MR. TSEYTLIN: (Unintelligible.)

14 THE COURT: They do say that, but we know that the
15 Commission is not going to do anything because they are bound by
16 Wis. Stat. 6.87(2), so your real position is nothing can be
17 done, it's entirely up to the legislature even if because of
18 COVID-19 there will be some individuals who are too concerned or
19 sufficiently unable to accomplish the in-person witnessing and
20 that there should be no fail-safe for those people. That's your
21 position.

22 MR. TSEYTLIN: Your Honor, then moving to the facts,
23 there has been absolutely, absolutely no showing in this case
24 that any such voter exists. If you want to give me a second
25 here --

1 THE COURT: No, no. You've made that point in your
2 brief, and you went through all of the individuals, and I think
3 it's a very good point. If it's a purely theoretical problem,
4 then that may be the end of it, although it seemed not to be a
5 theoretical problem for the last April election. There were
6 problems with these ballots with the witnessing, and for those
7 who claimed to have a problem that it turned out they had
8 solutions, maybe that's enough of a response, that COVID-19,
9 what we know about it now, unlike in April, means that some
10 social distancing is enough to accomplish what the statute
11 required and there hasn't been a sufficient showing that anyone
12 is unable to accomplish that. I get that point.

13 MR. TSEYTLIN: I mean, it's obviously impossible to
14 prove a negative, but, again, we have --

15 THE COURT: No, no. No. I think you --

16 MR. TSEYTLIN: The Democratic Party of Wisconsin --

17 THE COURT: Counsel, you've won this argument. There
18 isn't any evidence of anyone who isn't capable of accomplishing
19 the witnessing, although perhaps there could be some greater
20 clarity as to what that would constitute so that for those
21 voters who really are homebound and afraid of contact with
22 others understand that there's a way to accomplish this without
23 violating social distancing and mask wearing.

24 MR. TSEYTLIN: And I will just say on that, Your Honor,
25 I certainly understand and appreciate Your Honor -- you know, if

1 it's just about giving voters -- explaining to them the options
2 that WEC has already articulated, that certainly seems
3 reasonable as a policy matter, but I would just say it is not
4 nothing for a federal court to tell a state to do that. That
5 requires a finding of a likely constitutional violation. And so
6 while more information from WEC in some manner might be -- to
7 some people seem like a good policy decision, certainly a
8 federal court, without finding a likely constitutional violation
9 and given the complete lack of proof on the other side of any
10 voter who can't comply with reasonable effort, there isn't a
11 constitutional violation, that I think, with respect, the Court
12 doesn't have the authority to order that, even if it might be
13 modest.

14 THE COURT: I hear you.

15 Mr. Devaney, I'm going to come back to you on that point,
16 and then we'll go on to the next. It does appear on this record
17 there has been no showing of any individual who couldn't
18 accomplish some kind of in-person witnessing given the fact that
19 it appears all of them have in-person contact. Even the most
20 homebound have gone out to get food, have had others come to
21 give them food. They've got months to accomplish arranging
22 that, and whatever the problem was with the uncertainty of
23 COVID-19 for a few weeks where people might have locked their
24 door and not seen anyone for a month or more, we're well past
25 that now. And I'm not aware of a single affidavit that someone

1 didn't have some contact, and certainly the depositions that
2 were taken for examples, they seem to allow for some contact
3 with other human beings, which is all that's really required to
4 get a witness.

5 MR. DEVANEY: Your Honor, I'm trying to recall the 116
6 declarations we submitted and whether any of them established a
7 witness -- a voter was unable to obtain a witness, and I may
8 have to rely on a note from my colleagues on that but --

9 THE COURT: Well, without getting into that, I'm not
10 going to preclude -- everyone gets a chance in the closings, but
11 I think it is probably the strongest point for the defendants as
12 to the witness requirement that it seems fairly implausible that
13 even people -- never mind COVID-19 -- people with extremely
14 compromised immune systems or otherwise homebound have
15 absolutely no contact with another human being such that,
16 recognizing some limitations, they couldn't get someone to
17 witness their ballot, especially with the time that they have to
18 accomplish that. But you can -- I'm not going to -- I'm not
19 going to say that you've waived any argument that it's in the
20 record, and if someone wants to address that in the closings, I
21 think that would be appropriate.

22 MR. DEVANEY: Your Honor, we'll follow up on that.

23 I would go back though to the point that we do know -- and
24 I'll have to get the exact number -- that there were thousands
25 of ballots that were rejected for lack of witness signature, and

1 while that's not dispositive that a person was unable to obtain
2 one, it's certainly evidence that that is a plausible
3 explanation, and there are --

4 THE COURT: And, Mr. Tseytlin, I think that's probably
5 where I should come back to you, which is between the fact that
6 there was such a problem with completing the witness form on the
7 ballots -- for whatever reason people were flummoxed by it, and
8 no doubt COVID-19 played some role -- the Seventh Circuit didn't
9 just say that it might be preferable. They expressed confidence
10 that the Commission, in keeping with forward-leaning action,
11 would accommodate voters' interests in that regard and
12 suggested, for example, maintaining the statutory presence
13 requirement but not requiring a physical signature. We now know
14 that the WEC is going to do nothing, so that confidence was
15 ill-placed, and I don't know why that isn't an opening to -- for
16 this federal court to help them take that step since they're
17 frozen over what would seem like a fairly straightforward,
18 needed clarification for some voters who for whatever reason do
19 not manage to accomplish in-person witnessing.

20 MR. TSEYTLIN: Well, two responses on that, Your Honor:
21 First, there's no evidence in this record that that 14,000 that
22 counsel quoted as a proportion of all absentee voters is more
23 than usual, people just having trouble completing --

24 THE COURT: Yeah, I have a problem with that argument,
25 and here's my problem: When the state created this voting

1 system, they contemplated a relatively small percentage of
2 absentee votes and a huge percentage of in-person voters, so the
3 fact that in a small percentage of absentee voters there may be
4 a few who are impacted with this problem, it's a much bigger
5 problem for the viability of the vote itself when instead of 10
6 percent maybe, 80 percent -- up to 80 percent -- I guess 74
7 percent ended up being absentee ballots. So saying that it's in
8 keeping with historic numbers, it's completely ignoring these
9 are not historic numbers. These are -- this is a sea change in
10 voting.

11 The second problem I have with it is simply this is not an
12 ordinary election. COVID-19 is playing a role. I don't think
13 it's unreasonable to conclude that part of the problem with
14 signatures had to do with people's fears, whether well-founded
15 or not, about going through the formal witness process, and that
16 would seem to me at minimum we would want to give them some
17 information about how they can accomplish that during the
18 pandemic.

19 MR. TSEYTLIN: Then, Your Honor, I'm just going to fall
20 back on the second point I was going to make is I think the best
21 proof that the Seventh Circuit's confidence was well-placed is
22 the fact the plaintiffs cannot find one witness, not one, saying
23 that they could not reasonably comply with the current WEC rules
24 for the November election. That's the best --

25 THE COURT: I understand. Although if there were

1 thousands, and I think that's a fair assessment based on 14,000
2 certifications that were found insufficient, thousands who
3 didn't accomplish the witness, that's at least -- I don't know
4 if it's overwhelming evidence, but it's certainly arguably
5 probable cause to believe that there was some witnesses who were
6 flummoxed by that requirement.

7 MR. TSEYTLIN: Well, Your Honor, I think we have a good
8 sense of who -- among those 14,000 of who it could be. It could
9 be the four people that the plaintiffs noted. We deposed a
10 couple of them. You see that testimony. They couldn't produce
11 the fourth one for a deposition, and now counsel has withdrawn
12 reliance. So I think to the extent that there were a couple, we
13 talked about it in the briefs, we deposed them, and I think the
14 record is uniform on that.

15 MR. DEVANEY: Your Honor, may I be heard briefly --

16 THE COURT: I will leave that for the defendants -- I'm
17 sorry -- for the plaintiffs to respond to in their closings, and
18 let's move on to the next of the requirements. And on my
19 list -- actually I'm not sure I have the order right, but that's
20 the photo ID?

21 MR. DEVANEY: Yes.

22 THE COURT: Or perhaps you have another order.

23 MR. DEVANEY: Yes, photo ID. Your Honor, if I could
24 just for one moment go back to --

25 THE COURT: One moment.

1 MR. DEVANEY: -- witness certification, which is that
2 just in the short time counsel was talking, on my phone I went
3 back and I found five witness declarations from witnesses who
4 said they were unable to satisfy the witness certification
5 requirement, including Dolores Garm who said that she had a
6 heart condition. She saw the witness portion of her ballot,
7 called the clerk, found out she didn't have any option but to
8 find a witness, and decided not to vote because of that. And I
9 suspect there are more. I'm kind of moving quickly on my phone
10 as we talk about this but --

11 THE COURT: Again, you can address that in your
12 closings. Let's move on to the photo ID.

13 MR. DEVANEY: And, Your Honor, the critical issue with
14 photo ID is the definition of indefinitely confined, which, as
15 we know, is an exception to the photo ID requirement. And this
16 is another one of the one percent issues for which there has to
17 be a safety net, and the --

18 THE COURT: Well, apparently there is one. We're just
19 not sure what it means, and the WEC has decided not to explain
20 that to anyone.

21 MR. DEVANEY: And that is our concern, Your Honor, and
22 so at a minimum the indefinitely confined status should be
23 required to be defined so voters are on notice that if they have
24 COVID, if they are susceptible to COVID, or even if they have a
25 reasonable fear of COVID, that that qualifies as indefinitely

1 confined. During this pandemic, that kind of clarity is owed to
2 voters, and, by the way, there's a criminal penalty sanction for
3 people who misrepresent being indefinitely confined. And with
4 that, at a minimum, there ought to be clarity about what
5 indefinitely confined means, again particularly during the time
6 of this pandemic, and that goes to the safety net issue. And it
7 may be a small percentage of people who cannot obtain photo ID,
8 but they are within the one percent that's contemplated by *Luft*,
9 *Frank*, and the other Seventh Circuit precedent.

10 THE COURT: All right. Mr. Tseytlin, I assume you're
11 not claiming there are not voters who have found the photo ID to
12 be an impediment to providing -- or to providing photo ID with
13 their absentee ballot, albeit a minority, but those who have no
14 technological savvy may well find it quite challenging,
15 particularly if they don't have a driver's license or state ID.
16 But I assume your fallback is that it's up to the WEC whether
17 they want to provide further guidance, and they've chosen to
18 just quote the statute.

19 MR. TSEYTLIN: Your Honor, again, we have a complete
20 lack of evidence from the other side. They haven't produced a
21 single declarant that claims that they cannot reasonably comply
22 with photo ID and --

23 THE COURT: That can't be right because before the
24 April election I was provided with information of individuals
25 who were finding it virtually impossible to obtain an --

1 MR. TSEYTLIN: And this time around --

2 THE COURT: -- appropriate ID.

3 MR. TSEYTLIN: And this time around, Your Honor -- and
4 this time around, Your Honor, they've produced literally nobody.
5 We talked about --

6 THE COURT: I don't know what that means, "this time
7 around." It's the same record. I don't ignore what resulted in
8 my first decision just because it wasn't repeated in the
9 additional motion.

10 MR. TSEYTLIN: They don't have a single --

11 THE COURT: There is evidence on the record that I
12 relied upon last time with respect to individuals who found this
13 particular ID issue a problem.

14 MR. TSEYTLIN: Well, the last time Your Honor denied
15 all relief on this issue, and with regard to the evidence in the
16 record, there is not a single voter declaration saying they'll
17 have difficulty complying with this in November. There's not a
18 single one.

19 And then on the indefinitely confined issue, I would just
20 like to point out, Your Honor, that the scope of the
21 indefinitely confined issue with regard to COVID-19 is currently
22 fully briefed or in briefing and pending before the Wisconsin
23 Supreme Court, No. 2020AP557, *Jefferson v. Dane County*. I
24 understand --

25 THE COURT: And is that a constitutional challenge to

1 the requirement or a request for clarification for voters?

2 MR. TSEYTLIN: It's a challenge to -- Dane County had
3 issued its understanding --

4 THE COURT: Right, so its own explanation.

5 MR. TSEYTLIN: So that has been -- that's briefed or in
6 briefing and set for oral argument for the state Supreme Court.
7 So for this court to order clarification of that when the
8 state's highest court is going to define what that means for
9 state law -- I understand Your Honor's rejecting our broader
10 abstention arguments, but I would think at least with regard to
11 an issue of state law that's currently pending before the
12 state's highest court, the Court would not want to be getting
13 involved in that sort of thing.

14 THE COURT: And is there any indication how soon they
15 would actually decide that issue, since we're going to run out
16 of time to provide clarifications to voters unless we do it
17 sooner rather than later?

18 MR. TSEYTLIN: I believe they've set it for the
19 beginning of their September calendar for oral argument.
20 Obviously there's no guarantee when they will --

21 THE COURT: And I don't know -- is that September 20 or
22 what is their September calendar?

23 MR. TSEYTLIN: I believe it was the 28th or 29th, but
24 I'll get that on --

25 THE COURT: Yeah, which is virtually at the point of no

1 return, since it sounds like it would be, most importantly, part
2 of the September 1st mailing. But I take your point that there
3 is reason -- certainly an argument for deference in that regard.

4 Let me hear back briefly, Mr. Devaney, about the same
5 argument, that there is no evidence of someone having a problem
6 providing a photo ID with their absentee ballot -- I'm sorry --
7 with their request for an absentee ballot.

8 MR. DEVANEY: Your Honor, your memory is the same as
9 mine with respect to declarations we put in back in March when
10 we filed our original preliminary injunction motion, and by the
11 time of closing in an hour or two, I will have -- I'll provide a
12 report on whether we provided additional declarations, but I
13 know that we have declarations on that point.

14 THE COURT: Yeah. And do you want to comment on
15 deferring to the Wisconsin Supreme Court at this point?

16 MR. DEVANEY: It's a timing issue, Your Honor, and the
17 flyer for absentee ballots is on its way out soon. Instructions
18 for absentee ballot voting are on their way out soon, and there
19 has to be clarity in those instructions on what is prohibited,
20 what is not in determining whether someone has this indefinitely
21 confined status, and so I don't think we can afford to wait for
22 a decision by the Wisconsin Supreme Court that might shed light
23 on that.

24 THE COURT: Let me just go back to Mr. Tseytlin for a
25 second. Are you representing to the Court that there is no

1 affiant who, in the 160-some that I have, who declared problems
2 with providing a photo ID in requesting an absentee ballot?

3 MR. TSEYTLIN: I believe that there was -- in the
4 entire set there was one that was very vague about that, and he
5 did not claim that he would have that problem in November, and
6 that is my understanding of the record.

7 With regard to declarations that were submitted before,
8 they were not cited in the plaintiffs' voluminous statements of
9 proposed fact, so I think it would not be fair for this court to
10 rely upon them, because obviously we had no reason to engage
11 with them in either our briefing or our responses or to, for
12 example, depose those witnesses. We obviously deposed almost
13 all the witnesses, or tried to, that mentioned they had problems
14 with the signature requirement, and we got a really good record
15 on that. If we would have deposed all those witnesses, I think
16 we probably would have probably gotten a similar record, but we
17 never got that opportunity because they didn't rely on them in
18 the surrounding litigation.

19 THE COURT: Understood.

20 All right. Mr. Delaney, do you want to take on --
21 Mr. Devaney, excuse me -- do you want to take on proof of
22 residence?

23 MR. DEVANEY: Your Honor --

24 THE COURT: Again, you can go in whatever order you
25 choose.

1 MR. DEVANEY: And, Your Honor, the issue on proof of
2 residence, and I'll be brief on it, is similar to the issue with
3 respect to the other individual voter issues in that there
4 should be a safety net for voters who -- the small number of
5 voters who cannot satisfy that requirement and --

6 THE COURT: But what would that mean? If they've
7 already given instructions that you can include a utility bill,
8 what other instruction would they give?

9 MR. DEVANEY: Your Honor, what we would suggest is that
10 there be something similar to what we suggested for the witness
11 certification requirement, that there be a statement under
12 perjury by, admittedly, a small percentage of voters that are
13 unable to satisfy that requirement, and that would be the safety
14 net that's constitutionally required for this --

15 THE COURT: But is that really -- I mean, the safety
16 net is providing a utility bill or some other proof of
17 residence. I'm not sure that just leaving an opportunity for an
18 open-ended statement that "I had trouble locating anything that
19 indicated where I lived" is going to be enough. It wouldn't be
20 enough when they appeared in front of a poll worker. Why should
21 it be enough when they're attempting to vote absentee? Or to
22 register, I should say.

23 MR. DEVANEY: Your Honor, I think, for example, of a
24 student who lives in a common household and isn't on the lease,
25 isn't on the utility bill, as an example. Believe it or not, it

1 is hard for someone like that to obtain proof of residence.
2 It's not that easily done. Admittedly, it's a small percentage
3 of the population --

4 THE COURT: Yeah, and I'm not even sure it's any
5 percentage because I would think a lease agreement would
6 accomplish that.

7 MR. DEVANEY: Very often students aren't on the lease
8 agreements. You know, they could be subleasing from a friend
9 and living on a couch.

10 THE COURT: And nothing in writing at all?

11 MR. DEVANEY: Correct. It happens quite a bit.

12 THE COURT: And how do they -- what do they do when
13 they go to the polls on election day?

14 MR. DEVANEY: Well, they could -- I guess they --

15 THE COURT: I think they get turned down from voting.

16 MR. DEVANEY: Yeah.

17 THE COURT: And so I'm not sure why I would relieve
18 them of a responsibility they'd have to meet when they showed up
19 to vote.

20 MR. DEVANEY: Yeah, Your Honor, they could have a
21 student ID, for example, that wouldn't have an address, and that
22 would allow them to vote. So that's an example of how they
23 could vote.

24 THE COURT: Would it allow them to register --

25 MR. DEVANEY: I believe so.

1 THE COURT: -- in person?

2 MR. DEVANEY: I believe so, Your Honor.

3 THE COURT: I'm not sure if that's true. I wish I'd
4 asked the administrator, and I apologize that I didn't even
5 think about that as an issue.

6 MR. DEVANEY: Your Honor, my understanding of that
7 issue is there are two types of student IDs, one a generic
8 student ID that --

9 THE COURT: No, no, I didn't mean that. I meant I
10 don't know that a poll worker is required to allow an ID without
11 an address to satisfy the proof of residence requirement. My
12 guess is that they probably are not, but I don't know that.

13 MR. DEVANEY: My understanding -- and I have to caveat
14 it. It's an understanding -- is that a particular type of
15 student ID is sufficient to register and vote but that --

16 THE COURT: Without an address? That's your
17 understanding?

18 MR. DEVANEY: I believe so, but, Your Honor --

19 THE COURT: And with no other proof of residence? I
20 don't want to box you into a corner. I'm just not certain
21 that's right.

22 Let me hear from Mr. Tseytlin briefly, and then we'll move
23 on.

24 MR. TSEYTLIN: Your Honor, just two brief points.
25 Again, Your Honor, in all the declarations, they couldn't submit

1 one person that said that they would have trouble locating a
2 proof of residence. I mean, the other thing is, and this goes
3 to all of these, is this notion of an affidavit bypass. I think
4 that's a pretty clear nonstarter under *Luft*, and so, you know,
5 maybe if Your Honor is contemplating some additional information
6 or something, you know, we can discuss that. But the affidavit
7 bypass on any of these, including the proof of residence, I just
8 think is a nonstarter on the Seventh Circuit's binding case law.

9 THE COURT: And I'm not following that because the
10 Seventh Circuit continues to identify instances with individual
11 voters where they may need relief from what is otherwise an
12 acceptable general system for the average voter. Never mind the
13 overlay of the ADA, even under the balancing test, there is a
14 recognition of a fail-safe. Now, maybe an affidavit isn't it by
15 itself, but I don't think that necessarily means that the
16 Seventh Circuit has wholly rejected the line of cases suggesting
17 we have to look at the impacts on individual voters.

18 MR. TSEYTLIN: That's right, Your Honor. I think
19 what's clear from the Seventh Circuit's law is if the plaintiffs
20 can show that some identified voter, class of voters, cannot
21 cast a ballot with a reasonable effort, there has to be an
22 accommodation made for them, and I think they've also made
23 equally clear that an affidavit option is not a reasonable
24 accomodation. Something like the IDPP, which the state had
25 voluntarily adopted and was being administered but may have had

1 some potential holes, the Seventh Circuit said, you know, it
2 could be something like that, but certainly the affidavit
3 option, because of the problematic nature of an affidavit --
4 people just fill it out, and they think they have a reasonable
5 barrier, but they actually don't -- I think the Seventh Circuit
6 is pretty clear that that option is really off the table.

7 THE COURT: Mr. Devaney, briefly.

8 MR. DEVANEY: Your Honor, just in terms of the record,
9 again, I'm looking on my phone, and I can find four declarations
10 of people who had difficulty with photo ID, didn't have the
11 ability to upload it. I just want to make it clear that there
12 is --

13 THE COURT: What are those four you identify? I take
14 it their depositions were not taken?

15 MR. DEVANEY: I'm not sure the answer to that, Your
16 Honor. I don't think so. Sue Rukamp, Shirley Powell, Sharon
17 Gamm, Marlene Sorenson.

18 THE COURT: Okay. Got it.

19 MR. TSEYTLIN: Your Honor --

20 THE COURT: Before I hear back from you, I just had one
21 more question, Mr. Tseytlin, but you're welcome to comment in a
22 moment.

23 I'm sorry. What was -- the last name was Swellen (ph.)?

24 MR. DEVANEY: Sorenson.

25 THE COURT: Sorenson, Sorenson. I should have gotten

1 that.

2 What about the other concern that it just -- arguably by
3 providing some handy form, that there are going to be voters who
4 are not inhibited from providing (inaudible). They'll just fall
5 back on that because it's easy.

6 MR. DEVANEY: Um --

7 THE COURT: I suppose the penalty of perjury is the
8 best response to that.

9 MR. DEVANEY: Thank you for the answer, Your Honor. I
10 agree.

11 THE COURT: All right. Any other limitation of voting
12 that you wanted to address?

13 MR. DEVANEY: Those are my three issues, Your Honor.

14 THE COURT: All right. Mr. Tseytlin, I said I'd give
15 you the last word, so go ahead.

16 MR. TSEYTLIN: Your Honor, you know, we in our response
17 brief specifically said there was only a single witness that
18 they submitted that said they ultimately didn't complete the
19 photo ID, and then we explained why that witness did not say
20 that that would be a problem in November. There was complete
21 silence on the other side from that point. Obviously --

22 THE COURT: Well, that's what happens in a reply brief
23 is complete silence.

24 MR. TSEYTLIN: Well, their reply brief was like 80
25 pages long. You know, I would think that --

1 THE COURT: No. Counsel, that's what a reply brief is.
2 That's the last word. That's what this argument is for, so if
3 they want to respond in this argument, you'll get a chance in
4 closing to respond as well. You've got the names. You're
5 welcome to take a look at them. You'll have a little bit of
6 time to do that before I hear argument.

7 Anything else you want to add with respect to the three
8 restrictions we've now talked about?

9 MR. TSEYTLIN: Nothing further, Your Honor.

10 THE COURT: All right. Then I'll turn to plaintiffs to
11 comment on any remaining limitations.

12 MR. SHERMAN: Good afternoon, Your Honor. Jon Sherman
13 for the Gear plaintiffs.

14 The Gear plaintiffs had brought the mirror image of the DNC
15 claim on the receipt deadline. The same issues that obtain with
16 the postal service and delivery problems, those go the same for
17 and will have a severe impact on the delivery of ballots to
18 voters. An extension of the receipt deadline would be great
19 relief, but it's no help to someone who never receives a ballot
20 in the mail in the first place. And six of the eight individual
21 plaintiffs in Gear all diligently requested their absentee
22 ballots weeks in advance of the election and never received
23 them, not even after election day. So --

24 THE COURT: So what is the solution for that? We just
25 suspend all requirements? I mean, if they never get the request

1 and they're not comfortable going to the local municipality or
2 voting, what's the accommodation that they're entitled to?

3 MR. SHERMAN: Well, to be clear, Your Honor, they did
4 receive the request, but what happened is the ballots for
5 various reasons --

6 THE COURT: Got lost.

7 MR. SHERMAN: -- (unintelligible) the voter. Right?

8 THE COURT: Yeah. That's what I'm saying. So
9 what's -- I mean, to a certain extent, that's going to happen.
10 That's a risk of choosing an absentee ballot, but I'm not sure
11 what the relief is for that.

12 MR. SHERMAN: So the relief that we've proposed and
13 we've --

14 THE COURT: Would be to go online for everybody?

15 MR. SHERMAN: No. For a limited subset of voters, we
16 want to extend certain options that are currently in use but
17 only --

18 THE COURT: But how would we practically -- how would
19 we practically do that? What would the voter need to do in
20 order to demonstrate that they're entitled to go online and
21 obtain a ballot?

22 MR. SHERMAN: Well, the same as for military and
23 overseas voters, Your Honor --

24 THE COURT: No, it's not the same. It's not the same.
25 They have the ability to go on and make that representation.

1 You're talking about the WEC creating an entirely new avenue for
2 voting, which apparently would be triggered by some kind of
3 certification from the voter that they never got their absentee
4 ballot, right?

5 MR. SHERMAN: They do not necessarily need a
6 certification, and you can see --

7 THE COURT: Well, I don't know how else -- how could I
8 order it if they don't -- there has to be some initiation -- a
9 ballot has been sent out to them. The postal service, or
10 because it was just late to be sent out, didn't get it to them
11 in time.

12 MR. SHERMAN: Understood.

13 THE COURT: They probably become aware of that -- the
14 day before the election they're saying, "Wait a minute. I never
15 got my ballot."

16 MR. SHERMAN: Well --

17 THE COURT: I'm not going -- I don't know -- there is
18 no way to track this, notwithstanding that we have barcodes now.
19 That's just a theoretical fact. There's no evidence that they
20 can track a failure to deliver. I don't have the postal service
21 in front of me. Clearly the voter would have to do something
22 affirmatively.

23 MR. SHERMAN: I think that we've discussed that in the
24 Kehoe -- the Robert Kehoe deposition transcript, and what his
25 response is -- he's the technology director for the WEC.

1 THE COURT: Right, right. I know who he is.

2 MR. SHERMAN: He responded that there would have to be
3 some cancellation by the municipal clerk of the prior request,
4 and so -- but it's not an entire --

5 THE COURT: Well, no. That's just the first -- that's
6 just first -- that has to be triggered by something. They don't
7 just cancel it. They have to know it never got to the voter,
8 and they're not going to know that. In fact, in most of the
9 jurisdictions, they're not even going to have a barcode on the
10 ballot that gets sent out.

11 MR. SHERMAN: They would have --

12 THE COURT: So how are they going to find out that the
13 ballot was never delivered?

14 MR. SHERMAN: They would have to tweak the user
15 interface, which is myvote.wi.gov, to allow a voter to signal
16 that they have not received their ballot and they want to change
17 their ballot delivery method. Now, Robert Kehoe testified in
18 his deposition that most of the code and most of the programming
19 logic for this already exists. There are some open questions on
20 how they would do this, but he did testify that it is possible.
21 There are ways to make it secure, such as through reuploading a
22 photo ID the same way as it was done before. So the relief he
23 testified to, that it was feasible, secure, and it is of mutual
24 benefit both to municipal clerks and to voters because municipal
25 clerks are going to get these requests for replacement absentee

1 ballots because of these foreseeable problems with the postal
2 service and with just the sheer quantity, the unprecedented
3 quantity of absentee ballot requests and --

4 THE COURT: And would this only be available to those
5 individuals who got the ballot, mailed it in -- because they're
6 never going to know if it got there or not.

7 MR. SHERMAN: Right.

8 THE COURT: So who would it apply to?

9 MR. SHERMAN: Right. So we've proposed that this
10 relief be restricted to people who applied some number of days
11 before they exercised this fail-safe, that the fail-safe be
12 limited to, say, just a week -- it could be a week leading up
13 to, say, two or three days before election day, and these
14 fail-safes, we propose three of them. It's not just the online
15 access and downloading option through MyVote. We've also
16 proposed email delivery. Email delivery was in use for regular
17 absentee voters for the last (unintelligible) --

18 THE COURT: Briefly. Yeah.

19 MR. SHERMAN: For the last four years it's been in use,
20 and there's no evidence in the record that it led to any
21 security problems or any administrative problems. Almost
22 10,000 --

23 THE COURT: But it was struck down.

24 MR. SHERMAN: It was struck down in a pre -- in a case
25 with a pre-pandemic record, that is correct, but the --

1 THE COURT: But what makes it different than a pandemic
2 record?

3 MR. SHERMAN: Well, in *Luft* in the lower court's
4 decision, they make clear that what they were dealing with in
5 that case was a discrimination challenge. They were challenging
6 the ban on the restriction to just military and overseas
7 voting --

8 THE COURT: No, I didn't ask the question very well.
9 How is it different in an analysis with COVID-19 in the mix?

10 MR. SHERMAN: Right. Because in that context it was
11 just a disparate treatment of voters without considering the
12 burdens that are present here. In this context --

13 THE COURT: You're not answering me. Be specific.
14 There's the same burden with the postal service not adequately
15 fulfilling their obligation or just a voter being late to make
16 the request and not getting the ballot in time.

17 MR. SHERMAN: Well --

18 THE COURT: That's the same burden that exists
19 ordinarily. How is it different in COVID-19?

20 MR. SHERMAN: I have two specific responses on this,
21 Your Honor.

22 THE COURT: Right.

23 MR. SHERMAN: One, for COVID-19, there are people,
24 based on the epidemiological evidence in the record, based on
25 what the CDC has said, there are people in Wisconsin who cannot

1 vote if they don't get their ballot in the mail. It is not safe
2 for them to go to a polling place and take the risk of
3 contracting the disease from air or saliva transmission because
4 of their underlying health conditions. So in this context
5 in-person voting is simply not an alternative, and that's one of
6 the two things that --

7 THE COURT: But that's not the standard that you want
8 to apply. That would be indefinitely confined for purposes of
9 the ballot, but it wouldn't be "I didn't get the ballot."

10 MR. SHERMAN: I'm not sure I follow Your Honor's --

11 THE COURT: Yeah, and I'm not sure either. As I posed
12 the question, I realized perhaps that's not true.

13 So the narrow group you would be attempting to reach would
14 both not get the ballot in time but also be medically incapable
15 of going to vote in person.

16 MR. SHERMAN: The group we're trying to reach is the
17 folks -- the thousands of folks, some subset of voters who
18 requested a ballot timely and diligently but did not receive it
19 in the mail, and then it's --

20 THE COURT: But some of those aren't entitled to the
21 relief because they could still register and get a ballot before
22 the election up to the Sunday before the election or they could
23 go and vote at the election unless they have some medical
24 limitation. So it's a subset of the people you're asking relief
25 for.

1 MR. SHERMAN: Potentially. One, I would say the same
2 postal service problems will obtain. So if you apply for a
3 ballot --

4 THE COURT: Yeah, but that's always true. That's true
5 without COVID-19.

6 MR. SHERMAN: Well, that's --

7 THE COURT: There's going to be problems with the
8 ballots.

9 MR. SHERMAN: Right, and that's also true with the, you
10 know, receipt deadline extension, right? The same issues with
11 the postal service --

12 THE COURT: So the implication of that is I shouldn't
13 do anything about the receipt deadline.

14 MR. SHERMAN: No, that's -- I think both are necessary,
15 neither is sufficient --

16 THE COURT: I understand.

17 MR. SHERMAN: But the other thing I would say is, you
18 know, these voters simply cannot vote. There is no fail-safe
19 option for them if they don't get this ballot through an
20 alternative means. Email delivery is an option. The federal
21 write-in absentee ballot is an option. But what makes this
22 situation different from *Luft* is there is no in-person
23 alternative. The defendants have --

24 THE COURT: I've got you. Let me hear from the
25 defendants on that point.

1 MR. STRAWBRIDGE: Your Honor, this is Patrick
2 Strawbridge from the Republican groups.

3 THE COURT: Yeah.

4 MR. STRAWBRIDGE: I won't belabor the point. I think
5 Your Honor has identified some of the practical difficulties in
6 crafting --

7 THE COURT: Yeah, but the kernel being there is some
8 group of individuals who really are limited to voting by mail.
9 I don't think that's a hypothetical. That's -- there is a real
10 group of individuals who -- for whom the uncertainty with the
11 spread of COVID-19 precludes them showing up in person either
12 before the election to vote absentee or at the election itself.
13 They have dutifully complied with their obligation to request a
14 ballot, at least with respect to six of eight that have been
15 provided by the plaintiffs. They did so weeks before the
16 deadline, and the ballots either did not arrive or arrived so
17 late there's no way for them to vote timely. What's their
18 relief?

19 MR. STRAWBRIDGE: So obviously I'm not sure that the
20 evidentiary record in this case supports the view that that's
21 all going -- all those hypotheticals are going to stack on one
22 another for the November election, given the additional time
23 that's available now --

24 THE COURT: Well, let me ask you --

25 MR. STRAWBRIDGE: -- that wasn't available then --

1 THE COURT: That's a fair point. Let me go back then,
2 and just explain to me who these six of eight individuals were
3 and did they -- do they meet both the standards that they didn't
4 get the ballot and that they couldn't vote in person?

5 MR. SHERMAN: Yes, Your Honor. Six of the eight
6 individuals: Katherine Kohlbeck, she had surgery for breast
7 cancer and could not take the risk of going to vote in person in
8 April; Diane Fergot; Gary Fergot; Bonibet Bahr Olsan; Sheila
9 Jozwik; and Gregg Jozwik. I don't want to waste the Court's
10 time now, but those declarations lay out their underlying health
11 conditions and their age, which would be --

12 THE COURT: Who were the last two?

13 MR. SHERMAN: Sorry. Sheila Jozwik and Gregg Jozwik.

14 THE COURT: And each of the Jozwiks and the others you
15 mentioned all did not receive a ballot despite making a timely
16 request for it.

17 MR. SHERMAN: Correct. I want to make one caveat,
18 which is that five of those six actually never -- were so afraid
19 of COVID-19 that they could not go out in person. Gregg Jozwik
20 actually did go vote in person at risk to himself, but he was
21 very concerned of contracting COVID due to his age.

22 THE COURT: All right.

23 So back to you, Mr. Strawbridge. Five out of the eight
24 affiants ended up foregoing their right to vote because they
25 didn't get a timely ballot.

1 MR. STRAWBRIDGE: Yes.

2 THE COURT: So it's not theoretical.

3 MR. STRAWBRIDGE: I think it's --

4 THE COURT: Well, if you want to discuss it in your
5 closing argument, you've now got the names. You're welcome to
6 assist me in understanding, but let's assume that that's the
7 case.

8 MR. STRAWBRIDGE: Okay. So assuming that's the --

9 THE COURT: Five affiants faced exactly the concern
10 raised by the plaintiffs. What's their alternative?

11 MR. STRAWBRIDGE: So I guess their alternative in the
12 November election is to request the absentee ballot in time. If
13 it does not arrive in sufficient time for them to feel safe that
14 they can return it, they can call their municipal clerk and
15 request that it be redelivered to them immediately. Some of
16 these people may have individuals who could assist them either
17 in getting to the polls or doing a drop box method. I think
18 that the record in this case is not sufficient to the suggestion
19 that the Court should craft forward-looking, prospective relief
20 for a group of people I think the definition of which is
21 difficult to ascertain. If there are actual individuals, as
22 always, who suffer some series of situations that impairs their
23 individual right to vote, as-applied relief is always available
24 in the Seventh Circuit, and it's been clear that that's the
25 preferred relief in these types of situations. But given the

1 analysis that took place in *Luft* with respect to the state's
2 interest on email and fax requirements, I think that that's --
3 that's a much bigger obstacle to the plaintiffs' request in this
4 respect.

5 I don't really have anything else to say unless the Court
6 has questions. We'll address the individual --

7 THE COURT: No, no, no. That's fine. Let me pose that
8 essential response, which is they still have the option of
9 contacting their local clerk on the phone, explaining their
10 problems, and getting a reissuance of the ballot or having a
11 friend go and pick it up after they've established their
12 entitlement to it. We're talking about a relatively few people,
13 and there's no requirement that the state provide a robust
14 alternative online option to get a ballot.

15 MR. SHERMAN: Your Honor, as the record shows --

16 THE COURT: (Unintelligible.) I'm sorry, go ahead.

17 MR. SHERMAN: As the record shows, and you will see it
18 from those five or six declarations in the record, many of those
19 plaintiffs did contact their municipal clerks' offices, did seek
20 a replacement absentee ballot. In Katherine Kohlbeck's case,
21 that replacement ballot never came in the mail. I think it's
22 not responsive, with all due respect to Mr. Strawbridge, to say
23 mail delivery is the backup option for failed mail delivery.
24 That's not an alternative. It wasn't sufficient weeks --

25 THE COURT: But presumably these people get food from

1 somebody. Presumably they have some contact with someone who
2 could go pick it up. Are they not able to authorize that by the
3 phone?

4 MR. SHERMAN: I'm sorry, Your Honor, but that's not
5 permitted. It can't be picked up --

6 THE COURT: Yeah, that's what I assumed you would say.

7 Mr. Strawbridge, further evidence that your solution isn't
8 adequate.

9 MR. STRAWBRIDGE: I'm sorry, that my solution is
10 inadequate or that their solution is inadequate?

11 THE COURT: That your solution is inadequate. They
12 attempted the clerk's route, and the solution was to mail it
13 again, which was too late.

14 MR. STRAWBRIDGE: I think I'll just reiterate the point
15 that I made. I don't think on this showing that they've
16 demonstrated that there's a likely enough group who are entitled
17 to -- even a subset, large group, small group, however you want
18 to define it, that's entitled to prospective relief as opposed
19 to --

20 THE COURT: What would be wrong with having the clerk's
21 office have the option, since they've been doing it for four
22 years to that small group, to simply email the ballot?

23 MR. STRAWBRIDGE: Well, I think the *Luft* court talked a
24 little bit about some of the administrative difficulties with
25 dealing with emails or faxed ballots, the administrative

1 difficulties that they present in counting. And maybe on an
2 as-applied basis if one of Mr. Sherman's clients faces this in
3 November, he can bring it to the Court's attention, but I think
4 it's too speculative at this point in time. Thank you.

5 THE COURT: Mr. Sherman, any other issues that you
6 wanted to discuss this afternoon?

7 MR. SHERMAN: Could I just respond very briefly to
8 Mr. Strawbridge?

9 THE COURT: Really briefly, yeah.

10 MR. SHERMAN: One, the RNC can't have it both ways. If
11 it's rare, it can't be a significant administrative burden. It
12 won't take much for the canvassers to count those ballots. We
13 tend to think there's many voters across the state, because of
14 all the people with underlying comorbidities and the sheer
15 number of absentee ballots that are going to be cast. It's not
16 difficult to define and ascertain this group. It's the people
17 that have requested a ballot and didn't receive it in the mail.
18 They can certify that through any procedure, and we have
19 included alternative procedures like email delivery, which are
20 tried and true for the last four years and don't require any
21 update to MyVote and WisVote. And, lastly, as-applied relief is
22 completely illusory, and the intervenor defendants know that.
23 There's no way they will be able to get relief in a single
24 lawsuit or renewed motion just weeks or days before the
25 election.

1 Thank you very much, Your Honor.

2 THE COURT: Thank you.

3 Were there other plaintiffs who -- I think I had one other
4 group identified on the ADA issues, but I'm not certain.

5 MR. ZARROW: Your Honor, the Swenson plaintiffs are
6 going to be addressing the ADA issues and also in-person voting.

7 THE COURT: Okay. You may proceed.

8 MR. ZARROW: So I'll be addressing the ADA issues, and
9 I think the first point to make is the analysis is completely
10 different under the ADA than it is under *Luft*, so any of the
11 considerations that might apply there don't really apply to the
12 ADA.

13 There's two aspects to our ADA claim: One is accessible
14 online ballots, and one is witness certification, which we heard
15 a little bit about. You know, we could short circuit that when
16 I get to it, but the first thing I want to focus on is
17 accessible online ballots. I think this claim is actually
18 really straightforward. It is not COVID dependent, but COVID
19 makes this relief urgent, and the reason I say it's not COVID
20 dependent is because other courts outside the context of COVID
21 have already found that the ADA requires this relief. That's
22 the Fourth Circuit in the *Lamone* case and the Middle District of
23 Pennsylvania in the *Drenth* case have found that it was required
24 in the context of COVID.

25 So the challenge here by the Legislature is pretty narrow.

1 There's actually not a lot in dispute. The first thing that the
2 Legislature argues is that voting in person is a reasonable
3 modification. As we explained in our reply brief, and I won't
4 belabor the point, that's an entirely different government
5 service, as the Fourth Circuit found, the Middle District of
6 Pennsylvania found, every court that have considered this issue
7 has found telling a voter with a disability that they have to
8 vote in person whereas nondisabled voters have the choice to
9 vote in person or privately and independently by mail, it's just
10 a different service, so under the ADA it cannot, as a matter of
11 law, be a reasonable modification. So that argument falls away.

12 And then we're left with the standing point. I would
13 direct the Court to Docket Entry No. 492 in particular where we
14 identified extensively DRW's standing to bring this claim. It's
15 both organizational and associational. We documented voters
16 in -- just to, you know, address this in advance, we've
17 documented voters, blind voters, voters with cerebral palsy, who
18 would prefer to vote absentee but cannot do so -- could not do
19 so in April and will not be able to do so in November absent
20 relief from this court. So just to give --

21 THE COURT: (Unintelligible) -- because I should have
22 focused on this in my review of the materials, but what is it
23 that prevents them from applying online and voting by absentee
24 ballot?

25 MR. ZARROW: Right. So there is no interoperable

1 ballot that -- for example, a blind voter, where it has screen
2 reader accessible technology, it will list out the candidates
3 and allow it to talk back to it and --

4 THE COURT: Right. No, no, I understand, but is that
5 crucial? So not only would I have to require the State of
6 Wisconsin to return to online voting, but I would also have to
7 require interactive -- the ability for interactivity.

8 MR. ZARROW: Right. So it's actually two different
9 points there. You would not have to require the State of
10 Wisconsin to return to online voting, because all we want is an
11 interoperable PDF that the voter can then print and mail back.
12 So, you know, on that score it's not actually online voting.
13 What you would need to require the State of Wisconsin to do is
14 the two things basically that we've proposed and that I don't
15 think there's been any challenge that it's feasible, reasonable,
16 or within the WEC's power. One is to make available to voters
17 with disabilities an online interoperable ballot through MyVote
18 just the same way that ballots are made available to military
19 and overseas voters through MyVote. So they would just, you
20 know, go onto the MyVote system. There would be an online --

21 THE COURT: What did your clients do before there was
22 an online option? How did their limitations -- did it
23 completely prevent them from voting?

24 MR. ZARROW: Right. So they had to rely on somebody
25 else, and you'll see this evidence in the record. We cited it

1 in our brief. Sometimes that somebody else was a member of a
2 different political party, and for a blind voter, they had no
3 way of verifying whether, you know, that person actually marked
4 their ballot correctly. So the right at issue here under the
5 ADA is the right to vote privately and independently using this
6 government service. That's what all of the cases recognize.
7 It's the right --

8 THE COURT: And ultimately that's going to be required
9 of every state in the union in your reading of the law.

10 MR. ZARROW: Every court to have addressed this issue
11 has required it, whether in the COVID context or without. That
12 is -- yes.

13 THE COURT: And when you say "every court," that's two
14 courts?

15 MR. ZARROW: So that's two courts. Michigan by consent
16 decree settled a case, and, you know, in the context of COVID, a
17 lot of other --

18 THE COURT: So that court didn't decide anything.

19 MR. ZARROW: And --

20 THE COURT: What about the other court?

21 MR. ZARROW: Right. And the last --

22 THE COURT: So there's one court -- there's one court
23 that's addressed the issue so far.

24 MR. ZARROW: The Fourth Circuit addressed it for the
25 entire circuit.

1 THE COURT: Yeah.

2 MR. ZARROW: And then the Middle District of
3 Pennsylvania has addressed it. Michigan --

4 THE COURT: In the consent decree?

5 MR. ZARROW: No, no. That was a case litigated to
6 judgment.

7 THE COURT: All right.

8 MR. ZARROW: Michigan has done it by consent decree.
9 Many other states -- this is an important point that I don't
10 want to get lost. Many other states already do this
11 voluntarily, so they obviously won't be subject to litigation,
12 but it's proof of the concept that it can be done.

13 THE COURT: Yeah.

14 MR. ZARROW: And, you know, there are programs that you
15 can buy off the shelf that will provide this service. There's a
16 program called Democracy Live --

17 THE COURT: And what would -- what would trigger the
18 state's obligation to provide it?

19 MR. ZARROW: So --

20 THE COURT: In other words, what representation, if
21 any, is required by the voter in order to get this additional
22 manner of voting?

23 MR. ZARROW: Right. "I am a voter with a disability
24 under the ADA."

25 THE COURT: So simply certifying that personally would

1 require the state to provide that option.

2 MR. ZARROW: In exactly the same way that the state
3 requires a military voter to say, "I am a military voter," or a
4 voter overseas to say, "I am a voter overseas." I --

5 THE COURT: Let me hear from -- let me hear from the
6 defendants.

7 MR. STRAWBRIDGE: All right, Your Honor. I think you
8 can probably grasp what my response is, which is that there's
9 only two cases out there that have actually done this. We do
10 disagree with the reasoning. I think we set out some of the
11 reasons in our briefs. One of them is that we think that they
12 are too narrowly reading what the government program here is in
13 this case. The essence of the program at issue here is voting.
14 It shouldn't be construed as a particular form of voting for the
15 reasons we explained and that the *Luft* court, admittedly not in
16 the ADA context, walked through. Wisconsin is entitled and
17 actually makes it very easy to vote in a lot of different ways.
18 We think that satisfies --

19 THE COURT: And I don't think *Luft* tells me anything
20 about application of the ADA, but we can disagree about that.
21 In any event, your point is that you think the courts who
22 addressed it so far got it wrong, and the ADA doesn't require a
23 special accommodation for those who are limited in their ability
24 to use a paper ballot.

25 MR. STRAWBRIDGE: Yes. That's the essence of our

1 position.

2 THE COURT: All right.

3 I think you had mentioned, Mr. Sherman, some other subject
4 that you would touch on?

5 MR. ZARROW: Did you mean Mr. Zarrow, Your Honor?

6 THE COURT: I'm sorry. Mr. Zarrow. Thank you.

7 MR. ZARROW: No problem.

8 Yeah. So we also have the claim that the witness
9 certification requirement as applied to voters with disabilities
10 violates the ADA. I know the Court heard a lot about the
11 witness certification requirement earlier, so I won't belabor
12 the point, but any suggestion that *Luft's* consideration of the
13 witness certification requirement somehow applies to the ADA
14 would be incorrect. It's -- again, it's an entirely different
15 analysis, and, in fact, it's a different analysis in a way that
16 matters. The state can't just assert a government interest in
17 witness certification. They actually have to prove that the
18 modification would -- prove through evidence that the
19 modification would fundamentally alter the nature of the
20 program, and the state, one, has no evidence. They don't have
21 any evidence that a certification under pain of perjury would
22 fundamentally alter the nature of the program, and, of course,
23 they couldn't do that because they allow certifications under
24 pain of perjury in other contexts like, as you've heard, for the
25 indefinitely confined exception. And I'll say only on the

1 state's point about the absence of evidence, to the extent that
2 goes to standing, DRW has both organizational and associational
3 standing to bring this type of claim. My client has already
4 begun diverting resources --

5 THE COURT: You have standing. I'm just concerned that
6 it hasn't been raised in response by the defendant, so we're
7 fine.

8 MR. ZARROW: Okay.

9 THE COURT: Anything else that --

10 MR. ZARROW: Right.

11 THE COURT: -- you want to add, and does the defendants
12 want to be heard further on the separate issue?

13 MR. ZARROW: One final point is to the extent that the
14 idea is that it's a null set, there's no one who is going to be
15 affected by the witness certification requirement, I think we
16 can be fairly confident that's not true just in the way things
17 play out. For example, if someone actually gets COVID, it's not
18 clear how they would get a witness. But if it's a null set or
19 the state reasonably believes it's a null set, then it's no
20 burden on the state. I mean, no one -- there's no harm.

21 THE COURT: But it's also -- questions whether or not a
22 federal court should step in to solve a problem that doesn't
23 exist.

24 MR. ZARROW: Well -- and the response to that is I
25 think we can be fairly certain, even if we don't know as to any

1 individual particular voter what their circumstance is going to
2 be in November, across the gamut of voters with disabilities in
3 Wisconsin, I think we can be fairly certain that it will happen.

4 THE COURT: All right.

5 MR. STRAWBRIDGE: Your Honor, I can respond in like 30
6 seconds to that.

7 THE COURT: Go ahead.

8 MR. STRAWBRIDGE: I'm trying not to regurgitate what's
9 already --

10 THE COURT: No, no. That's fine. You have 30 seconds.
11 Go ahead.

12 MR. STRAWBRIDGE: On the standing point and on the null
13 set point, it's one thing to assume that somebody must be
14 affected in some way. It's another thing to actually come
15 forward with competent evidence not only that they're interested
16 in the situation of diverting resources, but there's an actual
17 individual who they represent within their association who is
18 suffering this problem or likely to suffer it. We don't think
19 that they've met that burden. And we do think *Luft* is relevant
20 as to what the -- the interest that the state has determined and
21 the significance and whether or not the combination they're
22 proposing would fundamentally alter it. Nothing else.

23 THE COURT: Understood. And I believe we have one
24 additional respond -- argument to be made for plaintiffs on
25 these issues.

1 MR. ZARROW: Your Honor, I have one more brief point
2 about drop boxes before I hand it over to my colleague, Ms.
3 Dubin, and I want to make sure she has allotted time.

4 THE COURT: Go ahead.

5 MR. ZARROW: It's not a claim. It's an item of relief
6 that we're asking for, but I think when the Court considers
7 everything its heard, drop boxes actually can play a really
8 important point -- role in this election, both in relieving some
9 of the problems with vote-by-mail but also taking the pressure
10 off voting in person, and what we really want the WEC to do, and
11 this is what the clerks have said -- we developed this evidence
12 in this case -- is tell the municipalities how they should be
13 setting up their drop boxes, what types to buy or what locations
14 to use and how to make them secure, and they haven't done that
15 yet. Thank you.

16 THE COURT: Thank you.

17 MS. DUBIN: Your Honor, Yaira Dubin on behalf of the
18 Swenson plaintiffs. You've heard a lot from everyone else today
19 about the problems that are likely to occur in the mail-in
20 voting system, but what we haven't talked about yet at all is
21 in-person voting, and that's really what's at the heart of all
22 this, and so it's a front-end problem and a back-end problem.

23 THE COURT: Sure.

24 MS. DUBIN: On the front end, look, the concerns about
25 unsafe in-person voting in the pandemic are what's causing

1 unprecedented pressure on the mail (unintelligible) --

2 THE COURT: Right.

3 MS. DUBIN: And on the back end, I think we heard from
4 the Legislature this morning that they expect voters who don't
5 succeed in voting by mail to end up showing up to the in-person
6 voting system on election day. And this isn't a one percent
7 issue like the other issues you've heard about this afternoon,
8 right? This is an issue aimed at the in-person voting system as
9 a whole. So measures aimed at making the in-person system
10 reasonably effective would go a long way toward a safe and
11 effective election for everyone in November.

12 In particular, there are two key pieces that made in-person
13 voting unsafe in April that are likely to happen again in
14 November: really significant number of polling places closing
15 and then unsafe conditions at the polling places that stayed
16 open. On the first point, the closures happened because of one
17 major reason, and that's poll worker shortages. You have no
18 poll workers; you have no polls. Ms. Wolfe's testimony this
19 morning in response to --

20 THE COURT: Yeah. She obviously agrees with you. So
21 what's the implication of that in terms of what this court could
22 do?

23 MS. DUBIN: Absolutely, Your Honor. There are two
24 critical pieces for fixing this. One is enjoining the statutory
25 county residence requirement and two is actually having a pool

1 of reserve poll workers who would be able to serve when they're
2 needed. In terms of poll workers, what's missing here and had
3 been missing here in April was a poll worker backstop, that
4 municipalities know they will be able to have poll workers if
5 they -- if people back out or they don't -- or they're not able
6 to recruit enough in the first instance.

7 THE COURT: Why am I having to order this? Because,
8 first, the State of Wisconsin, I would assume the executive
9 branch, who has already indicated a willingness to allow
10 National Guard to appear, could take other measures to provide
11 backstops for poll workers, and, secondly, the individual
12 localities who saw the problems that occurred in April could
13 take their own steps.

14 MS. DUBIN: Absolutely, Your Honor. A couple responses
15 to that, some legal, some factual. In terms of why you're
16 involved is because unsafe elections are unconstitutional, and
17 so if no one else is going to do it and your order would make it
18 happen, that's why you're involved.

19 In terms of what's happening with the other actors in the
20 system --

21 THE COURT: And -- yeah, and that's what you say, if no
22 one else is going to do it, then I have to get involved. It
23 looks like there have been some problems again in August but not
24 on the same magnitude, although it's a much smaller election, as
25 in April. What would be -- I guess your point is there could be

1 a potential -- well, not there could be. There is a substantial
2 likelihood of additional problems with poll workers given the
3 continuing concerns about COVID-19, and so the State of
4 Wisconsin should have a backdrop. Even though that's not really
5 the Commission's responsibility, they should be strongly
6 encouraging having alternatives, but I think they're already
7 doing that. They already recognize it's a risk of insufficient
8 poll workers, and they've been encouraging local municipalities
9 to take steps to make sure they have enough. So what else can I
10 require the WEC to do?

11 MS. DUBIN: Sure. Can I address both pieces of that?
12 First --

13 THE COURT: Absolutely.

14 MS. DUBIN: Green Bay, on page 123, is really good
15 about this if you -- when you look at our deposition, which is
16 they say that poll workers are the biggest obstacle for November
17 and that they're not able to recruit more poll workers on their
18 own. So maybe we wish that they would be able to, but they're
19 not. They're not getting what they need, so we do need someone
20 to step in and help them.

21 And to your point about what the WEC can actually do, I
22 think there are two really good options for the WEC on this.
23 One is creating a reserve pool of poll workers. They said they
24 would do that in their Tuesday, March 31, 2020, communication
25 for the April elections, and then they didn't --

1 THE COURT: And this requires the county exception so
2 that there are SWAT teams located in various parts of the state
3 that would drive in to assist on election day.

4 MS. DUBIN: Sure, Your Honor. So it doesn't require
5 it. If you do not enjoin the county residence requirement, then
6 they'll do what they did in April, which is assign the National
7 Guard or reserve poll workers to the counties where they live,
8 but it would certainly be aided by the county residence
9 requirement being enjoined, and there are good reasons to enjoin
10 the county residence requirement; namely, that the only state
11 interest being asserted in defense of the county residence
12 requirement is interest in localities functioning on their own,
13 but when localities are telling you they're not going to
14 function on their own, it's not a very meaningful interest.

15 So I would say the second option, Your Honor -- that's the
16 reserve poll worker option, but the second option is the
17 National Guard, which they've shown that they were willing to
18 request in these prior elections, but the problem is that
19 they're doing it too late. They're requesting it in the week
20 before an election, so the municipalities don't know they're
21 going to get their reserve poll workers, and the Green Bay
22 deposition is really clear about this. It's pages 135 to 136.
23 What Green Bay makes absolutely clear is that finding out about
24 the National Guard being available simply doesn't help them keep
25 polling places open if it's too close to the election itself.

1 THE COURT: All right. Let me hear from the
2 defendants.

3 MR. STRAWBRIDGE: Thank you, Your Honor. I think that
4 with respect to the -- let me just start with the county poll
5 workers. I don't think that there's been sufficient evidence
6 that it's that particular provision that is interfering with
7 anyone's ability to recruit poll workers. I think Your Honor is
8 correct and the record reflects that the WEC is doing a fairly
9 admirable job of trying to promote the need for poll workers, to
10 take the information they have from the municipalities to try to
11 determine -- to put, you know, links on their websites as to
12 people who want to volunteer to be poll workers, and the record
13 is clear that they work with local groups to try to encourage --

14 THE COURT: But it continues to be a problem and --

15 MR. STRAWBRIDGE: It does continue to be a problem.

16 THE COURT: I'm sorry?

17 MR. STRAWBRIDGE: I'm sorry. I didn't mean to
18 interrupt, Your Honor.

19 THE COURT: It does continue to be a problem, and some
20 contingency probably is in order to the extent that it magnifies
21 the narrowing or closing of polling locations as well as the
22 ability to handle a large influx of in-person voting.

23 MR. STRAWBRIDGE: I think the Green Bay testimony is --
24 I hate to say this, but it's speculative. They don't actually
25 say as of right now we can't open "X" number or we can't open

1 "Y" number. (Unintelligible) --

2 THE COURT: No, they don't do that, but even
3 Administrator Wolfe acknowledged this is an ongoing problem.
4 It's her greatest fear for the November election is the
5 inability to adequately staff polling locations.

6 MR. STRAWBRIDGE: So the response to that --

7 THE COURT: Her greatest fear.

8 MR. STRAWBRIDGE: Understood. I'm sure it is the fear
9 for a lot of election workers around the country, but the
10 existing law has not been shown to be interfering with the
11 ability to achieve that. I don't know how this court orders the
12 WEC to actually assemble a SWAT team or reserve corps to
13 parachute into various jurisdictions. The only relief they're
14 really asking for on this point that I think is practical in any
15 way, shape, or form is to suspend the county worker requirement,
16 and I don't think they've shown that that is the provision that
17 is interfering with the ability to get poll workers. It wasn't
18 an interference with the deployment of the National Guard in the
19 April election. I don't think there's any reason on the record
20 right now to believe it's going to be an interference with the
21 November election nor do I think, if pandemic safety is a
22 concern, it necessarily makes sense that we should be
23 encouraging travel all throughout the state, you know, at the
24 time of the election, but that's --

25 THE COURT: It does make the National Guard a more

1 palatable option, since they are located in and around the
2 state.

3 MR. STRAWBRIDGE: I'm not sure that the WEC or the
4 Court obviously has the authority to deploy the National Guard.

5 THE COURT: Fair enough.

6 Let me hear back from you, Ms. Dubin, and then we'll go
7 from there.

8 MS. DUBIN: Absolutely, Your Honor. So I think there's
9 been a lot of discussion back and forth about what the WEC is
10 already doing, and we're all very appreciative for the WEC's
11 efforts and the municipalities' efforts, but what they're
12 currently doing is trying to recruit poll workers in terms of
13 the "be a poll worker" widget and telling the municipalities to
14 recruit poll workers, and we do know that that's not working.
15 It's not speculative. That's what the municipalities are
16 telling us.

17 THE COURT: Yeah. Let's take the National Guard first.
18 What is my authority to order the State of Wisconsin to enlist
19 the National Guard in this effort?

20 MS. DUBIN: Your Honor, your authority is to order the
21 WEC to request the National Guard sooner, right? That's what's
22 going on there. They're probably going to request the National
23 Guard again, as they have for the past few elections, but
24 they're requesting it far too late.

25 THE COURT: And that's the relief you're looking for.

1 And what's the evidence that --

2 MS. DUBIN: On the National Guard piece.

3 THE COURT: What's the evidence that the relief of
4 county workers is going to make any difference?

5 MS. DUBIN: Both Milwaukee and Green Bay testified that
6 relieving them of that requirement would make a difference.
7 It's in both of the depositions for those, and not only that, I
8 think that we -- the RNC actually in their deposition with
9 Mr. Jefferson, he's testified there's no state interest in not
10 allowing someone from a neighboring county to come in to be
11 involved there. So there's not a cognizable state interest that
12 outweighs what we're talking about here. The Albrecht cite
13 is -- the Albrecht depo at 113 for them saying that this would
14 help them.

15 THE COURT: All right.

16 MS. DUBIN: Your Honor -- apologies.

17 THE COURT: Yeah. Go ahead.

18 MS. DUBIN: I wanted to move to my second argument, if
19 that's okay.

20 THE COURT: Yeah.

21 MS. DUBIN: And just one more point on the prior
22 argument, which is that it's either the National Guard or the
23 reserve poll workers or both, and the reserve poll workers is
24 certainly within your authority and has nothing to do with the
25 National Guard, and it's just between you and the WEC.

1 The second point is that polling places that stay open need
2 to be safe. Obviously a huge part of that is keeping more open,
3 but the second part is the directives for social distancing,
4 layout, and sanitization practices. They need to be clear, and
5 they need to be public because voters need to know that when
6 they go, they're going to be safe. A huge part of this is that
7 voters feel deterred because of what happened in April and they
8 feel scared. And if they know that the polling places are going
9 to be laid out with social distancing guidelines, sanitization
10 practices, Plexiglass, et cetera, they will be comfortable to go
11 vote, and that's a critical part of the relief we're asking for
12 today as well.

13 THE COURT: Well, but I'm not quite sure how the WEC
14 can represent that. All they can do is encourage local polling
15 sites to do that. They could, I guess, publicize the efforts
16 they're making to support efforts by local polling stations and
17 indicate their confidence perhaps, if they have any, that those
18 polling sites are going to be respectful of social distancing
19 and wearing of masks and other steps for sanitation, but beyond
20 that I'm not sure what the WEC can do.

21 MS. DUBIN: Sure. Three responses to that, Your Honor.
22 First of all --

23 THE COURT: I appreciate you giving me a headline every
24 time the number of responses, but you can give them to me in any
25 order or number you wish. Go ahead.

1 MS. DUBIN: I appreciate that. I'm always just worried
2 you're going to want to hear from someone else, so I figure --

3 THE COURT: This is your time.

4 MS. DUBIN: Thanks, Your Honor.

5 So I would say there's -- first, the municipalities have
6 said that they're going to follow the WEC guidance on this, so
7 it's a pretty clear record that it's not going to be an issue.
8 I'll give you the Green Bay deposition --

9 THE COURT: (Unintelligible) -- from the record that
10 the WEC is doing exactly that.

11 MS. DUBIN: So the WEC --

12 THE COURT: They're providing guidance.

13 MS. DUBIN: Your Honor, I apologize.

14 THE COURT: No. I mean, isn't that right? So the
15 first point is that the WEC needs to take leadership, and my
16 impression is that they're doing that.

17 MS. DUBIN: So, Your Honor, they really haven't done
18 what we would have hoped for throughout July. Actually earlier
19 this week, on August 3rd, they issued a webinar for polling
20 places that was more specific about how to lay out polling
21 places. We don't have any information about how many poll
22 workers are being required to watch that, and it certainly isn't
23 information that's going out to voters to tell them this is what
24 it would look like at the polling places on election day.

25 The final point that I would like to add to Your Honor's

1 original question was just that we do believe the WEC has
2 authority to make minimum statewide standards. That's part of
3 the WEC's authority in administrating Wisconsin elections and
4 consistent with federal and state law, and this is a minimum
5 requirement to make election places safe on election day.

6 THE COURT: Very good.

7 Does anyone want to respond for the defendants on this last
8 issue?

9 MR. STRAWBRIDGE: Yes, Your Honor. I mean, I just
10 think the record establishes that the WEC is making admirable
11 strides and is doing, I think, a good job of trying to support
12 the municipalities. Your Honor has identified the issue with
13 the fact that this is ultimately an issue that rests with the
14 municipalities and a responsibility that rests with them. I
15 don't think the evidence here suggests that this court should
16 undertake any sort of supervisory role with respect to the
17 degree or the extent to which the WEC is spreading these
18 messages. I think the WEC is doing a pretty good job as far as
19 it goes. I think that the public is generally aware of the need
20 for social distancing, and I think municipalities are obviously
21 imposing their own requirements and taking steps. I don't think
22 there's a reason to presume that they will ignore that come
23 election time.

24 THE COURT: I suppose the only obstruction is that they
25 haven't adopted a set of statewide standards, and they certainly

1 haven't published anything to the average voter suggesting that
2 some minimum standards have been set.

3 MR. STRAWBRIDGE: I think there have been discussions,
4 but I take the point. But it may be difficult for them to do so
5 when you take into account the variety of municipalities and
6 polling places that are welcome here, and I think maybe a
7 one-size-fits-all policy is not necessarily the best move for
8 them to make. But I think it's ultimately according to their
9 judgment, and I have a lot of respect for Mr. Kennedy, as I know
10 the Court does too, but he's not exactly the special master in
11 charge of the various, you know, individual tasks that the WEC
12 should be undertaking. I think the record reflects WEC can do
13 it.

14 I want to go back to one point on the poll worker shortage
15 just to make sure the record is clear. There are -- I mean, I
16 think, as Administrator Wolfe testified today, they're 900
17 short, but the number in the exhibit that was, you know, used by
18 the plaintiff or the statement is it's 900 out of 21,000.
19 That's not to suggest that those poll worker shortages shouldn't
20 be taken seriously, but I do --

21 THE COURT: 21,000 are involved in the -- 21,000 are
22 involved in the August election?

23 MR. STRAWBRIDGE: That's what the press release says,
24 correct.

25 THE COURT: Okay. Got it.

1 MR. STRAWBRIDGE: That's the only point I wanted to
2 make. Thank you, Your Honor.

3 THE COURT: Thank you. I think at this point then,
4 unless the plaintiffs have something more -- I'll give them an
5 opportunity to make any other arguments they wish in closing
6 arguments and the same for the defendants. At this time I'd
7 like to simply take up the exhibits.

8 The first -- well, actually before we get -- there was a
9 reference to Docket No. 227, Exhibit 3, Mr. Devaney, earlier,
10 and I wondered if this Wisconsin absentee ballot request is also
11 among the exhibits?

12 MR. DEVANEY: Your Honor, I believe it is, and if we're
13 going to be taking a break, I can certainly give you --

14 THE COURT: Well, the idea was to address this before
15 the break, not after.

16 MR. DEVANEY: I apologize.

17 THE COURT: No, that's fine. I'm just looking at the
18 list. I'm not seeing it listed as a docket number, so I'm not
19 sure it is there.

20 MR. DEVANEY: So this is the absentee ballot request
21 form.

22 THE COURT: Yes. It looks like there is a WEC absentee
23 ballot report.

24 MR. DEVANEY: I will check with our team and see if we
25 can find that, Your Honor.

1 THE COURT: Here's what we'll do: It'll be the last
2 exhibit. If we don't hit upon it, you can move its admission at
3 that time. I doubt there will be an objection, but I may be
4 surprised.

5 The first objection that I am aware of is to Exhibit 5,
6 which are -- is part of a supplemental production by
7 Mr. Spindell. Since there is both a relevance and hearsay
8 objection, I'll hear from the DNC as to their reason for
9 offering that exhibit.

10 MR. DEVANEY: Your Honor, in short, the reason to offer
11 it is Mr. Spindell, obviously a commissioner with the WEC,
12 comments on problems experienced in the April election and also
13 comments on problems that are likely to occur in the November
14 election, and that is a point that, of course, is relevant to
15 our claims. With respect to relevance, I think it's clear that
16 those comments bear directly on the two elections that we've
17 been discussing and the particular election at issue, and he is
18 a defendant, so it is a statement by a party opponent.

19 THE COURT: And these -- the first two pages look to
20 be, I don't know, personal notes or entries? Did Mr. Spindell
21 explain what they are?

22 MR. DEVANEY: Your Honor, we tried to clarify in our
23 written response to the objections that all we are seeking among
24 those documents is an advertisement that Mr. Spindell --

25 THE COURT: The newspaper ad --

1 MR. DEVANEY: Yes.

2 THE COURT: -- *Patriotic Veterans*?

3 MR. DEVANEY: Yes.

4 THE COURT: All right. And from that ad, which I guess
5 starts at page 3, tell me specifically what is said that you
6 believe is relevant.

7 MR. DEVANEY: Your Honor, I'm struggling to pull up the
8 ad.

9 THE COURT: That's fine. I think you've described it
10 generally. Let me hear from the defendants as to -- it seems to
11 me there's no hearsay objection, given that it does appear to be
12 a statement of a party opponent, so the only question is why
13 isn't it relevant what the WEC is telling others about the
14 rights of veterans to vote?

15 MR. BROWNE: Your Honor, this is Robert Browne on
16 behalf of the Legislature. Your Honor, I think you mentioned
17 before that you didn't want to hear from -- you know, the
18 Commission is split, and it's got three members from one party
19 and three members from another party, and so it's our belief
20 that, you know, these documents and ad contained in that
21 exhibit, it's just more, you know, kind of noise in the
22 background about, you know, maybe some kind of --

23 THE COURT: Well, the commissioners -- I'm sorry. The
24 commissioners themselves are defendants, so the hearsay is out.

25 As to the relevance, I'll reserve as to relevance and

1 consider it as appropriate.

2 Next objection is to Exhibit 6. I'm afraid I'm going to
3 have to call this back up. I apologize.

4 All right. Same objections, so let me hear from the DNC as
5 to its relevance.

6 MR. DEVANEY: Your Honor, I apologize. I'm trying to
7 pull up our response to the objections. I'm having a little bit
8 of difficulty with my computer right now. Someone just sent it
9 to me, so I'll be right with you.

10 THE COURT: Yeah. I'm still trying to pull it up
11 myself, so take your time.

12 MR. DEVANEY: Your Honor, so this is an email from an
13 employee of the postal service, Leonetta Jackson, to Mr. Kehoe
14 at the WEC, and it relates to having a report that the post
15 office received three tubs of late entry ballots dated April 6,
16 and then with the election day yesterday, April 7th, there was
17 no way these outgoing ballots would make it to your local
18 voters. So it's just a sign -- it's an email from the postal
19 office confirming problems transmitting ballots to voters,
20 which, of course, contributed to the fact that many ballots were
21 not received by the voters and many ballots were returned after
22 the election day receipt deadline.

23 So that's the relevance of it. It is an email from a
24 postal service employee. It's evident from the face of the
25 email that she is an employee, and, therefore, it's at least a

1 business record prepared in the normal course.

2 THE COURT: And addressed -- the addressee, Robert
3 Kehoe, is the witness in this case?

4 MR. DEVANEY: Correct.

5 THE COURT: I'm not sure it's produced in the ordinary
6 course. I thought he was retired.

7 MR. DEVANEY: Your Honor, that question is for me?
8 Regardless whether he's retired, the relevance of it is it's the
9 post office communicating to the WEC --

10 THE COURT: No, no. That's not how it works. Just
11 because a business creates a response to someone doesn't
12 suddenly get you out from under the hearsay rule. For it to be
13 a business record, it would have to be something that was
14 created in the ordinary course under the duties of that
15 individual. This is a personal email from an employee of the
16 post office to Mr. Kehoe, a private citizen. It doesn't get you
17 the business record exception.

18 MR. DEVANEY: Actually, Your Honor, though, the email
19 was prepared by the employee of the postal service.

20 THE COURT: So what? I mean, that would be like if you
21 wrote a personal letter to someone and you bound your law firm.
22 That's not how the business record exception works.

23 MR. DEVANEY: Well, Your Honor, our case does not rise
24 or fall on this email so --

25 THE COURT: All right. I'll sustain the objection.

1 Next objection is to a U.S. Office of Inspector General:
2 *Timeliness of Ballot Mail in Milwaukee*, and the objection is to
3 hearsay. This one you may have a better argument on business
4 record, but I don't have it in front of me, so I can't tell. I
5 assume you don't have it in front of you either.

6 MR. DEVANEY: I do know what it is. It's the Inspector
7 General's report prepared by the United States Postal Service
8 investigating into the incidents of lost ballots, unreceived
9 ballots, and late-arriving ballots in the April election. And I
10 think that actually our witness, Mr. Stroman, was involved in
11 preparation of this report, overseeing the investigation. He
12 discusses it. The Legislature, by the way, relies on this
13 report in its own brief, and it's clearly a business record,
14 probably a public record as well.

15 THE COURT: I'm with you. Let me -- it certainly seems
16 to be so. I'm not sure I understand the objection by the
17 defendants. It's a formal document created by the Inspector
18 General. How could it not satisfy a business record exception?

19 MR. BROWNE: Your Honor, we can withdraw that
20 objection.

21 THE COURT: All right. That is deemed withdrawn.

22 And we'll go to Exhibit 9.

23 MR. DEVANEY: And, Your Honor, Exhibit 9 is being sent
24 to me momentarily.

25 THE COURT: Looks to be a *Slate* newspaper article,

1 which is not an auspicious beginning.

2 MR. DEVANEY: Yes. The article does contain quotes
3 from Chair Jacobs about problems experienced in the April
4 election, fairly extensive descriptions of what occurred, what
5 went wrong.

6 THE COURT: Unfortunately, it's hearsay within hearsay.
7 I'm going to exclude the document, but if he's [verbatim] made
8 concessions on the record somewhere else or adopted these
9 statements somewhere else in the record, that could come in, but
10 I'll sustain the objection.

11 And that takes us to Exhibit 28, which is a CV of Patrick
12 Remington, and the only objection being hearsay. Normally I
13 would sustain that, but to the extent it's not present in his
14 report, I'd be inclined to allow Exhibit 28 and 29 in. If
15 there's something specific in those two CVs that the defendants
16 object to, I'd hear that, but I'm not going to exclude the basic
17 CVs.

18 MR. BROWNE: No, Your Honor, nothing specific in those.

19 THE COURT: All right. I'm just going to overrule
20 those objections, and under the circumstances, this being a
21 preliminary injunction hearing, the strict rules of hearsay
22 don't apply anyway, and it's an abbreviated form of, my
23 understanding, those two experts' background.

24 That brings me to a Marquette Law School poll, Exhibit 31,
25 which contains all the usual objections plus an authenticity

1 objection, so I'll hear first from the Swenson defendants as to
2 its relevance and how it overcomes -- well, what is it, its
3 relevance, and how it overcomes the hearsay objection.

4 MS. LENS: Yes, Your Honor. Thank you. This is
5 actually a document that is relied upon by Dr. Remington in his
6 report that I'm sure the Court is aware, to the extent that it's
7 an accepted practice to rely on documents like this, expert
8 witnesses, as Mr. Remington --

9 THE COURT: Well, no, it's fine for him to rely on it.
10 That's not the question. The question is whether it gets
11 admitted as an exhibit as evidence itself. He's fine to rely on
12 it. His report is in. The question is whether or not this
13 information -- and, unfortunately, I seem to have pulled up the
14 wrong one. It's supposed to be Exhibit 31. That must be the
15 problem. And, I'm sorry, it's being offered for what purpose?
16 Just to show the demographics of voters?

17 MS. LENS: Your Honor actually made a point of
18 clarification. It's a good question. We had intended, as you
19 know, to call Dr. Remington live. This exhibit list was
20 prepared at that time. We intended to use it with him on the
21 stand. Given that it's discussed in his report and relied on,
22 we do not need it separately admitted if Your Honor would prefer
23 to proceed that way.

24 THE COURT: All right. I will deem it withdrawn.
25 That brings me to Exhibit 33.

1 MS. LENS: Yes. Exhibit 33 is the same situation.

2 THE COURT: Same category? I'll deem that as withdrawn
3 as well, which is not to say that I wouldn't consider it in
4 considering the report and whether it is support for the sworn
5 report.

6 And with that said, I go to Exhibit 12, which is
7 represented to be a transcript of deposition of Commissioner
8 Spindell. As I've already indicated, I have agreed to consider
9 the deposition transcripts to the extent they have been cited as
10 part of the proposed findings of fact, and I will continue to do
11 that. I'm not going to wholesale admit all of the depositions
12 into the preliminary injunction record. If there's something
13 specific that you wish to point to, I might consider that, but I
14 would hope that that's already been done in the proposed
15 findings.

16 MS. LENS: Understood, Your Honor, and, again, that was
17 a document we intended to use with the witness and so --

18 THE COURT: Makes sense, yeah. So I'll deem that
19 withdrawn.

20 And we come to Exhibit 13. Maybe you could tell me, since
21 just about every exhibit on this page, 37 through 46, have been
22 objected to, except for 41 and 42, are these exhibits that you
23 believe -- that are necessary to be admitted into the record or
24 simply relied upon by experts or others?

25 MS. LENS: I think for the most part we're now into the

1 section of the report -- excuse me, the list that we were
2 intending to use with live witnesses. This one that we're
3 looking at right now, Exhibit 37, there is a statement by
4 defendant Commissioner Ann Jacobs in it which is, as Your Honor
5 has pointed out, not hearsay --

6 THE COURT: Well, the statement isn't hearsay, but the
7 source -- it's hearsay within hearsay. The second layer of
8 hearsay you satisfied, but the first layer you haven't. So I'm
9 going to exclude it unless you have some other basis for my
10 allowing it. I will sustain the objection to Exhibit 37.

11 MS. LENS: No specific basis other than obviously that,
12 you know, evidentiary standards are relaxed with a preliminary
13 injunction, but I assume you do not want to hear from me on
14 that, so understood.

15 THE COURT: I think that's a stretch for this kind of
16 document, not that I don't find somewhat credible statements
17 that appear in the press. I'm not going to rely on it for
18 purposes of evidence at a preliminary injunction hearing.

19 I assume the answers are the same with respect to a number
20 of these -- or at least with respect to Exhibit 38 and 39, but
21 I'll hear if that's not the case.

22 MS. LENS: I would agree with you, Your Honor.

23 THE COURT: All right. My ruling is the same then.

24 And that brings me to Exhibit 40, which I think would fall
25 for the same reason.

1 MS. LENS: I would agree, Your Honor.

2 THE COURT: All right. Then Exhibit 43 -- obviously
3 the defendants really love relevance and hearsay objections
4 because we're back again. This time it looks like collective
5 communications of Robert Spindell. I'm not sure how that
6 doesn't satisfy the relevance -- I'm sorry, the hearsay
7 objection, and I'm not sure that you would have bothered to
8 submit them unless you felt they were relevant, but I'll hear
9 briefly from Swenson before I hear from the defendants as to
10 Exhibit 43.

11 MS. LENS: We do contend, Your Honor, that they are
12 relevant. The compilation, which is the manner in which that
13 they were produced to us, is a compilation of documents from --
14 communications from a defendant. They contain information about
15 municipalities' need for poll workers --

16 THE COURT: Just so we're clear before I go to the
17 defendants to withdraw their objections, that compilation was
18 prepared by the defendants, not by you.

19 MS. LENS: It was -- correct. It was produced by the
20 WEC in this case, Your Honor.

21 THE COURT: All right. I don't know what the
22 objections are for for 43. If you want to argue it, I'll hear
23 it briefly. Otherwise I'm going to overrule.

24 MR. BROWNE: No, Your Honor. We can withdraw those
25 objections, and I think this exhibit is -- I think it's the same

1 as Exhibit 5.

2 THE COURT: All right. Very good. So Exhibit 43 is
3 in. To the extent it's a duplicate, it's not worth discussing.

4 Exhibit 44 is a hearing transcript. I'm not quite sure
5 what that's being offered for in Swenson.

6 MS. LENS: Yes, Your Honor. Again, it was intended to
7 be used with the witness. It contains sworn testimony by
8 Administrator Wolfe. If I understood the Court's comments
9 earlier, given that it is a prior proceeding, sworn testimony in
10 this manner, it is already in the record in this case and
11 probably does not need to be admitted yet again.

12 THE COURT: So the short answer is you've got it right
13 if it's been cited in the proposed findings of fact. I will
14 deem it admitted for that purpose. For other purposes,
15 including argument, I guess we'll have to talk about it, but I
16 hear you to be withdrawing it as an exhibit to the preliminary
17 injunction hearing itself, which I think is appropriate.

18 MS. LENS: Yes, Your Honor.

19 THE COURT: Very good. I just need to make a few
20 notes.

21 All right. Exhibit 45 and 46.

22 MR. BROWNE: Your Honor, I can short circuit that. I
23 think these are the same communications we were talking about,
24 so we'll just withdraw those objections.

25 THE COURT: Very good. Thank you.

1 Exhibit 50, which is purported to be an email chain
2 produced, I assume, in response to the Swenson plaintiffs'
3 discovery request, and the objection is to --

4 MS. LENS: Effectively --

5 THE COURT: Yeah. Ms. Swenson [verbatim], why don't
6 you just tell me what its relevance is.

7 MS. LENS: We'll withdraw it, Your Honor.

8 THE COURT: All right. It is withdrawn.

9 Same thing as to Exhibit 51?

10 MS. LENS: If I could have just a minute, Your Honor.

11 THE COURT: Sure, absolutely.

12 MR. SHERMAN: Your Honor, Exhibit 51 is the open letter
13 to the WHO that was published in *Clinical Infectious Diseases*
14 and signed by 239 scientists. It makes --

15 THE COURT: So you treat it as part of a learned
16 treatise at this point?

17 MR. SHERMAN: I would -- we've argued for the learned
18 treatise exception and also for the residual exception, that
19 there's sufficient indicia of reliability --

20 THE COURT: And the relevance?

21 MR. SHERMAN: The relevance is it shows the danger of
22 in-person voting from aerosolized transmission of COVID-19 and
23 argues that serious safety precautions need to be taken for that
24 reason.

25 THE COURT: All right. I'll hear from the defendants.

1 It seems like it should be admitted for what it's worth, which
2 is obviously preliminary views about COVID-19 not inconsistent
3 with many others and at least vetted to the point that it was
4 published, but I'll hear if you have a continuing argument.

5 MR. BROWNE: No, Your Honor. We'll withdraw the
6 objections, and the authentication objection was an
7 inadvertent --

8 THE COURT: That's fine.

9 MR. BROWNE: -- objection.

10 THE COURT: Same with respect to the article entitled
11 *Precautionary Principles that Apply to Public Health?* Are you
12 withdrawing those objections?

13 MR. BROWNE: Yes, Your Honor.

14 THE COURT: Very good. I don't know what the *MacIntyre*
15 *Review of Face Mask Efficacy* is, so I'll hear from the Gear
16 defendants as to your offering it.

17 MR. SHERMAN: Your Honor, we used this in Dr. Murray's
18 deposition mostly for the first table, which shows the limited
19 efficacy of face masks in a variety of community mask trials.
20 We are arguing the learned treatise exception for this document.

21 THE COURT: And it appeared where?

22 MR. SHERMAN: We asked Dr. Murray about this in her
23 deposition.

24 THE COURT: But it appeared in the *International*
25 *Journal of Nursing Studies*?

1 MR. SHERMAN: Correct, yes. It was published --

2 THE COURT: All right. I'll hear any further objection
3 for the defendants.

4 MR. BROWNE: No, Your Honor. We can withdraw those
5 objections.

6 THE COURT: Very good. I believe that leaves us with
7 four more.

8 Exhibit 61.

9 MR. SHERMAN: Your Honor, this document is the change
10 in policy. This is the policy change at the United States
11 Postal Service. It's entitled *Mandatory Stand-Up Talk*. The
12 details in the checkmarks on the first page are some of the
13 restrictions on overtime pay and requiring -- you know,
14 banning -- late trips are no longer authorized or accepted, so
15 it goes to the evidence of the postal service's difficulties in
16 delivering absentee ballots.

17 THE COURT: And, I'm sorry, Mr. Gear [verbatim], it was
18 prepared by whom?

19 MR. SHERMAN: This is a U.S. Postal Service document.

20 THE COURT: I don't know what that means. Who prepared
21 it? How was it used?

22 MR. SHERMAN: It -- I assume it was circulated -- I
23 believe it was circulated to all the U.S. Postal Service offices
24 around the country. It's been attached as --

25 THE COURT: And how do I know that? It was attached as

1 what?

2 MR. SHERMAN: It was attached as a document on a number
3 of press pieces, but you're right that there aren't -- there
4 perhaps are not sufficient --

5 THE COURT: Yeah, I don't think it's
6 self-authenticating, although that wasn't the objection. I also
7 think without that, it also presents a hearsay objection, so I'm
8 going to sustain the objection, and we'll deem that not
9 admitted.

10 Exhibit 62 --

11 MR. SHERMAN: Your Honor --

12 THE COURT: -- described as a -- I'm sorry?

13 MR. SHERMAN: Yeah. So I was going to describe Exhibit
14 62 through 70 are all documents that were produced by the WEC.
15 They all go to the feasibility and security of the proposed
16 upgrades to MyVote and WisVote. I could describe each in turn,
17 but that is --

18 THE COURT: No, I don't think there's any need to do
19 that. The relevance objections as to 63 and 64 I don't
20 understand, but I'll hear them if you want to make them.

21 As for the hearsay, if they were produced, as it appears is
22 the case, by the WEC or a commissioner or its administrator,
23 that's satisfied as well, but I'll hear any objections to either
24 63, 64, 65 for the defendants.

25 MR. BROWNE: Your Honor, we can withdraw those

1 objections.

2 THE COURT: Very good. They are deemed withdrawn.

3 And I think that addresses -- oh, I take it back. I spoke
4 too soon. I had Mr. Devaney's Wisconsin absentee ballot, which
5 we haven't come across yet, and it was blocking my view of five
6 more exhibits, 66 through 70.

7 MR. SHERMAN: Same descriptions.

8 THE COURT: Yeah. Maybe before I hear from you, Mr.
9 Sherman, I could just hear from defendants whether they even
10 want to sustain any objections to what also appear to be
11 statements by the WEC through its administrator in 66 and 67.

12 MR. BROWNE: Your Honor, we'd withdraw the objections.

13 THE COURT: And you're not coming through very clear,
14 but I assume that was a statement that you're withdrawing the
15 objections?

16 MR. BROWNE: It was. I apologize, Your Honor, if it
17 wasn't clear.

18 THE COURT: That's fine. I think it's just you moved
19 away from your mic somewhat.

20 68 you could explain is what, Mr. Sherman?

21 MR. SHERMAN: 68 -- I'm just going to my list. 68 is
22 the -- is a calendar of the development progress for MyVote from
23 March to April. It shows some of the upgrades that were made to
24 the MyVote --

25 THE COURT: Yeah. I get it. You know, I think I'm

1 going to admit that. I'll overrule those objections and admit
2 it for what it is worth.

3 I assume no objection remains as to Ms. Wolfe's June 12th
4 email?

5 MR. BROWNE: Correct, Your Honor.

6 THE COURT: Sorry. I'm not getting a response.

7 MR. BROWNE: Correct. Correct, Your Honor.

8 THE COURT: Okay. I'll deem that withdrawn.

9 And that brings us back to another development tracker. I
10 just have to call it up, but maybe I could hear from defendants
11 if they continue to have an objection to Exhibit 70.

12 MR. BROWNE: We can withdraw the objection, Your Honor.

13 THE COURT: Very good. It is deemed withdrawn.

14 The exhibits admitted are 1 through 4, 5 subject to
15 relevance, 7, 8, 10, 13 through 27, 28, 29 and 30, 32, 34 and
16 35, 41, 42, 47 through 49, 54 through 60, 62, and 68.

17 And that brings me then to, Mr. Devaney, your last
18 Wisconsin absentee ballot request, which I'm willing to just
19 designate as 71 since it was referred to during the course of
20 this hearing. For the record, it is also document 227-3, the
21 Wisconsin absentee ballot request. Unless there's an objection,
22 I'll deem that admitted as Exhibit 71.

23 All right. That's what the Court wanted to accomplish
24 before we take our break. I'm going to take 20 minutes. We'll
25 reconvene at 3:20, and I'll hear any closing arguments that

1 either side wants to make. I would like you to leave it about a
2 half hour a side, however you want to divide that up. Shorter
3 would be appreciated since we've tried to address most of the
4 major issues, but I know there are some that we haven't. And
5 why don't we do this this way: Why don't we do 20 minutes for
6 the plaintiffs, 30 minutes for the defendant, and then ten
7 minutes for the plaintiffs.

8 MR. DEVANEY: Your Honor, could I ask are there any
9 particular topics that you would like the parties to address,
10 given that we've covered the --

11 THE COURT: I think the only ones I would like
12 addressed are those that you didn't feel were adequately
13 discussed. I'm not sure I would want you to revisit any of the
14 matters, but there were a few where, for example, there were
15 arguments made that there was no evidence in the record about
16 the impacts of certain limitations, and if there's more evidence
17 in the record, that might be something you want to address. If
18 you feel as though there are other important -- I know for the
19 defendant they had their own jurisdictional claims. If they
20 want to raise them, they're welcome to. I'm not inviting it
21 because it's fully briefed, but I'm not going to preclude them
22 from raising it.

23 Does that give you some guidance?

24 MR. DEVANEY: Thank you.

25 THE COURT: Anything else for the parties before we

1 break? Hearing nothing, I take it we should stop our video feed
2 and turn off our mics, and I will come back on at 3:20. We are
3 in recess.

4 (Recess at 2:59 p.m. until 3:20 p.m.)

5 THE COURT: All right. It appears we have everyone,
6 and I'll hear closing argument for the plaintiffs.

7 MS. DUBIN: Hello, Your Honor. Yaira Dubin again on
8 behalf of the Swenson plaintiffs. I'd like to briefly address
9 the Seventh Circuit's decision in *Luft*, then turn to our
10 requested relief, the authority of the WEC, and conclude with a
11 thought about where we are in relation to November.

12 First, with respect to *Luft*, at the centerpiece of the
13 Legislature's briefing, they say that *Luft* doesn't require the
14 Court to do anything to make things different in November and,
15 instead, requires you to reject our claims across the board
16 without a particularized inquiry. That argument is wrong.
17 First, *Luft* obviously had nothing to do with the pandemic or
18 other massively disruptive events. The premise of *Luft* is that
19 it's easy in Wisconsin to vote. That's the premise that the
20 pandemic changes and that everything in this case and everything
21 we've talked about today rebuts.

22 Second, the Legislature misreads *Luft*. The test after *Luft*
23 remains the same, is there a serious burden on the right to
24 vote. *Luft* didn't say that individual provisions --

25 THE COURT: And so we're clear, Ms. Dubin, I think

1 that's been conceded today. The problem they had with almost
2 all of your relief is that you haven't shown a significant
3 burden on the right to vote.

4 MS. DUBIN: Your Honor, if the Legislature has conceded
5 that, wonderful and we accept the concession, but I take their
6 position to be still today that as long as the in-person voting
7 system works, the barriers in the mail-in voting system
8 aren't --

9 THE COURT: Not as to individuals. If there's a
10 substantial burden on a group of individuals, whether disabled
11 or other limitations, then I think they concede that there could
12 be some room for relief. Whether they believe it's necessary
13 relief -- I don't think they're relying on *Luft* to say that
14 whatever the legislature does, as long as overall the average
15 person can vote, then there's no further constitutional
16 requirement on the state, but if I'm mistaken, they can tell me.
17 That's not what they said earlier today.

18 MS. DUBIN: I'll leave them to talk about what their
19 position is on *Luft*. I'll just say that it's not just on the
20 individual component. It's also, as we were talking about
21 earlier, unsafe in-person voting, right? It's not just, oh, the
22 one percent need a way to vote. It's that in-person voting
23 needs to be safe even if the state is also offering by-mail
24 voting.

25 THE COURT: Understood, and you made that point

1 earlier.

2 MS. DUBIN: Absolutely. Finally on this point, our
3 claims are not limited to *Anderson-Burdick*, as the Court knows.
4 We talked about -- today about the ADA, about the Voting Rights
5 Act, about arbitrary disparities across jurisdictions and due
6 process, and none of those claims would be touched by *Luft*, even
7 if the Court had a different view on it.

8 That brings me to the question of our relief. The
9 Legislature has suggested numerous times that what we're asking
10 for is too much, that we're asking the Court to take federal
11 receivership of an election. That's not what we're asking for.
12 We're asking for a constitutional and legal baseline to make
13 voting safe and to make the by-mail voting system work. You
14 have our briefing, and you've heard today from us about what
15 critical measures would make that happen.

16 The mail-in voting system, the WEC is telling voters that
17 they can use that system. So the consequence is that if voters
18 use it and take on state law as designed, that it works. So the
19 absentee ballot deadline that you heard at length about from the
20 DNC, that each individual voter with a disability who is denied
21 the right to vote, cast your vote privately, can do so. And on
22 the in-person side, we're asking the Court to make in-person
23 voting reasonably safe, and I wanted to hit two points that we
24 had talked about earlier on the poll worker piece.

25 That relief can be accomplished in any way that the WEC

1 sees fit once you order a reserve pool of poll workers to be
2 available. It can be through the National Guard; it could be
3 through private workers. Either way is acceptable. I'd also
4 like to highlight that during this hearing, the governor called
5 up the National Guard for the August election while we've been
6 talking today, and the point that we were making earlier is that
7 that's too late, that that doesn't help municipalities like
8 Green Bay that need to be able to plan.

9 And, finally, on that point --

10 THE COURT: So -- I'm sorry. So that's not an issue
11 anymore since the governor has done it.

12 MS. DUBIN: For August. They're doing it for August,
13 but that's not for November --

14 THE COURT: Oh, I see what you mean. Okay.

15 MS. DUBIN: -- (unintelligible) for November and
16 absolutely needs to be done earlier than the week before the
17 election that's going to be happening.

18 THE COURT: Okay.

19 MS. DUBIN: And one more point that Your Honor and the
20 RNC had discussed, the county residence requirement, and the WEC
21 itself said in its response to our RFAs that enjoining the
22 county residence requirement would allow a greater pool of
23 reserve poll workers, and that's RFA Response No. 36.

24 The then the final important piece for both of our pieces
25 of relief --

1 THE COURT: And that was the -- I'm sorry. That was
2 the WEC who took that position?

3 MS. DUBIN: Absolutely, Your Honor.

4 The final important piece is educating Wisconsin's voters.
5 The WEC needs to tell voters what's going on, and everything is
6 conditioned on communicating to the public that this is what
7 we're doing to make it safe in November. This is what we're
8 doing to make your vote count, whether it's by mail or in
9 person. No defendant claims -- no defendant here claims that
10 our relief isn't feasible. What the Legislature says is that
11 the WEC is the wrong defendant to have sued. They're wrong.

12 THE COURT: Or that it's just not necessary.

13 MS. DUBIN: Correct, and we believe it is necessary for
14 the reasons we've laid out today, but I think once you accept
15 that it's necessary, the question is can they do it, right?
16 That's the question you and I were discussing earlier, which
17 is --

18 THE COURT: Right, right.

19 MS. DUBIN: Absolutely. And the answer to that is that
20 at the most basic level, the right to vote has to be
21 administered and guaranteed by the state, and in the pandemic
22 the 1,800 municipalities can't be left on their own when they
23 are saying and they're ringing the alarms that they're not going
24 to be able to do the things that need to be done to run a safe
25 and effective election. Wisconsin's decentralized system

1 doesn't change the fundamental responsibility to guarantee that
2 right to vote.

3 Your Honor, you started this hearing by saying to us that
4 we don't know exactly what November is going to look like, and,
5 you know, you talked to both sides and said that we -- both
6 sides take very confident predictions of what it will look like,
7 and you don't think that, you know, that we know. And I wanted
8 to say that it's true -- it's an unprecedented situation, and we
9 don't know exactly what it's going to look like. No one does --
10 but the unrebutted testimony of the experts here and the conduct
11 of the election administrators and the WEC commissioners all
12 makes clear that there's going to be significant concerns about
13 safety and a lot of mail-in ballots, and despite that
14 unprecedented situation, higher courts, including the Supreme
15 Court, have made clear that *Purcell* applies fully within the
16 pandemic. So the only option really is to act now.

17 Is it possible that everything turns out fine and there was
18 no need to worry? Sure, anything is possible, and, you know, I
19 think we all hope that COVID-19 goes away and everyone is
20 healthy and safe. But the costs and risks of doing nothing now
21 in light of the inability to do anything later are substantial
22 when the corresponding costs and risks of acting now, giving
23 everyone time to adjust and ensuring that people can vote
24 safely, but then not trying to be unnecessary, is both unlikely.
25 So we request that Your Honor grant the relief that we sought

1 today.

2 THE COURT: Thank you very much.

3 Were there others who were going to speak on behalf of the
4 defendants? I'm sorry, plaintiffs. I apologize.

5 Mr. Sherman, go ahead.

6 MR. SHERMAN: Thank you, Your Honor. Just a couple
7 quick points following up on what we discussed earlier.

8 I wanted to note that the replacement ballots now under
9 Wisconsin law are issued by mail. They will be issued by mail
10 in November no matter what this court rules, but you're entitled
11 to up to two replacement ballots under Wisconsin law, and there
12 is no current certification. Your Honor had asked about whether
13 there was some kind of certification that should be put in place
14 as to nondelivery or delivery failures.

15 THE COURT: How do you -- how do you request them?
16 Because I was under the impression you had to at least provide
17 an ID to get a replacement ballot.

18 MR. SHERMAN: You don't have to provide an ID. You
19 just -- basically you just submit a new absentee ballot request
20 form, the same way. Right. If they do -- if they don't have an
21 absentee -- they should have a photo ID for you on file
22 already --

23 THE COURT: Right, assuming it was already sent once.

24 MR. SHERMAN: Exactly.

25 THE COURT: The problem would be if it wasn't already

1 sent, then you'd have to provide the ID again.

2 MR. SHERMAN: Exactly. But you apply. If they have an
3 ID on file, then you don't need to resubmit it. You can get the
4 two replacements. Certification could be created, but none
5 exists at this moment for these fail-safes.

6 THE COURT: Well, then would there be any need to do
7 anything? Because you're already allowed to get two replacement
8 ballots. You could contact your local clerk, say, "I didn't get
9 the first one, send me the second," other than perhaps where
10 you're close to the election and you can't rely on the mail
11 you'd have to figure out a way to either print it from home,
12 which is not allowed now under the statute, or at least not
13 anymore, or you'd have to convince them to hand over the ballot
14 to your designee.

15 MR. SHERMAN: I don't think there's any need for it.
16 Wisconsin law provides for this replacement ballot system, and I
17 think there's comfort in the safeguards because there's a unique
18 identifying code on every absentee ballot that's issued whether
19 it's by mail or email.

20 THE COURT: Yeah.

21 MR. SHERMAN: That prevents against fraud, and Meagan
22 Wolfe in her depositions testified that that's an adequate
23 safeguard to prevent fraud.

24 Under *Luft* we believe that the state's interest that they
25 identify needs to be specific and tailored to the exact relief

1 that's being requested, and as to, let's say, let's take email
2 delivery as an option for alternative ballot delivery, there's
3 been no evidence of fraud over the last four years while email
4 delivery was allowed for all regular absentee voters. In the
5 2016 election, almost 10,000 absentee ballots were issued by
6 email delivery without incident, and there's no evidence to the
7 contrary in the record. And I find, just reviewing the record,
8 I don't see any other compelling state interest that would
9 support rejecting the specific request for email delivery on
10 this limited basis.

11 THE COURT: And, again, would this just be for
12 replacement ballots?

13 MR. SHERMAN: This would just be for replacement
14 ballots, Your Honor, correct.

15 THE COURT: And what's your understanding as to what
16 you would have to do? Just get on the phone, say, "I didn't get
17 it. Please email it to me, and here's my email address"?

18 MR. SHERMAN: We're not asking for a phone call option,
19 Your Honor, but currently people are allowed to, in many
20 jurisdictions, to just email requests, but most people just use
21 the MyVote portal. That's the most common way in which people
22 request their absentee ballots. It's the most common way in
23 which they request an absentee ballot. They could do --

24 THE COURT: Isn't that closed? The online option for
25 getting a ballot is closed at -- I guess if you're already

1 registered, you could still do it the Sunday before?

2 MR. SHERMAN: Correct.

3 THE COURT: (Unintelligible) -- five days before.

4 MR. SHERMAN: Right, so --

5 THE COURT: It's been a long day, but I'm getting
6 confused as to when the timing would be.

7 MR. SHERMAN: Right. Your Honor, we've suggested that
8 this fail-safe option be available for at least a week. It
9 could be a week that ends a couple days before election day. It
10 could be a week that ends at the same deadline. We leave that
11 to Your Honor's discretion if Your Honor decides to grant relief
12 in this case, but that would be the idea, to restrict the relief
13 both in terms of who can request it to people who are at risk --
14 severely at risk from going to the polls because of the COVID-19
15 pandemic and allow for them to access their ballot online or by
16 email in the same way that military and overseas voters are
17 currently permitted to request their replacement absentee
18 ballots.

19 With that said, I think, you know, that's the narrow relief
20 we're asking for. It's for a very limited group of people, and
21 under *Luft*'s requirement that the right to vote be considered
22 personal and that there is a burden when there is no way for a
23 voter to cast a ballot through reasonable efforts, we do think
24 that relief should be awarded in this case to provide a
25 fail-safe option. Thank you very much.

1 THE COURT: Thank you.

2 Other than rebuttal, anyone else who is going to speak on
3 behalf of the plaintiffs?

4 MR. LEITNER: Yes, Your Honor. Mark Leitner for the
5 Edwards plaintiffs. Just a couple --

6 THE COURT: Okay. Yeah, Mark, you've got about seven
7 minutes.

8 MR. LEITNER: All right. Well, I want to talk a little
9 bit about, first of all, you pointed out that there are six
10 plaintiffs -- we have six plaintiffs who are disabled within the
11 ADA: Angela West, Douglas West, Terron Edwards, William Laske,
12 Kileigh Hannah, and Jean Ackerman. And so there's no doubt that
13 there are plaintiffs in this case who've got standing to get
14 relief under the ADA --

15 THE COURT: And, Mr. Leitner, you're going to have to
16 be a little bit more specific as to those six that you just
17 named. They are disabled in a way that makes them vulnerable to
18 appearing in person? Is that your point?

19 MR. LEITNER: That is -- yes, that is correct and --

20 THE COURT: And any other way in which they're disabled
21 and require relief and what -- and is the relief that you're
22 requesting what we've already been talking about under the ADA?

23 MR. LEITNER: Yes. They are the other forms of relief
24 that we've referenced under the ADA, but those people have, you
25 know, in particular conditions that the CDC has recognized as

1 being conducive to the -- you know, contact --

2 THE COURT: They're in the comorbidity category of
3 substantial risk.

4 MR. LEITNER: Absolutely.

5 THE COURT: Yeah.

6 MR. LEITNER: And some very multiple. Jean Ackerman is
7 a great example of somebody who is one walking risk of
8 contracting COVID. She's 89 years old, has a number of
9 conditions.

10 I want to talk a little bit about relief, and I think one
11 way that's useful for the Court to look at it is that old
12 Seventh Circuit approach of who's hurt worse by a mistake. Is
13 it more damaging to the state to grant an injunction and suspend
14 the enforcement of a statute that under normal circumstances the
15 Seventh Circuit has said is a reasonable filter or way to
16 channel voting or is it a more serious error to enforce the
17 statute business as usual and under the unique circumstances
18 that we have here just in 2020 to quite likely disenfranchise
19 thousands of voters. And I think one way to look at that, and
20 there are obviously a whole lot of things that go into those,
21 but one way to look at it is it's very hard, in my view, for the
22 defendants to persuasively argue that lifting a requirement is
23 harmful if Wisconsin voted for a long time without imposing that
24 requirement, and I have three examples: One, voter ID, which
25 was passed in 2011; number two is the ban on email or fax

1 ballots, which was affirmed by the *Luft* case but was allowed for
2 several years as noted by counsel without any instances of
3 fraud; and the third being the limit of in-person absentee
4 ballot to -- commencing 14 days before the election that was
5 also passed in 2011. And I think that if you go through that
6 weighing of who's hurt worse by a mistake, particularly in those
7 instances, it's hard for the state to argue that it would be
8 hurt worse by a mistake like that.

9 And that's all I have here during this, Your Honor.

10 THE COURT: Very good. Unless there's more for the
11 plaintiffs, then we'll hear from the defendants.

12 MR. DEVANEY: Your Honor, may I have two minutes?

13 THE COURT: You have four minutes.

14 MR. DEVANEY: Thank you. All right. A few points,
15 Your Honor. First, I just wanted to double back to the issue of
16 whether we have declarations in the record relating to witness
17 certification and photo ID. We double-checked, and we do. I
18 would ask the Court to look at proposed findings of fact 68 and
19 157. We cite seven declarations for witness certification, five
20 for photo ID. We do not have declarations related to the
21 residence requirement and the document requirement for
22 residence.

23 Your Honor, the one claim we did not discuss today but I
24 briefly would like to mention is the issue about rejections
25 without giving voters the opportunity and notice to cure. The

1 RNC says this issue is not before the Court. That's not true.
2 We raised it in our opening brief at pages 54 to 56, again in
3 our reply, pages 51 to 53. 14,000 ballots were rejected for
4 witness certification, as we've discussed, Your Honor, and the
5 record shows --

6 THE COURT: Well, again, 14,000 were rejected for some
7 problem with their submission, witness certification certainly
8 being among them.

9 MR. DEVANEY: And the record does show that some voters
10 were contacted by election officials relating to deficiencies in
11 their ballots, others were not. This inconsistent treatment
12 violates due process for the reasons we described in our brief.
13 It also violates the Equal Protection Clause for the reasons we
14 discussed in our brief, and I just wanted that issue not to get
15 lost in the shuffle of the many other issues that are before the
16 Court, Your Honor.

17 And I'll just conclude by saying two things: One is that
18 the same issues that were before the Court back in April and
19 March relating to systemic problems with the electoral system
20 such as election day receipt deadline, registration, are before
21 the Court again. Some of the very same individual voting rights
22 issues, the one percent issues, are before the Court again. We
23 believe, not surprisingly, that the Court got it right on those
24 issues in April and that the systemic problems were recognized,
25 the individual problems were recognized, they were addressed,

1 and we would urge the Court to do the same again.

2 And I will conclude, Your Honor, by emphasizing in
3 particular the election day receipt deadline. The combination
4 of the pandemic, the surge in voting by mail, the postal service
5 issues really do create a train wreck of disenfranchisement that
6 is waiting to happen. We can see it. There's no -- there's
7 almost no speculation needed to recognize that thousands of
8 ballots are going to come in after election day given the time
9 frames that we've discussed both with respect to mail and when
10 people can request ballots, and I would urge the Court not to
11 allow that to happen and to take action now and not to wait.
12 The voters, as Ms. Wolfe acknowledged this morning, need to know
13 what the deadline is. I would urge the Court in particular to
14 address that issue soon and to establish the deadline and
15 prevent what could be massive disenfranchisement.

16 THE COURT: And your time is up, but I'll let you
17 answer this question: What is it -- how do I -- or how does the
18 WEC get notice out to people who are not registered?

19 MR. DEVANEY: I think they could publicize it on their
20 website. That's one channel they have.

21 THE COURT: Well, they already publicize it on their
22 website, the deadline for registration. That's not -- that's
23 already out there.

24 MR. DEVANEY: There's really nothing else they could do
25 other than website and education campaigns that they could

1 conduct, Your Honor.

2 THE COURT: Very good, Mr. Devaney. Thank you.

3 MR. DEVANEY: Thank you, Your Honor.

4 THE COURT: And I'll hear from the defendants.

5 MR. TSEYTLIN: Misha Tseytlin. Thank you, Your Honor.
6 I'd like to begin by just quickly clearing up the factual issues
7 that Mr. Devaney talked about. Just quickly on the signature
8 requirement, they have -- as far as we can tell, they have five
9 witnesses that signed on that. Jill Swenson, who we deposed,
10 said that she had multiple options -- multiple interactions, has
11 gone to a hair salon, scheduled physical therapy, met with
12 multiple customers --

13 THE COURT: And that's in your briefing.

14 MR. TSEYTLIN: Yeah, right. But, I mean, Elizabeth
15 Trogdon, also Quintin Nunley, also Dolores Gamm (sic) -- she
16 said she could have found a witness if she had one more week in
17 April -- and Leah Mann, withdrawn. So they have no witnesses as
18 far as we can tell that weren't withdrawn, didn't get deposed
19 and admitted it, or said they could have got it in an extra
20 week.

21 Now, with regard to photo ID, this is something that we
22 pointed out in our brief, that they didn't have any witnesses
23 that were alleging that they would have problems with photo ID
24 in November. They stood silent. I was very surprised that
25 Mr. Devaney raised a couple of names today. Just to quickly

1 tick through those names, and I apologize if I mispronounce any
2 names. As we saw --

3 THE COURT: That's fine.

4 MR. TSEYTLIN: -- I'm pretty bad with pronouncing
5 names.

6 THE COURT: No, no. You're fine. Go ahead.

7 MR. TSEYTLIN: Marlene Sorenson, she successfully
8 uploaded her license and her ballot was sent, according to her
9 declaration. Sharon Gamm, she properly uploaded her photo ID
10 after a couple tries. Her ballot was sent. Shirley Powell and
11 Sue Rukamp, they had problems uploading in April, but they make
12 no claims that they don't have smartphones, that they won't be
13 able to upload for November. So, again, they don't have a
14 single witness, as far as we can tell, that says, "We will have
15 a problem with this for November," which is, of course, the
16 inquiry here. It's not a damages lawsuit about what happened in
17 April. So that's the state of the record on those, and I think
18 if you go back and look, you will see there is no witness they
19 have on either of those or on the --

20 THE COURT: The residency.

21 MR. TSEYTLIN: -- that says they will have a problem
22 with that reasonable effort in November.

23 Now, kind of stepping more broadly back in terms of our
24 position on *Luft*, for facial relief you need to have a broad
25 showing --

1 THE COURT: I think we've now agreed it's *Luft*.

2 MR. TSEYTLIN: *Luft*.

3 THE COURT: Go figure.

4 MR. TSEYTLIN: I apologize.

5 THE COURT: That's all right.

6 MR. TSEYTLIN: You would need to have a broad showing
7 of a burden on voters in general taking the election system as a
8 whole. So that would, I think, with respect, foreclose the
9 facial relief they are seeking with regard to all of the
10 deadlines because those would be facial relief because they have
11 not -- I mean, to the extent they're saying, oh, a couple of
12 voters or some number of voters are going to be
13 procrastinating --

14 THE COURT: I don't think they're saying that. They're
15 saying that thousands of voters are going to request ballots too
16 late to get them, and they're going to be out of luck.

17 MR. TSEYTLIN: And our position on *Luft*, and I know --
18 *Luft* -- Your Honor does not accept our position, but I just
19 wanted to clarify for the record, is that number of voters is
20 not sufficient for facial relief against those deadlines, and I
21 understand --

22 THE COURT: I'm not sure I understand how -- I thought
23 you were in agreement that -- oh, I see what you're saying, that
24 the general standard -- what is enough under *Luft*? Overall that
25 there isn't a substantial burden on your ability to vote, right?

1 MR. TSEYTLIN: No. For *Luft* for facial relief you
2 would have to show that --

3 THE COURT: Yes.

4 MR. TSEYTLIN: -- across your whole populace, whether
5 it's 50 percent or 40 percent, for facial relief.
6 For as-applied -- well, Your Honor --

7 THE COURT: I mean, there's nowhere out there that says
8 40 percent or 50 percent. It's just that you provide a robust
9 right overall to vote. The question is does creating a deadline
10 that almost guarantees in these unusual circumstances that
11 you're going to have a massive number of uncounted absentee
12 votes, that would seem like a significant problem with the
13 voting system.

14 MR. TSEYTLIN: Well, Your Honor, again, I don't want to
15 spend too much time on that. I know Your Honor does not agree,
16 and I just want to clarify our point for the record, and I would
17 like to --

18 THE COURT: Yeah.

19 MR. TSEYTLIN: -- move to the other points.

20 With regard to facial relief, we do -- with regard to
21 as-applied relief, we do agree that each individual voter needs
22 to be able to vote with a reasonable effort.

23 THE COURT: Right. I'm staying on the facial, but
24 there's got to be -- even facially there's got to be some limit
25 where there's a COVID-19 sea change and a system that was

1 designed for massive in-person voting that is now going to be
2 used for massive absentee voting but has made no accommodations
3 for the massive number of people. I mean, two-thirds of the
4 people -- three-quarters of the people are likely to vote
5 absentee based on April's experience.

6 MR. TSEYTLIN: Right, Your Honor, and I'm happy to talk
7 about the specific issues --

8 THE COURT: But -- no, the specific issue is -- not the
9 specific issue. I'm sorry. The facial issue is that the
10 current design guarantees tens of thousands of absentee ballots
11 are not going to arrive by election day.

12 MR. TSEYTLIN: And our position, Your Honor, is that
13 those voters, if they do not want to vote in person, can, with
14 reasonable effort, submit their requests and their ballots --

15 THE COURT: And what does that mean? We know now that
16 it could be two weeks before the deadline, and those ballots are
17 not going to get back --

18 MR. TSEYTLIN: Well, Your Honor --

19 THE COURT: -- because they have to go -- they have to
20 go by mail or they could go online, but they'll be turned around
21 seven days -- in seven days, and then we know a certain number
22 are going to be lost in the process.

23 MR. TSEYTLIN: That's right, Your Honor, and Wisconsin
24 could have adopted a system where you have to do everything two
25 weeks before, and then I guess these arguments would be --

1 THE COURT: Right. And were this a normal election,
2 perhaps -- and I think *Luft* tells us that it's okay for a number
3 of people to lose their right to vote, but this isn't a normal
4 election, and the -- the state has never -- this wasn't designed
5 for a massive absentee ballot routine where instead of a few
6 hundred ballots, tens of thousands of ballots are going to be
7 lost, and I don't know that *Luft* says it's got to be 30 percent
8 or 40 percent. It just says there has to be robust options, and
9 the fact is there won't be for people who are afraid to go to
10 the polls.

11 MR. TSEYTLIN: Well, Your Honor, with that I very
12 respectfully disagree.

13 THE COURT: Sure.

14 MR. TSEYTLIN: There are robust options. Anybody can
15 request an absentee ballot now. They'll have plenty of time to
16 cast it, and the mailing problems can happen in any election,
17 and no one is ever --

18 THE COURT: I'm most concerned about the less
19 sophisticated voter who isn't going to recognize that these are
20 traps for the unwary. Relying on the dates set by the state,
21 they're going to be disenfranchised.

22 MR. TSEYTLIN: Right, Your Honor. The less educated
23 voter is not a legal standard that's available to this court,
24 and so -- and I heard Your Honor say something about that --

25 THE COURT: Does that make them unreasonable because

1 they are not particularly sophisticated about the workings of
2 the voting system?

3 MR. TSEYTLIN: Well, I think to be more specific, Your
4 Honor --

5 THE COURT: Because we're in agreement it's a
6 reasonable voter standard, right?

7 MR. TSEYTLIN: Objective, reasonable voter standard.
8 So, for example --

9 THE COURT: Right. Objective, reasonable. Is it not
10 reasonable for the typical voter to look at the deadline and
11 say, "I've got to be sure to get that in within the deadline or
12 maybe a week before the deadline because I don't want to mess
13 up"? How is that unreasonable?

14 MR. TSEYTLIN: Our view --

15 THE COURT: (Unintelligible) -- objectively reasonable,
16 and it's wrong.

17 MR. TSEYTLIN: There are robust in-person voting
18 options for voters --

19 THE COURT: But they're not -- we're talking about
20 voters who are afraid to go to the polls.

21 MR. TSEYTLIN: Then we go back to our point about
22 facial relief. There might be some category of voters who are
23 afraid to go to the polls, but that is --

24 THE COURT: Objectively, reasonably afraid to go to the
25 polls. Objectively, reasonably afraid to go to the polls.

1 They've chosen an absentee ballot route. They put in their
2 request at least a week before the deadline, and they're almost
3 certainly not going to be able to turn around their ballot and
4 get it back by election day.

5 MR. TSEYTLIN: Your Honor, in light of these
6 discussions and in light of what the DNC was saying in their
7 briefs, it will be incumbent upon anyone who is educating voters
8 to let them know get your ballots in early if you do not want to
9 vote in person. I think what is lost here is this assumption
10 that it is unreasonable for people to vote in person. We cite
11 that Fifth Circuit decision recently that said that --

12 THE COURT: No, I'm not saying it's unreasonable to
13 vote in person. I think that a reasonable person could
14 objectively decide that, particularly with social distancing and
15 the hope that that will be respected by the other voters and by
16 the poll workers themselves, that you could objectively,
17 reasonably conclude that it's safe. But you could also
18 objectively, reasonably conclude that it's too great a risk and
19 I should vote absentee, and then you could objectively,
20 reasonably conclude that I have until five days before the
21 election to request a ballot, but I don't want to run any risk,
22 so I'm going to request it seven days before that. And there's
23 a substantial likelihood, because of the COVID problems and the
24 problems with the post office, that your ballot will not be
25 counted, and yet you acted with what apparently was objective

1 reasonableness.

2 MR. TSEYTLIN: Our position, Your Honor, is if you are
3 a person who has decided that they do not want to vote in
4 person, you should return your ballot earlier than that. That
5 is our position, and there's nothing in the Constitution that --

6 THE COURT: No, no. There's nothing in the
7 Constitution, Mr. Tseytlin, but what's in the statute that tells
8 the voter that? It tells them the opposite of that. It tells
9 them you can ask anytime before five days before, particularly
10 if you do it online, and they'll mail it out immediately, and
11 you can get it back. And that's why they chose that date,
12 because that's a reasonable -- I mean, one would assume -- an
13 unsophisticated voter, a reasonable voter would assume the state
14 must have set that deadline because it makes sense, right?

15 MR. TSEYTLIN: Your Honor, I think the record is
16 undisputed that even before COVID the five-day deadline would
17 lead to this kind of problem --

18 THE COURT: Could lead to this problem, right.

19 MR. TSEYTLIN: And there's no --

20 THE COURT: I agree --

21 MR. TSEYTLIN: There's no --

22 THE COURT: -- except then they have to --

23 MR. TSEYTLIN: (Unintelligible.)

24 THE COURT: You had two options. One, you weren't
25 likely to use the absentee option because everyone votes in

1 person, at least the vast majority of people do, and, two, if
2 the absentee ballot doesn't work, no problem, I'll just go to
3 the polls. But neither one of those are available to some
4 objectively reasonable voters now.

5 MR. TSEYTLIN: Your Honor, if Your Honor has that
6 position, I think the maximum Your Honor could order is some
7 sort of education campaign to get people to turn in their
8 absentee ballots --

9 THE COURT: I don't know what that means. You were in
10 agreement with me that we don't know what that means, but now
11 you're suggesting there is such a thing. What would that mean?

12 MR. TSEYTLIN: Your Honor --

13 THE COURT: What could I as a federal judge order to
14 educate people to ignore the state statute?

15 MR. TSEYTLIN: It's certainly not ignoring the state
16 statute to get your ballot in two weeks before the election day.
17 That is not ignoring the state statute. In fact, the state
18 statute provides for that very clearly. Nothing in the state
19 statute encourages voters to wait until five days before
20 election day and so --

21 THE COURT: Other than that's the deadline.

22 MR. TSEYTLIN: But --

23 THE COURT: Yeah, I get it. In all seriousness, what
24 would I order? I mean, I'm not going to order they take out
25 television ads. I'm not even sure television ads work anymore

1 for the typical voter. I'm not going to order they go online
2 and put ads on Google and YouTube and whatever other websites
3 would be most effective to reach the average voter. It's
4 just -- I guess the best I could do is require the WEC to better
5 publicize this, but I'm not sure how they reach the very voters
6 you'd need to reach, which are those who are not registered and
7 have no history of absentee voting. They're the ones most
8 likely, reasonable voters, to get this wrong.

9 MR. TSEYTLIN: Well, Your Honor, two points: Several
10 million registered voters are getting those mailers, so we don't
11 think any relief is necessary or justified, but that would be --

12 THE COURT: Understood.

13 MR. TSEYTLIN: -- far less destructive than wholesale
14 changing statutory deadlines.

15 Now, just returning back to the other half of the *Luft* --

16 THE COURT: Yeah.

17 MR. TSEYTLIN: -- (unintelligible), the as-applied
18 relief, I think both *Luft* and the decision of the Seventh
19 Circuit with regard to this court's order in April makes clear
20 that an affidavit bypass option is just simply off the table,
21 and I think the reason for that is affidavit bypasses are so
22 easily misused that they make the voter integrity design of the
23 signature requirement and the photo ID requirement functionally
24 meaningless, and I think that is the point that the Seventh
25 Circuit was making in its state decision and the point that it

1 was making in this *Luft* decision. Now --

2 THE COURT: I'm not sure I read them to say an
3 affidavit is functionally pointless. They certainly agreed that
4 a simple declaration, which is what I had ordered, is
5 inadequate, but I don't think they said a sworn statement is a
6 workaround for everybody and renders the other voter integrity
7 steps meaningless.

8 MR. TSEYTLIN: Your Honor, I mean, if an affidavit
9 option again is ordered by a district court, I think the results
10 on appeal is quite clear of what will happen to an affidavit
11 option.

12 THE COURT: And maybe you're right.

13 MR. TSEYTLIN: And I urge Your Honor to, given the
14 lessons of what happened the last time, to not, with respect, go
15 down that path.

16 Now, just -- Your Honor, with regard to the deadlines, Your
17 Honor mentioned a couple times maybe taking a wait-and-see
18 approach with regard to the deadlines. We actually think that
19 it's best to have everything resolved now. Obviously if Your
20 Honor were to move the deadlines, we would appeal and seek a
21 stay of that, and so hopefully that will be sorted out in short
22 order by the appellate courts. The problem with a wait-and-see
23 approach is that we do end up with a rush-around problem and
24 voters start relying on certain new deadlines. This is the
25 problem that we had the last time, why we couldn't seek the full

1 stay from the U.S. Supreme Court, because we were concerned that
2 certain voters had relied close to election day on certain
3 aspects of the moved deadlines, so I would --

4 THE COURT: Seems like it goes the other way. If I set
5 a wait-and-see, you would have enough for jurisdiction by the
6 Seventh Circuit on any specific relief, if I provide some, as
7 well as the fact that I'm waiting to see, which I think would at
8 least be challengeable, and I would not have changed the rules
9 before the Seventh Circuit says, yeah, you got it right or you
10 got it wrong.

11 MR. TSEYTLIN: Certainly if Your Honor were to order
12 the relief and then stay it, we would -- for a period of time,
13 we would welcome that. You know, the issue that we have is we
14 just -- we don't want to run into a situation where we can't get
15 to the Seventh Circuit and if necessary --

16 THE COURT: No, I agree.

17 MR. TSEYTLIN: Before any voter reliance occurs.

18 THE COURT: Understood.

19 MR. TSEYTLIN: And that kind of brings me to the last
20 point, which is I think in the last hearing Mr. Strawbridge
21 talked to you about issuing an administrative stay or some sort
22 of stay of the decision, you know, so that we can go up to the
23 Seventh Circuit and seek a stay in an orderly manner. If Your
24 Honor does issue some sort of relief here, we would ask for
25 either Your Honor to stay that or to deny the stay as you did

1 the last time with your order so that we can properly seek
2 relief --

3 THE COURT: Right.

4 MR. TSEYTLIN: -- at the Seventh Circuit. Primary, I
5 guess, among those concerns in the short order is Your Honor
6 talked about requiring WEC to make certain changes in an
7 absentee mailer. Certainly we want to be able to go up on
8 appeal and challenge that before that mailer were to go out
9 because we certainly -- it wouldn't benefit anyone for the
10 mailer to go out, for them to also prevail in the Seventh
11 Circuit or the Supreme Court, and then for --

12 THE COURT: Even if I stayed it, you know, the mailer
13 is going to have to go out, so I think there's just going to be
14 urgency. Obviously there's pressure on me to get the decision
15 out and pressure on you to get any relief you think you're
16 entitled to or for the plaintiffs to get any relief they think
17 they're entitled to from appellate courts.

18 MR. TSEYTLIN: That's the third point, Your Honor. So
19 I guess then we would request, whenever the decision were to
20 issue, especially with regard to the change of the mailer, that
21 the decision issue in time for us not to have to seek an
22 overnight stay from the Seventh Circuit --

23 THE COURT: Right. Understood.

24 MR. TSEYTLIN: -- like what happened the last time
25 around.

1 THE COURT: Yeah. And that's been my goal as well, Mr.
2 Tseytlin, whether I made it clear or not. I thought I made it
3 clear that I don't want to have another fire drill. So we're on
4 the same page.

5 MR. TSEYTLIN: If I have a couple of minutes, I wanted
6 to pass it off to Mr. Strawbridge.

7 THE COURT: You have exactly that. Actually, no,
8 that's not fair. You have 12 minutes.

9 MR. TSEYTLIN: Well, I don't have anything further,
10 Your Honor, and I'll pass it off to Mr. Strawbridge.

11 THE COURT: Very good.

12 MR. STRAWBRIDGE: It's late in the day, and I think our
13 points have been made throughout the hearing. I wanted to make
14 one small point in response to some of the suggestions from the
15 Gear plaintiffs regarding the factual record in this case.

16 Of the affidavits they identified, a couple of them only
17 requested their absentee ballots in April, just two weeks before
18 the election. Those are the Fergots. Jozwik and Olsan never
19 followed up with their clerk when they did not receive their
20 initial ballots. Olsan was also available to vote in person.
21 Our view is that none of those affidavits are sufficient to
22 establish that they'll be unlikely to vote by mail or in person
23 in November, especially given the lead time and the increased
24 awareness among the state and local officials with respect to
25 the mail and to the other options.

1 I would -- other than that, I would sort of rest on what my
2 colleague has said. I do think that the Court should be
3 cautious in light of *Luft*, in light of the lessons from the
4 Seventh Circuit and the Supreme Court last time, but no need to
5 retread old ground at this point in the day.

6 THE COURT: All right. Did the WEC want to be heard at
7 all?

8 MR. LENZ: Your Honor, we do, not to make argument, but
9 there are a few points of clarification that may be helpful to
10 the Court --

11 THE COURT: Yeah.

12 MR. LENZ: -- as it considers the requests. Again, we
13 take no position on the requests from the plaintiffs.

14 But just to clarify some of the discussion from today, in
15 terms of the instructions, we wanted to make sure that this was
16 clear before the Court. So the mailer -- and we submitted them
17 all this afternoon. The mailer is going out on September 1st,
18 which includes the absentee request that the voter can complete
19 by mail or they can go to MyVote. There's no subsequent mailer
20 going to everybody. The subsequent piece of mail is enclosed in
21 an absentee ballot that's sent to that voter that instructs them
22 how to complete it.

23 THE COURT: Right.

24 MR. LENZ: The first mailer does contain the
25 indefinitely confined statutory information. The second one

1 does not and should not because that person has already either
2 submitted a photo ID to receive their ballot or they need not
3 because they're indefinitely confined under the statute. So we
4 wanted to make sure --

5 THE COURT: The only time it would make sense would be
6 to define it in the original mailer going out to registered
7 voters giving them a form to request an absentee ballot.

8 MR. LENZ: That is correct. So once the person has
9 received their ballot, it's kind of *fait accompli*. They've
10 either submitted their photo ID or they didn't have to under the
11 statutory exception.

12 THE COURT: Excuse me. They would have submitted it
13 for proof of residence possibly, but they could have submitted
14 other proof of residence without having provided a photo ID,
15 right?

16 MR. LENZ: That is correct.

17 THE COURT: You're saying that once they do that, that
18 satisfies any ID requirement, and they won't have to do that
19 again when they send in the absentee ballot itself even if they
20 never voted absentee before?

21 MR. LENZ: So if the voter is registered at their
22 current place of address and under the current name, if the
23 registration is up to date, and they're a first-time absentee
24 requestor, they need to submit the photo ID or certify that
25 they're indefinitely confined, but the photo ID --

1 THE COURT: Now you've lost me because I get your
2 point, for those people you're mailing out to, they're already
3 registered, so their need to provide any ID is limited, but
4 whatever they need to provide in terms of proof of residence
5 will have either been mooted or they could provide that with
6 their request for a ballot. But we're talking about people who
7 are going to be requesting a ballot without any of that
8 guidance, without the mailer, and will have to satisfy the
9 residency -- proof of residency requirement, but I was under the
10 impression that in order to actually vote absentee, they will
11 then have to provide an ID that would accompany an absentee
12 ballot request.

13 MR. LENZ: Correct, or they have to certify that
14 they're indefinitely confined and, therefore, exempt from the
15 absentee requirement -- I'm sorry, the photo ID requirement for
16 an absentee ballot.

17 THE COURT: But once they've done that, they won't have
18 any other issue when the absentee ballot itself is sent out.

19 MR. LENZ: Correct. So once the municipal clerk can
20 review and confirm the photo ID is appropriate and if the voter
21 has registered appropriately, once the ballot is issued, nothing
22 needs to accompany the ballot back and, in fact, nothing should.

23 THE COURT: Well, except for the witness certification,
24 which is addressed in the mailing with the ballot.

25 MR. LENZ: Correct, and it's on the envelope, which for

1 the witness --

2 THE COURT: Right. But no description of what might be
3 alternative means for those who can't accomplish it.

4 MR. LENZ: Correct.

5 THE COURT: We just went through that this morning.

6 MR. LENZ: Right.

7 THE COURT: Yeah.

8 MR. LENZ: And so we just wanted to make sure the
9 record was clear on that.

10 THE COURT: I appreciate it. Thank you.

11 MR. LENZ: Similarly, on the issue of student IDs, and
12 this one is a moving target, but student IDs under certain
13 circumstances can be both used for proof of residency and for
14 photo ID, but the requirements for the student ID is a little
15 bit different. I'm happy to talk to you more about that, but I
16 wanted to make sure that that was clear.

17 THE COURT: Well, and that still remains before Judge
18 Peterson, who has taken on Judge Adelman's case as well, and one
19 thing I will do consistent with the Seventh Circuit's comments
20 in *Luft* is try to coordinate guidance so that you're not
21 responding to more than one judge's rulings. But I
22 appreciate -- it is a little confusing because if the only time
23 you need an ID is with your proof of residency, how it could be
24 used in two different ways. The only way I'm aware of is a
25 student ID could, if it has a -- has the name, an address,

1 issuance date, and date of terminating or date of no longer
2 being effective and an ID, then that would fulfill probably all
3 the requirements to prove residency. If it doesn't include any
4 residence statement, then you might have to satisfy that in some
5 other way, either by proof of having paid your tuition for that
6 semester or getting the college to file a list of residents.

7 MR. LENZ: That's generally correct under my
8 understanding, and I agree with you that it's still before Judge
9 Peterson for a final determination. There is an additional
10 issue of the expiration date. There's different rules --

11 THE COURT: Yes.

12 MR. LENZ: Okay. And then the final -- the two final
13 issues: The one has to do with when a voter who has received an
14 absentee ballot can get a replacement, and I think you just
15 pinpointed one issue, which is the deadline has been
16 questionable all day. It is five days before, and the same
17 would apply for, you know, online or any other request. You
18 have to request it five days before so --

19 THE COURT: Although it can only be mailed out at that
20 point, which is a virtual guarantee that it's not going to get
21 there in time.

22 MR. LENZ: Correct. The only way it can be sent by the
23 clerk is mail. That's true.

24 THE COURT: Unless I were to create an exception.

25 MR. LENZ: Correct. After *Luft* it can no longer be

1 emailed or faxed by the clerk.

2 And, similarly, I just want to make sure this is clear,
3 that if that voter has sent back their ballot, regardless of
4 whether or not it's been received by the clerk before election
5 day, that voter cannot vote -- that voter cannot receive a
6 ballot at an in-person polling place, and that's under Wis.
7 Stat. Section 6.86(6).

8 THE COURT: Assuming that they catch it -- that it's
9 been updated, it reflects that the ballot went out. They may or
10 may not know if the ballot was sent back in, but if they note
11 that the ballot was received, they would mark it as such.
12 Otherwise, regardless, if they vote in person, they would --
13 that later absentee ballot, when it's reviewed, wouldn't be
14 counted. But while the statute says you're not supposed to be
15 able to vote, it requires things done at the polling place that
16 are difficult to accomplish.

17 MR. LENZ: Right. So it's up for the poll worker to
18 ask the voter, once they see the watermark indicating that that
19 person has been sent an absentee ballot --

20 THE COURT: Whether they sent it back. Right, exactly.

21 MR. LENZ: Okay. And then the final point is, to make
22 a record of this, is that the September 1st mailing has gone to
23 the printers as a practical matter --

24 THE COURT: That's why -- I was curious about that
25 because I was under the impression that it hadn't. In fact,

1 that's what Administrator Wolfe said under oath today. I was
2 under the impression that it had gone to the printer, which is
3 why I phrased it the way I did to her. So what was she talking
4 about then?

5 MR. LENZ: She was talking about the uniform absentee
6 ballot instructions that accompany the actual ballot that are
7 printed by the municipal clerks.

8 THE COURT: No, because that was the September --
9 mid-September 15th mailer. She was definitely talking about two
10 different mailers that aren't finalized, but, regardless, the
11 two that you filed, one of them has already gone to the printer.

12 MR. LENZ: Correct, and that's the one that's going to
13 2.7 million registered voters.

14 THE COURT: And which one is that?

15 MR. LENZ: That would be the first exhibit. I believe
16 it's --

17 THE COURT: It doesn't appear to be docketed yet. You
18 said you did file it on the docket?

19 MR. LENZ: Docket 522, Exhibit 1, Mailer and Absentee
20 Request Form.

21 THE COURT: All right. I may have to go out and back
22 in to get it to recognize that. Just give me a second.

23 Yeah. Thank you. So Exhibit 1 is the mailer that has
24 already been printed. Exhibit 2 would be the uniform absentee
25 instructions that will go out in mid-September. Exhibit 1 would

1 not go out until September 1st, but it obviously would be a huge
2 imposition to change it now, and Exhibit 3 would just be the
3 supplement that would be included with the uniform absentee
4 instructions? Or what's 3?

5 MR. LENZ: Sure. So Exhibit 3, the supplemental
6 uniform absentee instructions, only that goes to voters who can
7 receive their ballot by fax or email and instructs them how to
8 complete those.

9 THE COURT: So, in other words, it would only go to the
10 military or someone else who qualifies narrowly being overseas.

11 MR. LENZ: Correct. So Exhibit 2 is the one that
12 hasn't been printed by the -- well, Exhibit 2 and 3, I should
13 say, haven't been printed by the municipal clerks yet, and
14 they'll accompany every ballot that goes out starting in
15 mid-September up through the last day that an absentee ballot
16 goes out.

17 THE COURT: Got it. Anything else that you want to
18 add?

19 MR. LENZ: No. Thank you.

20 THE COURT: Thank you very much.

21 And now I'll hear any rebuttal that the plaintiffs wish to
22 provide.

23 (No response.)

24 THE COURT: Or we can just stand on the record.

25 MR. SHERMAN: Your Honor, if I could, I would just want

1 to make one quick point in response to what Mr. Strawbridge said
2 about the Gear plaintiffs. I know it's late in the day. But in
3 citing the declarations -- I know the Court has the declarations
4 from the Gear plaintiffs and can review them -- I would just
5 note that the bar for voter diligence seems to be going up by
6 the minute. These were voters who applied two weeks in advance.
7 In the case of Sheila Jozwik, a plaintiff in this case, it was
8 three weeks in advance of the election. They never received
9 their ballots even after election day, so these voters did use
10 reasonable efforts, and in some case I think they made more than
11 reasonable efforts, and they still were disenfranchised, and I
12 just wanted to make that clear for the record.

13 Thanks very much, Your Honor.

14 THE COURT: Understood. Thank you.

15 Anyone else want to speak on behalf of the plaintiffs?

16 MR. DEVANEY: Your Honor, two very quick points, if I
17 may. First is on the issue of public education. I just wanted
18 to point out, as Your Honor may be aware, that in 2016 Judge
19 Peterson ordered public -- a public education on the IDPP, and
20 the Seventh Circuit affirmed that *en banc*. Judge Peterson left
21 it to the predecessor of the WEC to propose how to get word out,
22 and he reviewed and approved the plan. We suggest that is a
23 good model.

24 There was also discussion with counsel for the Legislature
25 regarding the affidavit option, and I just wanted to point out

1 that Justice Stevens in *Crawford* endorsed the --

2 THE COURT: Yeah, I noted that. Yeah. Although,
3 unfortunately, he doesn't appear to be -- I mean, even he's
4 reversed some of his views since then, but go ahead.

5 MR. DEVANEY: And that was the point -- those are the
6 two points I wanted to make, Your Honor.

7 THE COURT: All right. Very good. I do greatly
8 appreciate everyone's participation today and appreciate your
9 patience with me as I try to better understand the record. I
10 do -- I am painfully aware of the consequences of delay on
11 everyone, particularly the Wisconsin voter, so I will endeavor
12 to move speedily, although there are a number of issues that I
13 need to address. I am aware of the need for a decision sooner
14 rather than later, especially with the efforts to try to inform
15 the public and to try to avoid a moving target.

16 With that said, thank you again, and we are --

17 MS. LENS: Your Honor? I'm sorry.

18 THE COURT: Yes.

19 MS. LENS: Your Honor, before we close, could I raise
20 two very quick housekeeping issues?

21 THE COURT: I should have asked that. Absolutely. Go
22 ahead.

23 MS. LENS: I appreciate it. Both relate to exhibits.
24 The first is that two of the hearing exhibits that were admitted
25 today, they're duplicates. I'm not sure which one was admitted.

1 No. 16 --

2 THE COURT: Yeah. And as I indicated earlier, I'm
3 willing to have duplicates admitted and --

4 MS. LENS: No, no, no. I understand.

5 THE COURT: -- that was actually noted.

6 MS. LENS: No, I understand. I don't know whether you
7 admitted 16 or 42, but neither has been filed on the record in
8 this case because they -- of the timing of them. They're the
9 RNC's and RPW's court-ordered requests -- responses to the
10 requests for admission. So I just wanted to see -- they've been
11 submitted, I believe, to Your Honor today via email, but they
12 are not on the record, and so I thought that --

13 THE COURT: There was no objection to 16. It is
14 admitted. There was no objection to 42, so it is admitted. To
15 the extent it hasn't been provided, then you should make sure
16 you file it.

17 MS. LENS: Okay. And then second, Your Honor, there
18 were some discussion of the Spindell compilations, and my
19 understanding is the Court admitted 5 but, with the
20 understanding that 43 and 45 were duplicates, did not admit
21 those. 43 --

22 THE COURT: Well, that's not true. That's not true.
23 43, the objections were withdrawn, and I may not have indicated
24 it, but under those circumstances it should have been accepted.

25 What was the other number?

1 MS. LENS: If 43 is admitted and 5 is admitted, then I
2 have no issue because 45 is a duplicate of 5.

3 THE COURT: All right.

4 MS. LENS: Thank you.

5 THE COURT: Anything else for the plaintiffs in terms
6 of housekeeping?

7 Anything for the defendants in terms of housekeeping?

8 MR. STRAWBRIDGE: No, Your Honor.

9 THE COURT: Hearing none, I do close this hearing and
10 will endeavor to move quickly. Thank you, all.

11 MR. DEVANEY: Thank you, Your Honor.

12 THE CLERK: This Honorable Court is adjourned.

13 (Proceedings concluded at 4:15 p.m.)

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1 I, JENNIFER L. DOBBRATZ, Certified Realtime and Merit
2 Reporter in and for the State of Wisconsin, certify that the
3 foregoing is a true and accurate record of the proceedings held
4 on the 5th day of August, 2020, before the Honorable
5 William M. Conley, U.S. District Judge for the Western District
6 of Wisconsin, in my presence and reduced to writing in
7 accordance with my stenographic notes made at said time and
8 place and a true and accurate transcription of the portion of
9 the proceedings that was digitally recorded.

10 Dated this 10th day of August, 2020.

11

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16

_____/s/ Jennifer L. Dobbratz

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Jennifer L. Dobbratz, RMR, CRR, CRC
Federal Court Reporter

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EXHIBIT 4



WISCONSIN ELECTIONS COMMISSION

Administering Wisconsin's Election Laws

[Home](#) » [Clerks Page](#)

Absentee Ballots

Military and Overseas info can be found here: [Military, Overseas and Absentee Ballots](#).

[Uniform Instructions to be Sent with Absentee Ballots](#)

The uniform instructions for absentee voting for Military, Overseas and Regular voters have been consolidated into a single document. There is now one uniform instructions document for all voter types. The instructions were updated on September 2016 with a reminder to the voter to return the entire ballot.

[Email/Fax Absentee Ballot Instructions for Clerks](#)

Information and instructions for emailing and faxing absentee ballots to voters.

WHO CAN REQUEST AND RECEIVE AN ABSENTEE BALLOT?

Any qualified elector. A qualified elector is a United States citizen, 18 years of age or older, who has resided in the district in which he or she intends to vote for at least 10 consecutive days. The elector must be registered in order to receive an absentee ballot.

Note: Military voters are not required to register (submit an EL-131) in order to vote.

HOW DOES AN ELECTOR REQUEST AN ABSENTEE BALLOT?

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.

Military and Overseas electors may also use the Federal Postcard Application ([FPCA](#)), which is a combination registration form and absentee ballot request.

WHAT ARE THE DEADLINES FOR MAKING A REQUEST?

- By mail: The request must be in the office of the municipal clerk no later than 5:00 p.m. on the *5th day preceding an election.
- In-person at the clerk's office: The last possible day for a clerk to conduct in-person absentee voting is the Sunday before the election. Each municipal clerk's office sets its own schedule for in-person absentee voting.
 - Note: A person cannot request an absentee ballot in person and leave the clerk's office with the ballot. The ballot is either voted in the clerk's office, or the clerk must mail the ballot to the elector.
 - *The deadline for indefinitely confined electors and military electors (not-away) to request an absentee ballot is the 4th day before the election.
 - *For a federal election, the deadline for military electors who are away from their residence due to active duty to request an absentee ballot is 5:00 p.m. on election day.
 - *Special provisions are made for hospitalized electors and sequestered jurors to request and vote by absentee ballot on election day. Wis. Stat. §§ [6.86\(1\)\(b\)](#), [\(3\)\(a\)](#).

WHEN DOES THE CLERK ISSUE THE ABSENTEE BALLOT?

An absentee ballot must be sent by the following dates to any voter with an absentee application on file.

- 47 days before a federal election
- 21 days before a primary or other election. Wis. Stat. § [7.15\(1\)\(cm\)](#).
- When a request for an absentee ballot is made by mail, the absentee ballot must be mailed to the elector within one day of the request.

Voters requesting an absentee ballot in person must cast the ballot in the clerk's office. Voters cannot take the absentee ballot out of the clerk's office.

Special provisions are made for issuing absentee ballots to residents of a nursing home, qualifying retirement homes and community-based residential facilities. See our manual [Absentee Voting in Residential Care Facilities and Retirement Homes](#).

WHAT PROCEDURES MUST BE FOLLOWED BY THE CLERK?

- Document on an absentee voting log: the date of receipt of the application, the name and address of the person making the request, the date the absentee ballot was sent to the elector, and any other pertinent information.
- Initial the ballot at the "Absentee ballot issued by" line in the endorsement section.
- Place absentee voting instructions, an Absentee Certificate envelope, and the absentee ballot inside a mailing envelope addressed to the requesting elector. The elector returns the voted absentee ballot to the clerk's office in the Absentee Certificate envelope that is postage pre-paid when mailed within the United States.

- When the voted absentee ballot is received by the clerk, enter the date of receipt on the absentee voting log.
- Check the Absentee Certificate envelope to be sure that the voter has properly completed and signed the certificate and that it has been properly witnessed. If not, and time permits, make an effort to contact the elector and make arrangements for correcting the problem, whenever possible.
- The Absentee Certificate envelope containing the elector's voted ballot should be placed in a carrier envelope and kept in a secure place in the clerk's office until election day. On election day, the clerk delivers the carrier envelope containing all absentee ballots received to the proper polling place before the polls close at 8:00 p.m. This also includes any absentee ballots received by the clerk on election day.
- Any voter may request absentee ballots for all elections in a calendar year.
- Military voters are entitled to vote for all offices. Wis. Stat. § [6.22](#).
- Permanent Overseas voters are United States citizens who have chosen to reside overseas with no present intent to return. Permanent Overseas voters are entitled to vote for federal offices only. Wis. Stat. § [6.24](#).

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

7/23/2020

Democratic National Committee v. Marge Bostlemann, et al. Neil Albrecht 30(b)(6)

Page 1

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DEMOCRATIC NATIONAL COMMITTEE AND)
DEMOCRATIC PARTY OF WISCONSIN,)
)
PLAINTIFFS,)CASE NO.
)3:20-cv-249-wmc
v.)
) (AND CONSOLIDATED CASES)
)
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)
)
REPUBLICAN NATIONAL COMMITTEE,)
REPUBLICAN PARTY OF WISCONSIN, AND)
THE WISCONSIN STATE LEGISLATURE,)
)
INTERVENOR-DEFENDANTS.)
_____)

VIDEOTAPED 30(B)(6) DEPOSITION OF NEIL ALBRECHT
TAKEN REMOTELY VIA ZOOM VIDEOCONFERENCE
THURSDAY, JULY 23, 2020
LOS ANGELES, CALIFORNIA

Reported by Audra E. Cramer, CSR No. 9901

DIGITAL EVIDENCE GROUP
1730 M Street, NW, Suite 812
Washington, D.C. 20036
(202) 232-0646

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1 VIDEOTAPED 30(B)(6) DEPOSITION OF NEIL ALBRECHT,
2 TAKEN REMOTELY VIA ZOOM ON BEHALF OF
3 INTERVENOR-DEFENDANT THE WISCONSIN STATE LEGISLATURE,
4 AT 9:02 A.M. EDT, THURSDAY, JULY 23, 2020, BEFORE
5 AUDRA E. CRAMER, CSR. NO. 9901, PURSUANT TO SUBPOENA.
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Page 3

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18 DANIEL HOLMSTOCK, HOTSEATER/VIDEOGRAPHER
19 MATT CLARKSTON
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21
22

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1 I N D E X

2 WITNESS

3 NEIL ALBRECHT

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5 EXAMINATION PAGE

6 BY MR. BROWNE 8

7 BY MR. BROWN 96

8

9 E X H I B I T S

10

NO.	PAGE	DESCRIPTION
Exhibit 1	12	SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION W/ ATTACHMENTS
Exhibit 2	28	NEWS RELEASE DATED 3/29/20: "MILWAUKEE ELECTION WORKER STAFFING DROPS AS CASES RISE: CITY HAS LESS THAN ONE-THIRD OF REQUIRED ELECTION WORKERS" DPW000013
Exhibit 3	34	NEWS RELEASE DATED 3/27/20: "MILWAUKEE ESTABLISHES DRIVE-UP EARLY VOTING" DPW000009

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1 EXHIBITS (CONTINUED)

2

NO.	PAGE	DESCRIPTION
Exhibit 4	42	MADISON.COM ARTICLE DATED 4/7/20: "MADISON HAS 66 POLLING SITES ON ELECTION DAY, MILWAUKEE HAS FIVE. WHAT'S THE DEAL?" DPW000125 THRU 000128
Exhibit 5	45	EMAIL CHAIN MILW ELEC - 00172 THRU 00177
Exhibit 6	50	EMAIL CHAIN DPW000001
Exhibit 7	52	EMAIL CHAIN DPW000002 AND 000003
Exhibit 8	54	EMAIL CHAIN DPW000004 AND 000005
Exhibit 9	58	EMAIL DPW000008
Exhibit 10	58	EMAIL (REDACTED) DPW000011 AND 000012
Exhibit 11	62	EMAIL CHAIN DWP000015 AND 000016
Exhibit 12	65	EMAIL CHAIN DWP000018 AND 000019
Exhibit 13	67	EMAIL CHAIN DPW000022
Exhibit 14	70	EMAIL CHAIN DPW000028 THRU 000032
Exhibit 15	74	EMAIL CHAIN DPW000033
Exhibit 16	92	EMAIL CHAIN MILW ELEC - 00349 THRU 00354
Exhibit 17	97	SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION W/ ATTACHED NOTICE

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1 REMOTELY VIA ZOOM VIDEOCONFERENCE

2 THURSDAY, JULY 23, 2020, 9:02 A.M. EDT

3

4 THE VIDEOGRAPHER: We are now on the

5 record. Here begins Video No. 1 in the

6 video-recorded deposition of Mr. Neil Albrecht,

7 taken in the matter of the Democratic National

8 Committee, et al. v. Marge Bostlemann, et al.

9 The case is pending before the United States

10 District Court for the Western District of

11 Wisconsin, Case No. 3:20-cv-249.

12 This deposition is being conducted by

13 Zoom video remote conferencing, and the physical

14 recording is taking place in Culpeper, Virginia.

15 Today's date is July 23, 2020. The time on the

16 video screen is 9:02 a.m.

17 My name is Daniel Holmstock. I am the

18 legal videographer and digital exhibit

19 technician from Digital Evidence Group. The

20 court reporter today is Audra Cramer, also in

21 association with Digital Evidence Group.

22 All parties to this deposition are

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1 appearing remotely and have agreed to the

2 witness being sworn in remotely.

3 Due to the nature of remote reporting,

4 please pause briefly before speaking to ensure

5 all parties are heard completely.

6 Counsel, all your appearances will be

7 noted on the stenographic record.

8 At this point the court reporter will

9 now administer the oath.

10

11 NEIL ALBRECHT,

12 having been first duly sworn, was

13 examined and testified as follows:

14

15 EXAMINATION

16 BY MR. BROWNE:

17 Q. Mr. Albrecht, my name is Robert Browne,

18 Jr., and I represent the Wisconsin legislature

19 in these matters.

20 Can you hear me okay?

21 A. I can. Thank you.

22 Q. Okay. I just wanted to make sure.

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1 Can you state your name for the record
 2 and spell it, please.
 3 A. Neil Albrecht, N-e-i-l,
 4 A-l-b-r-e-c-h-t.
 5 Q. And, Mr. Albrecht, have you ever had
 6 your deposition taken before?
 7 A. I have.
 8 Q. And how long ago was that?
 9 A. The last time was probably three years
 10 ago.
 11 Q. Okay. It's been a while since you've
 12 had your deposition taken, and I just want to go
 13 over some ground rules so we're on the same page
 14 as we go through the deposition.
 15 Is that okay?
 16 A. I'm having a hard time hearing you now,
 17 Mr. Browne.
 18 Q. Sure.
 19 What I just said is I want to go over a
 20 few ground rules since it's been a while since
 21 you've had your deposition taken just so we're
 22 on the same page.

Page 10

1 Is that okay?
 2 A. Yes.
 3 Q. And you just gave a perfect example of
 4 a first one. All your answers need to be
 5 verbal. So just instead of nodding your head,
 6 please speak your answer so that the court
 7 reporter can take it down.
 8 And then let's try not to talk over
 9 each other, because the court reporter can't
 10 take us down at the same time.
 11 And then, if you answer a question, I'm
 12 going to assume you understood the question.
 13 And then, finally, if you need to take
 14 a break at any point, just let me know, and we
 15 can find an appropriate stopping point.
 16 Can we agree on these basic ground
 17 rules?
 18 A. Yes.
 19 Q. Great.
 20 You said the last time you had your
 21 deposition taken was three years ago.
 22 Can you tell me generally what that

Page 11

1 testimony was about.
 2 A. I testified in a lawsuit in the state
 3 of Massachusetts for same-day registration in
 4 that state, and I testified to speak of how
 5 same-day registration occurred in the state of
 6 Wisconsin.
 7 Q. Have you ever testified other than that
 8 time?
 9 A. Yes.
 10 Q. Go ahead.
 11 A. Where I had been deposed, or just
 12 testified, period?
 13 Q. How about just deposed.
 14 A. I was deposed one other time in the one
 15 Wisconsin Institute lawsuit here in the state of
 16 Wisconsin.
 17 Q. Thank you.
 18 Mr. Albrecht, is there anything that
 19 would prevent you from providing truthful and
 20 accurate testimony today?
 21 A. No.
 22 MR. BROWNE: Okay. Dan, could you put

Page 12

1 up Legislative Exhibit 1 and mark it as Albrecht
 2 Exhibit 1.
 3 (Whereupon, Exhibit 1 was
 4 marked for identification.)
 5 BY MR. BROWNE:
 6 Q. Mr. Albrecht, do you see that on the
 7 screen?
 8 A. I do.
 9 Q. Okay. Have you seen this subpoena
 10 before, Mr. Albrecht?
 11 A. Yes.
 12 Q. When did you see it?
 13 A. I don't know the exact date.
 14 Q. Was it recently?
 15 A. We've received several similar
 16 subpoenas, but I certainly reviewed them
 17 recently, yes.
 18 Q. Okay. Do you understand that you've
 19 been designated to testify as the 30(b)(6)
 20 witness for the City of Milwaukee Election
 21 Commission?
 22 A. I don't know if it's just me, but you

Page 13

1 fade in and out. I couldn't hear the beginning
 2 of your question.
 3 Q. Sorry. I'll get closer. I have a
 4 small mic, but I'll try and get closer.
 5 Mr. Albrecht, do you understand that
 6 you have been designated to testify as the
 7 corporate 30(b)(6) witness for the City of
 8 Milwaukee Election Commission?
 9 A. Yes.
 10 MR. BROWNE: Okay. And Dan, if we
 11 could turn to the last page of the -- excuse
 12 me -- the Schedule A in the document.
 13 Perfect. Thanks, Dan.
 14 Q. Mr. Albrecht, do you see these topics
 15 listed on this Schedule A?
 16 A. I do.
 17 Q. And have you seen those before?
 18 A. Yes.
 19 Q. Okay. And you understand that you have
 20 been designated to testify as to those topics?
 21 A. Yes.
 22 Q. Okay. And are you prepared to give

Page 14

1 testimony on those topics?
 2 A. Yes.
 3 Q. And just for the purposes of this
 4 deposition, Mr. Albrecht, when I say the word
 5 "Commission," can we have an agreement that I am
 6 referring to the Milwaukee Election Commission?
 7 A. Yes.
 8 Q. Okay. Great.
 9 Mr. Albrecht, what did you do to
 10 prepare for today's deposition?
 11 A. I reviewed the Schedule A's of the
 12 subpoenas as well as an amicus brief that the
 13 City of Milwaukee had provided related to
 14 lawsuits around the April 7 election.
 15 Q. [Inaudible] or speak with anyone in
 16 preparation for your deposition?
 17 A. I'm sorry?
 18 Q. Did you meet or speak with anyone in
 19 preparation for your deposition?
 20 A. Just our city attorney.
 21 Q. Okay. And how many times did you meet
 22 with your city -- the city attorney?

Page 15

1 A. Once.
 2 Q. Okay. And how long did you speak with
 3 him?
 4 A. 15 minutes.
 5 Q. Okay. I just want to kind of quickly
 6 go through your background, both your
 7 educational background and your work history.
 8 Could you briefly describe your
 9 educational background to us.
 10 A. I have a bachelor's degree in
 11 journalism from the University of Milwaukee,
 12 Wisconsin, and I was a graduate of Milwaukee
 13 public schools.
 14 Q. And what about your work history? Can
 15 you give us a brief description of your work
 16 history, past employment, Mr. Albrecht.
 17 A. Sure. I came to work for the Election
 18 Commission in 2005. Prior to that I worked in
 19 the nonprofit sector in the City of Milwaukee
 20 and, prior to that, in the corporate sector.
 21 When I came to work for the City of
 22 Milwaukee Election Commission I was the deputy

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1 director from 2005 to 2011. I left employment
 2 with the city from 2011 to 2012, going to work
 3 for a nonprofit agency. I returned in 2012 as
 4 the executive director until June of this
 5 year -- I'm sorry -- July of this year.
 6 Q. Mr. Albrecht, how are you connected to
 7 the Commission now?
 8 A. I'm in a -- what's called a
 9 limited-term employment, LTE, position just to
 10 assist with the transition of the department.
 11 Q. Thank you.
 12 Mr. Albrecht, I want to kind of talk
 13 about the Commission itself now.
 14 Can you tell us what the purpose of the
 15 Commission is?
 16 A. To administer elections in the City of
 17 Milwaukee. To oversee the candidate filing
 18 processes and ballot placement certification for
 19 municipal officeholders. And to oversee
 20 campaign finance reporting for elected officials
 21 and candidates running for offices.
 22 Q. And how many commissioners does the

Page 17

1 Commission have?
 2 A. Three.
 3 Q. And are the commissioners appointed or
 4 elected?
 5 A. They are appointed by the mayor.
 6 Q. Thank you.
 7 Do the commissioners have a set term
 8 that they serve?
 9 A. Four years.
 10 Q. And how many staff members does the
 11 Commission have?
 12 A. Eight.
 13 Q. And does the Commission have any
 14 officers?
 15 A. No.
 16 Q. Okay. So you're the executive -- or
 17 you were the executive director of the
 18 Commission.
 19 Is that the only office or title at the
 20 Commission?
 21 A. There's a deputy director position as
 22 well.

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1 oversight of in-person absentee voting. Really
 2 everything related to those areas.
 3 Q. How does that role differ from the role
 4 that the Wisconsin Elections Commission plays?
 5 A. I would describe it as a more hands-on
 6 role where at the local level, at the municipal
 7 level, we have more of a responsibility around
 8 implementation, whereas the Wisconsin Elections
 9 Commission has more of an oversight role.
 10 Q. Is the Commission responsible for voter
 11 registration in Milwaukee?
 12 A. It is, yes.
 13 Q. Is the Commission responsible for
 14 delivering absentee ballots to voters?
 15 A. Yes.
 16 Q. Is the Commission responsible for
 17 returning absentee ballots from voters to
 18 election [inaudible]?
 19 A. Yes.
 20 I was adjusting my volume. I'm sorry.
 21 Q. Sure. No problem.
 22 Is the Commission responsible for

Page 18

1 Q. Are there any other positions?
 2 A. I'm sorry. Could you define
 3 "positions."
 4 Q. So other than a staff employee, are
 5 there any other positions you have?
 6 Executive director. Deputy director.
 7 Are there any other positions, you know, like
 8 deputy director or executive director?
 9 A. We are the only two management level
 10 positions.
 11 Q. Okay. Thank you.
 12 Mr. Albrecht, what role does the
 13 Commission play in Milwaukee elections?
 14 A. We really have the responsibility for
 15 oversight of all aspects of election
 16 administration. So that would include
 17 everything related to polling places, election
 18 workers, training and assigning election
 19 workers, voter registration, absentee ballot
 20 voting, other activities that occur out in the
 21 field at our polling places, such as packing
 22 supplies, voting equipment testing, and

Page 20

1 deciding whether an absentee ballot should be
 2 accepted?
 3 A. Yes.
 4 Q. Is the Commission responsible for
 5 opening and closing in-person absentee voting
 6 locations?
 7 A. Yes.
 8 Q. Is the Commission responsible for
 9 setting up drop boxes for absentee ballots?
 10 A. Yes.
 11 Q. Is the Commission responsible for the
 12 location of polling places?
 13 A. So can I ask for a clarification on
 14 that question?
 15 If our board of election commissioners
 16 has a role or our common counsel has a role in
 17 any of those functions, do you want me to
 18 identify that, in other words, if it's a role to
 19 make a recommendation, to either of those
 20 bodies?
 21 Q. In the instance of the location of
 22 polling places, is it the Commission's

Page 21

1 responsibility to determine where those polling
 2 places are located, or do you make a
 3 recommendation to one of the bodies you named?
 4 A. We make a recommendation of our polling
 5 place plan to our board of election
 6 commissioners.
 7 Q. And then the board of election
 8 commissioners decides where the polling places
 9 will be located?
 10 A. They approve our plan. They don't --
 11 correct.
 12 Q. Okay. Is the Commission responsible
 13 for providing equipment, including items such as
 14 PPE, personal protective equipment, to polling
 15 places?
 16 A. Yes.
 17 Q. Mr. Albrecht, what is the Commission's
 18 budget?
 19 Does it have a set budget?
 20 A. Our budget varies from year to year
 21 based on the number of elections. Four
 22 elections in even-numbered years, two elections

Page 22

1 in odd-numbered years are probably the most
 2 significant variances, but also voter turnout
 3 between a midterm and a presidential, for
 4 example.
 5 At peak our budget is about
 6 \$3.2 million, but it can also be as low as
 7 \$2 million.
 8 Q. Where does the Commission get these
 9 funds from?
 10 A. From city -- city government dollars,
 11 city revenue.
 12 Q. Does the Commission receive any funds
 13 from federal authorities, such as grants?
 14 A. No.
 15 I'm sorry. Could I clarify that
 16 Mr. Browne?
 17 This year -- and I have to say we
 18 receive Help America Vote Act dollars around
 19 accessibility. So if I could amend my answer to
 20 say on occasion.
 21 Q. Thank you.
 22 Mr. Albrecht, I want to kind of turn

Page 23

1 our focus to the April 7, 2020, election and
 2 talk about that. Okay?
 3 A. Okay.
 4 Q. When did the Commission begin to
 5 discuss the effects of Covid-19 on the April 7
 6 election?
 7 A. I would say almost immediately after
 8 the February primary.
 9 Q. And what was the nature of the
 10 discussions that the Commission had?
 11 A. Our discussions were at that time
 12 monitoring what was occurring in other areas of
 13 the country, such as the state of Washington,
 14 and just monitoring the spread of the pandemic
 15 and listening to what health officials were
 16 advising and trying to apply those principles to
 17 preparation for the election.
 18 Q. And what efforts did the Commission
 19 undertake to address the effects of Covid-19 for
 20 the April 7 election?
 21 A. In totality? I would say we
 22 immediately began -- we did an assessment of the

Page 24

1 age of our long-standing election worker staff,
 2 identified that more than half of our election
 3 workers were over the age of 60, and a third
 4 were over the age of 70. That was a good
 5 indicator to us that there was a strong
 6 probability that the evolving pandemic was going
 7 to impact our election worker staff. So we
 8 began recruitment efforts to bring in younger
 9 and new election workers to support the
 10 election.
 11 We began to educate our facilities on
 12 the 180 locations that we use for voting in the
 13 city of Milwaukee. We began to educate them on
 14 some of our planning processes and at least
 15 asked them to make a preliminary decision on
 16 whether or not they would allow us use of their
 17 facilities based on what was occurring with the
 18 pandemic.
 19 We brought in additional staff in the
 20 office to attempt to keep pace with the very
 21 high volume of absentee ballot application and
 22 registration activity that we were seeing.

Page 25

1 We began to shape a very extensive
 2 collaboration with the Milwaukee Health
 3 Department around ensuring safety of our staff,
 4 everything from our data entry staff working
 5 prior to the election to staff that would be
 6 working in person either at in-person voting
 7 locations or at polling places on Election Day.
 8 And we began to really strategize
 9 around how we could streamline some of our
 10 systems, particularly the by-mail absentee
 11 voting systems, so that we could get absentee
 12 ballots out as quickly as possible.
 13 Q. Did the Commission receive a survey
 14 from the Wisconsin Elections Commission
 15 regarding supplies they might need for the
 16 April 7 election?
 17 A. I believe we received that survey
 18 through the Milwaukee County Election Commission
 19 and not directly through the Wisconsin Elections
 20 Commission, but yes, we did.
 21 Q. Okay. Did the Commission respond to
 22 that survey?

Page 26

1 A. We did.
 2 Q. What supplies did the Commission
 3 indicate that it needed from Milwaukee?
 4 A. The supplies that were available to us,
 5 if I can recall entirely, were things like
 6 sanitizer, masks, pens, gloves, other -- spray
 7 bottles and disinfectants. And we identified
 8 that we needed everything that was available to
 9 us in the quantities that would have been
 10 appropriate for 180 voting locations plus our
 11 in-person absentee voting activities.
 12 Q. Did the Commission receive supplies
 13 from the Wisconsin Elections Commission that it
 14 requested?
 15 A. Yes.
 16 Q. Mr. Albrecht, did the Commission
 17 receive a survey from Wisconsin Elections
 18 Commission regarding poll workers that might be
 19 needed for the April 7 election?
 20 A. I don't recall.
 21 Q. Did the Commission have communication
 22 with the Wisconsin Elections Commission about

Page 27

1 your -- the need for poll workers or any
 2 communications regarding poll workers?
 3 A. Fairly frequently, yes.
 4 Q. And what did those communications
 5 entail? What was discussed?
 6 A. That in the city of Milwaukee, which
 7 was really the growing epicenter, if you will,
 8 of the pandemic in the state of Wisconsin, that
 9 we were seeing -- we were witnessing a rapid
 10 exodus of our election workers and that we were
 11 very concerned around our ability to administer
 12 in-person voting at all of our voting locations
 13 initially. But certainly as things evolved, we
 14 looked at different options for scaling back
 15 voting locations.
 16 But our primary communication was just
 17 really around what we were experiencing, what we
 18 were hearing from other Milwaukee County
 19 municipalities around significant decline in
 20 available election workers.
 21 MR. BROWNE: Dan, can you put up the
 22 file marked Legislative Exhibit 2 and mark that

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1 as Albrecht Exhibit 2, please.
 2 (Whereupon, Exhibit 2 was
 3 marked for identification.)
 4 BY MR. BROWNE:
 5 Q. Mr. Albrecht, if you could just take a
 6 look at that. And again -- or for the first
 7 time I'll just say, Mr. Albrecht, if you need to
 8 have that enlarged or moved around, Dan can do
 9 that for you. All you have to do is ask him to
 10 do that.
 11 A. I can read it. Thank you.
 12 Q. Mr. Albrecht, are you familiar with
 13 this document?
 14 A. I am, yes.
 15 Q. Can you tell us what it is?
 16 A. So I didn't mention this earlier, but
 17 another one of our efforts to try to prepare for
 18 the April 7 election and the pandemic was we
 19 would do regular media briefings with the media
 20 for the public, doing our absolute best to try
 21 to keep the public aware of how things were
 22 evolving with regard to the election. And this

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1 was a media release that we sent out announcing
 2 our transition from our traditional 180 voting
 3 sites to five voting centers.
 4 This may -- I'm sorry. This may have
 5 preceded that. This just looks like an
 6 announcement that we were in need of election
 7 workers. Sorry I didn't read it all the way
 8 through.
 9 Q. Were you responsible for this release
 10 as executive director of the Commission?
 11 A. I was.
 12 Q. If you look at the third paragraph of
 13 the release, it states, "The math is simple,"
 14 said Neil Albrecht, executive director of the
 15 Milwaukee Election Commission. "We would
 16 normally operate our 180 sites with a minimum of
 17 1,400 election workers. As of today, we have
 18 less than 400. We will not be able to maintain
 19 our long-standing tradition neighborhood-based
 20 voting for this election."
 21 Do you see that, Mr. Albrecht?
 22 A. I do.

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1 Q. When did you know that you would be
 2 short poll workers for the April election?
 3 A. Could you define "short."
 4 Q. Well, in the article it says that you
 5 normally have 1,400 election workers, but it
 6 quotes you as saying you have less than 400.
 7 When did you know that?
 8 A. And the reason I ask that question is,
 9 as the cases of Covid-19 began to increase in
 10 the state of Wisconsin, almost immediately from
 11 the time that occurred, we knew we would be
 12 short election workers.
 13 I would say probably in the seven to
 14 ten days leading up to the election, we became
 15 aware that we were going to be -- or we verified
 16 by going back and reengaging our election
 17 workers, that we were going to be significantly
 18 short.
 19 Q. I think you mentioned this previously,
 20 but did the Commission take any steps to recruit
 21 new poll workers?
 22 A. We did, yes.

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1 Q. Can you tell us what those steps were?
 2 A. We did -- several of our media
 3 briefings were dedicated to making the public
 4 aware that we were going to be -- that there was
 5 the potential for us to be very short-staffed in
 6 election workers unless city residents came
 7 forward and supplemented what had been our
 8 long-standing core of election workers.
 9 We reached out to many of our community
 10 partners, to other divisions of city government,
 11 to different associations, sororities,
 12 fraternities, to try to raise awareness of our
 13 anticipated shortfall in election workers.
 14 Q. Was the Commission able to recruit new
 15 poll workers?
 16 A. We were, yes.
 17 Q. Do you recall approximately how many?
 18 A. I don't. I am aware that as the
 19 election approached, even -- I would say a
 20 substantial percentage, at least half, of the --
 21 I'm going to estimate here -- 300 election
 22 workers that we had recruited dropped out,

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1 indicating that at the time that they had
 2 applied to be an election worker -- many of them
 3 had also even gone through training -- as the
 4 pandemic continued to evolve in the city of
 5 Milwaukee, reconsidered their decisions and
 6 withdrew.
 7 Q. Mr. Albrecht, just kind of for our
 8 edification, how many poll workers does it take
 9 to staff a polling location?
 10 A. It depends on how many voting wards are
 11 assigned to that polling location. So Milwaukee
 12 is divided into 327 voting wards, or sometimes
 13 referred to as reporting units. We have sites
 14 that have as many as three wards or four wards,
 15 and we have single-ward sites.
 16 So if it's a single-ward site, it can
 17 be as low as five people. If it's a
 18 multiple-ward site, it can be as high as 12 to
 19 20 people, depending on anticipated turnout.
 20 Q. Thank you.
 21 Did the Commission at some point
 22 approaching the April 7 election suspend

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1 in-person early voting in Milwaukee?
 2 A. Yes.
 3 Q. When did it do that?
 4 A. Approximately two weeks prior to the
 5 election.
 6 Q. And why was that done?
 7 A. We had had incidents at two of the
 8 three locations that were being used, the
 9 Zablocki Library and the Midtown Center, where
 10 voters had been noncompliant with health and
 11 safety precautions that we were attempting to
 12 implement, particularly those related to social
 13 distancing.
 14 As a result of those incidents, the two
 15 site supervisors at Zablocki and at Midtown, as
 16 well as many of the election workers, identified
 17 that they did not feel safe and were very
 18 concerned about exposure at that time and
 19 withdrew from their roles.
 20 Q. And so all in-person voting was
 21 suspended at that point?
 22 A. That's correct.

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1 MR. BROWNE: Dan, can you put up
 2 Legislative Exhibit 3, and I'd ask that that be
 3 marked as Albrecht Exhibit 3.
 4 (Whereupon, Exhibit 3 was
 5 marked for identification.)
 6
 7 BY MR. BROWNE:
 8 Q. Mr. Albrecht, can you take a look at,
 9 please.
 10 Are you familiar with this document,
 11 Mr. Albrecht?
 12 A. I am, yes.
 13 Q. Can you tell us what it is?
 14 A. It is a media release that I sent on
 15 March 27 announcing the availability of drive-up
 16 in-person absentee voting.
 17 Q. And when did the Commission establish
 18 drive-up early voting?
 19 A. It was the Saturday -- a week before
 20 the Saturday preceding the election. I'm sure
 21 the date is on here somewhere.
 22 March 28.

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1 Q. Mr. Albrecht, if you look down to the
 2 third paragraph, it states, "Early voting was
 3 temporarily suspended in Milwaukee so that an
 4 assessment could be made of Center for Disease
 5 Control guidelines on best practices to reduce
 6 Covid-19 exposure risk during voting."
 7 Do you see that?
 8 A. I do, yes.
 9 Q. Okay. Was early voting, other than
 10 this drive-up early voting that this release is
 11 talking about, ever reinstated?
 12 A. No. I mean, early voting other --
 13 there were no other early voting or in-person
 14 absentee voting opportunities other than the
 15 drive-up that is referenced in this document.
 16 Q. Mr. Albrecht, how many people took
 17 advantage of this drive-up early voting?
 18 A. I don't recall that exact statistic.
 19 Q. Do you have an estimate or a ballpark?
 20 A. I would estimate it to be around -- I
 21 want to say it was just around 6,000 --
 22 Q. Is that --

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1 A. -- 6,000 residents.
 2 Q. Is that number comparable to what
 3 normal early voting looks like in a normal
 4 election cycle in Milwaukee?
 5 A. The number of participants in early
 6 voting varies pretty significantly based on
 7 anticipated turnout for the election. So in
 8 comparing it to the April 2016 presidential
 9 primary, we actually had more people, about a
 10 46 percent increase early vote in the city of
 11 Milwaukee in this election than in that
 12 presidential primary.
 13 Q. I think you mentioned in-person
 14 absentee voting was suspended.
 15 When did the Commission suspend that
 16 type of voting?
 17 A. It would have been -- I'm going to have
 18 to -- I'd have to look at a calendar.
 19 It would have been -- let's see -- a
 20 week -- I believe it was March 20. Would have
 21 been --
 22 Q. Sorry. Go ahead. Go ahead.

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1 A. It was a Friday. Would have been the
 2 last day for in-person absentee voting, and it
 3 was announced on a Sunday.
 4 Q. Does March 22 sound right?
 5 A. It does, yes.
 6 Q. Okay. Could you tell us why in-person
 7 absentee voting was suspended?
 8 A. For the reason that I had previously
 9 described?
 10 Do you want me to repeat that?
 11 Q. Sure.
 12 A. That there was a -- so when we're
 13 talking about in-person absentee voting and
 14 early voting, we're talking about the same
 15 thing; correct?
 16 Q. I thought they were different. If you
 17 think they're different, can you explain the
 18 differences.
 19 A. No, I'm saying that they are the same.
 20 I just want to make sure that we're clear on
 21 that.
 22 Q. Okay.

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1 A. So the in-person absentee voting was
 2 suspended because the site supervisors at our --
 3 and the election workers at our three in-person
 4 an voting sites were concerned about their risk
 5 and exposure to Covid-19.
 6 Q. Mr. Albrecht, did the Commission at
 7 some point limit the number of polling locations
 8 it was going to have --
 9 A. Yes.
 10 Q. -- for the April 7 election?
 11 Sorry.
 12 A. Yes.
 13 Q. And when was that done?
 14 A. I believe the announcement was made on
 15 April 4. Of the five centers was made on
 16 April 4.
 17 Q. And, Mr. Albrecht, why was that done?
 18 A. We did a final assessment of the number
 19 of election workers that were available to us,
 20 including the election workers that had been
 21 recruited, that had gone through training, and
 22 we went back and contacted everyone who

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1 indicated that they were going to work and found
 2 that we had lost additional people.
 3 I believe at its lowest, which would
 4 have been right around this time, our election
 5 worker staffing was somewhere around 300 to 350
 6 people. It was more than evident that we would
 7 not be able to staff our 180 sites -- at one
 8 time we had considered 45 sites; at one time we
 9 had considered 15 sites -- and that, at best, we
 10 would have a sufficient number of people to
 11 administer the election and also ensure all of
 12 the precautions that had been recommended by the
 13 health department at five sites.
 14 Q. So on April 7 the City of Milwaukee had
 15 five polling locations; is that correct?
 16 A. That's correct.
 17 Q. And I know it's been stated in the
 18 press a bunch of times, but how many polling
 19 locations does the City of Milwaukee normally
 20 have during an election?
 21 A. 180.
 22 MR. BROWNE: Excuse me just for a

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1 second. Somebody is not on mute, and I'm
 2 getting some conversation. So if everybody
 3 could mute their lines. Thank you.
 4 Q. Mr. Albrecht, did the Commission learn
 5 at some point that the government authorized
 6 National Guard members to serve as poll workers?
 7 A. We did; that's correct.
 8 Q. When did the Commission learn that?
 9 A. I believe it was the Saturday preceding
 10 the election, which would have been -- it was
 11 either April 3 or April 4.
 12 Q. Did the Commission request National
 13 Guard members to serve as poll workers?
 14 A. Yes.
 15 Q. How many did the Commission request?
 16 A. 500.
 17 Q. And were National Guard members made
 18 available to the Commission and to Milwaukee?
 19 A. Yes.
 20 Q. How many?
 21 A. We ended up with approximately 270.
 22 Q. And they were made available to you on

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<p>1 April 4; is that correct?</p> <p>2 A. We did not meet them for the first</p> <p>3 time, if that would -- if that's consistent with</p> <p>4 "made available," we did not meet them for the</p> <p>5 first time until Monday, April 6.</p> <p>6 Q. [Inaudible.]</p> <p>7 A. I'm sorry?</p> <p>8 (The reporter requested clarification.)</p> <p>9 MR. BROWNE: Sure.</p> <p>10 Q. Mr. Albrecht, did you know that you</p> <p>11 were getting 270 Guard members by April 4?</p> <p>12 A. No.</p> <p>13 Q. No, you did not?</p> <p>14 A. I did not.</p> <p>15 Q. Okay. Thank you.</p> <p>16 And these 270 Guard members that were</p> <p>17 made available to assist the Commission in</p> <p>18 Milwaukee in the election, how many were placed</p> <p>19 at polling locations?</p> <p>20 A. I'm trying to remember the exact...</p> <p>21 Right around 160.</p> <p>22 Q. So 160 Guard members were placed at the</p>	<p>1 news articles from madison.com, and it was</p> <p>2 written by Briana Reilly on April 7, 2020. I</p> <p>3 want to turn your attention to the bottom of the</p> <p>4 second page.</p> <p>5 Dan, if you could scroll to the second</p> <p>6 page at the bottom.</p> <p>7 Do you see that, Mr. Albrecht?</p> <p>8 A. Yes.</p> <p>9 Q. It states, "Albrecht acknowledged that</p> <p>10 it could have been possible to perhaps open</p> <p>11 additional sites if city staff had known how</p> <p>12 many National Guard members would be available</p> <p>13 before Monday afternoon, a total he said could</p> <p>14 have been anywhere from 20 to 250 the city asked</p> <p>15 for."</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Is that an accurate representation of</p> <p>19 what you said?</p> <p>20 A. I believe so.</p> <p>21 Q. Okay. And the Monday referenced in the</p> <p>22 article was Monday, April 6; is that correct?</p>
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<p>1 five polling locations that were open?</p> <p>2 A. That's correct.</p> <p>3 MR. BROWNE: Okay. Dan can you put up</p> <p>4 Legislative Exhibit 4 and mark it as Albrecht</p> <p>5 Exhibit 4.</p> <p>6 (Whereupon, Exhibit 4 was</p> <p>7 marked for identification.)</p> <p>8 BY MR. BROWNE:</p> <p>9 Q. Mr. Albrecht, could you take a look at</p> <p>10 that article. And if you want to read it, Dan</p> <p>11 can scroll through it for you. Just tell him</p> <p>12 when you want to turn the page.</p> <p>13 THE WITNESS: Turn the page.</p> <p>14 Okay.</p> <p>15 BY MR. BROWNE:</p> <p>16 Q. Are you familiar with the article,</p> <p>17 Mr. Albrecht?</p> <p>18 A. Not this specific article, but I've</p> <p>19 certainly seen -- there was a lot of media</p> <p>20 coverage related to the April 7 election. I've</p> <p>21 certainly seen comparable articles.</p> <p>22 Q. I'll represent to you that this is a</p>	<p>1 A. That's correct.</p> <p>2 MR. BROWNE: And, Dan, if you go to the</p> <p>3 next page at the top, very top.</p> <p>4 Q. The article goes on to quote you,</p> <p>5 Mr. Albrecht, "'Had we had that information</p> <p>6 sooner, I absolutely think it could have</p> <p>7 influenced the number of voting centers.'"</p> <p>8 And further you're quoted,</p> <p>9 Mr. Albrecht, "'The timing really did not allow</p> <p>10 us to maximize their presence and think about</p> <p>11 the possibility of opening more centers.'"</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. And did you state that?</p> <p>15 A. I believe so, yes.</p> <p>16 Q. And so if the Commission staff had</p> <p>17 known about how many Guard members would be</p> <p>18 available before April 6, it would have made a</p> <p>19 difference; is that correct?</p> <p>20 A. I'm sorry. Could you repeat the</p> <p>21 question.</p> <p>22 Q. Sure.</p>

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1 So based on what you said in the
 2 article, if the Commission staff had known about
 3 how many Guard members would be made available
 4 before April 6, it would have made a difference
 5 in terms of the polling locations opened; is
 6 that correct?
 7 A. I would say it could have made a
 8 difference.
 9 MR. BROWNE: Okay. Dan, could you put
 10 up Legislative Exhibit 5, and mark it as
 11 Albrecht Exhibit 5.
 12 (Whereupon, Exhibit 5 was
 13 marked for identification.)
 14
 15 BY MR. BROWNE:
 16 Q. Mr. Albrecht, I believe you testified
 17 earlier that you knew on Saturday, April 4, you
 18 were getting 270 Guard members; is that correct?
 19 A. We didn't -- no. I testified that we
 20 became aware that we would be getting Guard
 21 members on the 4th. We didn't know the number
 22 until the 6th.

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1 Q. So you didn't know that you were
 2 getting 270 Guard members [inaudible]?
 3 A. I'm sorry. I can't hear you,
 4 Mr. Browne.
 5 Q. Sorry.
 6 You didn't know that you were getting
 7 270 Guard members until April 6?
 8 A. That's correct.
 9 MR. BROWNE: Dan, can you go to the
 10 page Bates-labeled MILW ELEC 00173.
 11 Q. Mr. Albrecht, could you look at the
 12 bottom of the page to the email dated Saturday,
 13 April 4.
 14 Do you see that?
 15 A. Yes.
 16 Q. That's an email from Claire
 17 Woodall-Vogg. And I'm sorry if I got her name
 18 wrong.
 19 Is that correct?
 20 A. Yes.
 21 Q. And is it pronounced Woodall-Vogg?
 22 A. Yes.

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1 Q. Okay. And who was Ms. Woodall-Vogg?
 2 A. She was our business systems
 3 administrator.
 4 Q. At that time; is that correct?
 5 A. Correct. And the person responsible
 6 for oversight of central count.
 7 Q. Okay. What's her position now with the
 8 Commission?
 9 A. She's executive director.
 10 Q. And if you look at that email
 11 Ms. Woodall sent, she states, "Hi all. I just
 12 received word that we will be assigned 20
 13 National Guard members at central count on
 14 Tuesday and Wednesday"; is that correct?
 15 A. Yes.
 16 Q. And she goes on to state, "I hate to
 17 muck this up and put more work on Scott and
 18 David but is there any way for us to adjust our
 19 purchase order to be for 275 people for the
 20 three meals? The last thing I want is to run
 21 out of food for people."
 22 Do you see that?

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1 A. Yes.
 2 Q. So by Saturday, April 4, Commission
 3 staff, including Ms. Woodall-Vogg, knew that at
 4 least 20 Guard members were available to assist
 5 Milwaukee; is that correct?
 6 A. I would say we were confident that we
 7 would have at least 20 Guard members to work at
 8 central count, yes.
 9 Q. She was so confident that she ordered
 10 lunch for them on April 7; correct?
 11 A. Yes.
 12 Q. Okay. How is it that the Commission
 13 staff knew enough to plan ahead for their
 14 lunch -- for the Guard members' lunch but didn't
 15 know enough to plan ahead for potential poll
 16 locations and placing Guard members at the poll
 17 locations?
 18 A. Well, what we're talking about here are
 19 a commitment of 20 National Guard members of the
 20 500 that were requested that was later reduced
 21 to 250 once we had a better understanding of the
 22 role that they would be serving.

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1 We knew we would be getting National
 2 Guard members. We had no idea how many but felt
 3 confident that we would at least have 20.
 4 Q. But in this email she knew,
 5 Ms. Woodall-Vogg -- at least one member of the
 6 Commission staff, knew that you were getting 20
 7 for sure?
 8 A. She was being proactive, correct.
 9 Q. Mr. Albrecht, can you tell me who David
 10 Kronig is?
 11 A. I believe he is a staff person for the
 12 Democratic Party of Wisconsin.
 13 Q. And what is your relationship with him?
 14 A. Well, he will -- he would occasionally
 15 contact me with questions.
 16 Q. Questions about what?
 17 A. Election preparation and administration
 18 and issues related to the April 7 election.
 19 Q. [Inaudible.]
 20 (The reporter requested clarification.)
 21 MR. BROWNE: Sorry.
 22 Q. Do you know what position Mr. Kronig

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1 holds with the Democratic Party of Wisconsin?
 2 A. I do not recall.
 3 Q. Do you know if he's the director of
 4 voter protection?
 5 A. I don't recall his title.
 6 Q. And, Mr. Kronig -- excuse me --
 7 Mr. Albrecht, you know that the Democratic Party
 8 of Wisconsin is one of the Plaintiffs in this
 9 case?
 10 A. I do, yes.
 11 MR. BROWNE: Dan, can you put up
 12 Legislative Exhibit 6 and mark it as Albrecht
 13 Exhibit 6.
 14 (Whereupon, Exhibit 6 was
 15 marked for identification.)
 16 MR. BROWNE: And for the record, this
 17 is an email string between Mr. Kronig and
 18 Mr. Albrecht, with the last email in the string
 19 dated March 12, 2020, at 9:54 a.m., with the
 20 subject line "Early Voting."
 21 THE WITNESS: Okay.
 22 BY MR. BROWNE:

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1 Q. Mr. Albrecht, are you familiar with
 2 this email string?
 3 A. I vaguely recall it, yes.
 4 Q. Okay. Can you tell me what the email
 5 string is about?
 6 A. It would appear that Mr. Kronig
 7 contacted me on March 11 to alert me that
 8 Madison was starting their early voting program
 9 on that date -- or the next day -- I'm sorry --
 10 Thursday the 12th, and would Milwaukee be doing
 11 anything similar or staying with what had been
 12 our published schedule of starting on Monday.
 13 And I responded that we would be starting early
 14 voting on Monday, which had been our published
 15 date.
 16 Q. Why is Mr. Kronig emailing you about
 17 the start of early voting?
 18 A. I would characterize it as he had a
 19 question. We get questions from the political
 20 parties, from candidates and from the public all
 21 the time related to voting.
 22 Q. Did you ever send emails to Mr. Kronig,

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1 or did you always just respond to his questions?
 2 A. I don't recall. It seems like mostly I
 3 would respond to questions.
 4 MR. BROWNE: Dan, can you put up
 5 Legislative Exhibit 7 and mark it as Albrecht
 6 Exhibit 7, please.
 7 (Whereupon, Exhibit 7 was
 8 marked for identification.)
 9 BY MR. BROWNE:
 10 Q. Mr. Albrecht, can you please take a
 11 look at that, and let me know when you've had a
 12 chance.
 13 And just for the record, this is an
 14 email string between Mr. Kronig and
 15 Mr. Albrecht, with the last email in the string
 16 dated March 22, 2020, at 9:13 p.m., a Sunday,
 17 with the subject line "In-Person Absentee."
 18 A. Okay. I've reviewed it.
 19 Q. Can you tell us about this email
 20 string?
 21 A. It would appear that on March 22
 22 Mr. Kronig became aware of the fact that we had

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<p style="text-align: right;">Page 53</p> <p>1 suspended in-person absentee voting and then 2 asks if the -- references a court case; asks if 3 the city has considered any sort of a 4 drive-through model or by appointment. 5 I reply by stating that I didn't think 6 that the city maybe was the first vote, would 7 not be the last to suspend in-person voting; 8 that our early -- that our decision was largely 9 based on the daily increase in cases; and that I 10 would be regrouping with staff to discuss if we 11 could offer some form of -- some other form of 12 in-person voting that would be safer. 13 And then he -- and then Mr. Kronig asks 14 for me to keep him in the loop. 15 Q. What did you understand Mr. Kronig to 16 mean when he said "keep me in the loop"? 17 A. That because I indicated that I would 18 be meeting with staff to look at what our 19 options might be to continue some form of early 20 voting, he was asking me to let him know as 21 things evolved. 22 Q. Mr. Albrecht, didn't the Commission</p>	<p style="text-align: right;">Page 55</p> <p>1 Mr. Albrecht, with the last email in the string 2 dated March 25, 2020, at 6:20 p.m., with a 3 subject line of "Curbside Voting?" 4 Q. Mr. Albrecht, can you tell us what this 5 email string is about? 6 A. Mr. -- can I read the -- what's on this 7 page, or just based on what was on the first 8 page? 9 Q. Oh, sure. If you need time to read 10 that, go ahead, please. 11 A. So the email begins with Mr. Kronig 12 asking if I've had contact with Maribeth 13 Witzel-Behl, who is the city clerk for the City 14 of Madison, regarding Madison's drive-up -- 15 Madison's transition to drive-up early voting. 16 I reply to Mr. Kronig that -- I guess 17 in summation, that at that time Milwaukee and 18 Madison were two different cities and that 19 Milwaukee was experiencing higher cases, more 20 reported deaths, and that I felt that that was 21 presenting additional challenges to our ability 22 to offer any kind of in-person absentee voting,</p>
<p style="text-align: right;">Page 54</p> <p>1 make all its actions public, similar to the 2 releases we looked at earlier? 3 A. We definitely tried, yes. 4 MR. BROWNE: Dan, could you put up 5 Legislative Exhibit 8 and mark it as Albrecht 6 Exhibit 8. 7 (Whereupon, Exhibit 8 was 8 marked for identification.) 9 BY MR. BROWNE: 10 Q. And, Mr. Albrecht, take a look at that, 11 and let me know when you've had a chance. And 12 this is a multipage document, so if you need him 13 to scroll -- if you need Dan to scroll, he can 14 do that for you. 15 A. Yeah, it might be easier to start from 16 the first. 17 Q. Sure. 18 So Dan can you scroll to the next page. 19 THE WITNESS: Thank you. 20 Okay. 21 MR. BROWNE: And for the record, this 22 is an email string between Mr. Kronig and</p>	<p style="text-align: right;">Page 56</p> <p>1 and that certainly my priority was the health 2 and safety of my staff and our election workers. 3 Mr. Kronig responded by saying that he 4 sympathized. That would just be my summary of 5 his response: that he sympathized with our 6 situation, but he was hoping that we would be 7 able to establish -- I mean, encourage -- we'd 8 be able to come between a -- find a balance 9 between health and safety and access to voting. 10 Q. Did you understand why Mr. Kronig 11 wanted you to connect with Maribeth? 12 A. I mean, there was a lot of conversation 13 across the state, I'd say municipal clerk to 14 municipal clerk, county clerk to county clerk, 15 many of the municipalities talking to the 16 Wisconsin Elections Commission, all of us trying 17 to figure out how to manage this concept of 18 in-person absentee voting or early voting. 19 And I think that Mr. Kronig, for 20 reasons that I cannot recall, became aware of 21 Madison's model and wanted to be sure that I was 22 aware of it. And I think that was the rationale</p>

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<p>1 or the impetus behind the email.</p> <p>2 Q. And the position you expressed in your</p> <p>3 response, did that position ever change?</p> <p>4 A. I did convene additional meetings with</p> <p>5 my staff, and they had been ongoing. They</p> <p>6 certainly weren't -- how do you say? -- they</p> <p>7 weren't -- this email exchange was not the</p> <p>8 impetus behind those meetings.</p> <p>9 But we continued to look at statutory</p> <p>10 requirements, how we were going to provide</p> <p>11 access to registration in the clerk's office,</p> <p>12 and whether or not we could come up with a model</p> <p>13 of drive-up early voting in the city of</p> <p>14 Milwaukee, and eventually did come up with a</p> <p>15 model that we were all comfortable with in terms</p> <p>16 of having the staff willing to do it and not in</p> <p>17 any way compromising the health and safety</p> <p>18 aspect or the voting integrity aspects.</p> <p>19 Q. And did the Commission implement that</p> <p>20 early drive-up voting?</p> <p>21 A. Yes.</p> <p>22 Q. And that was the release we saw</p>	<p>1 Q. Can you tell us what this email is</p> <p>2 about?</p> <p>3 A. Since Mr. Kronig had asked me to keep</p> <p>4 him in the loop on whether or not Milwaukee was</p> <p>5 able to reestablish some form of early voting or</p> <p>6 in-person absentee voting, when we sent out the</p> <p>7 media release, I also forwarded it to him. I'm</p> <p>8 basically responding to his request.</p> <p>9 Q. Okay. [Inaudible.]</p> <p>10 (The reporter requested clarification.)</p> <p>11 MR. BROWNE: Sure.</p> <p>12 Q. Mr. Albrecht, the media release was</p> <p>13 done the same day as that email?</p> <p>14 A. I believe so. I tend to date the media</p> <p>15 release, and I see a date of March 27, and I see</p> <p>16 this email was sent March 27. So I believe so,</p> <p>17 yes.</p> <p>18 MR. BROWNE: Dan, can you put up</p> <p>19 Legislative Exhibit 10 and mark that as Albrecht</p> <p>20 Exhibit 10.</p> <p>21 (Whereupon, Exhibit 10 was</p> <p>22 marked for identification.)</p>
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<p>1 earlier; is that correct?</p> <p>2 A. That's correct.</p> <p>3 Q. Okay.</p> <p>4 MR. BROWNE: Dan, could you put up</p> <p>5 Legislative Exhibit 9 and mark it as Albrecht</p> <p>6 Exhibit 9.</p> <p>7 (Whereupon, Exhibit 9 was</p> <p>8 marked for identification.)</p> <p>9 BY MR. BROWNE:</p> <p>10 Q. Mr. Albrecht, could you look at that</p> <p>11 document.</p> <p>12 A. Yes. I think I think's -- it's moving</p> <p>13 around on the page.</p> <p>14 There we go.</p> <p>15 Q. There it is.</p> <p>16 Mr. Albrecht, why don't you take a look</p> <p>17 at that.</p> <p>18 And just for the record, this is an</p> <p>19 email between Mr. Albrecht and Mr. Kronig dated</p> <p>20 March 27, 2020, at 7:39 p.m., a Friday night,</p> <p>21 with the subject line "Milwaukee Resuming IPAV."</p> <p>22 A. Yes.</p>	<p>1 BY MR. BROWNE:</p> <p>2 Q. Mr. Albrecht, can you take a look at</p> <p>3 this. Again, this is a multipage document.</p> <p>4 It's two pages. There's not much on the second</p> <p>5 page.</p> <p>6 And for the record, this is an email</p> <p>7 between Mr. Kronig and John Devaney dated</p> <p>8 March 30, 2020, and contains a forwarded email</p> <p>9 dated March 29, 2020, at 5:07 p.m., on a Sunday,</p> <p>10 from Mr. Albrecht to Mr. Kronig, with a subject</p> <p>11 line of "Milwaukee Polling Location Alert."</p> <p>12 There's not much to the email,</p> <p>13 Mr. Albrecht.</p> <p>14 A. Okay.</p> <p>15 Q. And I'm just focusing on the forwarded</p> <p>16 email, your email to Mr. Kronig.</p> <p>17 Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. Why did you send that email to</p> <p>20 Mr. Kronig on Sunday evening of March 29?</p> <p>21 A. To make him aware of a media release.</p> <p>22 I don't know the -- I don't recall the subject</p>

15 (Pages 57 to 60)

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<p>1 line, what the origin of that is, but I could 2 speculate that it was related to a media release 3 about polling locations. 4 Q. Do you know what the attachment was 5 that you asked him to look at? 6 A. I don't, no. I don't even see that 7 there was an attachment. 8 Q. On March 29 had the Milwaukee polling 9 place locations been released to the public at 10 that point? 11 A. No. But I do not believe that's what 12 this was. 13 Q. And the subject line -- but the subject 14 line of the email that you sent to Mr. Kronig 15 was "Milwaukee Polling Location Alert"; is that 16 correct? 17 A. It is. I believe we had sent out a 18 previous alert to the public, a media 19 advisement, at that time indicating that the 20 City of Milwaukee was looking at a model of 21 having between 10 and 12 voting locations, and 22 that was published in the media as well.</p>	<p>1 Q. Mr. Albrecht, could you take a look at 2 this. And again this is a multipage document. 3 Dan, if you could do this side by side, 4 that would be great. 5 Just for the record, this is an email 6 string between Mr. Kronig and Mr. Albrecht, with 7 the last email in the string dated April 2, 8 2020, at 11:00 a.m., with the subject "Poll 9 Sites?" 10 A. Okay. 11 MR. BROWNE: Dan, if we could focus on 12 the second page, the first email in that string. 13 Q. Mr. Albrecht, do you see that? 14 A. I do. 15 Q. Mr. Kronig wrote to you, "Any chance 16 you can give me a preview of where they'll be? 17 Or let me know when the sites will be 18 announced?" 19 Do you see that? 20 A. Yes. 21 Q. Why did Mr. Kronig want a preview? 22 A. I couldn't speak -- I can't speak for</p>
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<p>1 MS. UMBERGER: Robert, this is Michelle 2 Umberger, the Democratic Party of Wisconsin's 3 counsel. I would like to note that it appears 4 there was a privileged part of this email that 5 was inadvertently produced. 6 It doesn't sound like you're going to 7 be looking at that portion of the email, but we 8 would like to replace this exhibit with a 9 properly redacted version at the end of the 10 deposition. 11 MR. BROWNE: Michelle, I don't have a 12 problem with that. I specifically stayed away 13 from that inquiry. I'm not sure there's any 14 privileged material in there, but I understand, 15 and I don't have a problem with that. 16 MS. UMBERGER: Thank you. 17 MR. BROWNE: Dan, can you put up 18 Legislative Exhibit 11 and mark it as Albrecht 19 Exhibit 11. 20 (Whereupon, Exhibit 11 was 21 marked for identification.) 22 BY MR. BROWNE:</p>	<p>1 him. 2 Q. Okay. Did you agree to provide the 3 preview? 4 A. I told him that once the plan was set, 5 I would be happy to share it with him. I 6 wouldn't interpret that as agreeing to a 7 preview. 8 Q. Okay. 9 If you turn to the second page, Dan, at 10 the bottom. Could you highlight that email, 11 Dan, or blow it up. 12 Mr. Albrecht it says -- it states -- 13 and you wrote this in a March 31, 2020, email at 14 4:43 p.m. to Mr. Kronig. You state, "Yes, 15 definitely. I'm working on the plan now -- or 16 trying to, anyway." 17 So did you agree to give him the 18 preview? 19 A. Not a preview. What I was agreeing to 20 was that when our polling place plan was set, I 21 was certainly willing to share it with him and 22 the public.</p>

16 (Pages 61 to 64)

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1 MR. BROWNE: If you'd go to the last
 2 email in the string, which is the first email on
 3 the top of the first page.
 4 Q. Do you see that, Mr. Albrecht?
 5 A. I do.
 6 Q. It states, "Neil, I'm sure you've been
 7 giving this a lot of thought, but I wanted to
 8 put in a plug that all polling sites function as
 9 satellite city halls so that any voter could
 10 vote at any of these sites."
 11 Do you see that?
 12 A. I do, yes.
 13 Q. What did you understand Mr. Kronig to
 14 mean in this email?
 15 A. That however many voting sites the City
 16 of Milwaukee established, that voters would be
 17 available to appear at any of those sites,
 18 regardless of where they lived in the city.
 19 MR. BROWNE: Dan, can you put up
 20 Legislative Exhibit 12 and mark it as Albrecht
 21 Exhibit 12.
 22 (Whereupon, Exhibit 12 was

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1 marked for identification.)
 2 MR. BROWNE: This is another multipage
 3 document.
 4 Dan, could you put them side by side.
 5 Q. Mr. Albrecht, why don't you take a look
 6 at that, and let me know when you're done.
 7 And for the record, this is an email
 8 string between Mr. Kronig and Mr. Albrecht, with
 9 the last email in the string dated April 2,
 10 2020, at 9:42 p.m., with the subject line of
 11 "Judge's Order."
 12 A. Okay.
 13 Q. If you look -- Mr. Albrecht, if you
 14 look at the first page -- the top of the first
 15 page, there's two emails there.
 16 The first is an email that you wrote on
 17 April 2, 2020, at 7:31 p.m.
 18 Do you see that?
 19 A. Yes.
 20 Q. And you wrote to Mr. Kronig, "Thanks.
 21 BTW, we are extending weekend hours from the
 22 initial 10-3 to 8-5 for drive-up. Release to be

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1 sent out tomorrow"; is that correct?
 2 A. It is.
 3 Q. Why did you write this to Mr. Kronig?
 4 A. To make Mr. Kronig aware.
 5 Q. Okay. And obviously this was
 6 information that had not been released to the
 7 public by the Commission; is that correct?
 8 A. It sounds like the release was going
 9 out the next day, given the time that I sent
 10 this email.
 11 MR. BROWNE: Dan, if we could put up
 12 Legislative Exhibit 13 and mark it as Albrecht
 13 Exhibit 13.
 14 (Whereupon, Exhibit 13 was
 15 marked for identification.)
 16 BY MR. BROWNE:
 17 Q. Mr. Albrecht, why don't you take a look
 18 at that, and let me know when you're done.
 19 For the record, this is an email string
 20 between Mr. Kronig, Mr. Albrecht and Mr. Matthew
 21 O'Neill, with the last email in the string dated
 22 April 7, 2020, at 11:34 a.m., with the subject

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1 line of "Long Lines at South Division and
 2 Riverside."
 3 A. Okay. I've reviewed it.
 4 Q. If you look at the second email -- the
 5 second-to-last email in the string, which is the
 6 email on -- sorry.
 7 If you look at the first email in the
 8 string, it's from April 7, 2020, at 11:17 a.m.
 9 Do you see that?
 10 A. I do, yes.
 11 Q. Okay. Mr. Kronig wrote, "Neil, hope
 12 you're hanging in. We're getting reports of
 13 especially long lines at South Division and
 14 Riverside. I assume you're maxed out in poll
 15 worker capacity, but wondering if you have
 16 the [sic] ability to shift people around to help
 17 out?"
 18 Do you see that?
 19 A. I do, yes.
 20 Q. Do you understand what Mr. Kronig was
 21 asking?
 22 A. I interpreted his question to be that

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1 there were lines at South Division and Riverside
 2 that our poll workers were assigned, but was it
 3 maybe possible to move some people from the
 4 sites that didn't have lines to the sites that
 5 did have lines.
 6 Q. Mr. Kronig sent this email in the midst
 7 of the election on April 7, 2020; is that
 8 correct?
 9 A. Correct.
 10 Q. You're pretty busy during an election;
 11 right?
 12 A. I am, yes.
 13 Q. Especially the April 7, 2020, election;
 14 correct?
 15 A. Correct.
 16 Q. But you took the time to respond to
 17 Mr. Kronig; is that correct?
 18 A. I did, yes.
 19 Q. And by the way, who is Mr. Matthew
 20 O'Neill?
 21 A. I know him to be an attorney who
 22 sometimes works with the Democratic Party.

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1 Q. Do you know if Mr. O'Neill was
 2 representing the Democratic Party in Wisconsin
 3 during the April 2020 election?
 4 A. I do not.
 5 MR. BROWNE: Dan, can you put up
 6 Legislative Exhibit 14.
 7 (Whereupon, Exhibit 14 was
 8 marked for identification.)
 9 BY MR. BROWNE:
 10 Q. And, Mr. Albrecht, this is a multipage
 11 email, so if you want to read it, you can start
 12 at the last page and have Mr. -- or have Dan
 13 scroll through it. It's about four or five
 14 pages.
 15 THE WITNESS: You can go to the
 16 previous page -- or the next page.
 17 MR. BROWNE: And just for the record,
 18 this is an email string between Mr. Kronig,
 19 Mr. Albrecht and Mr. O'Neill, Theresa Gabriel
 20 and Christopher Meuler, with the last email in
 21 the string dated April 7, 2020, at 8:15 p.m.,
 22 with the subject line of "Voting Lines."

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1 THE WITNESS: You can go to the next
 2 page.
 3 Go to the next page.
 4 I feel like there's a page missing.
 5 What was the page...
 6 (Discussion held off the record.)
 7 THE WITNESS: You can go all the way
 8 back to the beginning.
 9 Yeah, stop right there. Thank you.
 10 Okay.
 11 BY MR. BROWNE:
 12 Q. Did you have a chance to look at it,
 13 Mr. Albrecht?
 14 A. I did, yes.
 15 Q. Okay. Who is Theresa Gabriel?
 16 A. She was the deputy director.
 17 Q. Deputy director of the Commission?
 18 A. Correct.
 19 Q. And do you know who Christopher Meuler
 20 is?
 21 A. I don't, no. I don't recall who that
 22 was.

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1 Q. Do you know if he's an attorney?
 2 A. I don't know.
 3 Q. If you look on the first page, it's the
 4 third-to-last email in the string. It's the
 5 email on April 7, 2020, at 7:50 p.m., and it's
 6 from Mr. O'Neill.
 7 Do you see that?
 8 A. Yes.
 9 Q. Mr. O'Neill wrote to you and garbled.
 10 (The reporter requested clarification.)
 11 MR. BROWNE: I'll start again.
 12 Q. Mr. O'Neill wrote to you and
 13 Mrs. Gabriel. It states, "Neil and Terri, is
 14 there any [sic] chance you could (if you have
 15 not already) tell your five chiefs to have a
 16 poll worker go stand at the end of the line at
 17 8:00 p.m. and remind people in the line that
 18 they can vote?"
 19 Do you see that?
 20 A. I do, yes.
 21 Q. Why did Mr. O'Neill write this to you?
 22 A. I don't know. I believe he was just

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1 making a suggestion.
 2 Q. Okay. Did he write that to you and
 3 Ms. Gabriel because he knew you would take that
 4 action?
 5 A. I didn't -- no, I wouldn't agree with
 6 that.
 7 Q. Okay. Why do you think he wrote that
 8 to you?
 9 A. As a suggestion. We have a lot of
 10 people who make suggestions when it comes to our
 11 administration of elections. I just took this
 12 as one of those suggestions.
 13 Q. All right. Let's look at your
 14 response, which is the email above that. It's
 15 on April 7 at 8:14 p.m.
 16 Do you see that?
 17 A. Yes.
 18 Q. And in response you wrote to
 19 Mr. O'Neill, "Each site has placed a person at
 20 the end of the line"; is that correct?
 21 A. Correct.
 22 Q. So you took that suggestion; is that

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1 right?
 2 A. It's -- it was our protocol regardless
 3 of Mr. O'Neill's suggestion. It's pretty
 4 standard, including in advisements from the
 5 Wisconsin Elections Commission, that when the
 6 polls close at 8:00 p.m. and there is a line, to
 7 put a person at the end of that line.
 8 Q. And, Mr. Albrecht, again, this is
 9 another email on April 7, Election Day, that you
 10 responded to; is that correct?
 11 A. Correct.
 12 MR. BROWNE: Dan, could you put up
 13 Legislative Exhibit 15, and I'd like that marked
 14 as Albrecht Exhibit 15.
 15 (Whereupon, Exhibit 15 was
 16 marked for identification.)
 17 MR. BROWNE: This is a one-page
 18 document.
 19 Q. Mr. Albrecht, can you take a look at
 20 that. Let me know when you've finished.
 21 For the record, this is an email string
 22 between Mr. Kronig, Mr. Albrecht and

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1 Mr. O'Neill, with the last email on the string
 2 dated April 12, 2020, at 6:07 p.m., on Sunday,
 3 with the subject line of "Absentee Ballots
 4 Without Postmarks."
 5 (Discussion held off the record.)
 6 THE WITNESS: I'm sorry. Because of
 7 that, I lost track of what you had previously --
 8 I'm sorry. Mr. Browne, did you ask a question
 9 related to this email?
 10 BY MR. BROWNE:
 11 Q. No, Mr. Albrecht. I just asked you to
 12 take a look at it and let us know when you're
 13 finished.
 14 A. I'm finished. Thank you.
 15 Q. Okay. If you look at the first email
 16 in the string on April 12 at 2:06 p.m. -- do you
 17 see that?
 18 A. I do, yes.
 19 Q. Mr. Kronig writes to you, "Neil, given
 20 the lack of guidance from WEC on the ballots
 21 that came in after April 7 by mail but without
 22 postmarks or with illegible or undated

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1 postmarks, I was hoping you could share how
 2 Milwaukee plans to count [sic] these [sic]
 3 ballots. We are trying to develop
 4 recommendations on what categories of ballots we
 5 think should be counted but would not want to
 6 put out something that is more restrictive than
 7 what you are planning."
 8 Do you see that?
 9 A. I do.
 10 Q. Do you understand what Mr. Kronig was
 11 asking there?
 12 A. I think he was asking what Milwaukee's
 13 plan was going to be for addressing the issue of
 14 ballots received after April 7 and without
 15 postmarks.
 16 Q. And if you look up at the top, it's
 17 just a -- an email from you to Mr. Kronig and
 18 Mr. O'Neill.
 19 Do you see that? There's no text.
 20 A. I think what I sent him was the
 21 attachment.
 22 Q. And what was the attachment?

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1 A. The agenda for our board of election
 2 commissioners that was going to be meeting to
 3 discuss how to handle the absentee ballots
 4 without postmarks.
 5 Q. And you sent that on Sunday evening at
 6 6:07 p.m.; is that correct?
 7 A. Correct.
 8 Q. And did the attachment say anything
 9 about Milwaukee's plans to count or not count
 10 ballots that came in after April 7 by mail but
 11 without postmarks or with illegible or undated
 12 postmarks?
 13 A. Without seeing the attachment, I
 14 would -- I could speculate with relative
 15 confidence that it was just a meeting agenda
 16 which would have indicated that the Commission
 17 were going to be discussing the item, without
 18 any kind of additional information as to what
 19 our plan was to be.
 20 Q. Okay. And this attachment was
 21 titled -- it looks like a date, "04132020 BOC
 22 Meeting Agenda.pdf"; is that right?

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1 A. Correct.
 2 Q. And the date of your email was the
 3 April 12.
 4 Had the board of meeting agenda -- has
 5 the board of commissioners meeting agenda been
 6 released to the public at that point?
 7 A. It would have been, yes.
 8 MR. BROWNE: Okay. If this is an
 9 appropriate time for everybody -- and I think
 10 the court reporter definitely wants one -- can
 11 we just take like a five- or -- how about a
 12 ten-minute break?
 13 THE REPORTER: Sounds great. Thank
 14 you.
 15 MR. McCLAIN: Sounds good.
 16 MR. BROWNE: Great. We can go off the
 17 record, Dan.
 18 (Recess taken.)
 19 THE VIDEOGRAPHER: The time is
 20 10:47 a.m. We're back on the record.
 21 BY MR. BROWNE:
 22 Q. Mr. Albrecht, just kind of a cleanup

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1 question: From all those emails we saw where
 2 you were either a recipient or a sender, you
 3 actually received those emails or sent those
 4 emails; is that correct?
 5 A. That's correct.
 6 Q. Okay. Thanks.
 7 All right. Now I kind of want to skip
 8 subjects, and I want to talk about the upcoming
 9 elections in August, and in particular the
 10 upcoming election in November 2020.
 11 Mr. Albrecht, can you tell us: What
 12 preparations has the Commission undertaken place
 13 for the upcoming 2020 elections?
 14 A. Well, certainly April 7 was a learning
 15 experience for us, and we have considerably more
 16 time now in our preparations. So we have
 17 broadened and phased in some new election worker
 18 recruitment efforts, first and foremost.
 19 We've done some education work with the
 20 facilities that we use for voting purposes and
 21 have been able to rebuild our base of voting
 22 sites for the city of Milwaukee.

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1 We have worked with the health
 2 department and vendors on expanding the
 3 availability of PPE for use at our polling
 4 places, but also just trying to make sure that
 5 we are implementing protocols that provide the
 6 highest level of safety to our election workers
 7 and to the public during in-person voting.
 8 We've assessed the sites that we use
 9 for in-person voting in the city of Milwaukee.
 10 We have launched a program called SafeVote in
 11 Milwaukee, which is designed to encourage the
 12 public -- encourage residents of the city to
 13 think about by-mail absentee voting as the
 14 safest voting method, given the possibility or
 15 even probability of a resurgence of Covid-19
 16 cases in the fall.
 17 We've streamlined a lot of our
 18 processes, particularly those related to by-mail
 19 absentee voting, again based on our experiences
 20 in April, just to make sure that we are handling
 21 requests with the greatest level of quality
 22 control and accuracy and that we are getting

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1 ballots out to residents in a timely manner.
 2 We've worked with the Wisconsin
 3 Elections Commission on the phasing in of the
 4 intelligent barcodes on those absentee ballots
 5 and making the public aware of those barcodes as
 6 a mechanism for tracking the status of their
 7 absentee ballots.
 8 We've established more drop box
 9 locations in the city of Milwaukee, just
 10 anticipating more people wanting to take their
 11 ballots to drop box locations instead of the
 12 post office.
 13 And other -- other planning, again,
 14 just always discussing what our experiences were
 15 with April 7 and trying to do everything that we
 16 can to alleviate some of the barriers to voting
 17 that residents in the city experienced in April.
 18 So our plan is sort of designed around that.
 19 Q. Has the Commission received a survey
 20 from the Wisconsin Elections Commission as to
 21 sanitation and PPE supplies it might need for
 22 the August and November 2020 elections?

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1 A. I don't believe we did. I believe
 2 those surveys go to the counties, and we
 3 received a request for that information through
 4 the Milwaukee County Election Commission.
 5 Q. Did the Commission respond to that
 6 survey?
 7 A. We did, yes.
 8 Q. And what did the Commission request in
 9 terms of sanitation and PPE supplies for the
 10 August and November 2020 elections?
 11 A. We reviewed all of the supplies that
 12 were being made available by the state and based
 13 our order on the operation of 180 voting sites
 14 and approximately 1,200 election workers. So
 15 masks, pens, disinfectant, all of the supplies
 16 that the state is anticipating again making
 17 available.
 18 Q. Has the Commission or Milwaukee
 19 received those supplies yet?
 20 A. We have not. I believe they're due
 21 toward the end of next week.
 22 Q. Okay. Does the Commission intend to

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1 update its requests for sanitation and PPE
 2 supplies as the August and November 2020
 3 elections approach?
 4 A. I don't think we'll have to update our
 5 request for the August election, but we'll
 6 certainly review between the August and the
 7 November election.
 8 Q. Has the Commission applied for funding
 9 or grant money through the CARES Act?
 10 A. We have through the Wisconsin Elections
 11 Commission.
 12 Q. And how much money did the Commission
 13 apply for under the CARES Act?
 14 A. I believe it was right around \$320,000,
 15 the maximum amount that was available to the
 16 City of Milwaukee.
 17 Q. And do you know if the city -- or do
 18 you know if the Commission has received that
 19 grant money?
 20 A. Yes.
 21 Q. It did?
 22 A. Yes.

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1 Q. And all 320,000?
 2 A. Correct.
 3 Q. Okay. And what can that money be used
 4 for?
 5 A. The state provided a criteria of
 6 eligible expenses, mostly related to
 7 unanticipated costs from the Covid-19 pandemic.
 8 So if I -- I have not seen the list for some
 9 time, since we submitted our application for
 10 funding, but I believe it was things like
 11 absentee ballot, postage expenses, materials,
 12 PPE. Unintended expenses that relate to the
 13 Covid-19 P pandemic.
 14 Q. Mr. Albrecht, you mentioned Intelligent
 15 Mail barcodes.
 16 A. Uh-huh.
 17 Q. Have you been in discussions with the
 18 Wisconsin Elections Commission about Intelligent
 19 Mail barcodes?
 20 A. I have not specifically, but I know
 21 members of my staff have.
 22 Q. And what have those discussions

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1 entailed?

2 A. Reviewing how the intelligent barcode

3 will be placed on the envelope and its use and

4 how that information is then integrated into

5 My Vote, which is the public portal for a voter

6 to track the status of their absentee ballot.

7 Q. And does the Commission plan to adopt

8 and use Intelligent Mail barcodes?

9 A. We have already.

10 Q. Great.

11 Mr. Albrecht has the Commission applied

12 for HAVA Election Security subgrants?

13 A. I believe -- I'll just maybe preface

14 this by saying I'm a little removed from

15 activities in the department right now, but I

16 believe those dollars are available to counties

17 and not municipalities. And I've had

18 conversation with the Milwaukee County Election

19 Commission about their application, but we would

20 not be applying directly.

21 Q. Okay. Mr. Albrecht, what has the

22 Commission done with regard to poll worker

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1 recruitment -- you mentioned that before -- for

2 the 2020 -- excuse me -- for the November 2020

3 election?

4 A. We have a number of long-standing poll

5 worker recruitment strategies. Certainly we've

6 publicly announced our hiring and need for

7 additional poll workers. I would say our most

8 significant and effective strategy is we've done

9 quite a bit of outreach to community

10 organizations in the city of Milwaukee and

11 established a network of groups and

12 organizations to assist us with our outreach

13 efforts.

14 We've also reestablished contact with

15 our core group of election workers. It's a very

16 different time for the public right now when it

17 comes to the pandemic than it was on April 7, so

18 we've provided them with information related to

19 the PPE that will be available. We've talked

20 about a return to neighborhood-based voting in

21 the city of Milwaukee.

22 So between rebuilding our core and just

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1 disseminating information through the media,

2 including social media as well as outreach to

3 community organizations, to the primary

4 political parties just to encourage assistance

5 and support in our recruitment efforts.

6 Q. Does the Commission anticipate poll

7 worker shortages for the November 2020 election?

8 A. Well, Mr. Browne, that's a difficult

9 question to answer, because it would require

10 being able to anticipate where the pandemic will

11 be as we approach the November election.

12 If we see anything comparable in terms

13 of public fear and reaction that we did going

14 into the April 7 election, then it's probable

15 that we'll experience some level of shortage in

16 election workers, but at this point we are

17 anticipating full staffing levels for both

18 August and November.

19 Q. Thank you.

20 Is the Commission prepared to request

21 and use National Guard members as poll workers

22 if they're available?

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1 A. Yes.

2 Q. Mr. Albrecht, what has the Commission

3 done with regard to poll worker training for the

4 November 2020 elections?

5 A. We have transitioned from a model of

6 in-person training to virtual training classes.

7 We are offering both in-person and virtual, but

8 in-person in a large setting with a select

9 number of individuals that's based on guidance

10 that we've received from our local health

11 department.

12 Q. So the potential poll worker could be

13 trained while they're at home; is that right?

14 Through the virtual inspect?

15 A. Correct.

16 Q. Mr. Albrecht, what has the Commission

17 done with regard to local election officials and

18 election inspector training for the November

19 2020 election?

20 A. What have we done with regard to --

21 Q. Yeah.

22 Have you taken any steps to recruit

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1 local election officials or train election
 2 inspector -- train election inspectors?
 3 A. Just as I described -- I was just
 4 asking for clarification on that, because it
 5 seems similar to the previous question -- we
 6 have designed our -- a virtual training
 7 opportunity for our election inspectors, who are
 8 the same, at least by my definition, as our
 9 election workers.
 10 Q. Mr. Albrecht, how many polling
 11 locations does the Commission expect to have
 12 open for the November 2020 election?
 13 A. I would anticipate between 160 and 170.
 14 Probably closer to the 170 number.
 15 Q. Mr. Albrecht, what specific measures is
 16 the Commission going to take with regard to
 17 social distancing at polling locations for the
 18 November 2020 election?
 19 A. Well, as we did in April, we are hoping
 20 to provide floor markings, Xs for tape to assist
 21 voters with identifying the guidance around the
 22 6 feet distance. So that would be both inside

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1 elections?
 2 A. So we will provide hand sanitizer. We
 3 will provide disinfectants and wiping materials.
 4 We will provide -- we will discourage the use of
 5 sharing pens or other materials. Disinfecting
 6 voting booths after each voter cleaning all
 7 surfaces frequently. We have Plexiglas shields
 8 and face shields for our election workers.
 9 I think I've captured everything there.
 10 Q. Mr. Albrecht, what other measures is
 11 the Commission intending to take in terms of
 12 polling locations and the ability to open them
 13 and maintain a safe environment for all voters?
 14 Anything beyond what you've mentioned already.
 15 A. I was going to say probably nothing
 16 beyond what I've mentioned. But again just
 17 publishing and sharing with our election workers
 18 and our facilities.
 19 I may not have mentioned that we
 20 actually have a written protocol from the
 21 Milwaukee Health Department related to operating
 22 a voting site, and sharing that with our

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1 the voting room and allowing for a line to form
 2 in the facility.
 3 Q. Okay. And I think you previously
 4 mentioned talking with your facilities that will
 5 be polling locations.
 6 What have you discussed with the
 7 facilities that will be polling locations?
 8 A. The health and safety precautions that
 9 we will be putting in place with regard to --
 10 for example, we're making masks available to
 11 voters that appear and do not have masks. But
 12 also the disinfecting of the space. The
 13 prohibition of food buffets or food being
 14 brought into the polling place. Just letting
 15 them know in essence the precautions that we're
 16 taking to try to not compromise the safety of
 17 the facility.
 18 Q. You mentioned disinfectant of the
 19 polling locations.
 20 What specific measures is the
 21 Commission going to take with regard to hygiene
 22 at polling locations for the November 2020

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1 election workers and sharing that with those
 2 facilities.
 3 Q. [Inaudible.]
 4 (The reporter requested clarification.)
 5 MR. BROWNE: Sure.
 6 Q. The protocol you just mentioned, will
 7 the polling locations be required to follow that
 8 protocol?
 9 A. Yes.
 10 MR. BROWNE: Dan, can we put up
 11 Legislative Exhibit 16, and can we mark
 12 Legislative Exhibit 16 as Albrecht Exhibit 16.
 13 (Whereupon, Exhibit 16 was
 14 marked for identification.)
 15 BY MR. BROWNE:
 16 Q. Mr. Albrecht, you mentioned barriers
 17 that you're going to install at the various
 18 polling locations.
 19 Could we turn to the last page of this
 20 email string.
 21 And, Mr. Albrecht, if you want to read
 22 through this email string, you're welcome to.

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1 It's a multipage email. I'm going to ask you
 2 just a few really specific questions about
 3 towards the end of the email -- the email
 4 string.
 5 So if you want to take a read through
 6 it, you're welcome to, Mr. Albrecht.
 7 A. Sure.
 8 You can go to the next page.
 9 MR. BROWNE: And just for the record,
 10 Albrecht Exhibit 16 is an email string between a
 11 number of city employees, with the last email in
 12 the string dated June 22, 2020, at 10:44 a.m.,
 13 with the subject line of "Polling Place
 14 Construction Question."
 15 THE WITNESS: Okay. And the next page.
 16 Okay. Next page.
 17 Okay. Next page.
 18 Okay. Next page.
 19 Okay. That was a lot to read. I'll do
 20 my best to represent it.
 21 BY MR. BROWNE:
 22 Q. And I apologize, but I'm just going to

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1 ask you about a specific couple of those emails.
 2 A. Sure.
 3 MR. BROWNE: If we could go to the last
 4 page of this document.
 5 Q. Do you see that page, Mr. Albrecht?
 6 A. I do.
 7 Q. And that's an email from you dated
 8 May 28, 2020 at 5:46 p.m.; is that correct?
 9 A. That's correct.
 10 Q. And could you tell us what that email
 11 is about?
 12 A. It is an email that I sent to Jeff
 13 Polenske, who is the commissioner for the
 14 Department of Public Works with the City of
 15 Milwaukee, asking for contact information on
 16 someone that we could work with regarding the
 17 establishment of Plexiglas shields at our voting
 18 sites and other election worker locations.
 19 And then basically asking if he
 20 could -- if we should go through DPW to purchase
 21 those Plexiglas shields or look to an outside
 22 vendor.

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1 MR. BROWNE: And if we could scroll up
 2 to the next page, please.
 3 Q. Mr. Albrecht, is that a picture of what
 4 you were seeking to have either purchased or
 5 constructed?
 6 A. So I wasn't the sender of the email.
 7 It's difficult for me to respond, then, to their
 8 intent. But I believe this is a -- was included
 9 as a depiction of the type of shield that we
 10 were looking for, yes.
 11 Q. And do you know if the Commission
 12 purchased those Plexiglas barriers?
 13 A. We have, yes. Not those in the photo,
 14 but Plexiglas barriers have been purchased.
 15 Q. And those will be at all the polling
 16 locations?
 17 A. That's correct.
 18 Q. Mr. Albrecht, my last question: Has
 19 the Commission made any other efforts, outside
 20 of what we talked about today, to prepare for
 21 the November 2020 election?
 22 A. I'm sure we have, but nothing that I

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1 can recall at this time beyond what I stated.
 2 MR. BROWNE: Mr. Albrecht, thank you
 3 for your time. I have no further questions at
 4 this point. I think there are some other
 5 questioners who'd like to speak with you,
 6 though.
 7 MR. BROWN: Yeah, this is Kurt Brown
 8 for the Swenson Plaintiffs. We will have some
 9 questions for Mr. Albrecht. It would be great
 10 if we could take a quick break just to regroup
 11 and then hop back on and begin with that.
 12 I don't know if there's anyone else
 13 that was -- that had questions, though.
 14 THE VIDEOGRAPHER: The time is
 15 11:10 a.m. We're going off the record.
 16 (Recess taken.)
 17 THE VIDEOGRAPHER: The time is
 18 11:26 a.m. We're back on the record.
 19
 20 EXAMINATION
 21 BY MR. BROWN:
 22 Q. Hi, Mr. Albrecht. My name is Kurt

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1 Brown. I represent the Swenson Plaintiffs in
2 this action.
3 I'd like to introduce here as
4 Exhibit 17, Albrecht 17, Swenson Exhibit 6. If
5 we can put that up.
6 THE VIDEOGRAPHER: I believe the next
7 exhibit is 17. I don't know in that's what you
8 said, but if we're going sequentially, it would
9 be 17.
10 MR. BROWN: Yeah, that was the plan,
11 Albrecht 17.
12 (Whereupon, Exhibit 17 was
13 marked for identification.)
14 BY MR. BROWN:
15 Q. Mr. Albrecht, this is going to look
16 very similar to a document you saw earlier, but
17 it is different. This is a subpoena served on
18 Milwaukee, a 30(b)(6), by the Swenson Plaintiffs
19 in this action.
20 Have you seen this subpoena?
21 A. I have, yes.
22 MR. BROWN: Okay. And can we just

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1 scroll through the pages to get to the subjects
2 there so Mr. Albrecht can see the subjects here.
3 A little further. There we go. Okay.
4 Q. Okay. Mr. Albrecht, and you understand
5 that you're testifying here as the Milwaukee
6 Election Commission's designated representative;
7 correct?
8 A. Yes.
9 Q. And just to clear up any possible
10 confusion as I might use the word "you" or
11 something like that as we go through this:
12 Unless specified otherwise, all questions are
13 directed to you as the designated representative
14 of the Milwaukee Election Commission.
15 Is that understood?
16 A. Yes.
17 Q. Okay. Thank you.
18 (Discussion held off the record.)
19 MR. BROWN: Maybe we should go off the
20 record to get this --
21 THE VIDEOGRAPHER: Okay. Stand by.
22 Let me just go off the record.

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1 The time is 11:28 a.m. We're going off
2 the record.
3 (Discussion held off the record.)
4 THE VIDEOGRAPHER: The time is
5 11:30 a.m. We're back other than the record.
6 MR. BROWN: Thank you.
7 Q. Let me find where I was here,
8 Mr. Albrecht.
9 Okay. You testified earlier about some
10 of the Commission's responsibilities.
11 Do you remember that part of your
12 testimony earlier?
13 A. Yes.
14 Q. And when you testified about the
15 Commission's responsibility for the delivery of
16 absentee ballots, for example, you were not
17 speaking to whether the Commission has sole
18 responsibility for the delivery of absentee
19 ballots under Wisconsin law; is that correct?
20 A. That's correct.
21 Q. And you didn't mean to suggest that the
22 Wisconsin Elections Commission has no

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1 responsibility for the delivery of absentee
2 ballots; is that right?
3 A. That's right.
4 It might help us to define what you
5 mean by "delivery."
6 Are you talking about -- can I ask:
7 Are you talking about the, for example,
8 processing of an absentee ballot application as
9 delivery?
10 Q. Well, I'll ask it a different way.
11 The absentee ballot process, the WEC
12 has oversight over absentee ballots generally;
13 is that correct?
14 A. The WEC has oversight of the statewide
15 voter registration database, which we and all
16 municipalities use for entering absentee ballot
17 applications and processing those requests. So
18 in that regard, we do not have sole
19 responsibility.
20 Q. Okay. And opening and closing drop
21 boxes. You testified earlier that the
22 Commission has responsibility for opening and

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1 closing drop boxes.
 2 You were not speaking to whether the
 3 Commission has the sole responsibility for
 4 opening and closing drop boxes under Wisconsin
 5 law; is that correct?
 6 A. With regard to absentee ballot drop
 7 boxes -- again, just trying to understand the
 8 definition here of "sole responsibility."
 9 I would say that we do have sole
 10 responsibility in terms of doing so within the
 11 parameters of the law.
 12 Q. Now, if the WEC issued guidance on the
 13 opening and closing of drop boxes, would the
 14 Milwaukee Election Commission act in accordance
 15 with that guidance?
 16 A. Correct, yes. Yes. And all other --
 17 Q. So in that -- sorry. I didn't mean to
 18 cut you off.
 19 So in that regard, the WEC also has
 20 oversight for the opening and closing of drop
 21 boxes; is that correct?
 22 A. In that regard, yes.

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1 Q. And the procurement of PPE for polling
 2 places. You testified earlier that the
 3 Commission has responsibility for procuring PPE.
 4 You were not speaking to whether the
 5 Commission has sole responsibility for procuring
 6 PPE under Wisconsin law; correct?
 7 A. Yeah, I'm struggling with this line of
 8 questioning in terms of the definition of "sole
 9 responsibility." I don't think there's any
 10 provision in state law or guidelines provided by
 11 the Wisconsin Election Commission in terms of
 12 who has responsibility for purchasing PPE.
 13 Q. Well, let me ask in a different way,
 14 then.
 15 You testified earlier that the WEC
 16 assisted with the procurement of PPE for the
 17 April election; correct?
 18 A. Correct.
 19 Q. And you testified that the Milwaukee
 20 Election Commission had completed a survey
 21 circulated by the WEC related to PPE needs for
 22 the November election; correct?

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1 A. Correct.
 2 Q. And the WEC is planning on assisting
 3 the Milwaukee Election Commission with the
 4 procurement of PPE for November; correct?
 5 A. Assisting, correct.
 6 Q. So the WEC, then, has responsibility
 7 for the procurement of PPE for the November
 8 election; is that correct?
 9 A. I would have a hard time applying
 10 "providing assistance" to "having
 11 responsibility."
 12 Q. You mentioned earlier that the
 13 Milwaukee Election Commission has responsibility
 14 for poll worker recruitment as well.
 15 And you were speaking to whether -- you
 16 were not speaking to whether the Commission has
 17 sole responsibility for poll worker recruitment
 18 under the law; is that right?
 19 A. I would say that I was speaking to sole
 20 responsibility. The -- I believe that the state
 21 statutes place the burden on municipalities to
 22 recruit and train their election workers.

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1 The WEC may provide assistance with
 2 regard to those processes and may ensure that
 3 those compliances are -- I mean that those
 4 processes are compliant with state law,
 5 particularly around training requirements.
 6 Again, I don't know why I'm just
 7 struggling with how this fits into the
 8 definition of "sole responsibility," but
 9 ultimately I interpret it as our responsibility
 10 to recruit and train and assign our election
 11 workers.
 12 Q. Would you agree, though, that the WEC
 13 plays a role in poll worker recruitment?
 14 A. Yes.
 15 Q. And the WEC plays a role in poll worker
 16 training; correct?
 17 A. Very much so.
 18 Q. So I'll circle back on some of those
 19 previous questions, then, if you don't mind.
 20 The WEC plays a role in the absentee
 21 ballot process; correct?
 22 A. Correct.

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1 Q. And the WEC plays a role in opening and
 2 closing drop boxes; correct?
 3 A. Correct. Yeah, thank you for that
 4 clarification.
 5 Q. Yep. Glad that helped.
 6 And we did establish that the WEC plays
 7 a role in the procurement of PPE for local
 8 elections; correct?
 9 A. Correct.
 10 Q. Now, I'd like to take you to Exhibit 8,
 11 which you were shown earlier, back to Albrecht
 12 Exhibit 8.
 13 And if you could zoom in there just a
 14 bit.
 15 I'm looking at this third-to-last
 16 sentence that says -- and this is you writing to
 17 David Kronig: "We need leadership at the state
 18 level and not some piecemeal response on the
 19 local level that puts staff at greater risk."
 20 Did I read that accurately?
 21 A. Yes.
 22 Q. And when you said "state leadership" --

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1 or "the state level" -- excuse me -- that would
 2 include the WEC; correct?
 3 A. Correct.
 4 Q. Thank you.
 5 Mr. Albrecht, you testified earlier
 6 about the Milwaukee Election Commission's plans
 7 for the November election.
 8 Do you remember that?
 9 A. I do, yes.
 10 Q. And you stated that the Commission is
 11 intending to open drop boxes for the November
 12 election; is that right?
 13 A. Yes.
 14 Q. Now, if the WEC issued guidance with
 15 respect to the opening of drop boxes, would the
 16 Commission act consistent with that guidance?
 17 A. Yes.
 18 Q. And if the WEC provided supplies for
 19 opening drop boxes, for example, the drop boxes
 20 themselves, would the Milwaukee Election
 21 Commission accept those supplies?
 22 A. Yes.

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1 Q. And would the Milwaukee Election
 2 Commission benefit from those supplies and that
 3 guidance?
 4 A. Yes.
 5 Q. And you stated also that the Milwaukee
 6 Election Commission has plans for the use of PPE
 7 and the procurement of PPE for the November
 8 election.
 9 Do you remember that?
 10 A. Yes.
 11 Q. And if the WEC were to issue guidance
 12 regarding the procurement of PPE and the use of
 13 PPE at polling locations, would you act
 14 consistent with that guidance?
 15 A. Yes.
 16 Q. And if the WEC were to provide
 17 supplies, the PPE itself, would the Milwaukee
 18 Election Commission accept those supplies?
 19 A. Yes.
 20 Q. And would the Milwaukee Election
 21 Commission benefit from those supplies and that
 22 guidance?

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1 A. Yes.
 2 Q. You also testified that the Milwaukee
 3 Election Commission is enacting social
 4 distancing protocols for polling places for the
 5 November election.
 6 Do you remember that?
 7 A. Yes.
 8 Q. If the WEC were to issue guidance on
 9 social distancing protocols for the November
 10 election, would the Milwaukee Election
 11 Commission act consistent with that guidance?
 12 A. Yes.
 13 Q. And if the Wisconsin Election
 14 Commission provided training to poll workers
 15 regarding proper social distancing protocols at
 16 polling places, would the Milwaukee Election
 17 Commission accept that training?
 18 A. Yes.
 19 Q. And would the Milwaukee Election
 20 Commission benefit from that training and that
 21 guidance?
 22 A. Yes.

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1 Q. Mr. Albrecht, you also testified that
 2 the Milwaukee Election Commission is planning on
 3 employing certain sanitization practices for
 4 polling places; is that correct?
 5 A. Yes.
 6 Q. And if the WEC were to issue guidance
 7 regarding proper sanitization of polling places,
 8 would the Milwaukee Election Commission act
 9 consistent with that guidance?
 10 A. Yes.
 11 Q. And if the Wisconsin Elections
 12 Commission offered training for poll workers on
 13 proper sanitization practices for polling
 14 places, would the Milwaukee Election Commission
 15 accept that training?
 16 A. Yes.
 17 Q. And would the Milwaukee Election
 18 Commission benefit from that training and that
 19 guidance?
 20 A. Yes.
 21 Q. You also testified that the Milwaukee
 22 Election Commission is planning on using

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1 Intelligent Mail barcodes for tracking absentee
 2 ballots.
 3 Do you remember that?
 4 A. Yes.
 5 Q. If the Wisconsin Elections Commission
 6 were to issue guidance regarding tracking and
 7 delivery of absentee ballots, would the
 8 Milwaukee Election Commission act consistent
 9 with that guidance?
 10 A. Yes.
 11 Q. And if the Wisconsin Elections
 12 Commission offered supplies or money to enable
 13 the use of Intelligent Mail barcodes, would the
 14 Milwaukee Election Commission take that money?
 15 A. Yes.
 16 Q. And would the Milwaukee Election
 17 Commission benefit from that guidance regarding
 18 Intelligent Mail barcodes and that -- those
 19 funds to enact the use of Intelligent Mail
 20 barcodes?
 21 A. Yes.
 22 Q. I'd like to turn back to looking to

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1 November and poll workers.
 2 You testified earlier that if there
 3 were a fear relating to Covid-19 pandemic on
 4 levels that were seen prior to April, that you
 5 would -- that it was probable that Milwaukee
 6 would see poll worker shortages again; is that
 7 correct?
 8 A. Yes.
 9 Q. Now, given the ongoing crisis, the
 10 Covid crisis, is the Milwaukee Election
 11 Commission concerned about poll worker shortages
 12 for the November election?
 13 A. Yes.
 14 Q. If the WEC were to assist the Milwaukee
 15 Election Commission in recruiting additional
 16 poll workers for the November election, would
 17 that -- would that recruitment effort help the
 18 Milwaukee Election Commission for the November
 19 election?
 20 A. I would assume so, yes.
 21 Q. And if the Wisconsin Elections
 22 Commission arranged for additional poll worker

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1 support for the November election, would that
 2 additional support be helpful to the Milwaukee
 3 Election Commission?
 4 A. Absolutely.
 5 Q. And would those additional poll workers
 6 enable the Milwaukee Election Commission to open
 7 as many polling locations as it plans to open
 8 for the November election?
 9 A. I would think so, yes.
 10 Q. So the Milwaukee Election Commission
 11 would benefit from the assistance of the WEC in
 12 recruiting additional poll workers for November?
 13 A. Yes.
 14 Q. Mr. Albrecht, would you agree that the
 15 WEC has the ability to assist the Milwaukee
 16 Election Commission with issues such as poll
 17 worker recruitment and poll worker shortages?
 18 A. Yes.
 19 Q. Are you aware that Wisconsin law
 20 mandates that each election official, including
 21 each poll worker, be a qualified elector of a
 22 county in which the municipality where the

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1 official serves is located?
 2 A. Yes.
 3 Q. And if the WEC were to waive that
 4 requirement that poll workers be residents of
 5 the county in which they serve, do you believe
 6 that Milwaukee would be able to recruit more
 7 poll workers?
 8 A. Possibly. Yes. I don't know the
 9 extent, but I'm sure it would have some value,
 10 yes.
 11 Q. And would you agree that if
 12 Milwaukee -- the Milwaukee Election Commission
 13 were able to recruit more poll workers, whether
 14 through the assistance of the WEC directly or
 15 because of relaxed statutory requirements, that
 16 Milwaukee would be able to open more polling
 17 places for the November election?
 18 A. Yes.
 19 Q. I'd like to talk more about absentee
 20 ballots.
 21 One issue with the increased volume of
 22 absentee voters is processing the ballots

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1 themselves; is that right?
 2 A. Yes.
 3 Q. And under Wisconsin law, ballots must
 4 be received by Election Day to be counted; is
 5 that correct?
 6 A. Yes.
 7 Q. And given the unprecedented volume of
 8 absentee voters, would you agree it's likely
 9 that many ballots may not be received by
 10 Election Day?
 11 A. By "Election Day" being in November.
 12 Q. Correct, Election Day in November.
 13 A. I'm sorry. Could you repeat the
 14 question, Mr. Brown.
 15 Q. I'll ask another question first.
 16 Are you aware of absentee ballot
 17 delivery issues with respect to the April 7
 18 election?
 19 A. Yes.
 20 Q. Are you aware of any absentee ballots
 21 that were -- absentee mail-in ballots that were
 22 undelivered because of USPS issues?

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1 A. Yes.
 2 Q. And so given the unprecedented volume
 3 of absentee voters, is it -- isn't it likely
 4 that there will be absentee delivery issues
 5 again in the November election?
 6 A. Yes.
 7 MR. BROWNE: Objection to form.
 8 BY MR. BROWN:
 9 Q. If a ballot were not counted because it
 10 had not been received by Election Day, would you
 11 agree that that would deny that voter the right
 12 to vote?
 13 MR. BROWNE: Objection to form.
 14 THE WITNESS: Yes.
 15 BY MR. BROWN:
 16 Q. And would you agree that permitting
 17 ballots to be received until a week after
 18 Election Day to be counted, so long as they were
 19 postmarked by Election Day, that that would
 20 ensure every voter that timely mailed in their
 21 absentee ballot could have their vote counted?
 22 MR. BROWNE: Objection to form.

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1 THE WITNESS: I don't know if I could
 2 speak to every voter, but certainly the
 3 promise -- I would agree with the promise behind
 4 that statement.
 5 (Discussion held off the record.)
 6 BY MR. BROWN:
 7 Q. So you would agree, Mr. Albrecht, that
 8 permitting ballots to be received until a week
 9 after Election Day would ensure that some voters
 10 who mailed in their ballots would have their
 11 ballot counted that otherwise would have been
 12 disregarded?
 13 A. Yes.
 14 Q. And another issue with processing
 15 absentee ballots is just simply the processing
 16 themselves -- not necessarily delivery, but just
 17 the processing of a high number of absentee
 18 ballots by local election officials; is that
 19 correct?
 20 A. Yes.
 21 Q. And under Wisconsin law, poll workers
 22 are not permitted to process absentee ballots

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1 until polls open on Election Day; is that right?
 2 A. That's correct.
 3 Q. Given the anticipated and unprecedented
 4 volume of absentee ballots, is it feasible for
 5 Milwaukee election officials to count all of the
 6 absentee ballots on Election Day if they have to
 7 wait to start counting until the polls open?
 8 A. It is highly improbable that the City
 9 of Milwaukee will be able to process all of the
 10 anticipated absentee ballots in the November
 11 election within that period of time, from the
 12 time that the polls open till the time the polls
 13 close on Election Day.
 14 Q. And what problems do you see that
 15 foresee with that statutory timing requirement?
 16 A. Well, it delays the availability of the
 17 election results, and -- that's probably the
 18 most significant consequence. And it also --
 19 obviously, we're not able to produce election
 20 results around the time of the closing of the
 21 polls.
 22 Q. And would you agree that enjoining that

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1 statute and allowing poll workers to begin
 2 counting absentee ballots prior to Election Day
 3 could alleviate the stress caused by needing to
 4 count high number of absentee ballots while
 5 observing precautions due to Covid-19, such as
 6 avoiding large-group gatherings?
 7 A. Absolutely.
 8 Q. Could attempting to count so many
 9 absentee ballots in a short period of time lead
 10 to errors in counting?
 11 A. Yes.
 12 Q. Mr. Albrecht, earlier -- let me
 13 rephrase that.
 14 Do you recall seeing earlier an email
 15 about the lack of guidance from the WEC
 16 regarding how to count ballots without postmarks
 17 or with illegible or undated postmarks?
 18 A. I recall that, yes.
 19 Q. If the WEC issued guidance on how to
 20 count ballots with irregular or undated
 21 postmarks, would the Milwaukee Election
 22 Commission act consistent with that guidance?

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1 A. I believe so. I -- it's difficult --
 2 that was a -- that's a decision made by our
 3 board of election commissioners, and it's
 4 difficult for me to speak on their behalf.
 5 Q. Would you agree that the Milwaukee
 6 Election Commission would benefit from guidance
 7 on the WEC with respect to how to count ballots
 8 that have irregular postmarks?
 9 A. Yes.
 10 Q. Mr. Albrecht, are you aware of any
 11 issues with ballot delivery due to WisVote or
 12 My Vote problems?
 13 A. Yes.
 14 (The reporter requested clarification.)
 15 MR. BROWN: WisVote, W-i-s.
 16 Q. And are you aware that, according to
 17 the WEC's absentee voting report, that
 18 approximately 2,693 ballots were never sent to
 19 Milwaukee residents because of WisVote or
 20 My Vote issues?
 21 A. Yes.
 22 Q. Do you think that's an acceptable

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1 outcome?
 2 A. Not for voters, no.
 3 Q. And would you agree that the WEC needs
 4 to take whatever precautions necessary to ensure
 5 that issues like that with respect to WisVote
 6 and My Vote do not repeat themselves?
 7 A. Yes.
 8 Q. And the WEC is the entity that has the
 9 authority to make upgrades to WisVote; is that
 10 correct?
 11 A. That's correct.
 12 Q. And the WEC could improve WisVote by
 13 improving applications to allow the local
 14 election officials to better manage their
 15 WisVote tasks?
 16 A. Yes.
 17 Q. And the WEC can improve how ballot
 18 requests are processed and batched into WisVote?
 19 A. Yes.
 20 Q. And with respect to My Vote, the WEC is
 21 the only entity that has authority to make
 22 upgrades to the My Vote website; correct?

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1 A. Correct.

2 Q. And the WEC can increase memory

3 capacity for My Vote to handle higher volume of

4 users registering for ballots online; correct?

5 A. I would assume so. I'm not an IT

6 person, but I would -- they have responsibility

7 for oversight of that site, yes.

8 Q. So if server capacity -- additional

9 server capacity were necessary to ensure that

10 voters were able to access the My Vote website,

11 it would be the WEC that would be responsible

12 for increasing that server capacity; correct?

13 A. Yes.

14 Q. And the same -- if increased bandwidth

15 were necessary, that would be the WEC's

16 responsibility to increase the bandwidth;

17 correct?

18 A. Correct.

19 Q. Mr. Albrecht, I want to ask you a few

20 questions about voter fraud.

21 As the representative for the Milwaukee

22 Election Commission, are you aware of any

Page 122

1 instances of voter fraud taking place in

2 Milwaukee resulting from the use of absentee

3 ballots?

4 A. I mean, having been in this position

5 for 15 years, I don't recall anything specific

6 to by-mail absentee voting or an absentee

7 ballot.

8 Q. From the Milwaukee Election

9 Commission's perspective, are concerns about

10 voter fraud a valid reason for the WEC not to do

11 whatever it can to ensure voters have the

12 opportunity to vote absentee if they want?

13 A. No.

14 MR. BROWN: Now, I may just have a few

15 more questions, but I'd like to take a quick

16 break just to huddle quickly. But we're

17 probably close to the end here.

18 So if we could go off the record for

19 five minutes and come back, that would be very

20 helpful.

21 THE VIDEOGRAPHER: Okay. Stand by,

22 everybody.

Page 123

1 The time is 11:58 a.m. We're going off

2 the record.

3 (Recess taken.)

4 THE VIDEOGRAPHER: The time is 12:06

5 p.m., and we're back on the record.

6 MR. BROWN: Well, Mr. Albrecht, I just

7 wanted to thank you for your time today. We

8 really appreciate it. There will be no further

9 questions from the Swenson Plaintiffs.

10 Thanks again.

11 THE WITNESS: Thank you.

12 MR. BROWN: We can go off the record.

13 MR. BROWNE: Hold on one second.

14 Mr. Albrecht, I don't have any

15 follow-up either, but thank you for your time.

16 We appreciate you taking the time today.

17 THE WITNESS: Thank you.

18 THE VIDEOGRAPHER: Okay, everybody. So

19 if there's no other further statements for the

20 record, we're going to go off.

21 The time is 12:07 p.m., July 23, 2020.

22 We are going off the record, completing the

Page 124

1 videotaped deposition.

2 (At 12:07 p.m. EDT the

3 deposition of NEIL ALBRECHT was

4 adjourned.)

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7/23/2020

Democratic National Committee v. Marge Bostlemann, et al. Neil Albrecht 30(b)(6)

Page 125

1 STATE OF CALIFORNIA)
 2 COUNTY OF LOS ANGELES) SS.
 3
 4 I, AUDRA E. CRAMER, CSR No. 9901, in and for the
 State of California, do hereby certify:
 5 That, prior to being examined, the witness named
 in the foregoing deposition was by me duly sworn to
 6 testify the truth, the whole truth and nothing but the
 truth;
 7 That said deposition was taken down by me in
 shorthand at the time and place therein named, and
 8 thereafter reduced to typewriting under my direction,
 and the same is a true, correct and complete transcript
 9 of said proceedings;
 10 I further certify that I am not interested in the
 event of the action.
 11 Witness my hand this ____ day of _____,
 12 2020.
 13
 14
 15
 16
 17
 18 _____
 19 Certified Shorthand
 20 Reporter for the
 21 State of California
 22

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 7 I do hereby acknowledge that I have read
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 9
 10 (Check appropriate box):
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 11 complete transcription of the answers given by
 me to the questions therein recorded.
 () Except for the changes noted in the
 12 attached Errata Sheet, the same is a true,
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Page 126

1 Niel Albrecht 30(b)(6), c/o
 MILWAUKEE CITY ATTORNEY'S OFFICE
 2 841 NORTH BROADWAY
 MILWAUKEE, WISCONSIN 53202
 3
 4 Case: Democratic National Committee v. Marge Bostlemann, et al.
 Date of deposition: July 23, 2020
 5 Deponent: Niel Albrecht 30(b)(6)
 6
 7 Please be advised that the transcript in the above
 8 referenced matter is now complete and ready for signature.
 9 The deponent may come to this office to sign the transcript,
 a copy may be purchased for the witness to review and sign,
 10 or the deponent and/or counsel may waive the option of
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 12 signature page to counsel noticing the deposition, noting the
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 9 Witness Name: Niel Albrecht 30(b)(6)
 10 Deposition Date: July 23, 2020
 Page No. Line No. Change
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21 _____
 22 Signature Date

7/28/2020

Democratic National Committee v. Marge Bostlemann, et al.

Kris Teske 30(b)(6)

Page 1

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DEMOCRATIC NATIONAL COMMITTEE AND)
DEMOCRATIC PARTY OF WISCONSIN,)
)
PLAINTIFFS,) CASE NO.
) 3:20-cv-249-wmc
AND CONSOLIDATED CASE NOS.
v.) 3:20-cv-278-wmc AND 3:20-
cv-284-wmc
)
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)
)
REPUBLICAN NATIONAL COMMITTEE,)
REPUBLICAN PARTY OF WISCONSIN, AND)
THE WISCONSIN STATE LEGISLATURE,)
)
INTERVENOR-DEFENDANTS.)

VIDEOTAPED 30(B)(6) DEPOSITION OF KRIS TESKE
TAKEN REMOTELY VIA ZOOM VIDEOCONFERENCE
TUESDAY, JULY 28, 2020, LOS ANGELES, CALIFORNIA
Reported by Audra E. Cramer, CSR No. 9901

DIGITAL EVIDENCE GROUP
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Washington, D.C. 20036
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Page 2

1 VIDEOTAPED 30(B)(6) DEPOSITION OF KRIS TESKE,
2 TAKEN REMOTELY VIA ZOOM ON BEHALF OF
3 INTERVENOR-DEFENDANT THE WISCONSIN STATE LEGISLATURE,
4 AT 10:03 A.M. EDT, TUESDAY, JULY 28, 2020, BEFORE
5 AUDRA E. CRAMER, CSR. NO. 9901, PURSUANT TO SUBPOENA.
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Page 3

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19 ALSO PRESENT
20 DANIEL HOLMSTOCK, HOTSEATER/VIDEOGRAPHER
21
22

Page 9

1 appearing remotely and have agreed to the
 2 witness being sworn in remotely.
 3 Due to the nature of remote reporting,
 4 please pause briefly before speaking to ensure
 5 all parties are heard completely.
 6 Counsel, your appearances will be noted
 7 on the stenographic record.
 8 And at this point the stenographer will
 9 now administer the oath.
 10
 11 KRIS TESKE,
 12 having been first duly sworn, was
 13 examined and testified as follows:
 14
 15 EXAMINATION
 16 BY MR. BROWNE:
 17 Q. Good morning, Ms. Teske. My name is
 18 Robert Browne, Jr., and I represent the
 19 Wisconsin legislature in these cases.
 20 Could you state your full name for the
 21 record and spell it, please.
 22 A. Kris A. Teske, K-r-i-s, middle initial

Page 10

1 A., last name Teske, T-e-s-k-e.
 2 Q. Ms. Teske, I just want to make sure:
 3 Can you hear me okay?
 4 A. Yes.
 5 Q. Great.
 6 Ms. Teske, have you ever had your
 7 deposition taken before?
 8 A. No.
 9 Q. Okay. So I just want to go over a
 10 couple of ground rules so that we're on the same
 11 page.
 12 Is that all right?
 13 A. Sure.
 14 Q. Okay. So all your answers need to be
 15 verbal, especially since we're over Zoom. But
 16 even if we were in a person-to-person setting,
 17 your answers have to be verbal so that the court
 18 reporter can take them down.
 19 The other thing I'd ask is we try not
 20 to talk over each other. The court reporter can
 21 only take one person at a time. And, again,
 22 especially over Zoom, it's difficult. So just

Page 11

1 let me finish my question, and then you can go
 2 ahead and answer.
 3 And if you answer a question,
 4 Ms. Teske, I'm going to assume you understood
 5 it. Okay?
 6 And then, finally, if you need to take
 7 a break at any time, just let me know, and we
 8 can find an appropriate stopping point.
 9 Can we agree on these basic ground
 10 rules?
 11 A. Yes.
 12 Q. Great.
 13 Mrs. Teske, is there anything that
 14 would prevent you from providing truthful and
 15 accurate testimony today?
 16 A. No.
 17 MR. BROWNE: Dan, can we call up
 18 Legislative Exhibit 1, and let's mark that as
 19 Teske Exhibit 1.
 20 (Whereupon, Exhibit 1 was
 21 marked for identification.)
 22 BY MR. BROWNE:

Page 12

1 Q. And, Ms. Teske, I'm going to ask you to
 2 take a look at that.
 3 So the technician, his name is Dan.
 4 He's able to move and manipulate the document
 5 any way you want to. So if you want to have him
 6 scroll through it, if you want to have him move
 7 it to the left or the right, he can do that; you
 8 just have to ask.
 9 But I would just ask you to look at
 10 this now. And you can ask Dan to turn the pages
 11 and read as much of it as you want.
 12 Do you understand?
 13 A. Sure. I can do that.
 14 Q. Okay. Have you seen this document
 15 before?
 16 A. I believe so.
 17 Q. Okay. Do you remember when you saw it?
 18 A. When it was served -- or sent to me.
 19 Q. Okay. Do you understand that you've
 20 been designated to testify as a corporate
 21 30(b)(6) representative of the clerk's office of
 22 the City of Green Bay?

Page 13

1 A. Yes, I do.

2 MR. BROWNE: Okay. Dan, could we turn

3 to the last page in that exhibit.

4 Q. Ms. Teske, do you see those topics on

5 that last page?

6 A. Yes.

7 Q. 1, 2 and 3, do you see them on the

8 Schedule A?

9 A. Yes, I do.

10 Q. Okay. You understand you've been

11 designated to provide testimony on those topics;

12 is that correct?

13 A. Yes.

14 Q. Ms. Teske, what did you do to prepare

15 for today's deposition?

16 A. I had notes from the April election

17 that I just skimmed over just to refresh my

18 memory.

19 Q. Did you speak or meet with anyone in

20 preparation for today's deposition?

21 A. I met with Brian and Vanessa just to

22 talk about what a deposition is?

Page 14

1 Q. I don't know to know what you talked

2 about with them, but could you just tell me:

3 When you say "Brian," who is Brian, and who is

4 Vanessa?

5 A. Vanessa is the Green Bay city attorney,

6 and Brian Beisenstein is the one that is -- was

7 contracted to help with this. He's an attorney

8 also.

9 Q. [Inaudible.]

10 A. I'm sorry. You're cutting out.

11 Q. Yeah, sorry.

12 Do you know Vanessa's last name,

13 Ms. Teske?

14 A. Chavez.

15 Q. Great.

16 And you said you reviewed notes from

17 the April 7 election; is that correct?

18 A. Yes.

19 Q. Okay. Are those personal notes you

20 had?

21 A. Yes.

22 Q. What did those notes -- what were those

Page 15

1 notes about?

2 A. How the election went.

3 Q. Okay. When you say, "How the election

4 went," what do you mean?

5 A. I was asked to do a report to council,

6 and so I wrote up notes on the April election.

7 Q. Were those contemporaneous notes,

8 meaning were they taken at the time of the

9 election, or were they notes that you just

10 created recently?

11 A. I created them right after the April

12 election.

13 Q. All right. Ms. Teske, I just want to

14 briefly go through some of your background.

15 Could you briefly describe your

16 educational background.

17 A. As far as the clerk?

18 Q. No. Your educational background.

19 A. Okay. I graduated high school.

20 Q. Where? What high school, Ms. Teske?

21 A. Southwest High School in Green Bay.

22 Q. Okay. Do you have anything beyond a

Page 16

1 high school degree?

2 A. I have a certification of a clerk

3 through UWGB.

4 Q. And when did you obtain that

5 certification?

6 A. I don't remember the year.

7 Q. Was it after 2000? before 2000?

8 A. Oh, it was after 2000, yes.

9 Q. Was it after 2010?

10 A. Yes.

11 Q. Was it close to 2015?

12 A. It was between 2012 and 2015. In

13 there.

14 Q. And you said that was UW Green Bay you

15 obtained that certification?

16 A. It's a clerks institute that they put

17 on every summer, and you have to go three years,

18 and then you get certified. And I also went the

19 fourth year for treasurer.

20 I also want to add that I take the

21 Wisconsin Elections Commission's webinars.

22 Q. Okay. Do you hold any professional

Page 17

1 licenses?
 2 A. Just the certification as clerk.
 3 Q. Ms. Teske, I just want to talk about --
 4 briefly about your work history.
 5 Could you give a brief description of
 6 your work history.
 7 A. Concerning how long I've been with the
 8 city or...?
 9 Q. Sure, we can start there.
 10 How long have you been with the city?
 11 A. I've been with the city 15 years,
 12 8 years as the clerk.
 13 Q. And, Ms. Teske, is that an appointed
 14 position, the clerk's office, the clerk -- being
 15 a clerk?
 16 A. I am appointed.
 17 Q. Okay. When were you first appointed?
 18 A. February of 2012.
 19 Q. And how long of a term is the
 20 appointment?
 21 A. It's every two years.
 22 Q. So you've been reappointed four years;

Page 18

1 is that correct? Or four times?
 2 A. In February I was appointed as the
 3 interim, and then in April I was appointed as
 4 the clerk.
 5 Q. And, Ms. Teske, just briefly, what did
 6 you do before you came to work for the City of
 7 Green Bay?
 8 A. Well, for approximately 25 years I was
 9 at PMI, and then I went to a real estate company
 10 as the receptionist and then a title company and
 11 then with the city.
 12 Q. Ms. Teske, for the deposition today,
 13 can we agree that when I use the term "clerk's
 14 office," I'm referring to the clerk's office of
 15 the City of Green Bay; is that okay?
 16 A. Yes.
 17 Q. Ms. Teske, I want to talk about the
 18 April 7 -- or, actually, I want to talk about
 19 the duties or responsibilities of the clerk's
 20 office just generally now.
 21 What are the responsibilities of the
 22 clerk's office; in other words, what does the

Page 19

1 clerk's office do?
 2 A. We administer elections. We issue
 3 liquor licenses -- a number of different
 4 licenses.
 5 Do you want me to list all those?
 6 Q. Sure.
 7 A. I know I won't get them all, but
 8 operator license, which is, you know, a
 9 bartender serving alcohol; public vehicle
 10 license; public vehicle operator license; dog
 11 and cat license; adult entertainment license;
 12 direct seller; solicitor; junk permit.
 13 I know there's many others. You want
 14 me to keep going?
 15 Q. No, that's okay. I'm just trying to
 16 get an idea of what the clerk's office does.
 17 How many staff members work in the
 18 clerk's office?
 19 A. I have four full-time people and then
 20 myself.
 21 Q. Is there a deputy clerk?
 22 A. Yes.

Page 20

1 Q. Who is the deputy clerk?
 2 A. Kimberly Wayte.
 3 Q. And she appointed as well?
 4 Excuse me. Is the deputy clerk
 5 appointed as well as?
 6 A. She's appointed by the clerk.
 7 Q. And how long has Ms. Wayte been the
 8 deputy clerk?
 9 A. Approximately three years now.
 10 Q. Ms. Teske, you mentioned that one of
 11 the responsibilities or duties of the clerk's
 12 office is to administer elections; is that
 13 correct?
 14 A. Yes.
 15 Q. Okay. How does that differ -- how does
 16 the clerk's responsibility differ from the role
 17 of the Wisconsin Elections Commission?
 18 A. We follow what the Wisconsin Elections
 19 Commission puts forth.
 20 Q. What is the clerk's role in voter
 21 registration -- the clerk's office role in voter
 22 registration?

Page 21

1 A. I'm sorry. Can you repeat that,
2 please.

3 Q. Sure.

4 What is the clerk's office role in
5 voter registration in elections in Green Bay?

6 A. Well, we send out the forms when people
7 ask. We register them.

8 Q. Okay. So the clerk's office in the
9 City of Green Bay is responsible for voter
10 registration; correct?

11 A. Correct.

12 Q. Okay. What's the clerk's office role
13 in delivering absentee ballots to voters?

14 A. It's our job to send them to the
15 voters.

16 Q. What is the clerk's office's role in
17 returning absentee ballots from voters to
18 election officials?

19 A. In Green Bay we have central count. So
20 they stay in the clerk's office for Election
21 Day.

22 Q. Okay. What is the clerk's office role

Page 22

1 in deciding whether an absentee ballot should be
2 accepted?

3 A. We follow the guidelines from the
4 Wisconsin Elections Commission and state
5 statute, and that is voter signature, witness
6 signature and witness address.

7 Q. And the clerk's office decides if the
8 absentee ballot is acceptable then?

9 A. Yes.

10 Q. What is the clerk's office role in
11 opening and closing in-person absentee ballot
12 locations?

13 A. I'm sorry. You cut out.

14 Q. Sure.

15 What is the clerk's office role in
16 opening or closing in-person absentee ballot
17 locations?

18 A. I guess -- I'm sorry. Are you asking
19 if I have the authority to establish them?

20 Q. Yes.

21 A. I feel I do not.

22 Q. Okay. Does the clerk's office have

Page 23

1 responsibility for establishing them?

2 A. I have the responsibility to staff
3 them.

4 Q. Okay. What about closing them? Does
5 the clerk's office have responsibility for
6 closing them?

7 A. In the City of Green Bay, I have to
8 give the hours that I think would be
9 appropriate, and then that gets approved higher
10 up.

11 Q. [Inaudible.]

12 A. Sorry. I can't hear you.

13 Q. Who approves that?

14 You said it gets approved higher up.
15 Who approves that?

16 A. I send the hours to the mayor, chief of
17 staff and the city attorney.

18 Q. Ms. Teske, what is the clerk's office
19 role in setting up drop boxes for absentee
20 ballots?

21 A. April was the first time we had them.
22 And it was discussed mayor, chief of staff,

Page 24

1 attorney and myself, and then I set that up.

2 Q. Ms. Teske, what is the clerk's office
3 role in determining the location of polling
4 places?

5 A. Actually, council is the one that
6 approves or denies.

7 Q. So when you say "council," who are you
8 referring to?

9 A. The 12 other persons.

10 Q. Okay. The city council that's who
11 you're referring to?

12 A. Yes.

13 Q. Okay. Thank you.

14 What is the clerk's office role in
15 staffing the polling places?

16 A. The clerk's office is the one that puts
17 all communication to recruit poll workers.

18 Q. So the clerk's office is responsible
19 for staffing the polling places?

20 A. Yes.

21 Q. What is the clerk's office role in
22 providing equipment, including personal

Page 25

1 protective equipment, to polling places?
 2 A. I get that approved through the chief
 3 of staff as to what I would like to order.
 4 Q. But is it your responsibility or is it
 5 the city's responsibility to provide supplies,
 6 including PPE, to polling places?
 7 A. Again, the clerk's office gets supplies
 8 ready. But when we're talking about PPE, that
 9 is multiple people in the city working on that.
 10 Q. Thank you.
 11 Ms. Teske, what's the clerk's office
 12 budget?
 13 A. For the entire election?
 14 Q. Its entire budget?
 15 A. I don't have that number in front of
 16 me.
 17 Q. Do you have a ballpark -- ballpark
 18 estimate?
 19 A. I know what the election budget is, but
 20 I don't know it all together.
 21 Q. Okay. Why don't you tell me --
 22 A. I apologize.

Page 26

1 Q. No, that's all right.
 2 Why don't you tell us what the election
 3 budget is.
 4 A. This year it's approximately \$325,000.
 5 Q. Where does the clerk's office get its
 6 funds for its budget -- for its general budget?
 7 Where does it get its funds?
 8 A. That's a finance question.
 9 Q. Okay. So you don't know where the
 10 funds come from?
 11 A. No.
 12 Q. Okay. Do they come from the city?
 13 A. Of course. Yes.
 14 Sorry. I misunderstood.
 15 Q. No, that's all right.
 16 Do you know how much funding the
 17 clerk's office gets from the State of Wisconsin?
 18 A. No.
 19 Q. Do you know how much the clerk's office
 20 gets in funding from the federal government?
 21 A. No.
 22 Q. All right. Ms. Teske, I want to talk

Page 27

1 about the April 7 election.
 2 When did the clerk's office begin to
 3 discuss the effects of COVID-19 in the April 7
 4 election?
 5 A. I started discussing with the chief of
 6 staff in March.
 7 Q. And when you say "the chief of staff,"
 8 you're talking about the chief of staff for the
 9 mayor; is that correct?
 10 A. For the mayor, yes.
 11 Q. Okay. Do you remember when in March
 12 you started discussing with the chief of staff?
 13 A. The beginning of March. I don't have
 14 the exact date.
 15 Q. That's all right.
 16 Do you remember what your discussions
 17 with the chief of staff were about?
 18 A. About obtaining disinfecting supplies.
 19 Things like that.
 20 Q. And I forgot to ask this before, and
 21 chief of staff has been mentioned before: Who
 22 was the chief of staff at the time that you were

Page 28

1 talking with?
 2 A. I'm sorry. You cut out.
 3 Q. Sorry.
 4 I forgot to ask this before when you
 5 mentioned the chief of staff: Who was the chief
 6 of staff at the time you were having these
 7 discussions?
 8 A. Celestine Jeffreys.
 9 Q. Okay. Is she still the chief of staff
 10 for the mayor?
 11 A. Yes.
 12 Q. Ms. Teske, could you tell me what
 13 efforts the clerk's office undertook to address
 14 the effects of COVID-19 on that April 7
 15 election?
 16 A. I had Plexiglas shields over the tables
 17 made, and we had masks, gloves, hand sanitizer,
 18 disinfecting spray and disinfecting wipes.
 19 MR. BROWNE: Dan, could we put up
 20 Legislative Exhibit 2 and mark that as Teske
 21 Exhibit 2.
 22 (Whereupon, Exhibit 2 was

Page 29

1 marked for identification.)

2 BY MR. BROWNE:

3 Q. And, Mrs. Teske, I want you to take a

4 look at, and let me know when you've had a

5 chance to look at it.

6 It's a two-page email, so if you want

7 Dan to scroll to the second page to let you read

8 it, that's fine. And just let me know when

9 you've had a chance to read it.

10 THE WITNESS: Can you make it just a

11 little bit bigger.

12 MR. BROWNE: And just for the record,

13 this is an email string with the last email in

14 the string dated March 5, 2020, between

15 Ms. Teske and Meagan Wolfe, the administrator of

16 the Wisconsin Elections Commission, with the

17 subject line of "Nursing Homes."

18 THE WITNESS: Okay. I remember this.

19 BY MR. BROWNE:

20 Q. Okay. There's another page to it,

21 Ms. Teske.

22 Do you want to look at that as well?

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1 A. Sure.

2 Okay.

3 Q. Okay. Ms. Teske, if you look at the

4 bottom of the first page and on to the second

5 page, there's an email from you dated March 3,

6 2020, to the Wisconsin Elections Commission.

7 Do you see that?

8 A. Yes.

9 Q. Then if we go to that third page -- or

10 excuse me -- the second page, Point 3, you

11 wrote, "Will you be putting out a contingency

12 plan so we all know what to expect and what we

13 are allowed to do?"

14 Do you see that?

15 A. Yes.

16 Q. Can you tell us what you meant by that?

17 A. Normally -- I mean, I have a

18 contingency plan, but with the pandemic, we -- I

19 don't have anything in there on a pandemic. So

20 what I wanted to know was, you know, when it

21 concerns nursing homes, you know, were we going

22 to go in. Because by law we have to.

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1 And I guess, kind of, I wanted to know

2 pretty much everything about the election: Are

3 we setting up a different way? Are we --

4 nothing as far as the law goes. You know, I

5 wasn't questioning anything about witnesses or

6 anything on the certificate, but could they give

7 us direction on how we should lay out a polling

8 location to keep everyone safe.

9 And if polling locations back out, what

10 are we allowed to do? Because, as we know,

11 there is state statute that those polling

12 locations have to be established at a certain

13 time. So I wanted to make sure what was going

14 to be the protocol; if someone backed out, what

15 am I allowed to do.

16 Q. [Garbled] guidance from the Wisconsin

17 Elections Commission; is that right?

18 A. I'm sorry. Didn't hear you.

19 Q. So you were seeking guidance from the

20 Wisconsin Elections Commission; is that right?

21 A. Correct.

22 MR. BROWNE: And if you go to the first

Page 32

1 page, Dan.

2 Q. In that second paragraph -- Ms. Teske,

3 do you see that second paragraph there?

4 And you wrote, "I am in the process of

5 coming up with a contingency plan because I will

6 be too busy in a couple of weeks and an

7 alderperson requested that the city come up with

8 the plan as a whole."

9 Do you see that?

10 A. Yes.

11 Q. What did you mean by that?

12 A. The same thing: an alderperson who,

13 again, was very concerned about COVID, and at

14 that time not everyone was taking it serious.

15 So the alderperson and I talked, and we thought

16 we should have something in place so that we

17 were prepared if things -- if COVID got bad as

18 we got closer to the election.

19 So, again, it had to do with poll

20 workers, the polling location setup, you know,

21 nursing homes. Things like that we talked

22 about.

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1 Q. So you did come up with a contingency
2 plan, then?

3 A. Well, that's when I asked the WEC if
4 they could help, if they were giving guidance.
5 Because they normally do, and nothing -- you
6 know, nothing was coming out. And I need to
7 plan a lot sooner than smaller municipalities.
8 So I was trying to get ahead of the game.

9 Q. Did the plan that you came up with
10 [garbled] if other poll workers started to back
11 out?

12 A. I couldn't hear --

13 MR. BEISENSTEIN: I didn't catch that
14 question.

15 MR. BROWNE: Yeah, sure. I'll repeat
16 it.

17 Q. Ms. Teske, did the contingency plan you
18 came up with account for recruiting new poll
19 workers if other poll workers started to back
20 out?

21 A. I am always recruiting poll workers.

22 Q. Did the contingency plan you came up

Page 34

1 with account for that?

2 A. I actually didn't get anything in
3 writing, because that's when every -- then
4 things started -- I was -- let me start over.

5 I was waiting for direction from the
6 WEC, which I didn't get. And then we just took
7 it a day at a time because everything was
8 changing by the hour.

9 Q. You didn't actually come up with a
10 contingency plan then?

11 A. I just had the normal one.

12 Q. Ms. Teske, did the clerk's office
13 receive a survey from the Wisconsin Elections
14 Commission regarding supplies that might be
15 needed for the April 7 election?

16 A. I believe when I heard about that, it
17 was from Brown County.

18 Q. Did the clerk's office --

19 A. Because it was going -- supposed to be
20 going through the county.

21 Q. Did the clerk's office respond to that
22 survey at all?

Page 35

1 A. Yes. Because I did receive supplies.
2 Probably -- I don't think I did the survey,
3 though. I think I told the county clerk's
4 office what I needed.

5 Q. And that's the Brown County clerk's
6 office?

7 A. Brown County clerk's office, yes.

8 Q. Okay. And what did you tell them that
9 you needed?

10 A. I told them I needed pens and then
11 masks, hand sanitizer, and any disinfecting
12 products they could give us.

13 Q. And you said you received those
14 supplies; is that correct?

15 A. I did. The Saturday -- the Friday
16 before the election.

17 Q. Did you ever request more supplies from
18 the Wisconsin Elections Commission after you
19 received that shipment of supplies on the Friday
20 before the election?

21 A. For the April election?

22 Q. Yes.

Page 36

1 A. No. I had purchased some through the
2 City of Green Bay budget.

3 Q. What did you purchase through the City
4 of Green Bay budget?

5 A. Disinfecting spray. Disinfecting
6 wipes. Masks and gloves.

7 Q. Did the clerk's office receive a survey
8 from the Wisconsin Elections Commission
9 regarding poll workers that might be needed from
10 for the April 7 election?

11 A. So at that time I couldn't even read
12 the emails anymore, because we were trying to
13 get absentee ballots out. And so a lot of that
14 information went through different channels at
15 the City of Green Bay.

16 Q. When you say "different channels at the
17 City of Green Bay," what do you mean?

18 A. Instead of the clerk's office
19 responding, that went through the chief of
20 staff, and from there I don't know who else.

21 Q. Did the clerk's office ever respond to
22 the survey by the [garbled] about needing poll

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1 workers for the April 7 election?

2 A. I did not.

3 Q. Okay. Do you know if the chief of

4 staff or the mayor's office responded to a

5 survey from the Wisconsin Elections Commission

6 about needing poll workers?

7 A. I believe they were questioned. I

8 don't know if they did the survey.

9 Q. Ms. Teske, did the clerk's office or

10 the City of Green Bay ever suspend in-person

11 absentee voting in Green Bay?

12 A. No. I had to -- I'm sorry. I had to

13 think.

14 We moved it.

15 Q. When you say you moved it, what do you

16 mean?

17 A. It wasn't in the clerk's office. We

18 moved it to Green Bay Transit so that the girls

19 could be behind glass so there was protection.

20 Q. But the absentee voting continued;

21 there was no halt in it at any point?

22 A. No.

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1 Q. Ms. Teske, did the clerk's office or

2 the City of Green Bay limit the number of

3 polling locations it was going to have for the

4 April 7 election?

5 A. We normally have 31, and it went down

6 to two, and that was per the mayor's office.

7 But I just want to say that many of our polling

8 locations wouldn't allow us to use their

9 facility.

10 Q. Okay. Let's unpack your answer a

11 little bit there.

12 You said it was per the mayor's office.

13 So the mayor gave the order to limit

14 the polling locations to two instead of the

15 normal 31; is that correct?

16 A. Every day -- well, almost every day the

17 mayor, chief of staff, city attorney and myself

18 had a meeting, and I would update them on how

19 many polling locations backed out, how many poll

20 workers backed out.

21 As the time got closer -- and I wasn't

22 aware of this until it was in process -- that

Page 39

1 they were looking to work with the school

2 district to get the four gyms at the high

3 schools. And then when they realized we only

4 had 19 poll workers, he took it down to two.

5 Q. It was the mayor's decision to limit

6 the polling locations for the April 7 election

7 to two locations; is that correct?

8 A. Yes.

9 Q. And do you remember when he -- when

10 that decision was made; what date it was made?

11 A. Around March 29, that I'm aware of.

12 Q. And you said the reason it was done was

13 because of polling places backing out and then

14 limited poll workers; is that correct?

15 A. Correct.

16 Q. Were there any other reasons that that

17 was done?

18 A. For safety reasons.

19 Q. And you mentioned that the city had the

20 option on -- or at least engaged in discussions

21 with the local high schools in the city of

22 Green Bay to be polling places for the April 7

Page 40

1 election; is that correct?

2 A. That was through the mayor's office.

3 Q. Okay. Do you know if a memorandum of

4 understanding was signed with the local high

5 schools for use as polling locations?

6 A. There was a contract.

7 Q. Okay. And that was for all four of the

8 local high schools?

9 A. I'm sorry. I don't remember by the

10 time it got to me if it was down to the -- if it

11 was down to the two or if it was the four. I

12 apologize.

13 Q. But the city only ended up using two

14 high schools as polling locations; is that

15 correct?

16 A. Correct.

17 Q. And this is kind of more of a general

18 question, but just for our edification: How

19 many poll workers does it take to run a polling

20 location, typically?

21 A. It depends on the ward.

22 Q. Okay. Can you give me kind of an

Page 41

1 average ward, how many poll workers it would
 2 take to run an average ward in the City of
 3 Green Bay?
 4 A. Seven.
 5 Q. And what about the two high schools
 6 that were used as the polling locations: How
 7 many poll workers did it take to run those two
 8 polling locations?
 9 A. I had nine at one, ten at another, and
 10 then I had volunteers doing the directing and
 11 disinfecting.
 12 Q. How many volunteers did you have?
 13 A. That I don't know. Some people who
 14 were friends of poll workers just showed up to
 15 help disinfect. So I don't know.
 16 Q. How many poll workers would you have
 17 needed to run all four of the high schools as
 18 polling locations on April 7?
 19 A. Again, it depends. I -- it depends on
 20 what the mayor wanted. If the mayor just wanted
 21 one table per gym, if we would have went with
 22 multiple tables for each ward, there would be a

Page 42

1 difference. So it depends on how it was set up.
 2 Q. If you had had one table per gym for
 3 the four gyms at the local high schools, how
 4 many poll workers are we talking, then?
 5 A. I would have liked at least 28.
 6 Q. And that's total for the four high
 7 schools -- or for the four polling locations; is
 8 that correct?
 9 A. Yes.
 10 Q. Ms. Teske, did the clerk's office
 11 learn -- or the City of Green Bay learn at some
 12 point that the governor authorized National
 13 Guard members to serve as poll workers?
 14 A. It was brought up in the beginning to
 15 help process absentee ballots, but that never
 16 became -- never became. And then I know the
 17 county was working with the chief of staff.
 18 I found out for sure that we would have
 19 the National Guard on Sunday, the Sunday before
 20 the election. So that would have been the 5th.
 21 Q. Ms. Teske, did the clerk's office
 22 request National Guard members to serve as poll

Page 43

1 workers?
 2 A. Can you repeat that, please.
 3 Q. Sure.
 4 Did the clerk's office request National
 5 Guard members to serve as poll workers?
 6 A. No. By then, the Sunday before,
 7 everything was set. We were down to two wards.
 8 I had enough seasoned poll workers to run them,
 9 so we didn't need the National Guard. And I was
 10 worried they wouldn't get trained, and some of
 11 them were not. I did receive --
 12 Q. Go ahead.
 13 A. One did show up the morning of. She
 14 was at the door. And I said, "Are you sure it's
 15 the City of Green Bay?" She said yes, and so I
 16 used her.
 17 So we had one National Guard person,
 18 who was wonderful.
 19 Q. So the City of Green Bay requested
 20 National Guard members to serve as poll workers?
 21 A. No.
 22 Q. They did not request National Guard

Page 44

1 members?
 2 A. We did not.
 3 Q. Okay. So I'm making a differentiation
 4 here. I asked you about the clerk's office, and
 5 now I'm asking about the City of Green Bay.
 6 Did the City of Green Bay request
 7 National Guard members serve as poll workers?
 8 A. No. Not that I'm aware of.
 9 Q. Ms. Teske, was the clerk's office or
 10 the City of Green Bay offered the assistance of
 11 National Guard members by the county -- the
 12 Brown County clerk?
 13 A. I'm sorry. You're cutting in and out.
 14 Q. Sure.
 15 Was the clerk's office or the City of
 16 Green Bay offered the assistance of National
 17 Guard members by the Brown County clerk?
 18 A. They didn't ask me.
 19 Q. Do you know if they asked the city?
 20 A. I believe so.
 21 Q. And do you know what the city's
 22 response was?

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1 A. I don't know how they answered. They
 2 did ask me if we needed them at that point, on
 3 that Sunday.
 4 Q. Okay. And what was your response?
 5 A. No.
 6 MR. BROWNE: Dan, can we put up
 7 Legislative Exhibit 3 and mark that as Teske
 8 Exhibit 3.
 9 (Whereupon, Exhibit 3 was
 10 marked for identification.)
 11 THE VIDEOGRAPHER: Exhibit 3 will not
 12 display. I will do it a manual way just for the
 13 time being.
 14 BY MR. BROWNE:
 15 Q. Ms. Teske, why don't you take a look at
 16 that, and you can ask Dan to page through it if
 17 you want. It's about a five-page document.
 18 And just for the record, this is an
 19 article from the Green Bay Press Gazette dated
 20 April 8, 2020, written by Haley BeMiller.
 21 A. I'm aware of the article.
 22 MR. BROWNE: Could we turn to page 2,

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1 where it says "National Guard Help."
 2 Q. Do you see that, Mrs. Teske?
 3 A. Yes.
 4 Q. And there's actually a quote that's
 5 attributed to you, which reads, "'We had a
 6 National Guard person and also citizens who
 7 stepped up to work, along with certified poll
 8 workers,' city clerk Kris Teske said in an
 9 email. 'We had plenty of people.'"
 10 Do you see that?
 11 A. Yes.
 12 Q. And I read that correctly?
 13 A. Yes.
 14 Q. Did you make that statement in an
 15 email?
 16 A. I did. I did.
 17 Q. -- in an email?
 18 It's accurate?
 19 A. Yes.
 20 Q. What did you mean by "plenty of
 21 people"?
 22 A. When you only have a table at each

Page 47

1 ward, which -- that's what the mayor wanted, I
 2 didn't need additional people.
 3 Q. So you were only talking about the two
 4 polling places that were open that day on
 5 April 7?
 6 A. That's correct.
 7 Q. So do you think you could have used
 8 more people to open more polling places on
 9 April 7?
 10 A. Definitely.
 11 Q. Okay. And I think you mentioned this
 12 before I put this document up, but you said you
 13 had one National Guard person who also helped
 14 out?
 15 A. Yes.
 16 Q. Okay. Why could you use that one
 17 National Guard person and not use other National
 18 Guard people who were offered to the City of
 19 Green Bay?
 20 A. I had an odd number at West High
 21 School, and I thought she could help with
 22 disinfecting. My concern was the National Guard

Page 48

1 would not be trained to run a polling location,
 2 and so I -- and I didn't know until Sunday that
 3 we were getting them for sure, and everything
 4 was all set.
 5 Q. Ms. Teske, do you know who David Kronig
 6 is?
 7 A. I believe he is with the Democratic
 8 Party.
 9 Q. What is your relationship with him?
 10 A. He emails me.
 11 Q. He emails you? What do you mean?
 12 He just emails you all the time? Does
 13 he email you sporadically?
 14 What's the relationship?
 15 A. If I remember correctly, I think he
 16 emailed me two times for the April 7 election.
 17 Q. Do you know what position Mr. Kronig
 18 holds with the Democratic Party of Wisconsin?
 19 A. I don't recall.
 20 Q. Do you know if he's the director of
 21 voter protection for the Democratic Party of
 22 Wisconsin?

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1 A. I don't recall.

2 Q. And you know that the Democratic Party

3 of Wisconsin is one of the Plaintiffs in these

4 cases; correct?

5 A. There's just multiple lawsuits, and

6 I -- I assumed. I don't know.

7 MR. BROWNE: Dan, can you put up

8 Legislative Exhibit 4 and mark that as Teske

9 Exhibit 4.

10 (Whereupon, Exhibit 4 was

11 marked for identification.)

12 BY MR. BROWNE:

13 Q. And, Ms. Teske, I'll just ask you to

14 take a look at it. And, again, you can ask Dan

15 to scroll through it. It's a two-page document.

16 And for the record, this is an email

17 string between Mr. Kronig and Ms. Teske, with

18 the last email in the string dated March 19,

19 2020, at 11:30 a.m., with a subject line of

20 "Early Voting."

21 A. Okay.

22 Q. Ms. Teske, are you familiar with that

Page 50

1 email string?

2 A. Yes, I am.

3 Q. Did you receive and send those emails

4 on that string?

5 A. Yes, I did.

6 Q. Okay. If you look at page 2 of that

7 document, do you see the email from Mr. Kronig

8 dated March 11, 2020, at 8:04 p.m.?

9 Do you see that?

10 A. Yes.

11 Q. Okay. Mr. Kronig wrote, "Kris, you

12 probably saw or heard that Madison announced

13 unexpected early voting starting tomorrow, aimed

14 at allowing college students to vote before they

15 head out for spring break. Any chance Green Bay

16 will be doing something similar?"

17 Did I read that correctly?

18 A. Yes, you did.

19 Q. Okay. Why is Mr. Kronig emailing you

20 about the start of early voting?

21 A. Because he saw that Madison was doing

22 it.

Page 51

1 Q. Okay. So why would he email you about

2 it?

3 A. Because we have UWGB in our

4 municipality.

5 Q. Do you understand what Mr. Kronig meant

6 by "Any chance Green Bay will be doing something

7 similar"?

8 A. I had no idea why he sent that to me,

9 because we didn't have ballots, and we have no

10 control over when we get the ballots.

11 Q. But do you have control over when early

12 voting starts in Green Bay?

13 A. Yes.

14 Q. So do you think Mr. Kronig was asking

15 you to start early voting in Green Bay?

16 A. I was starting as soon as I got the

17 ballots.

18 Q. But do you think Mr. Kronig was asking

19 you to start early voting in Green Bay?

20 A. Yes.

21 Q. Thank you.

22 You said Mr. Kronig emailed you twice

Page 52

1 before?

2 I think that's what you testified.

3 A. I'm sorry. You cut out again.

4 Q. I'm sorry.

5 You said you believed Mr. Kronig

6 emailed you twice; is that correct?

7 A. Yes.

8 MR. BROWNE: Dan, could you put up

9 Legislative Exhibit 5 and mark it as Teske

10 Exhibit 5.

11 (Whereupon, Exhibit 5 was

12 marked for identification.)

13 BY MR. BROWNE:

14 Q. And, Ms. Teske, take a look at that.

15 It's a two-page document.

16 And for the record, this is an email

17 string between Mr. Kronig and Ms. Teske, with

18 the last email in the string dated April 7,

19 2020, at 7:36 p.m., with a subject line of

20 "Absentee Ballot Drop Box."

21 A. I'm aware of this one.

22 Q. Okay. Did you send -- or did you

Page 53

1 receive and send emails on this string,
 2 Ms. Teske?
 3 A. Yes.
 4 Q. If we scroll down to the second page
 5 and the email on that page, it's an email from
 6 Mr. Kronig at 6:17 p.m. on April 7.
 7 Do you see that, Ms. Teske?
 8 A. Yes.
 9 Q. Okay. And in that email Mr. Kronig
 10 wrote to you, "I wanted to flag one thing we've
 11 heard from a couple of Green Bay voters.
 12 Apparently they are somewhat confused by the
 13 signage at the drop box, which makes it look
 14 like they're sticking their ballots in the
 15 Construction Bid bin. Could you possibly have
 16 someone cover over the Construction Bid sign and
 17 direct people to the right drop box for their
 18 ballots?"
 19 Did I read that correctly?
 20 A. Yes.
 21 Q. Why was Mr. Kronig asking you to do
 22 this?

Page 54

1 A. In my opinion, he wanted to make sure
 2 that the ballots got in the right drop box.
 3 Q. And did you clarify the signs as
 4 Mr. Kronig asked?
 5 A. We did go out and make the sign bigger.
 6 Q. Mr. Kronig sent this email in the midst
 7 of the election on April 7; is that correct?
 8 A. That's correct.
 9 Q. You're pretty busy during an election;
 10 right?
 11 A. That probably isn't even the word.
 12 But, yes, we're very busy.
 13 Q. And you were probably super busy during
 14 the April 7 election; right?
 15 A. Yes, we were.
 16 Q. But you took the time to respond to
 17 Mr. Kronig; right?
 18 A. Yes.
 19 MR. BROWNE: Dan, could you put up
 20 Legislative Exhibit 6 and mark that as Teske
 21 Exhibit 6.
 22 (Whereupon, Exhibit 6 was

Page 55

1 marked for identification.)
 2 BY MR. BROWNE:
 3 Q. Ms. Teske, can you take a look at this.
 4 This is a two-page document.
 5 For the record, this is an email string
 6 between Mr. Kronig and Ms. Teske, with the last
 7 email in the string dated April 7, 2020, at
 8 7:58 p.m., with the subject line of "Lines at
 9 West HS."
 10 THE WITNESS: Okay. Can you go down.
 11 I forgot -- okay. I forgot about this
 12 one. Yes.
 13 BY MR. BROWNE:
 14 Q. Okay. So you testified earlier that
 15 there were two emails, but this is the third
 16 email; is that right?
 17 A. That's correct.
 18 Q. Do you think there were possibly other
 19 emails that Mr. Kronig sent you?
 20 A. I mean, there could be. Those two are
 21 the ones that stuck in my mind.
 22 MR. BROWNE: Okay. Dan, if we could

Page 56

1 scroll down to the bottom of page 1 and the top
 2 of page 2. Maybe if you could show them side by
 3 side.
 4 Q. Ms. Teske, if you look there at the
 5 bottom of page 1 and the top of page 2, it's an
 6 email from Mr. Kronig on April 7, 2020, at
 7 7:29 p.m.
 8 And he wrote to you, "Hey, Kris, we're
 9 hearing reports of lines at West High School not
 10 moving at all for 45 minutes or more. Can you
 11 shed any light on what's going on there? Do you
 12 have people you could shift there to alleviate
 13 wait time?"
 14 Do you see that?
 15 A. Yes.
 16 Q. Do you have an understanding of what
 17 Mr. Kronig meant by "Do you have any people you
 18 could shift there to alleviate wait time" --
 19 "wait times?" Sorry.
 20 A. Yeah. He wanted me to send more people
 21 over to get the line down.
 22 Q. So he's asking you to shift poll

Page 57

1 workers?
 2 A. Yes.
 3 Q. Okay. And you had -- Green Bay had a
 4 limited number of poll workers that day; right?
 5 A. Yes.
 6 Q. Let's look at your response in the
 7 email above on page 1, and it's on -- the email,
 8 you responded on April 7 at 7:43 p.m.
 9 And you wrote in response to
 10 Mr. Kronig, "There's a line at both East and
 11 West. We will reassess in an hour."
 12 Do you see that?
 13 A. Yes.
 14 Q. Okay. This is another email you
 15 answered on Election Day, April 7; correct?
 16 A. Yes.
 17 Q. And you did it fairly quickly, about
 18 12 minutes; is that right?
 19 A. Yes.
 20 Q. And then Mr. Kronig responded to you
 21 five minutes later. If you look above that, he
 22 writes, "Thanks, Kris. Will you make sure to

Page 58

1 have poll workers at the end of the line telling
 2 people that they can still vote after 8 if they
 3 were already there?"
 4 Is that correct?
 5 A. Yes.
 6 Q. Do you know -- do you understand why
 7 Mr. Kronig told you to do this?
 8 A. At a polling location, when
 9 8:00 o'clock comes, anyone's that's in line is
 10 allowed to vote; anyone that comes after 8:00 is
 11 not allowed to. So poll workers are instructed
 12 to put someone at the end of the line at
 13 8:00 o'clock, and anyone that comes after that
 14 is turned away.
 15 Q. Great.
 16 All right. Ms. Teske, I want to talk
 17 about the upcoming elections in August and
 18 November of 2020.
 19 What preparations has the clerk's
 20 office undertaken for the upcoming 2020
 21 elections?
 22 A. Now that we have time to plan, we have

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1 done a huge recruitment process for poll
 2 workers. We have gotten different polling
 3 locations, and some of our regular polling
 4 locations now, since they understand the
 5 pandemic more, they're allowing us in; some
 6 still are not.
 7 We're getting more PPE. And now all
 8 the new recruited poll workers are taking their
 9 training and asking us any questions they may
 10 have about the training.
 11 Q. Ms. Teske, do you have a number of
 12 about how many poll workers you have right now
 13 ready for the upcoming elections?
 14 A. Right now I have 210.
 15 Q. And normally -- what's a normal poll
 16 worker amount to have for -- on an election?
 17 A. Again, it depends on the election. So,
 18 you know, I was hoping for this election,
 19 August, to have 280. But what I normally do is
 20 try and get the 350 I would normally want for
 21 November so that they are -- have one election
 22 under their belt so they understand what's going

Page 60

1 to happen in November.
 2 Q. Ms. Teske, has the clerk's office
 3 received a survey from the Wisconsin Elections
 4 Commission as to types of sanitation and PPE
 5 supplies it might need -- that Green Bay might
 6 need for the August and November 2020 election?
 7 A. Yes.
 8 Q. Did the clerk's office respond to that
 9 survey?
 10 A. It actually came through -- they wanted
 11 us to respond to the Brown County clerk's
 12 office, so I did.
 13 Q. And what did you tell the Brown County
 14 clerk's office about the supplies you might need
 15 for the upcoming elections?
 16 A. That I needed masks. That I'd take
 17 more pens. You know, hand sanitizer. Anything
 18 they could provide to us.
 19 Q. Do you intend to update your requests
 20 for supplies and PPE after the August election
 21 in preparation for the November election?
 22 A. What we are getting from the Wisconsin

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1 Elections Commission this time is to carry us
 2 over for the November election also.
 3 Q. Has the clerk's office or the City of
 4 Green Bay received those supplies yet?
 5 A. No.
 6 Q. Okay. When do you expect them?
 7 A. They thought by the end of the week.
 8 Q. Thank you.
 9 Ms. Teske has the clerk's office or
 10 Green Bay applied for funding or grant money
 11 through the CARES Act?
 12 A. Yes.
 13 Q. Do you know how much money the clerk's
 14 office or the City of Green Bay could
 15 potentially receive under the CARES Act?
 16 A. I believe it was around \$54,000.
 17 MR. BROWNE: Dan, can we put up
 18 Legislative Exhibit 7, please.
 19 (Whereupon, Exhibit 7 was
 20 marked for identification.)
 21 BY MR. BROWNE:
 22 Q. And, Ms. Teske, if you want to take a

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1 look at that. It's a two-page document.
 2 THE WITNESS: Can you make it bigger?
 3 I'm sorry. Okay.
 4 THE VIDEOGRAPHER: No need to apologize
 5 at all. Just let me know when to scroll and
 6 what to do.
 7 THE WITNESS: Thank you.
 8 Okay. Yep.
 9 BY MR. BROWNE:
 10 Q. Are you familiar with this document?
 11 A. I am.
 12 Q. Can you tell us what it is?
 13 A. It's money that we will be receiving
 14 from the Wisconsin Elections Commission. It was
 15 a base of \$200 and then a dollar ten per
 16 registered voter as of June.
 17 MR. BROWNE: This is an email from
 18 EL Financial to Kris Teske dated June 23, 2020,
 19 at 7:45 a.m.
 20 Q. And, Ms. Teske, this email, is it
 21 confirming that the City of Green Bay and the
 22 clerk's office will receive this funding under

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1 the CARES Act?
 2 A. Yes.
 3 Q. And you said it was approximately
 4 \$54,000; is that right?
 5 A. I believe that's what it came to, yes.
 6 Q. And you did receive this email; is that
 7 correct?
 8 A. I did.
 9 Q. And has the city or the clerk's office
 10 received this money?
 11 A. I believe we did. That's the finance
 12 department, but I believe we did get it in.
 13 Q. Okay. Can you tell us what the money
 14 can be used for?
 15 A. We can use it for PPE. We can use it
 16 for equipment that will make the election run
 17 smoother. Things of that nature.
 18 Q. Has the clerk's office or the City of
 19 Green Bay received any other grants?
 20 A. Yes.
 21 Q. Can you tell us what those are?
 22 A. We received one for over a million

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1 dollars. I'm trying to think of the name.
 2 Civic Life -- I can't remember.
 3 Q. Don't struggle. I'll help you out
 4 here.
 5 Can we put up Legislative Exhibit 7(a).
 6 And let's mark that as Exhibit 8.
 7 (Whereupon, Exhibit 8 was
 8 marked for identification.)
 9 MR. BROWNE: And, Dan, if you could
 10 scroll down to the bottom of page 4.
 11 Q. And, Ms. Teske, if you want to take a
 12 look at this. But once you have, tell me if
 13 this is the grant you're talking about.
 14 A. That is, uh-huh.
 15 Q. Okay. And that was a grant from the
 16 Center for Tech and Civic Life; is that correct?
 17 A. That's correct.
 18 Q. And it was a grant for funds for the
 19 Wisconsin Safe Voting Plan; is that right?
 20 A. I'm sorry. You cut out.
 21 Q. Yeah.
 22 And was that a grant for what they call

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1 the Wisconsin Safe Voter [sic] Plan?
 2 A. Correct.
 3 Q. And do you know what the Wisconsin Safe
 4 Voter Plan -- Voting Plan is?
 5 A. Well, we had to fill out what would be
 6 our dream scenario for elections and anything
 7 that we would wish to purchase and to get the
 8 word out to the voters.
 9 Q. If you look down in that article a
 10 little bit, it says, "All five cities applied to
 11 CTCL for the grants, saying it would enable
 12 cities to keep voting sites open, set up
 13 drive-through locations and provide personal
 14 protective equipment for poll workers"; is that
 15 correct?
 16 A. Yes.
 17 Q. And the City of Green Bay received
 18 \$1.1 million; is that right?
 19 A. Yes.
 20 Q. Okay. And the city has that money;
 21 right?
 22 A. Another finance question.

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1 Q. Okay. Do you know if that money has
 2 been spent for helping opening -- keeping voting
 3 sites open, setting up drive-through locations
 4 and providing protective personal equipment?
 5 A. We are just in the process of -- we
 6 just had a kickoff meeting yesterday with them,
 7 so I don't believe -- I don't believe anything's
 8 been spent yet.
 9 Q. Okay. When you said, "We just had a
 10 kickoff meeting with them," who do you mean when
 11 you say "them"?
 12 A. Center for Tech and Civic Life.
 13 Q. So you were working in conjunction with
 14 the CTCL to administer and, you know, spend
 15 these funds; is that correct?
 16 A. They're making sure that what we're
 17 spending on -- spending it on is what they
 18 envisioned. And, you know, they have people
 19 that can help redesign some of our instruction
 20 sheets. Things like that.
 21 Q. Okay. Ms. Teske, has the clerk's
 22 office communicated with the election --

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1 Wisconsin Elections Commission regarding
 2 Intelligent Mail barcodes?
 3 A. I know the Wisconsin Elections
 4 Commission implemented that for the August
 5 election.
 6 Q. And does the clerk's office and the
 7 City of Green Bay plan to adopt Intelligent Mail
 8 barcodes?
 9 A. It's on there when we print the label.
 10 Q. Okay. So the city and the clerk's
 11 office are going to use Intelligent Mail
 12 barcodes?
 13 A. What it does is shows us on reports
 14 where the ballot is at, when it's working
 15 correctly.
 16 Q. So the city and the clerk's office are
 17 going to use Intelligent Mail barcodes?
 18 A. We're using them. I'm just going to
 19 put it that way. I mean, we're -- I'm not sure
 20 if it's working 100 percent, so I'm not relying
 21 on anything. But I will look at -- you know, if
 22 someone calls and says, "I didn't get a ballot,"

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1 I can go back and say, "Well, it looks like it's
 2 at the post office."
 3 Q. When you say you're not sure it's
 4 working 100 percent, what do you mean?
 5 A. I'm sorry. Say that again.
 6 Q. Yeah. When you say you're not sure
 7 it's working 100 percent, what do you mean?
 8 A. From my understanding, the post office
 9 isn't using the barcode necessarily. It's going
 10 through without scanning that.
 11 And this is just hearsay. I haven't --
 12 I've just heard from other clerks, and, you
 13 know, the -- not every post office works the
 14 same.
 15 Q. Ms. Teske, do you know if the clerk's
 16 office or the City of Green Bay have applied for
 17 HAVA Election Security subgrants?
 18 A. No. I'm not aware of it.
 19 Q. Ms. Teske, what has the clerk's office
 20 or the City of Green Bay done with regard to
 21 poll worker recruitment for the November 2020
 22 election?

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<p style="text-align: right;">Page 69</p> <p>1 A. The city has established an ad hoc 2 committee on elections. So I'm getting help 3 from those people that were assigned to that 4 ad hoc committee, and one of the groups 5 within -- is calling all different organizations 6 in the City of Green Bay.</p> <p>7 The City of Green Bay also sent out a 8 flyer to every single person, talking about, you 9 know, how they can get an absentee ballot, 10 things like that. And on there it asked, if 11 they want to be a poll worker, you know, where 12 they could go to apply.</p> <p>13 We have it on our website, on Facebook 14 I believe on Twitter. So we've done a huge 15 push.</p> <p>16 Q. This ad hoc committee on elections, can 17 you tell us what that is?</p> <p>18 A. The ad hoc committee is a group of -- 19 it's the chief of staff, myself, two 20 alderpersons, and then two chief of staffs, one 21 professor from UWGB, and another one that's in a 22 group that's -- that advocates voting.</p>	<p style="text-align: right;">Page 71</p> <p>1 Brown County, and I told them 100 that I'd like. 2 And then yesterday I had a call with the 3 Wisconsin Elections Commission, and they 4 questioned my 100 -- my request for 100. And 5 they said it was only for critical need, and 6 then they said, "Can you come up" -- "Can you 7 look and see what the number would be." 8 So first off 100 -- I mean, we're in a 9 critical strange, so I wanted 100. So I said, 10 "Fine. I will take 50." 11 And they said, "You're not guaranteed. 12 We don't know if they'll be trained. And don't 13 plan on them." 14 Q. Are we talking about the August 15 election? 16 A. Yes. 17 Q. Okay. And what about for the November 18 election: Would you be prepared to request 19 National Guard members to assist as poll workers 20 for the November election? 21 A. I will as long -- and the difference 22 with August is I have around 112 seasoned poll</p>
<p style="text-align: right;">Page 70</p> <p>1 And this group is -- they got divided 2 out into subgroups. So one is looking at poll 3 worker recruitment, one is trying to get polling 4 locations, and then another group is looking at 5 getting word out to voters who speak different 6 languages, just to get people to vote.</p> <p>7 Q. And how often is this committee 8 meeting?</p> <p>9 A. We were meeting every week. Now it's 10 kind of every other week.</p> <p>11 Q. And does the committee have power to 12 implement changes in -- not changes, but 13 presentations for the November 2020 election?</p> <p>14 A. They are voting on things, but then it 15 goes forward to the city council, and then the 16 council votes on it.</p> <p>17 Q. Ms. Teske, is the clerk's office or the 18 City of Green Bay prepared to request and use 19 National Guard members as poll workers if 20 they're available for the November 2020 21 election? 22 A. I was asked that question last week by</p>	<p style="text-align: right;">Page 72</p> <p>1 workers. So I know that I could have seasoned 2 poll workers at different polling locations with 3 [garbled] people that could administer the 4 polling location.</p> <p>5 Q. Mrs. Teske, what has the clerk's office 6 or the City of Green Bay done with regard to 7 poll worker training for the November 2020 8 election? 9 You said you're recruiting all the 10 time. What have you done in terms of training? 11 A. So what we're doing is, first off, they 12 get an email with a video that the WEC 13 recommended. And then also we have an Election 14 Day manual that's done for the City of Green Bay 15 that is -- coincides with the WEC manuals. But 16 this is a step-by-step process of Election Day: 17 what they should say, what they need to look 18 for. And so they go through that. 19 The chief inspector then gets 20 additional training of the baseline training 21 for -- through the WEC. That's a webinar also. 22 And then I am sending the chief inspectors</p>

18 (Pages 69 to 72)

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1 another webinar entitled "Election and COVID-19"

2 so they're prepared for their polling location;

3 how to set it up properly.

4 Q. Thank you.

5 Ms. Teske, what has the clerk's office

6 or the City of Green Bay -- how many polling

7 places -- hold on. Let me start over.

8 How many polling places or polling

9 locations does the clerk's office or the City of

10 Green Bay expect to have open for the November

11 2020 election?

12 A. We mainly focused on August, so I don't

13 have a definite number for November.

14 Q. Do you have an anticipated number for

15 November?

16 A. Right now it looks to be about 17

17 again.

18 Q. And I should have asked this: What is

19 the number for August "garbled"?

20 A. 17.

21 I'm sorry. You're cutting out. You

22 asked --

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1 Q. You got it right. You got it right.

2 A. Oh, okay.

3 MR. BEISENSTEIN: What was the date?

4 I'm assuming it was the August 7 date.

5 MR. BROWNE: Yes.

6 THE WITNESS: August 11.

7 MR. BEISENSTEIN: Or 11th. I'm sorry.

8 THE WITNESS: Yeah.

9 BY MR. BROWNE:

10 Q. Ms. Teske, what specific measures is

11 the clerk's office going to take with regard to

12 social distancing at polling locations for the

13 November 2020 election?

14 A. Well, we have the Plexiglas shields at

15 the poll book tables. We are spacing everything

16 out the 6 feet apart, and what they did at the,

17 like -- like what they did at the April

18 election, if there's a line, they will be 6 feet

19 apart. Yeah.

20 Does that answer your question?

21 Q. Are you taking any steps in regards to

22 social distancing in terms of the polling

Page 75

1 booths.

2 Are they separated by 6 feet or

3 anything like that?

4 A. Yes. Yes. Everything will be

5 separated 6 feet to the best that we can do,

6 yes.

7 Q. And at the polling locations you'll

8 have the space to do that social distancing?

9 A. Say that again.

10 Q. At the polling locations you currently

11 have planned now for August and then potentially

12 for November, will you have the space to do

13 social distancing?

14 A. Yes.

15 Q. Ms. Teske, what specific measures in

16 the clerk's -- is the clerk's office going to

17 take with regard to hygiene at the polling

18 locations for the November 2020 elections?

19 A. We are going to have hand sanitizer at

20 the entrance and the exists, hand sanitizer at

21 all the locations, you know, registration table,

22 poll book table, wherever we feel it'll be

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1 needed the most.

2 There's going to be some wipes that are

3 allowed to be used on the equipment. Those are

4 special, so it doesn't hurt the equipment.

5 Then we're going to have the masks, the

6 gloves. We're trying to get face shields for

7 the poll workers. I am in talks right now

8 because the City of Green Bay has a mask

9 mandate, and I'm working with the attorney's

10 office because I don't think we can do that for

11 the voters. So that hasn't been put in place

12 yet. And we will have masks there for the

13 voters if they need them.

14 Q. Ms. Teske, what specific measures is

15 the clerk's office going to take with regard to

16 supplies, including PPE at polling locations?

17 I think you just mentioned masks and

18 face shields.

19 Will there be other PPE there at the

20 polling locations?

21 A. Well, let's see. The masks. The

22 gloves. Hand sanitizer. The Plexiglas shields.

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1 Face shields. Disinfecting wipes. Disinfecting
 2 spray. I'm working on the pens, whether they'll
 3 be one-time use or whether we will be
 4 disinfecting the pens.
 5 Q. Ms. Teske, are there any other measures
 6 that the clerk's office or the City of Green Bay
 7 is intending to take in terms of the polling
 8 locations and the ability to open them and
 9 maintain a safe environment for the November
 10 2020 elections?
 11 A. Well, I'm just -- I'm still focusing on
 12 August. So, you know, I'm going to look at if
 13 we need any security measures for November,
 14 along with August.
 15 MR. BROWNE: Dan, can we put up
 16 Legislative Exhibit 8, and we'll call it Teske
 17 Exhibit 9.
 18 (Whereupon, Exhibit 9 was
 19 marked for identification.)
 20 BY MR. BROWNE:
 21 Q. And this is a three-page document,
 22 Ms. Teske. If you want to have Dan scroll

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1 right?
 2 A. Yes.
 3 Q. Okay. And you were a recipient on this
 4 email; is that correct?
 5 A. Yes.
 6 Q. And who were the other recipients on
 7 this email?
 8 THE WITNESS: Can you go back to the
 9 first page, please.
 10 So Kim Wayte is the deputy clerk.
 11 District One is Alderperson Dorff. Celestine
 12 Jeffreys is the chief of staff. Joe Faulds is
 13 the HR director, who is Nate's boss. And Andy
 14 Krzewina is in the park department.
 15 BY MR. BROWNE:
 16 Q. And is this email about the ADA
 17 compliance of these potential polling locations?
 18 A. Yes.
 19 Q. Is the City of Green Bay responsible to
 20 make sure that -- strike that.
 21 Is the City of Green Bay or the clerk's
 22 office responsible to make sure that polling

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1 through it so you can take a look at it, that's
 2 fine.
 3 A. I know what it is.
 4 Q. Okay. And just for the record, this is
 5 an email dated June 18, 2020, from Nate
 6 Froemming to multiple individuals, with the
 7 subject line "WEC Audit Results 6/18/20."
 8 You said you're familiar with this,
 9 Ms. Teske.
 10 What is it?
 11 A. This is talking about polling locations
 12 that we could use that the city owns, I believe.
 13 I'm not sure if there's [garbled].
 14 MR. BEISENSTEIN: Kris, you broke up a
 15 little bit there.
 16 THE WITNESS: Could I see the second
 17 page.
 18 Okay. Okay.
 19 BY MR. BROWNE:
 20 Q. Ms. Teske, who is Nate Froemming?
 21 A. He is the safety manager.
 22 Q. Is he the city safety manager; is that

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1 locations are ADA compliant?
 2 A. Yes.
 3 Q. What is Triangle Hill?
 4 A. That's the shelter at a park.
 5 Q. So it's -- is it outside, Ms. Teske?
 6 A. It's a building. It's an actual
 7 building in the park. People can, you know,
 8 have a party there kind of thing.
 9 Q. Sure.
 10 What about the Wildlife Sanctuary?
 11 What is that?
 12 A. The city owns that. That's, you know,
 13 wildlife and things like that with a, you know,
 14 nature center and everything. And they have a
 15 new add-on to that building. It's a huge room
 16 to use for party use and things like that.
 17 Q. What is Bay Beach?
 18 A. Bay Beach is a fun place. It's got
 19 rides. It has a pavilion. And that is a
 20 Green Bay city attraction.
 21 Q. And the last one may be obvious, but
 22 Sears?

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<p>1 Is that referring to a Sears store, or 2 what is that? 3 A. It's the former Sears building at 4 Green Bay plaza. 5 Q. Okay. Are these sites going to be 6 polling locations for the November 2020 7 election? 8 A. Again, we haven't truly discussed it. 9 Sears, I believe the -- we weren't sure if we 10 were going to get Sears in November, but I 11 believe that we have that now. Bay Beach we are 12 going to use, and Wildlife Sanctuary. Triangle 13 Hill has some accessibility issues that -- I 14 don't know if we'll use that one or not. 15 Q. Ms. Teske, this is my last question, 16 and I want to thank you for your time: Has the 17 clerk's office made any other efforts to prepare 18 for -- outside of what we've talked about today, 19 has the clerk's office made any other efforts 20 related to the November election and to prepare 21 for that election? 22 A. I have to think, because it's just</p>	<p>1 Should we report back 10:45, 11:45 your 2 time, Rachel? Is that okay? 3 MS. HOMER: Yes, that sounds great. 4 THE VIDEOGRAPHER: All right. The time 5 is 11:30 Eastern Central Time [sic]. We're 6 going off the record. 7 (Recess taken.) 8 THE VIDEOGRAPHER: The time is 9 11:45 a.m. Eastern Standard Time. We're back on 10 the record. 11 12 EXAMINATION 13 BY MS. HOMER: 14 Q. Good morning, Ms. Teske. Thank you for 15 taking the time today. I know you're incredibly 16 busy, so I really appreciate you spending some 17 time here. 18 My name's Rachel Homer. I'm one of the 19 attorneys for the Plaintiffs. 20 I just want to pull up the very first 21 document, which Dan has labeled Document 1. 22 Great. Thank you.</p>
<p>1 second nature for me to be thinking of it. 2 So, you know, the WEC is going to be 3 sending out a mailing -- so we won't be doing 4 that, to all people I guess -- on absentee 5 voting. 6 I'm sure we will be recruiting more 7 people and -- or, again, trying to get the word 8 out more as far as different ways that a person 9 can vote. 10 MR. BROWNE: Thank you, Mrs. Teske. I 11 appreciate your time this morning. 12 THE WITNESS: Thank you. 13 MS. HOMER: Good morning. This is 14 Rachel Homer. We're going to have several 15 questions for Ms. Teske, but we'd like to take a 16 break before we start that. 17 Would anyone object to a 15-minute 18 break? 19 MR. BEISENSTEIN: Excellent idea, 20 Rachel. I was just going to suggest that. 21 15 minutes. It's 10:30 here, Central 22 Time.</p>	<p>1 And before I get started, Ms. Teske, 2 let me just remind you some of the same things 3 that Rob said earlier. 4 If you're having any trouble hearing 5 me, please just let me know. 6 If you're having any trouble seeing the 7 document, please just speak up. We can enlarge 8 it; we can scroll it. 9 And if you need a break at any time, 10 just let me know; we can take a break. 11 Sound good? 12 A. Yes. 13 Q. Great. Thank you. 14 Now, have we seen this document before? 15 THE VIDEOGRAPHER: Did you want to mark 16 this as Exhibit 10? 17 MS. HOMER: Yes, please. 18 (Whereupon, Exhibit 10 was 19 marked for identification.) 20 BY MS. HOMER: 21 Q. Have you seen this document before? 22 A. Yes.</p>

21 (Pages 81 to 84)

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1 Q. Do you understand that you've been
 2 designated by the office of the city clerk of
 3 Green Bay to testify on the topics listed in
 4 this document?
 5 And, Dan, can you actually just scroll
 6 to the last page, where it lists the topics --
 7 or I guess the second-to-last page. Thank you.
 8 Ms. Teske, do you understand that
 9 you've been designated to testify on these
 10 topics?
 11 A. Yes, I do.
 12 Q. And are you prepared to testify on each
 13 of these topics?
 14 A. Yes.
 15 Q. Great.
 16 And just to note, same as earlier, in
 17 my questions when I say "you," I mean you in
 18 your capacity representing the city clerk of
 19 Green Bay, not just you personally.
 20 Do you understand that?
 21 A. Yes.
 22 Q. Great. All right. Let's go ahead and

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1 get started.
 2 Can you describe what additional steps
 3 you took -- beyond those that you normally would
 4 take to prepare for an election, what additional
 5 steps you took to prepare for the April election
 6 in light of the COVID pandemic?
 7 A. We purchased PPE. We made sure that
 8 the chief inspectors then could relate to their
 9 poll workers the process of social distancing,
 10 how things should be disinfected. And we did
 11 press releases notifying the public of the
 12 different polling locations.
 13 Q. Is there anything else that you did for
 14 the April election?
 15 A. There was multiple press releases sent.
 16 I can't remember them all. But I do know that
 17 when it became time that we knew that all
 18 absentee ballots were going to get out, a press
 19 release was sent out around that.
 20 Q. Great.
 21 Turning to the November election, can
 22 you describe what steps you took beyond those

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1 that you would normally take to prepare for an
 2 election in light of the COVID-19 pandemic?
 3 A. And you said November.
 4 Q. Yes, preparing for the November
 5 election.
 6 A. Okay. Well, this one we had more time
 7 to plan than we did the April. So we could
 8 purchase more PPE to expand to more polling
 9 locations, because we did the Plexiglas divider
 10 shields. We could do a huge recruit on poll
 11 workers, getting them trained.
 12 And -- well, we got the word -- we're
 13 certainly getting the word out of the changes
 14 for the fall elections, meaning the different
 15 ways that people can vote. Things like that.
 16 Q. What role does the WEC typically play
 17 in Green Bay's preparations for elections?
 18 A. I follow what they tell us to do.
 19 Q. And does the WEC ensure that Green Bay
 20 complies with the law when administering
 21 elections?
 22 A. I can't speak for them.

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1 Q. Does the WEC provide instructions to
 2 Green Bay about how to comply with the law when
 3 administering elections?
 4 A. Somewhat.
 5 Q. Can you expand on that?
 6 A. A lot of times their direction comes
 7 after we need it.
 8 Q. For the April election, did Green Bay
 9 receive any instructions or directives from the
 10 WEC about how to comply with state and federal
 11 law?
 12 A. Only certain things. We -- go ahead.
 13 Q. No. Can you expand on that?
 14 A. Sure.
 15 Anything that came, you know, through,
 16 like, the governor, any law changes, when it
 17 came to direction on polling location setup and
 18 safety, they wouldn't -- they wouldn't respond.
 19 MS. HOMER: Okay. Dan, can you pull up
 20 Exhibit 2 -- or Document 2 and mark it as the
 21 next exhibit. Thank you.
 22 (Whereupon, Exhibit 11 was

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1 marked for identification.)
 2 BY MS. HOMER:
 3 Q. Ms. Teske, do you recognize this email?
 4 THE WITNESS: If you could make it
 5 bigger.
 6 A lot of it in April -- oh, this is --
 7 okay. Let me make sure I read this one.
 8 Okay. Keep going, please. Keep going.
 9 Okay. Keep going.
 10 Yes. Okay.
 11 BY MS. HOMER:
 12 Q. Is this an email from the WEC to county
 13 clerks?
 14 A. It says to county clerks, yes.
 15 Q. And then it eventually got forwarded to
 16 you?
 17 A. I would have gotten it because it does
 18 say Wisconsin municipal clerks.
 19 Q. What is this email about?
 20 A. It is about, I believe, the AMB ballot
 21 to be sent out.
 22 Q. Now, please take a look at that last

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1 paragraph on the first page.
 2 And, Dan, if you can make that a little
 3 bigger.
 4 Right. That last paragraph, starting
 5 with "at today's special meeting."
 6 And, Ms. Teske, just take a moment to
 7 read that to yourself.
 8 A. Okay.
 9 Q. Does this say that the WEC "directed"
 10 Wisconsin clerks to follow certain procedures?
 11 A. Yes.
 12 Q. And did you understand this email to be
 13 an authoritative instruction of what the law
 14 requires you to do?
 15 MR. BEISENSTEIN: Object to the form of
 16 the question.
 17 Go ahead and answer it if you can,
 18 Kris.
 19 THE WITNESS: Yes.
 20 BY MS. HOMER:
 21 Q. Do you believe that you had the
 22 discretion to act contrary to that direction?

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1 MR. BEISENSTEIN: Same objection.
 2 Go ahead, Kris.
 3 THE WITNESS: No.
 4 BY MS. HOMER:
 5 Q. And did you follow this direction?
 6 A. Yes.
 7 Q. Great. Thank you.
 8 Dan, can you pull up Document 3,
 9 Exhibit 12.
 10 (Whereupon, Exhibit 12 was
 11 marked for identification.)
 12 BY MS. HOMER:
 13 Q. Ms. Teske, do you recognize this
 14 document?
 15 Ms. Teske, the question is whether you
 16 recognize this email. And take your time to
 17 read it.
 18 A. Yeah, I'm just trying to -- yes.
 19 Q. And is this an automatic response from
 20 you about absentee ballot processing?
 21 A. I received [garbled] from our law
 22 department.

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1 Q. Can you expand on that?
 2 A. From my understanding, the court
 3 overturned a ruling, and we -- the clerk's
 4 office staff was working on trying to get
 5 absentee ballots out. And, actually, we got the
 6 notification at around 6:30 on -- wait a minute.
 7 Sorry. I'm thinking of when they
 8 stopped us. I apologize. Let me just read it
 9 again.
 10 Q. Not a problem. Take your time.
 11 A. Oh, okay. Okay. Sorry.
 12 Q. Can you explain to me what this email
 13 is.
 14 A. People were -- when people realized
 15 that the court overturned the extension, people
 16 started asking us if we could email the ballots.
 17 And --
 18 Q. And did -- oh, no. I'm sorry. Please
 19 finish.
 20 A. Nope. Go ahead.
 21 Q. Did the WEC provide you with
 22 instructions about whether you could email the

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1 ballots?

2 A. What I did when people started asking

3 if their ballot could be emailed, which the City

4 of Green Bay not only doesn't do -- because in

5 statute it says May. We only do it for overseas

6 and military -- I questioned our attorney, and

7 then the mayor was on, too. And he did get

8 direction from one of the commissioners at the

9 WEC saying that, no, we weren't allowed to

10 email.

11 Q. And you followed that instruction?

12 A. Correct.

13 Q. And the City of Green Bay was not a

14 defendant in that lawsuit; correct?

15 A. I don't know.

16 Q. Okay. So to the best of your

17 understanding, the WEC instructed you on how to

18 implement that binding court ruling, whether or

19 not you were a party in that lawsuit?

20 A. Correct.

21 Q. And did you comply with the WEC's

22 instruction here because the WEC typically

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1 coordinates how municipalities like Green Bay

2 comply with court orders?

3 A. We did comply.

4 MS. HOMER: Okay. Dan, you can go

5 ahead and close this exhibit.

6 Dan, can you open up Document 4.

7 (Whereupon, Exhibit 13 was

8 marked for identification.)

9 BY MS. HOMER:

10 Q. Ms. Teske, do you recognize this email?

11 THE WITNESS: Again, can you make it

12 bigger, please.

13 Oh, yes.

14 BY MS. HOMER:

15 Q. Did you receive this email from the

16 WEC?

17 A. Yes.

18 Q. And what is this email about?

19 A. That the court case that started, I

20 believe, in 2016, they finally made a decision.

21 And then -- so we were given direction that --

22 some different points that got overturned, like

Page 95

1 the residency and things like that.

2 Then this came out a couple days later

3 saying, "Oh, we made a mistake. It hasn't been

4 mandated yet."

5 Q. And is this email the WEC giving you

6 instructions about how to follow that court

7 order?

8 A. Yes.

9 Q. And did you follow those instructions?

10 A. Yes.

11 Q. And did you believe that Green Bay was

12 obligated to follow those instructions?

13 A. Yes.

14 Q. And generally when the WEC instructs

15 Green Bay on how to comply with a court order,

16 you follow those instructions; right?

17 A. Yes.

18 Q. And Green Bay was not a defendant or

19 not involved in this lawsuit; correct?

20 A. I don't know that.

21 MS. HOMER: Okay. Dan, can you open up

22 Document 5, and let's go ahead and mark this as

Page 96

1 Exhibit 14.

2 (Whereupon, Exhibit 14 was

3 marked for identification.)

4 BY MS. HOMER:

5 Q. Ms. Teske, do you recognize this email?

6 THE WITNESS: If you can make it

7 bigger, please.

8 Yep, I remember it.

9 BY MS. HOMER:

10 Q. Great.

11 Dan, can you scroll down to the bottom

12 of page 2 and the top of page 3.

13 Great. Thank you.

14 So, Ms. Teske, this is an email from

15 you to Meagan Wolfe, the WEC administrator;

16 correct?

17 A. Correct.

18 Q. What are you asking her here?

19 A. UWGB has been asking us to have a

20 satellite site at the college for quite a few

21 years now, and that started to come about again.

22 And if you look at the grant from Civic -- the

<p style="text-align: right;">Page 97</p> <p>1 Civic Life grant, in there it talks about 2 additional polling locations for in-person. 3 And I know that the deadline had 4 passed, so I wanted to make sure, because of 5 that -- the way it was worded in the memorandum 6 concerning the Seventh Court district, I wanted 7 to make sure I was reading it correctly. So I 8 was getting clarification. 9 Q. And so if we go to page 2, the response 10 that you got from this -- there we go. 11 It looks like you got a response from 12 Nathan Judnic, another official at the Wisconsin 13 Elections Commission; is that correct? 14 A. Correct. 15 Q. Now, please take a look at the second 16 sentence in the first full paragraph on that 17 page, where it says -- yeah, there we go. Thank 18 you, Dan -- where it says, "There does not 19 appear to be any provisions in state law that 20 allows municipalities to now add new alternative 21 locations under Wisconsin Statute 6.855." 22 Do you see where that is?</p>	<p style="text-align: right;">Page 99</p> <p>1 decided that we didn't have to take it before 2 our city council to get approval to move them. 3 So that is what I considered them telling us 4 that it's an exception to the law, and that this 5 time there isn't. 6 BY MS. HOMER: 7 Q. And so did you understand him to be 8 saying that the WEC could grant an exception to 9 this statute? 10 MR. BEISENSTEIN: Same objection. 11 Go ahead. 12 THE WITNESS: That I don't know. 13 BY MS. HOMER: 14 Q. Okay. Did you seek an exception from 15 the WEC to this requirement? 16 A. What I did is I told the mayor and the 17 chief of staff that the deadline has passed. 18 And so right now it's in our legal department 19 and they, from what I'm told, are working with 20 the WEC. 21 Q. Do you know whether any other 22 municipalities sought an exception or reprieve</p>
<p style="text-align: right;">Page 98</p> <p>1 A. Yes. 2 Q. And then if you look at -- not the 3 sentence after that, but the one after that, 4 where it says, "Without a reprieve or exception 5 by the legislature or possibly the Commission on 6 this topic to allow municipalities to adjust for 7 staffing and availability of locations in August 8 and November, our advice is that the statute 9 says what it says." 10 Do you see that? 11 A. Yes. 12 Q. Going back to where he says "without a 13 reprieve or exception by the legislature or 14 possibly the Commission," what did you 15 understand him to be saying there? 16 MR. BEISENSTEIN: Object to the form of 17 the question. 18 Go ahead and answer, Kris, if you can. 19 THE WITNESS: In April, when we 20 realized that we -- that we were losing polling 21 locations, there's a deadline for that also, for 22 polling locations on Election Day. The WEC</p>	<p style="text-align: right;">Page 100</p> <p>1 from the WEC? 2 A. I don't know that. 3 Q. Okay. Are you worried about having too 4 few locations for in-person voting in the 5 November election? 6 A. No. 7 Q. If there were too few locations for 8 in-person voting for the November election, why 9 would that be harmful? 10 A. We've never had additional sites. It's 11 always just been in the clerk's office, and 12 we've handled it. 13 Q. Okay. If there were any court orders 14 between now and November about election 15 administration, you would expect the WEC to 16 instruct you on how to comply with them; 17 correct? 18 A. Correct. 19 Q. And you would comply with any such 20 instructions that you received from the WEC; 21 correct? 22 A. Correct.</p>

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1 Q. Great. Thank you.

2 Dan, you can go ahead and close this

3 exhibit. And can you open Document 6, and let's

4 mark this as Exhibit 15.

5 (Whereupon, Exhibit 15 was

6 marked for identification.)

7 BY MS. HOMER:

8 Q. Ms. Teske, do you recognize this

9 document?

10 THE WITNESS: Can you make it larger?

11 Okay. Keep going.

12 Okay. Is this the one to move the

13 election?

14 Let's see. If you could keep going,

15 please. Okay. Continue. Continue. Okay.

16 Continue.

17 Okay. Yep.

18 BY MS. HOMER:

19 Q. Can you tell me what this document is?

20 A. This is the one where we're asking them

21 to postpone, I believe, the election.

22 Q. And just to clarify, when you say "this

Page 102

1 is the one," you mean this is a lawsuit that you

2 filed as the plaintiff against the WEC as well

3 as other defendants; is that correct?

4 A. This came out of our attorney's office,

5 yes.

6 Q. Okay. And what were you trying to

7 accomplish with this lawsuit?

8 A. We could see that the train wreck was

9 coming; that we could not get all of the

10 absentee ballots out in time for everyone who

11 requested. So the mayor was trying to push the

12 election off so that we would be able to make

13 sure every person that wanted to vote could

14 vote.

15 Q. And did you file this lawsuit because

16 you believed that the WEC was not doing enough

17 to help Green Bay and other municipalities

18 prepare for the April election?

19 A. I guess that's -- the WEC, from my

20 understanding, is -- they just tell us what

21 needs to be done through the Commission. So

22 when we ask for information from them, they say

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1 they just are administering what the Commission

2 wants. So the WEC, as the administrative part

3 who I deal with, cannot make those decisions.

4 Q. But you filed this lawsuit because you

5 felt there was no way for you to effectively

6 administer this election in April; is that

7 correct?

8 A. That's correct.

9 Q. Great. Let's go ahead and turn to a

10 different topic. Let's talk about the WisVote

11 website and My Vote website.

12 Are you familiar with the WisVote

13 website?

14 A. Yes, I am.

15 Q. How has the Green Bay clerk's office

16 use the WisVote website?

17 A. For everything: registration, absentee

18 reports.

19 Q. And is Green Bay able to make upgrades

20 or changes to the WisVote system?

21 A. No.

22 Q. And that's because only the WEC is able

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1 to make upgrades or changes to the WisVote

2 system; correct?

3 A. That's correct.

4 Q. And if the WEC made improvements to

5 WisVote, that would make Green Bay more able to

6 effectively use that website; is that correct?

7 A. That's correct.

8 Q. And being able to use that website more

9 effectively would make it easier for you

10 administrator the November election; is that

11 correct?

12 A. That's correct.

13 Q. And are you familiar with the My Vote

14 website?

15 A. Yes.

16 Q. And are you able to make any upgrades

17 or changes to My Vote?

18 A. No.

19 Q. And that's because only the WEC can

20 make upgrades or changes to My Vote; correct?

21 A. Correct.

22 Q. And if the WEC upgraded or improved

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1 My Vote, that would make it easier for you to
 2 effectively administer the November election;
 3 correct?
 4 A. Correct.
 5 MS. HOMER: Okay. Dan, can you pull up
 6 Document 7., and let's mark this as the next
 7 exhibit. I think we're at Exhibit 16.
 8 (Whereupon, Exhibit 16 was
 9 marked for identification.)
 10 BY MS. HOMER:
 11 Q. Ms. Teske, do you recognize this email?
 12 A. Let's see.
 13 Q. And it goes for several pages. So feel
 14 free to ask Dan to scroll if you'd like.
 15 THE WITNESS: Yes, please.
 16 Yes, I remember this.
 17 BY MS. HOMER:
 18 Q. Okay. And what is this email chain?
 19 What is this about?
 20 A. A person tried to give -- tried to, you
 21 know -- let's see -- was this to request an
 22 absentee, I believe?

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1 She tried to request an absentee, and
 2 she couldn't do it.
 3 Q. And then you forwarded her request to
 4 Robert Kehoe; is that correct?
 5 A. Yes.
 6 Q. And who is Robert Kehoe?
 7 A. He's with the Wisconsin Elections
 8 Commission.
 9 Q. Okay. And why did you forward it to
 10 Mr. Kehoe?
 11 A. Because I can't troubleshoot something
 12 that I don't have control over, and I don't have
 13 control over My Vote.
 14 MS. HOMER: And then, Dan, if you can
 15 just scroll to the top -- it looks like we're
 16 there. Great.
 17 Q. Ms. Teske, if you look at that last
 18 sentence in your email where you say, "Are you
 19 saying because we were so inundated with emails,
 20 it looked to her like it wasn't working?"
 21 Do you see that sentence?
 22 A. Yes.

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1 Q. Did you ever get a response to that
 2 request?
 3 A. He did look into it, and he took care
 4 of it. Let's see. [Mumbled reading to self.]
 5 Yeah, I can't remember the outcome of
 6 it. It's not what I guess I thought it was
 7 going to be, but yes -- well, to answer that, he
 8 said there was times that the system was so
 9 overrun, that some got missed.
 10 Q. And there's nothing that you can do to
 11 fix the system when it's so overrun; correct?
 12 A. No. And we wouldn't even know that one
 13 got missed.
 14 Q. And so the WEC would have to manage the
 15 system to make sure it doesn't get overrun by
 16 too many requests; correct?
 17 A. Well, let me restate that: They do,
 18 but on our end we had to expand our servers --
 19 server space. So -- but we did that. So it
 20 should be on their end, yes.
 21 Q. Okay. Thank you.
 22 Dan, can you pull up Document 8.

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1 I'm sorry. Can we mark that last
 2 exhibit with the next number, Exhibit 17?
 3 THE VIDEOGRAPHER: So we have
 4 Exhibit 16 the last one marked. So this would
 5 be 17 now.
 6 MS. HOMER: Great.
 7 (Whereupon, Exhibit 17 was
 8 marked for identification.)
 9 BY MS. HOMER:
 10 Q. So this exhibit, Ms. Teske, do you
 11 recognize this email?
 12 THE WITNESS: Can you enlarge this,
 13 please.
 14 Yes, I do.
 15 BY MS. HOMER:
 16 Q. If you scroll to the bottom, you can
 17 see the origin of this email chain.
 18 Is this an email where a voter is
 19 trying to register online and is having trouble,
 20 and so she emails you?
 21 A. Yes.
 22 Q. And then at the top of that same page,

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1 you forward that email to the WEC; correct?
 2 A. Yes.
 3 Q. And why did you forward it to the WEC?
 4 A. Because I couldn't figure it out.
 5 Q. And then do you see that sentence --
 6 Dan, if you can close -- there we go.
 7 Do you see that sentence on top -- oh,
 8 I'm sorry. Sorry. I'm looking at the wrong
 9 placement. Hold on just one moment.
 10 Dan, can you scroll down to the next
 11 page, the top of the next page. There we go.
 12 Ms. Teske, do you see the sentence
 13 where you say, "This is really causing a lot
 14 more work for clerks"?
 15 A. Yes.
 16 Q. What did you mean by that?
 17 A. The whole purpose of My Vote is so that
 18 the clerk's office -- it eliminates some work
 19 for the clerk's office. So when their system
 20 doesn't work right, it causes us more work.
 21 Q. And is there more that the WEC can be
 22 doing to alleviate this burden on clerks?

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1 A. I'm sorry. You cut out.
 2 Q. Is there more that the WEC can be doing
 3 to alleviate this burden on clerks?
 4 A. I guess you'd have to ask them.
 5 Q. Is there more that you believe the WEC
 6 can be doing to alleviate this burden on clerks?
 7 A. Yes.
 8 Q. Could you expand on that?
 9 A. Well, they did make some changes
 10 already, because clerks email them all the time
 11 with suggestions. And, you know, I even asked
 12 them at the beginning of the -- when the huge
 13 rush started, I asked, "Are we doing this as
 14 fast as we possibly can?" And I was told yes.
 15 And I thought there's got to be a way
 16 to generate a label that you don't have to click
 17 18 times. And, you know, that's all I can do is
 18 suggest.
 19 MS. HOMER: Okay. Dan you can go ahead
 20 and close this exhibit.
 21 Q. Thinking about the April election
 22 generally, what sort of things could the WEC

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1 have done to further help you administer that
 2 election more effectively?
 3 A. Well, I think there's multiple things.
 4 I guess it's -- it's my opinion that they should
 5 have put in place how polling locations should
 6 be set up; what precautions we should take. But
 7 they kept telling us to go to the health
 8 department. No one wanted to answer. So maybe
 9 they didn't have that option either, but we take
 10 direction from them on everything else. I just
 11 thought they should.
 12 As far as the absentee requests, that
 13 process should have changed way before this for
 14 the November election, whether it was a pandemic
 15 or not. It took five minutes just to get a
 16 label out of the system for one person. Emails
 17 were coming in faster than we could print them
 18 off, even by a person that works in the print
 19 department, who is very efficient.
 20 Again, it shouldn't be 18 clicks to get
 21 a label out. And I was right, because they
 22 changed it and made it so much easier.

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1 So there's multiple things I think they
 2 could do. I probably could go on and on, but...
 3 Q. Please do go on.
 4 A. Well, I just -- they need to get their
 5 communications out sooner. They -- there's a
 6 lot of small municipalities in Wisconsin who
 7 that wouldn't affect them at all, but the bigger
 8 municipalities plan months in advance for
 9 things. And I know the pandemic is different
 10 because it, you know, came upon us, but, you
 11 know, just in general.
 12 When you showed about the contingency
 13 plan before, that should have come out way ahead
 14 of time on things. So I just feel their
 15 communication -- in April I didn't even have a
 16 chance to read them half the time. I was
 17 working constantly so voters could get their
 18 ballot. And it's just frustrating.
 19 Q. What would have been helpful for the
 20 WEC to do to assist Green Bay on poll worker
 21 recruitment for April?
 22 A. Maybe do a media blitz for everyone,

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1 you know, for all of Wisconsin.
 2 Q. Are there any other --
 3 A. That's my opinion.
 4 Q. I'm sorry. Please continue.
 5 A. That's just my opinion.
 6 Q. Are there any other things that the WEC
 7 could have done to be helpful to Green Bay on
 8 poll worker recruitment?
 9 A. When we get -- I have the National
 10 Guard decision thrown in my face constantly;
 11 still is. If that would have been brought to us
 12 ahead of time -- and I have no clue how that
 13 even happens, so I -- I'm not blaming the WEC.
 14 But you can't tell a municipality of our size on
 15 the Sunday before, when everything is set to go
 16 and we are already setting things up, that you
 17 have all these people coming in. It doesn't
 18 work that way.
 19 Q. What would have been helpful for the
 20 WEC to do to assist Green Bay in making sure
 21 that you had enough PPE for the April election?
 22 A. I'm very thankful we got PPE from them,

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1 but it should have been sooner, because I
 2 already had our supply bins gone by the time I
 3 got that.
 4 Q. What would have been helpful for the
 5 WEC to do to assist you with absentee ballots
 6 and printing labels and sending out -- sending
 7 out those absentee ballots?
 8 A. I'm sorry. You cut out.
 9 Q. You had mentioned earlier that the
 10 absentee ballot label system needed improvement
 11 because it was very cumbersome.
 12 What else would have been helpful for
 13 the WEC to do to assist you with managing
 14 those -- that increased number of absentee
 15 ballot requests?
 16 A. Again, I don't know the capability of
 17 the WEC and how fast they can do things, but I
 18 think there could have been some steps, because
 19 our IT department took some steps to make it
 20 faster for us to print all the emails that came
 21 in.
 22 So there's just -- I just feel there's

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1 things that they could have done -- I mean, even
 2 saving one minute of the five minutes would have
 3 made a difference. But I can't say what they're
 4 capable of doing.
 5 Q. And is there anything else for the
 6 April election that you wish you had more
 7 support or help from the WEC on to make sure the
 8 election ran smoothly?
 9 A. I think our frustration was we reached
 10 out to many, you know, hospitals, doctors, WEC
 11 for guidance on how to keep poll workers and
 12 citizens safe.
 13 Q. And you didn't receive that guidance;
 14 is that correct?
 15 A. No.
 16 Well, let me rephrase: They said we
 17 should follow CDC guidelines.
 18 Q. And that was not sufficient guidance
 19 for you; you wish you had better guidance?
 20 A. Correct.
 21 MS. HOMER: Okay, Dan. Could you go
 22 ahead and open Document 9, and let's mark this

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1 as the next exhibit.
 2 THE VIDEOGRAPHER: 18.
 3 MS. HOMER: Thank you.
 4 (Whereupon, Exhibit 18 was
 5 marked for identification.)
 6 BY MS. HOMER:
 7 Q. Ms. Teske, do you recognize this email?
 8 THE WITNESS: Can you enlarge it,
 9 please.
 10 Can you scroll down? Is there any more
 11 to it?
 12 Yep.
 13 MS. HOMER: Dan, can you scroll to the
 14 bottom of page 2 here.
 15 Q. And, Ms. Teske, you can see that this
 16 initial email is from you to Meagan Wolfe, the
 17 administrator of the WEC; correct?
 18 Oh, Dan, I realize that it's actually
 19 cutting off the "To" line. Can you just scroll
 20 up a little bit so we can see who the email is
 21 to.
 22 THE WITNESS: Yep.

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1 BY MS. HOMER:
 2 Q. So, Ms. Teske, this is an email from
 3 you to Meagan Wolfe; correct?
 4 A. And the attorney at the WEC, yes.
 5 Q. And what are you asking them in this
 6 email?
 7 A. I know that at that time other clerks
 8 were discussing this also, wondering if we could
 9 just not have in-person voting and have everyone
 10 absentee vote by mail as far as the in-person
 11 absentee voting, so ahead of time.
 12 Q. And what was Ms. Wolfe's response?
 13 A. No, that we couldn't do that.
 14 Q. And then if you look at the top of the
 15 email -- Dan, if you can scroll just to the
 16 first page -- you forward this to the mayor of
 17 Green Bay, and you say, "I don't understand why
 18 they aren't being more proactive on this."
 19 Now, you're referring to the WEC with
 20 that sentence; correct?
 21 A. Yes.
 22 Q. And what did you mean by that?

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1 A. My staff was scared to do in-person
 2 voting because we had no protection between us
 3 and the public. We don't have glass between us
 4 and the public. So there was talk that people
 5 were cutting the hours down and things like
 6 that.
 7 So I just thought that -- because all
 8 the clerks -- I'm on a clerk list and could see
 9 that happening -- that why couldn't the WEC say,
 10 "Okay. We're going to go with this amount of
 11 hours," or, you know, just getting some
 12 direction.
 13 Q. And why did you say that you don't
 14 understand why the WEC isn't being more
 15 proactive?
 16 A. Because they tell us what to do
 17 otherwise.
 18 Q. And they weren't telling you what to do
 19 here?
 20 A. No.
 21 Q. And you wished that they were being
 22 clearer in telling you what to do here?

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1 A. Yes.
 2 Q. Would it have helped you administer the
 3 election if the WEC had been more proactive
 4 here?
 5 A. Well, city staff wouldn't have been
 6 using their time trying to find out what to do.
 7 MS. HOMER: Okay. Dan, you can go
 8 ahead and close this email. And can you open
 9 Document 10, and let's mark this as the next
 10 exhibit.
 11 Q. Ms. Teske, do you recognize this email?
 12 A. Yes.
 13 Q. Oh, and I'm sorry. I realize
 14 Mr. Browne earlier introduced this as Exhibit 2,
 15 so you've seen it already.
 16 A. Yes.
 17 Q. Can you tell me what this email is
 18 about?
 19 A. I was concerned about nursing homes.
 20 It was getting close to the time -- the City of
 21 Green Bay goes out to the polling locations at
 22 the optimal time when we can register nursing

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1 home residents and have them absentee vote the
 2 first time around. So there's just a three-day
 3 window that we can do that.
 4 We were getting close that, and I
 5 knew -- well, I didn't want anyone bringing
 6 anything into the nursing homes, because I knew
 7 they would be highly susceptible to COVID-19.
 8 And I didn't want our election workers going in
 9 either. I didn't think that was a good thing.
 10 I'm used to in the winter for the flu season
 11 sometimes they're on lockdown. So I thought,
 12 Why isn't someone putting something out about
 13 the nursing homes?
 14 So then we started calling the nursing
 15 homes, asking them, "Do you want us to come?
 16 Are you on lockdown?" And they would tell us,
 17 you know -- because it has to be a lockdown
 18 whether we can -- that tells us we can go or
 19 not. If they're on lockdown and then the second
 20 time we try they're still on lockdown, we have
 21 to mail them.
 22 So I was just trying to get directions

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1 from them, the WEC.
 2 Q. And did you ever get that direction
 3 from the WEC?
 4 A. Eventually it came.
 5 Q. And what was the direction that they
 6 gave you when it came?
 7 A. Not to go in.
 8 Q. And did you find that that direction
 9 provided you sufficient guidance for how to
 10 balance the safety needs and the need to make
 11 sure that voters in nursing homes can vote?
 12 A. Yes. I knew what to do then.
 13 Q. Okay. And were you asking the WEC
 14 about a contingency plan because it's their
 15 responsibility to help you administer the
 16 elections statewide?
 17 A. We create the contingency plan and send
 18 it to the WEC for approval. The nursing home,
 19 that's a law.
 20 So I knew from working with them before
 21 that the Commission would more than likely make
 22 that decision whether we would go in or not. So

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1 that's why -- otherwise, we're not following
 2 law. So that's why I was asking for direction.
 3 Q. And when there are unexpected
 4 circumstances coming up near an election, like a
 5 pandemic, you look to the WEC for guidance on
 6 how to handle those unexpected or new
 7 circumstances; is that correct?
 8 A. Yes.
 9 Q. And did you feel that you were given
 10 sufficient guidance here about how to handle
 11 this new circumstance, this pandemic?
 12 A. I'm sorry. You cut out.
 13 Q. Did you feel that you were given
 14 sufficient guidance about how to handle this
 15 emergency new circumstance of the pandemic in
 16 the lead-up to this election?
 17 A. Are you talking about just nursing
 18 homes or as a whole.
 19 Q. I apologize. I'm talking about nursing
 20 homes specifically.
 21 A. I feel when we got the direction, it
 22 was fine. But I don't feel we got the direction

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1 in a -- in the time frame that I thought we
 2 should get it.
 3 Q. Great. Thank you.
 4 Let's switch to talking about the
 5 November election, looking forward to that.
 6 What are the biggest obstacles that
 7 you're facing as you prepare for the November
 8 election given the COVID-19 pandemic?
 9 A. It's the poll workers. That's the
 10 issue right now, yeah, because I requested
 11 everyone to answer me in May -- let's see --
 12 May/June if they planned on working in the fall
 13 with the way things were at that time, and, you
 14 know, I got answers. It was about 112 of them.
 15 And now in this past two weeks they're
 16 backing out on me again. And I totally
 17 understand, but it's hard to schedule and make
 18 sure that there's, you know, some experience
 19 there without moving more people around.
 20 Q. And other than poll workers, what are
 21 the other obstacles that you're concerned about
 22 as you prepare for the November election?

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1 A. My biggest worry right now is election
 2 night. We have 14,000 -- we sent out 14,000
 3 absentee ballots for August. I can't get the
 4 equipment I need to purchase to have a
 5 high-speed tabulator on Election Day, and I
 6 don't know if we're going to get the results in
 7 at an acceptable time that I feel comfortable
 8 with.
 9 In April, with all the absentees we
 10 had, we were given multiple days to get those in
 11 the tabulator. I haven't heard anything yet for
 12 November. So we'll have from 7:00 in the
 13 morning until we're done. I just can't even --
 14 I just -- I'm really worried.
 15 Q. And what other obstacles are you
 16 concerned about besides poll workers and
 17 tabulating?
 18 A. Security. I'm worried with the mask
 19 mandate, even if there wasn't a mask mandate,
 20 the things that are going on in the community as
 21 far as fighting, confrontations. Poll workers
 22 aren't trained to handle, you know,

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1 confrontations, and they shouldn't have to be.

2 Q. And are there any other things that

3 you're concerned about in terms of preparing for

4 the November election given the pandemic?

5 A. I can't think of anything else right

6 now.

7 Q. Okay. Mr. Browne earlier asked you

8 about a survey that you were sent from the WEC.

9 Just to clarify: Was that survey about

10 the April election, the August election or the

11 November election?

12 A. Like I said to him, Brown County is the

13 one that called and talked to us. And so in

14 April it was about the April election, and now

15 the latest call is for August and November.

16 Q. And do you expect to get an additional

17 survey from the WEC asking what you need for the

18 November election, or is the most recent survey

19 the last one that you expect to get?

20 A. I can't answer for them.

21 Q. Okay. And has the WEC provided you

22 with what you asked for in that most recent

Page 126

1 survey?

2 A. We didn't get the supplies yet. They

3 weren't delivered.

4 Q. Do you know when you expect them to be

5 delivered?

6 A. They said by the end of the week.

7 Q. Okay. And those supplies need to

8 cover -- just to clarify: Those supplies need

9 to cover both this August election and the

10 November election?

11 A. Yes.

12 Q. Okay. Let's go back to talking about

13 poll workers, which you mentioned being very

14 concerned about.

15 Having a sufficient number of poll

16 workers for the November election is important;

17 right?

18 A. Correct.

19 Q. And if there aren't a sufficient number

20 of poll workers in November, that would make it

21 more difficult for voters to cast their ballots

22 in person; correct?

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1 A. Yes. And I'm not talking just bodies.

2 Q. Please expand.

3 A. Okay. So, you know, even our

4 alderpersons think you can just take people and

5 plo p them in those spots and get it done. You

6 can't. You have to have people that know the

7 laws to do it right.

8 So, for instance, in April I had 19

9 excellent workers, and that election balanced.

10 Now, people don't see that as important. The

11 citizens don't see how that works after the

12 election. I want to make sure that everything

13 balances and is done right.

14 So for people to say I can take the

15 National Guard and put them in a polling

16 location and administer the election when they

17 haven't ever done one, that's not possible. So

18 I would have to have enough poll workers where I

19 would have seasoned, trained poll workers along

20 with new poll workers to make an election

21 happen.

22 Q. And if you don't have a sufficient

Page 128

1 number of poll workers, and if they are not

2 sufficiently trained, that would make it less

3 safe for voters to vote in November; correct?

4 A. I guess you need to define "safe."

5 Q. Let me try that again.

6 If there are not a sufficient number of

7 poll workers in November, would it make it less

8 safe for voters to cast their ballots, given the

9 COVID-19 pandemic?

10 A. As far -- so you're not talking

11 procedure?

12 Q. I apologize. Let me clarify that. I'm

13 being unclear here.

14 If there are too few polling locations,

15 that means that there are crowds at the polling

16 locations; correct?

17 A. Okay. I see where you're going now.

18 No, I don't believe that. I think if

19 it's handled correctly, it can still be safe. I

20 think that's what the mayor was trying to do in

21 April.

22 Q. Okay. And if it's not handled

Page 129

1 correctly, so that there are too many crowds,
 2 that increases the risk of COVID-19 spread as
 3 you understand it; correct?
 4 A. I'll explain how I did to an alderman.
 5 If you have multiple polling locations,
 6 that means more poll workers, so more poll
 7 workers are exposed. By having a limited amount
 8 of poll workers, same amount of voters, it's
 9 less people exposed. So if those people
 10 standing in line are 6 feet apart, it would be
 11 safer.
 12 Q. Okay. Thank you for clarifying.
 13 A. Yep.
 14 Q. If there are not enough poll workers
 15 for you to open all the polling sites that you
 16 would like to have open, that might deter some
 17 Wisconsinites from voting; correct?
 18 A. I would have to say that voters have to
 19 take responsibility. So they are given multiple
 20 options to get their ballot in. So during the
 21 April election, the people that requested an
 22 absentee ballot that didn't get one and were

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1 forced to go to the polls, that would be the
 2 scenario, that then they're forced, and that is
 3 unfortunate. Other people that go to the polls
 4 on Election Day, that's their choice.
 5 Q. Great. Thank you. And I apologize for
 6 being unclear.
 7 You said earlier that you're very
 8 concerned about the poll worker shortage;
 9 correct?
 10 A. Yes.
 11 Q. Why are you concerned about that?
 12 A. Because now we have 17 polling
 13 locations, and I need to staff that as 17
 14 polling locations.
 15 Q. And what would happen if you were not
 16 able to staff that?
 17 A. We'd have to move it to another polling
 18 location that has poll workers, and they would
 19 have to work more than one ward.
 20 Q. And how would that harm voters?
 21 A. I'm sorry. You cut out.
 22 Q. How would that harm voters?

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1 A. The line'll be longer. But if it's
 2 done right, it would be safe.
 3 Q. And if the line is longer, that would
 4 make it more difficult for some voters to vote;
 5 correct?
 6 A. Again, that's their choice to leave.
 7 They can stand in line. We give them a chair.
 8 It's how you look at it, I guess.
 9 Q. And if there were long lines, that
 10 might deter some Wisconsinites from voting;
 11 correct?
 12 A. It depends on their commitment to vote.
 13 Q. And recruiting a sufficient number of
 14 poll workers is -- excuse me.
 15 Recruiting a sufficient number of poll
 16 workers is a significant challenge for Green Bay
 17 in preparing for the November election; correct?
 18 A. It's a huge process, yes.
 19 Q. And the WEC has a role in helping
 20 Green Bay recruit poll workers; correct?
 21 A. I'm sorry. You cut out again.
 22 Q. The WEC has a role in helping Green Bay

Page 132

1 recruit poll workers; correct?
 2 A. I don't think they see that as their
 3 role.
 4 Q. Do you see that as their role?
 5 A. I feel it's placed on us.
 6 Q. Would it be helpful to Green Bay if the
 7 WEC were more proactive in helping recruit poll
 8 workers?
 9 A. Money-wise to get the word out, yes.
 10 Q. And other than money-wise, are there
 11 other things that would be helpful to you if the
 12 WEC were to do to help you recruit poll workers?
 13 A. Well, I guess we know our community
 14 better. I can't answer that if they could help
 15 us more than what we're doing. That I don't
 16 know.
 17 Q. Okay. And what's the ideal number of
 18 poll workers for Green Bay?
 19 What number are you hoping to reach?
 20 A. For what election?
 21 Q. For the November election. I
 22 apologize.

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1 A. Roughly 350.

2 Q. And roughly 350 poll workers, how many

3 polling locations will that allow you to open?

4 A. If we had 31 places, we could -- let me

5 rephrase.

6 We have 47 wards, normally 31 polling

7 locations. So right now we have 17 polling

8 locations, but what we are doing is -- we're

9 still having the 47 wards. We're having

10 multiple wards in one place.

11 So -- state your question again so I

12 can...

13 Q. Yeah. So I had asked, if you have that

14 optimal number of poll workers that you

15 identified, how many polling locations does that

16 allow you to open?

17 A. So, again, you know, I could do 31 if I

18 have 31 places to put them, or 17 with how it's

19 kind of looking. Or, again, if it comes down

20 to, like, the April, two. I can make it work.

21 But, yes, there were lines, but the

22 amount of voters that they had at each place, I

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1 have some wards on a normal election that have

2 that many -- double registered voters. So it's

3 because of the pandemic. But I can pretty much

4 make anything work.

5 Q. And if there are more polling locations

6 open, does that make it easier for voters to

7 vote?

8 A. It'll be less of a wait time.

9 Q. Okay. And do those same poll workers

10 also help count the absentee ballots on Election

11 Day?

12 A. No.

13 Q. No.

14 That's a separate staff?

15 A. Yes.

16 Q. And have you recruited a sufficient

17 number of people to help you count those

18 absentee ballots on Election Day?

19 A. You cut out in the beginning again.

20 I'm sorry.

21 Q. Not a problem.

22 Are you also responsible for recruiting

Page 135

1 workers to count those absentee ballots?

2 A. Yes.

3 Q. How many people have you recruited to

4 count those absentee ballots?

5 A. I use city staff and some retirees, so

6 I'm not worried about that.

7 Q. Okay. Let's move on to talking about

8 the National Guard.

9 You had discussed the National Guard

10 earlier with Mr. Browne and explained that you

11 didn't use them for April, but you said that you

12 wanted to use them for August; is that correct?

13 A. Yes.

14 Q. And you had told the WEC you had

15 requested 100 National Guard members for August,

16 but they told you that that was too many, and so

17 you reduced your request to 50; is that correct?

18 A. Yes.

19 Q. And were you surprised that the WEC

20 second-guessed your assessment of how many

21 National Guard members you needed for the August

22 election?

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1 A. Yes.

2 Q. Do you know why they second-guessed

3 your assessment of how many National Guard

4 members you needed for the August election?

5 A. They just said it was a lot.

6 Q. But they didn't provide any more

7 reasoning or explanation for why they

8 second-guessed your needs?

9 A. Just that this was for critical -- if

10 you couldn't open a polling location critical.

11 Q. And are you planning on requesting

12 National Guard members to help with the November

13 election?

14 A. It depends on how many poll workers I

15 get, you know, from the community.

16 Q. And are you concerned that if you

17 request National Guard members, the WEC might

18 again second-guess your assessment of how many

19 you need?

20 A. Well, in my mind, it really doesn't

21 matter, because they told me not to plan on

22 them. And it's exactly what I thought in April.

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<p>1 That's why I didn't plan on using them.</p> <p>2 But the WEC made a different decision</p> <p>3 that is going to affect the number of poll</p> <p>4 workers we need now for the coming elections,</p> <p>5 and that's why I asked for 100, and I explained</p> <p>6 that to them.</p> <p>7 Q. And so because you can't plan on or</p> <p>8 rely on having National Guard members for the</p> <p>9 November election, that's not -- the</p> <p>10 availability of National Guard members doesn't</p> <p>11 really help you prepare for November; is that</p> <p>12 correct?</p> <p>13 A. Knowing whether I'm going to get them</p> <p>14 or not? No, it doesn't help me at all.</p> <p>15 Q. And has the WEC told you when you will</p> <p>16 know whether or not you can have National Guard</p> <p>17 members?</p> <p>18 A. Again, it will be very short notice.</p> <p>19 Q. And because it will be such short</p> <p>20 notice, that's really not useful to you at all;</p> <p>21 correct?</p> <p>22 A. No, it's not.</p>	<p>1 (Whereupon, Exhibit 20 was</p> <p>2 marked for identification.)</p> <p>3 BY MS. HOMER:</p> <p>4 Q. Ms. Teske, do you recognize this email?</p> <p>5 THE WITNESS: Can you enlarge it,</p> <p>6 please.</p> <p>7 Okay. Keep going down.</p> <p>8 Okay. Yep.</p> <p>9 BY MS. HOMER:</p> <p>10 Q. And what is this email about?</p> <p>11 A. The organization COVO is an</p> <p>12 organization that -- one of the members is on</p> <p>13 the ad hoc team. They really go out into the</p> <p>14 community; they do registration drives; they</p> <p>15 encourage people to vote.</p> <p>16 So we -- the City of Green Bay wasn't</p> <p>17 aware that a report could be pulled out of the</p> <p>18 Wisconsin Elections Commission website as to</p> <p>19 anybody that registered on My Vote, when they</p> <p>20 would check, "I would like to be a poll worker,"</p> <p>21 that we could get a report on that. We didn't</p> <p>22 know that; other clerks didn't either. I take</p>
<p>Page 138</p> <p>1 Well, let me rephrase: If I am short,</p> <p>2 if I don't get to a number that I want to get</p> <p>3 at -- and that would mean the poll workers won't</p> <p>4 get lunches, won't get supper -- then I will</p> <p>5 insert the National Guard.</p> <p>6 Q. And you'll -- just to clarify, you'll</p> <p>7 insert the National Guard as poll workers, or</p> <p>8 you'll use them to help with the not getting</p> <p>9 lunch, not getting supper problem that you just</p> <p>10 mentioned?</p> <p>11 A. If I need somebody at the poll book</p> <p>12 table that needs a break, needs to eat, and a</p> <p>13 National Guard person came in, not trained, I</p> <p>14 could have them sit with that other person,</p> <p>15 because that other poll worker can monitor the</p> <p>16 work.</p> <p>17 Q. Okay. I see. Thank you.</p> <p>18 Dan, can you pull up Document 11, and</p> <p>19 let's mark this as the next exhibit, which I</p> <p>20 believe is Exhibit 19.</p> <p>21 THE VIDEOGRAPHER: Exhibit 20.</p> <p>22 MS. HOMER: Exhibit 20. Thank you.</p>	<p>Page 140</p> <p>1 almost every single webinar, and that was not --</p> <p>2 that information wasn't given to us.</p> <p>3 Q. And so now the WEC has set up My Vote</p> <p>4 to make it possible for local clerks to identify</p> <p>5 voters who want to volunteer as poll workers; is</p> <p>6 that correct?</p> <p>7 A. No. We have to ask for a report.</p> <p>8 Q. You have to ask the WEC for a report?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. So just to make sure I'm</p> <p>11 understanding, if you ask the WEC, they can give</p> <p>12 you a report of any voter who volunteered</p> <p>13 through the website to be a poll worker --</p> <p>14 A. Correct.</p> <p>15 Q. -- is that correct?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. And so in your email at the top</p> <p>18 of this chain, you're asking a member of your</p> <p>19 staff to see if they can use that tool to get a</p> <p>20 report to identify additional poll workers; is</p> <p>21 that correct?</p> <p>22 A. Yes.</p>

35 (Pages 137 to 140)

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1 Q. So you're trying to make use of this --
 2 of the WEC's assistance to identify poll
 3 workers; correct?
 4 A. Say that again.
 5 Q. In this email chain, you are trying to
 6 make use of the WEC's assistance to help you
 7 identify poll workers; is that correct?
 8 A. Correct.
 9 Q. And for a poll worker to volunteer,
 10 they have to -- they have to do it on the
 11 My Vote website; correct?
 12 A. Not necessarily.
 13 Q. Can you expand on that?
 14 A. They can call our office. We have the
 15 information on our website. And during election
 16 time we put it out on a Facebook on how to
 17 connect to us if they want to be. And also on
 18 the hard copy of registrations that come in the
 19 mail or that are given on Election Day.
 20 Q. But as far as you know, there's nothing
 21 the WEC is doing to actively reach out to voters
 22 and encourage them to be poll workers; is that

Page 142

1 correct?
 2 A. You'd have to ask them, because I'm
 3 not --
 4 Q. But as far as you know, there isn't
 5 any -- I'm sorry. Go ahead.
 6 A. Correct. As far as I know, there's
 7 nothing.
 8 Q. Has the WEC asked you about how they
 9 could help you reach potential poll workers in
 10 Green Bay?
 11 A. I know that they did a template for a
 12 press release. They have information like that
 13 out there to help us use the information, you
 14 know, templates so the municipality itself can
 15 use that.
 16 Q. Now, are you aware of a Wisconsin law
 17 that mandates that each poll workers be, quote,
 18 a qualified elector of the county in which the
 19 municipality where the official serves is
 20 located?
 21 A. Yes.
 22 Q. If this requirement that poll workers

Page 143

1 be residents of the county where they serve had
 2 been waived for the April election, would that
 3 have helped you recruit more poll workers?
 4 A. Okay. Maybe I didn't hear you
 5 correctly before.
 6 The law has changed that we can have
 7 poll workers from anywhere in Brown County.
 8 Okay? It was chief inspectors to be from
 9 Green Bay. But I also got the okay that if
 10 they're not, if they're in Brown County, I can
 11 use them as chief inspectors.
 12 Q. You said you got the okay.
 13 From whom did you get that okay?
 14 A. Wisconsin Elections Commission.
 15 Q. Okay. Let me go back and just -- give
 16 me just one moment to look at my notes here.
 17 I want to go back and revisit that last
 18 series of questions. I'm not sure if I was
 19 sufficiently clear.
 20 A. Okay.
 21 Q. As you understand it, the Wisconsin law
 22 mandates that each poll worker be from the

Page 144

1 county in which they serve; is that correct?
 2 A. Correct.
 3 Q. And if you could recruit poll workers
 4 from other counties, that is, beyond Brown
 5 County, would that have helped you recruit
 6 sufficient poll workers for April?
 7 A. I don't know because I didn't try.
 8 Q. Okay. And if that law were waived for
 9 November, do you think that that would help you
 10 recruit additional poll workers for the November
 11 election?
 12 A. You know, again, I -- it's hard for me
 13 to answer. If -- I do know that when a person
 14 who has been a poll worker moves out of the
 15 county, they're disappointed they can't continue
 16 to work. But how many that would be, I have no
 17 idea.
 18 Q. But there might be at least some
 19 additional poll workers that you could recruit
 20 if you were allowed to recruit poll workers from
 21 outside of the county?
 22 A. Maybe.

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1 Q. Okay. Thank you.

2 Now, let's go back to some of the other

3 topics that you identified as things you're

4 concerned about for November. You had talked

5 about having clear public health guidance, and

6 you were asking the WEC and any other agency

7 that you could ask for that clear guidance.

8 Having clear public health guidance on

9 how to safely conduct in-person voting is

10 important for the November election; correct?

11 A. Correct.

12 Q. And if there isn't clear public health

13 guidance on the appropriate way to

14 social-distance and sanitize polling places,

15 that could make it less safe for voters to cast

16 their ballots in person; correct?

17 A. You cut out.

18 Q. I'm sorry.

19 If there isn't clear public health

20 guidance on the appropriate way to

21 social-distance and sanitize polling places,

22 that could make it less safe for voters to cast

Page 146

1 their ballots in person in November; correct?

2 A. You mean to get the word out so the

3 public feels safe is what you're getting at?

4 Q. Yes, that's -- please answer that

5 question.

6 A. Yes.

7 Q. And in addition to the public feeling

8 safe, the public might actually be less safe if

9 there's not clear public health protocols for

10 the poll workers to follow; correct?

11 A. Correct.

12 Q. And if voters are scared about their

13 safety when voting, that might deter some voters

14 from voting altogether; correct?

15 A. Okay. Again, voter responsibility.

16 They have the option to absentee vote. The law

17 changed where anyone can absentee vote. If

18 someone's scared, they should request an

19 absentee ballot.

20 Q. Developing clear public health guidance

21 for how in-person polling sites should work is

22 challenging; correct?

Page 147

1 A. Say that again.

2 Q. Developing clear public health guidance

3 for how in-person polling locations should

4 operate is challenging; correct?

5 A. Well, the WEC now is supplying us with

6 information to post. The hard thing is, when

7 you have that many polling locations, to make

8 sure that everyone follows the exact steps.

9 And to get those places set up, you

10 know, the City of Green Bay doesn't have

11 really -- they don't have community centers,

12 things like that. So we can't go in the week

13 before and start taping off 6 feet, you know,

14 and doing all that. All this has to be done

15 pretty much on the Monday before. So, you know,

16 guidance far enough ahead and enough people to

17 do it is crucial.

18 Q. And you talked earlier about voter

19 choice and voter responsibility.

20 But Green Bay is trying to make it

21 safer for voters to vote in person; is that

22 correct?

Page 148

1 A. Definitely.

2 Q. And you're certainly working very hard,

3 trying your absolute best to make sure that it's

4 safe for voters to vote in person?

5 A. And in person all the way around I'm

6 trying to keep everybody safe.

7 Q. And that's because voters shouldn't

8 have to choose between their health and safety

9 and voting; correct?

10 A. Correct.

11 Q. Now, you just spoke about the guidance

12 that the WEC has now provided about sanitation

13 and public health in the polling places.

14 In Green Bay's view, should the WEC be

15 more proactive in providing more guidance or

16 more training for how to operate in-person

17 voting sites safely in November?

18 A. Yes, I think they could.

19 Q. And Green Bay would benefit from having

20 that additional guidance and support from the

21 WEC; correct?

22 A. Yes.

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1 Q. And Green Bay would certainly accept
 2 additional support in developing and
 3 implementing public health guidance and
 4 protocols for safe in-person voting in November;
 5 correct?
 6 A. You cut out in the beginning.
 7 MS. HOMER: I'm sorry about that. The
 8 technology makes this much more difficult.
 9 Audra, if you could read back what I
 10 said, that would be great. Thank you.
 11 (Record read as follows:
 12 "Question: And Green Bay
 13 would certainly accept additional
 14 support in developing and
 15 implementing public health
 16 guidance and protocols for safe
 17 in-person voting in November;
 18 correct?")
 19 THE WITNESS: Yes.
 20 BY MS. HOMER:
 21 Q. Thank you.
 22 Let's talk a little bit about PPE and

Page 150

1 sanitizing supplies. You had mentioned PPE as
 2 one of the things that you were worried about
 3 for November.
 4 Having sufficient PPE and sanitizing
 5 supplies like Clorox wipes or similar for poll
 6 workers for the November election is important;
 7 correct?
 8 A. Correct.
 9 Q. And if there isn't sufficient PPE for
 10 poll workers or sanitizing supplies for poll
 11 workers, that could make it more dangerous for
 12 poll workers and voters to vote in-person in
 13 November; correct?
 14 A. According to CDC guidelines, yes.
 15 Q. And that fear of voting in person being
 16 dangerous could deter some Wisconsinites from
 17 voting altogether; correct?
 18 A. That's their choice.
 19 Q. But it could deter some of them?
 20 A. I guess that's on them. You'd have to
 21 ask them.
 22 Q. And obtaining enough PPE and sanitizing

Page 151

1 supplies for poll workers in November is a
 2 significant challenge for Green Bay; correct?
 3 A. From what I understand, for certain
 4 things it's hard to get. We're to the point now
 5 where we're having our procurement manager be
 6 the one to order. It wasn't like I was the
 7 one -- I had to do it in April. So he's the one
 8 that's, you know, investigating and ordering.
 9 Q. Okay. Does Green Bay have sufficient
 10 funds to obtain the necessary PPE and sanitizing
 11 supplies for the November election?
 12 A. Now we do, with the grants that we
 13 received; otherwise, it wasn't in the budget.
 14 Q. Okay. But you do believe that with the
 15 grants you have sufficient funds?
 16 A. Yes.
 17 Q. Okay. Does the WEC have a role in
 18 helping Green Bay obtain sufficient PPE and
 19 sanitizing supplies for November?
 20 A. They are supplying some.
 21 Q. Can you expand on that?
 22 What do you mean by "They are supplying

Page 152

1 some"?
 2 A. You know, they get a certain allotment,
 3 and then it has to be divvied up between the
 4 counties. So, you know, they try and give us
 5 what we request.
 6 Q. And have they given you the full amount
 7 that you request -- that you've requested?
 8 A. Last election we did. This one we
 9 haven't gotten it yet, so I don't know.
 10 Q. By "last election" you mean the April
 11 election?
 12 A. Uh-huh.
 13 Q. And by "this election" you mean the
 14 August election?
 15 A. Correct.
 16 Q. And are you expecting them to deliver
 17 additional supplies for the November election?
 18 A. Like I stated before, they told us that
 19 what we're getting now, to expect that to be for
 20 both elections.
 21 Q. And do you believe that the supplies
 22 that they -- that you expect them to deliver by

Page 153

1 next week will be enough for both the August
 2 election and the November election?
 3 A. No, it won't cover it all.
 4 Q. It won't cover it all?
 5 A. No.
 6 Q. Okay. And are you concerned about
 7 obtaining the rest of the PPE and sanitizing
 8 supplies that you need for the November
 9 election?
 10 A. I'm sorry. You cut out.
 11 But if you're asking -- the City of
 12 Green Bay is ordering the rest.
 13 Q. So you're not concerned about getting
 14 the rest of the PPE and sanitizing supplies that
 15 you need; correct?
 16 A. Depends on how much is used in August.
 17 Q. So you might still need more for
 18 November and have difficulty obtaining that?
 19 A. Depends on the supply. You know, not
 20 sure how much hand sanitizer will be used, and
 21 that's one of the things that's hard to get. So
 22 not sure for November.

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1 Q. Okay. And if the WEC were to offer you
 2 additional PPE and sanitizing supplies beyond
 3 what you're expecting to get before the August
 4 election, you would accept those additional
 5 supplies; correct?
 6 A. For sure.
 7 Q. And that would be helpful to Green Bay?
 8 A. Yes, it would.
 9 Q. Great.
 10 And you mentioned earlier that you're
 11 trying to get face shields for poll workers.
 12 Is the WEC helping with you that?
 13 A. Well, they gave us the grant money, but
 14 not as far as actually getting -- you know,
 15 they're not out there looking for it, but they
 16 gave us the money. We can use that grant money
 17 for that.
 18 Q. Okay. Great. Let's switch to talking
 19 about absentee ballots.
 20 You mentioned earlier that one
 21 challenge posed is the increased number of
 22 absentee ballots and collecting and accepting

Page 155

1 all of those absentee ballots back.
 2 Is finding a safe and secure way for
 3 voters to return their absentee ballots
 4 important for the November election?
 5 A. Yes.
 6 Q. And if voters can't safely return their
 7 absentee ballots, that makes it harder for
 8 Wisconsinites to vote; correct?
 9 A. Not for them to vote. I mean, they'll
 10 get the ballot. It depends on how they feel the
 11 post office is doing. So that's why we have a
 12 drop box to offer so that it doesn't have to be
 13 sent back through the mail.
 14 Q. And so if there are not sufficient drop
 15 boxes, that might make it harder for
 16 Wisconsinites to return their ballots and,
 17 therefore, make sure that their votes are
 18 counted; is that correct?
 19 A. No. If we have one and it's available
 20 24/7, I don't see where that's an issue.
 21 Q. How many drop boxes are you planning on
 22 having for November?

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1 A. We're still discussing that because of
 2 the grant money. It was approved by the city
 3 council to have two additional, so we would have
 4 three for sure that's been approved. Other than
 5 that, I don't know what the future holds.
 6 Q. And what are the considerations that
 7 you're thinking about when you decide how many
 8 drop boxes to have?
 9 A. Location? I mean, Green Bay isn't that
 10 big. You know, I investigated what other places
 11 do. So we're just looking to make it fair for
 12 everyone.
 13 Q. What do you mean by "make it fair for
 14 everyone"?
 15 A. That it's in a location that -- you
 16 know, one on each side, obviously, of the river
 17 and, you know, that people can get to it.
 18 Q. So you need there to be enough drop
 19 boxes that people can easily get to a convenient
 20 drop box; is that correct?
 21 A. We want to make them -- we want to make
 22 it convenient.

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1 Q. And the limiting factor on the number
 2 of drop boxes is the cost; is that correct?
 3 A. Right now it's not, because of the
 4 grant. Before it was.
 5 Q. So you do have enough funds to provide
 6 as many drop boxes as you need?
 7 A. Yes.
 8 Q. So do you have any concerns about
 9 having enough drop boxes for the November
 10 election?
 11 A. I haven't -- because we don't know the
 12 number yet, I haven't gone out to see
 13 availability. That would be my only issue is
 14 not being able to get them in time.
 15 Q. What do you mean by "availability"?
 16 A. Well, because all other clerks are
 17 looking at drop boxes also. So, you know, if
 18 the supply is there, we're good. Just like the
 19 high-speed tabulators: They're not available.
 20 You know, it depends.
 21 Q. And is the WEC doing anything to
 22 increase that supply of drop boxes?

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1 A. No.
 2 Q. Would it be helpful to you --
 3 A. Not that I'm aware of.
 4 Q. Would it helpful to you if the WEC
 5 proactively attempted to increase the supply of
 6 drop boxes so that you and every other
 7 municipality could obtain the number of drop
 8 boxes that you need?
 9 A. The guidance I think we should get from
 10 the WEC is the kind we should get -- not the
 11 brand, but the kind -- to make sure that we're
 12 all, you know, making sure they're secure drop
 13 boxes. So I think that would be nice if they
 14 would, you know, say, "Okay. They have to be
 15 made of this. We recommend this size and
 16 tamperproof kind of thing." That would be
 17 fantastic.
 18 Q. And you have not received that guidance
 19 from the WEC about the kind of drop boxes you
 20 need or how to ensure that they are safe and
 21 secure?
 22 A. I haven't seen anything.

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1 Q. Okay. And it would be helpful to you
 2 if you received that guidance?
 3 A. Yes.
 4 MS. HOMER: So I have a few more
 5 questions, but I'm going to suggest that we take
 6 just a quick five-minute break here.
 7 Is that all right with everyone?
 8 Great. Let's go off the record for
 9 just five minutes and return at 1:20 Eastern
 10 Time, 12:20 Central Time.
 11 THE VIDEOGRAPHER: The time is
 12 1:15 p.m. Eastern Time. We're going off the
 13 record.
 14 (Recess taken.)
 15 THE VIDEOGRAPHER: The time is
 16 1:20 p.m. We're back on the record.
 17 BY MS. HOMER:
 18 Q. Ms. Teske, I just have a few more
 19 questions. And thank you again for spending all
 20 this time with us today. I really appreciate
 21 it.
 22 I want to go back to something you said

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1 earlier about obtaining a high-speed tabulator
 2 so that you can count all of the absentee
 3 ballots.
 4 You said that you're worried about
 5 being able to get that machine; is that correct?
 6 A. Correct.
 7 Q. And is the WEC doing anything to assist
 8 you in getting that machine?
 9 A. Can you repeat that. You cut out.
 10 Q. Is the WEC doing anything to help you
 11 get that machine?
 12 A. The WEC?
 13 Q. Yes.
 14 A. No, they are not.
 15 Q. You're just trying to buy that machine
 16 on your own?
 17 A. Through the supplier that we have to
 18 buy from, yes.
 19 Q. And do you have the funds to buy the
 20 machine?
 21 A. Yes.
 22 Q. So the issue is just the lack of

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1 availability of the machine itself?

2 A. And I do want to clarify. Okay?

3 They did get some in. We didn't have

4 the money at the time, so it went to someone

5 else. Now that we have the money, they don't

6 have them.

7 Q. And would it be helpful if the WEC

8 played a coordinating role among all of the

9 municipalities in Wisconsin that are presumably

10 trying to get the same machine and help make

11 sure that the places that need it get those

12 machines?

13 A. You cut out again.

14 Q. I'm sorry. We seem to be having tech

15 problems here.

16 Would it be helpful to you if the WEC

17 played a coordinating role among all of those

18 municipalities in Wisconsin that are presumably

19 trying to get that machine and if the WEC made

20 sure that the limited supply of machines went to

21 where they're most needed?

22 A. First of all, I don't think -- the

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1 smaller municipalities don't need this, so I

2 have no idea how many are looking for them. I

3 know there's a list. We're on a list.

4 I don't -- I think the only -- the only

5 thing the WEC could say is, "Okay. This one's a

6 bigger municipality than the other." I don't

7 think they have control over the manufacturer.

8 Q. Okay. Now, let's go back to what you

9 said about counting all the absentee ballots.

10 You had said that in April you were

11 given multiple days to get the ballots through

12 the tabulator; is that correct?

13 A. Correct.

14 Q. And is that because there was a court

15 order that extended the number of days that you

16 could accept mail-in ballots?

17 A. Yes.

18 Q. And if the court were to order that

19 again for the November election, that would

20 assist you with being able to tabulate all of

21 the ballots; is that correct?

22 A. Yes.

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1 Q. So you would find that helpful in

2 making sure that Green Bay can count all of its

3 ballots?

4 A. We'll get them all counted. I'm saying

5 in the timely manner, that would be very helpful

6 if they gave us extended time.

7 Q. Great. Thank you.

8 That's all the questions that I have.

9 So thank you so much for your time today. I

10 really appreciate it. And I don't have anything

11 else.

12 THE WITNESS: Thank you.

13 MR. BROWNE: Ms. Teske, I'd like to

14 thank you for the time you gave us today. We

15 appreciate it.

16 THE WITNESS: You're welcome.

17 THE VIDEOGRAPHER: All right. So if

18 nothing else for the record, the time is

19 1:24 p.m. Eastern Standard [sic] Time, July 28,

20 2020. Going off the record, completing today's

21 videotaped session.

22 (Whereupon, at 1:24 p.m. EDT

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1 the deposition of KRIS TESKE was

2 adjourned.)

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1 STATE OF CALIFORNIA)
 2 COUNTY OF LOS ANGELES) SS.
 3
 4 I, AUDRA E. CRAMER, CSR No. 9901, in and for the
 State of California, do hereby certify:
 5 That, prior to being examined, the witness named
 in the foregoing deposition was by me duly sworn to
 6 testify the truth, the whole truth and nothing but the
 truth;
 7 That said deposition was taken down by me in
 shorthand at the time and place therein named, and
 8 thereafter reduced to typewriting under my direction,
 and the same is a true, correct and complete transcript
 9 of said proceedings;
 10 I further certify that I am not interested in the
 event of the action.
 11 Witness my hand this ____ day of _____,
 12 2020.
 13
 14
 15
 16
 17
 18 _____
 19 Certified Shorthand
 20 Reporter for the
 21 State of California
 22

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 6
 7 I do hereby acknowledge that I have read
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 9
 10 (Check appropriate box):
 () The same is a true, correct and
 11 complete transcription of the answers given by
 me to the questions therein recorded.
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 12 attached Errata Sheet, the same is a true,
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 13 answers given by me to the questions therein
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 14
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 22 DATE NOTARY

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 APPLETON, WISCONSIN 54912
 3
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 8 referenced matter is now complete and ready for signature.
 The deponent may come to this office to sign the transcript,
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 10 signing. Please advise us of the option selected.
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 11 signature page to counsel noticing the deposition, noting the
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