

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DEMOCRATIC NATIONAL COMMITTEE
and DEMOCRATIC PARTY OF WISCONSIN,

Plaintiffs,

v.

20-cv-249-wmc

MARGE BOSTELMANN, JULIE M. GLANCEY, ANN S.
JACOBS, DEAN KNUDSON, ROBERT F. SPINDELL, JR.
and MARK L. THOMSEN,

Defendants,

and

REPUBLICAN NATIONAL COMMITTEE
and REPUBLICAN PARTY OF WISCONSIN,

Intervening Defendants.

SYLVIA GEAR, MALEKEH K. HAKAMI, PATRICIA
GINTER, CLAIRE WHELAN, WISCONSIN ALLIANCE
FOR RETIRED AMERICANS and LEAGUE OF WOMEN
VOTERS OF WISCONSIN,

Plaintiffs,

v.

20-cv-278-wmc

MARGE BOSTELMANN, JULIE M. GLANCEY, ANN S.
JACOBS, DEAN KNUDSON, ROBERT F. SPINDELL, JR.,
MARK L. THOMSEN, and MEAGAN WOLFE,

Defendants.

REVERAND GREG LEWIS, SOULS TO THE
POLLS, VOCES DE LA FRONTERA, BLACK LEADERS
ORGANIZING FOR COMMUNITIES, AMERICAN
FEDERATION OF TEACHERS, LOCAL, 212, AFL-CIO,
SEIU WISCONSIN STATE COUNCIL and LEAGUE
OF WOMEN VOTERS OF WISCONSIN,

Plaintiffs,

v.

20-cv-284-wmc

MARGE BOSTELMANN, JULIE M. GLANCEY, ANN S.
JACOBS, DEAN KNUDSON, ROBERT F. SPINDELL, JR.,
MARK L. THOMSEN, and MEAGAN WOLFE,

Defendants.

CITY OF RACINE’S
AMICUS CURIAE BRIEF

NOW COMES the City of Racine, amicus, by the City of Racine City Attorney’s Office,
and shows unto the Honorable Court as follows:

INTRODUCTION

To assist the Court in answering the question before it, the City of Racine (“City or
“Racine”), Wisconsin, offers, as amicus curiae, the following perspective and information that
is—as required—unique to this municipality. *See Nat’l Org. for Women, Inc. v. Scheidler*, 223
F.3d 615, 617 (7th Cir. 2000). Through this brief, the City presents the Court the reality of the
effects that the extant novel coronavirus (“COVID-19”) pandemic has had on this municipality
as it pertains to the April 7, 2020, Spring Election, which election is imminent. Racine’s regard
for Wisconsin’s election laws is as unwavering as its desire to protect each of its resident’s right
to vote. As such, the City respectfully urges the Court to acknowledge that Wisconsin is at war

with a common enemy that threatens each individual's wellbeing, and, as such, to temporarily modify election laws so that this enemy cannot also threaten the sacred right to vote.

FACTS

1. On March 12, 2020, the Honorable Cory Mason, the Mayor of the City of Racine, announced that the City of Racine was in a state of emergency due to the public health emergency associated with the COVID-19 pandemic. (Mason Decl., ¶ 4.)

2. On March 18, 2020, Mayor Mason formally proclaimed that such an emergency existed pursuant to Wisconsin Statutes sections 323.11 and 323.14(4) and Racine Ordinance section 34-1. (Mason Decl., ¶ 5.)

3. Effective March 25, 2020, the Secretary of the State of Wisconsin's Department of Health Services issued a statewide "Safer at Home" order restricting public activities and gatherings, closing non-essential businesses, and taking other precautionary steps due to the public health emergency associated with the COVID-19 pandemic. (Available at: <https://evers.wi.gov/Documents/COVID19/EMO12-SaferAtHome.pdf>.)

4. Racine is the fifth-largest city in Wisconsin. As of the 2010 U.S. census, Racine had a population of 78,860, approximately 56,852 of whom were of voting age. (Mason Decl., ¶ 6.)

5. Racine is one of the most ethnically diverse cities in Wisconsin. Approximately 23% of its residents are African-American, and approximately 21% of Racine residents are Hispanic or Latino. (Mason Decl., ¶ 7.)

6. Approximately 20% of Racine residents live below poverty level. (Mason Decl., ¶ 9.)

7. Approximately 32% of African-American Racine residents and 27% of Hispanic or

Latino Racine residents live in poverty. (Mason Decl., ¶ 9.)

8. The City has approximately 34,000 registered voters. (Coolidge Decl., ¶ 6.)

9. The City has 14 polling stations, and each is comprised of between two and four electoral wards. (Coolidge Decl., ¶ 13.)

10. As of March 26, 2020, the Racine City Clerk's Office has been overburdened by processing more than 4,500 requests for an absentee ballot, which is 3,000 more requests than its usual amount. (Coolidge Decl., ¶ 6.)

11. The Racine City Clerk's Office will require between 180 and 200 election workers to adequately staff its 14 polling stations should the April 7 election proceed as planned. (Coolidge Decl., ¶ 13.)

12. Currently, the City has 137 poll workers who routinely and reliably work elections; as of this writing, 50 are willing to work during the April 7 election. (Coolidge Decl., ¶ 16.)

13. Due to the public health emergency, the number of trained election workers has decreased dramatically. The Racine City Clerk's Office is concerned that it cannot adequately staff the polling stations come the April 7 election. (Coolidge Decl., ¶ 14.)

14. The Racine City Clerk's Office is concerned that drive-through voting is considerably more arduous than curbside voting, as more is expected of each election worker logistically because election equipment is not contained indoors and stationary. (Coolidge Decl., ¶ 15). Additionally, the Racine City Clerk's Office is concerned that drive-through voting does not decrease the proximity between election workers and voters, as election workers must be close enough to voters to hear, check identification, pass the poll book, utilize signature utensils, and to render assistance. (Bowersox Decl., ¶ 8.)

15. In-person voting requires person-to-person contact, and it is an impossibility to

ensure the required six-foot distance between voters, employees, and volunteers at polling stations come the April 7 election. (Bowersox Decl., ¶ 9.)

16. In terms of current absentee ballot requests, Ms. Coolidge received around 1,100 requests for absentee ballots on the evening of March 30, 2020. (Coolidge Decl., ¶ 17.)

17. The City lacks supplies to maintain basic compliance regarding the availability of hand sanitation or personal protective equipment at each of its 14 polling stations pursuant to recommendations put forth by the Center of Disease Control or Wisconsin Department of Health Services. (Bowersox Decl., ¶ 10.)

18. City employees currently facilitating in-person absentee voting are not wearing personal protective equipment because the City lacks this equipment. (Coolidge Decl., ¶ 11.)

ARGUMENT

In presenting this brief to this Honorable Court, the City of Racine highlights its concern that it cannot guarantee an election conducted in a manner that protects the health of Racine's voters and employees and volunteers staffing the election, while assuring complete fidelity to the processes established by law. Racine shall not duplicate arguments sure to be made by the parties and other amici.¹ However, the City of Racine's calls to the Court's attention the fact that its ability safely to conduct an election will be compromised significantly if the procedures now in-place are not modified.

Racine makes two requests in its brief:

(1) that the Court modify the election requirements to allow absentee voting exclusively;
and

¹ The City takes note that while the Plaintiffs in this action are partisan political entities, the City of Racine is a nonpartisan municipal government. As such, the City takes no position from a partisan political perspective.

(2) that the Court extend the process for issuing and collecting those absentee ballots to dates certain, to be established by the Court.

Racine's argument is based on competing, incompatible, yet equally-important considerations facing it for this Spring Election. In holding an election, the City is duty and law bound to ensure voting is free, fair, and accurate. In the face of a pandemic with significant restrictions on social contact in order to limit the remarkably contagious COVID-19 virus, in-person voting not only exposes citizen voters, City employees, and City volunteers to an unreasonable threat, but also requires the City's residents to defy the State of Wisconsin's order to stay at home.² Without modification, holding in-person voting the City not only ignores the State's protective order to limit the spread of contagion, and safeguard the health of our population, but actually exposes people to an increased risk of contracting and spreading the virus by exercising a constitutional right by casting a vote in-person.

The City of Racine cannot safely ensure or accommodate in-person voting at this time during the pandemic based on the facts and circumstances as attested to by Ms. Coolidge and Ms. Bowersox. (Coolidge Decl., generally; Bowersox Decl., generally). Not only does the City lack sufficient basic supplies to ensure hand sanitation and personal protective equipment provisions, but the City lacks adequate poll workers to keep each polling location open. Even if the City did have supplies and protections in an appropriate amount, the number of staff and volunteers that are able and willing to staff the Spring Election dwindles by the day. (Coolidge Decl., generally).

By modifying the election's requirements to allow voting by absentee ballot, the Court will allow the City to ensure every citizen's right to participate in the greatest and most important

² Nothing in Wisconsin's Safer-at-Home Order provides an exception for any person to leave home to vote.

function of our democracy while adhering to the equally important public health directives to fight an unprecedented threat to our public health and economy.

To expect the City to conduct in-person voting on the April 7 election date not only exposes citizens, employees, and volunteers to an unreasonable health risk, but potentially puts each voter at risk of potentially disastrous consequences. Any voter who appears for in-person voting on April 7 risks personal exposure to a highly contagious virus that could result in illness or further spread of disease. In addition, voters must also choose whether to disobey the Wisconsin Department of Health Services' order to stay home absent a need for an essential item or service related to basic needs. For both strictly law-abiding citizens and persons with health concerns, it is fair to assume that some may choose not to exercise their right to vote in order to protect themselves and their loved ones from risk of exposure to COVID-19.

CONCLUSION

For the reasons set forth herein, the City of Racine requests this Court modify voting requirements to allow the election to continue by the use of absentee ballots to protect both the health and safety of poll workers, volunteers and voters. Further, the City requests the Court extend deadlines for the election to ensure each vote may be counted and every citizen's voice heard.

Dated this 31st day of March, 2020.

RESPECTFULLY SUBMITTED

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