

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

JILL SWENSON, MELODY MCCURTIS,  
MARIA NELSON, BLACK LEADERS  
ORGANIZING FOR COMMUNITIES, and  
DISABILITY RIGHTS WISCONSIN,

Plaintiffs,

v.

MARGE BOSTELMANN, JULIE M. GLANCEY,  
ANN S. JACOBS, DEAN KNUDSON, ROBERT  
F. SPINDELL, JR., and MARK L. THOMSEN,  
Commissioners of the Wisconsin Elections  
Commission;

MEAGAN WOLFE, Administrator of the  
Wisconsin Elections Commission,

Defendants,

and

WISCONSIN LEGISLATURE, REPUBLICAN  
NATIONAL COMMITTEE, and REPUBLICAN  
PARTY OF WISCONSIN,

Intervening Defendants.

20-cv-459-wmc

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**MARGE BOSTELMANN, JULIE GLANCEY, ANN JACOBS, DEAN KNUDSON,  
ROBERT SPINDELL, MARK THOMPSON AND MEAGAN WOLFE'S RESPONSE TO  
PLAINTIFFS' PROPOSED FINDINGS OF FACT**

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The defendants respond to the plaintiffs' proposed findings of fact as follows:

**PLAINTIFFS' PROPOSED FACTS**

**The COVID-19 Pandemic**

1. COVID-19 “spread[s] mainly from person-to-person” through “respiratory droplets,” and is more likely to spread “between people who are in close contact with one another (within about 6 feet).” Declaration of Rachel E. Goodman (“Goodman Decl.”), Ex. 1 (Ctrs. for Disease Control & Prevention, *How COVID-19 Spreads*, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last updated June 1, 2020)).

**RESPONSE:** Not disputed.

2. COVID-19 poses a dire threat to individuals at high risk for complications from COVID-19. Expert Report of Patrick Remington, M.D. (“Remington Report”) at 8.

**RESPONSE:** Not disputed.

3. The first confirmed case of COVID-19 in Wisconsin was diagnosed on February 5, 2020. Goodman Decl., Ex. 2 (*Coronavirus Spreads to Wisconsin as Hundreds More Americans Return to U.S. from Outbreak's Epicenter*, CBS News (Feb. 10, 2020), <https://www.cbsnews.com/live-updates/coronavirus-usa-confirmed-cases-news-death-toll-evacuations-latest-2020-02-05/>).

**RESPONSE:** Not disputed.

4. It was the twelfth case in the United States, which has since confirmed over 2 million more cases. *Id.*; Goodman Decl., Ex. 3 (Ctrs. for Disease Control & Prevention, *Cases in*

*the U.S.*, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>  
(last updated June 14, 2020)), at 1.

**RESPONSE:** Not disputed.

5. Since February, over 25,000 people have tested positive for COVID-19 in Wisconsin alone. Goodman Decl., Ex. 19 (Wis. Dep’t of Health Servs., *COVID-19: Wisconsin Summary Data*, <https://www.dhs.wisconsin.gov/covid-19/data.htm> (last updated June 22, 2020)).

**RESPONSE:** Not disputed.

6. Experts predict that “over the next several months”—“from June to November 2020”—it is likely that “Wisconsin will see continued community transmission [of COVID-19] (at best), and may see increased transmission and more outbreaks (at worst).” Remington Report at 7.

**RESPONSE:** Not disputed.

7. In-person voting under these circumstances poses “a significant risk to human health.” *Id.* at 8.

**RESPONSE:** Disputed in part. The risk of transmission is greatly reduced if people are wearing masks and practicing social distancing.

8. Physically casting a ballot requires voters and poll workers to come “in[to] close contact with one another,” and to “touch[] surfaces or objects at [the] polling place, such as door handles, tables, pens, and ballots.” *Id.* at 9.

**RESPONSE:** Not disputed.

9. Because infected people are often “contagious before the onset of symptoms, [or] never develop symptoms,” it is virtually impossible to keep polling places virus-free. *Id.*

**RESPONSE:** Not disputed.

10. There will consequently be “a significant risk of contracting and transmitting COVID-19 in Wisconsin during any in-person voting for the November 2020 election in Wisconsin.” *Id.* at 10.

**RESPONSE:** Objection. This proposed fact is opinion testimony. Without waiving this objection, it is not disputed that the risk of contracting COVID-19 is greater when people are in close proximity.

### **Events Leading Up to the April 7 Election**

11. At a February 27 meeting of the Wisconsin Elections Commission (“the Commission”)—the first at which COVID-19 was discussed—Defendant Dean Knudson, the Chair of the Commission at the time, dismissed the need to plan for a COVID-19 outbreak. Goodman Decl., Ex. 4 (*Wisconsin Elections Commission February 2020 Meeting*, WisconsinEye (Feb. 27, 2020)), at 5.

**RESPONSE:** Objection. Defendant Knudson’s personal opinion is not relevant to any of the issues in this matter. The WEC acts only through motions that garner a majority. Wis. Stat. § 5.05(1e). To the extent a response is required, Disputed. Commissioner Knudson stated, I mean, I think it’s a valid concern to have contingency planning for what happens if our election officials can’t do their duties. (Ex. 4, p. 4).

12. “[A]t worst,” Defendant Knudson said, “there would be either long lines or a delay in reporting,” and the Commission has “robust procedures” for absentee voting. *Id.* at 5.

**RESPONSE:** Objection. Defendant Knudson’s personal opinion is not relevant to any of the issues in this matter. The WEC acts only through motions that garner a majority. To the extent a response is required, not disputed.

13. Defendant Meagan Wolfe similarly stated: “currently, [the Commission] do[es not] talk about things like, you know, if all your poll workers are sick . . . what would you do.” *Id.* at 3.

**RESPONSE:** Disputed. At the February 27, 2020 meeting, Defendant Wolfe said, “Currently we don’t talk about things like, you know, if all of your poll workers are sick, sort of what would you do. But we could address that. That’s something that we’ve talked about internally with our office, sort of, what is our policy if everyone in the office were to get sick and it was election day tomorrow, what would we do? How would we make sure that we were able to offer services? So it is part of our contingency planning discussions and we can talk about it. (Ex. 4, p. 4).

14. On March 12, Governor Tony Evers declared a statewide public health emergency.

Goodman Decl., Ex. 5 (John K. Wilson & Shamane Mills, *Evers Declares Public Health Emergency Due to COVID-19*, Wis. Public Radio (Mar. 12, 2020),

<https://www.wpr.org/evers-declares-public-health-emergency-due-covid-19>).

**RESPONSE:** Not disputed.

15. On March 17, the Wisconsin Department of Health Services banned gatherings of 10 or

more people. Goodman Decl., Ex. 6 (Shawn Johnson, *Wisconsin Bans Crowds of 10 or Larger: Order Bars and Restaurants Closed*, Wis. Public Radio (Mar. 17, 2020),

<https://www.wpr.org/wisconsin-bans-crowds-10-or-larger-order-bars-and-restaurants-closed>).

**RESPONSE:** Not disputed.

16. The same day, the Mayor of Green Bay said that the city would be “unable to administer a normal election.” Goodman Decl., Ex. 7 (Eric Genrich (@MayorGenrich), Twitter (Mar. 17, 2020, 4:53 PM), <https://twitter.com/MayorGenrich/status/1240018483963985923>).

**RESPONSE:** Not disputed.

17. Defendant Ann Jacobs said that she “no longer believe[d] that we are able to fairly and properly administer this election without delay or postponement,” and that she “believe[d] we’re putting people at risk.” Goodman Decl., Ex. 8 (Laurel White, *State Election Officials Spar Over Possible Postponement of April 7 Election*, Wis. Public Radio (Mar. 18, 2020), <https://www.wpr.org/state-election-officials-spar-over-possible-postponement-april-7-election>), at 2.

**RESPONSE:** Objection. Defendant Jacobs’s personal opinion is not relevant to any of the issues in this matter. The WEC acts only through motions that garner a majority. Wis. Stat. § 5.05(1e). To the extent a response is required, not disputed.

18. Defendant Mark Thomsen likewise said that “[Wisconsin is] going to have an election where no one can vote safely—that’s absurd.” *Id.*

**RESPONSE:** Objection. Defendant Thomson’s personal opinion is not relevant to any of the issues in this matter. The WEC acts only through motions that garner a majority. Wis. Stat. § 5.05(1e). To the extent a response is required, not disputed.

19. Defendant Julie Glancey argued in favor of an election by mail-in ballot only. *Id.*

**RESPONSE:** Objection. Defendant Glancey’s personal opinion is not relevant to any of the issues in this matter. The WEC acts only through motions that garner a majority. Wis. Stat. § 5.05(1e). To the extent a response is required, not disputed.

20. On March 18, Defendants issued a memorandum highlighting shortages of absentee ballot envelopes, polling locations, poll workers, and cleaning equipment. Goodman Decl., Ex. 9 (Wis. Elections Comm'n, *Update Regarding COVID-19 Election Planning* (Mar. 18, 2020), [https://elections.wi.gov/sites/elections.wi.gov/files/2020-03/Com\\_.%20memo%20re%20COVID-19%20Election%20Planning%203.18.20.pdf](https://elections.wi.gov/sites/elections.wi.gov/files/2020-03/Com_.%20memo%20re%20COVID-19%20Election%20Planning%203.18.20.pdf)), at 3-4.

**RESPONSE:** Not disputed.

21. A few days later, a bipartisan group of mayors urged that the election be delayed. Goodman Decl., Ex. 10 (Laurel White, *Some Wisconsin Mayors Urge Postponing April 7 Election*, Wis. Public Radio (Mar. 20, 2020), <https://www.wpr.org/some-wisconsin-mayors-urge-postponing-april-7-election>), at 2.

**RESPONSE:** Not disputed.

22. On March 24, the Department of Health Services Secretary-designee Andrea Palm issued Emergency Order No. 12, the Safer At Home Order. Goodman Decl., Ex. 11 (Wis. Dep't of Health Servs., *Emergency Order No. 12, Safer at Home Order* (Mar. 24, 2020), <https://elections.wi.gov/sites/elections.wi.gov/files/2020-03/Health%20Order%20%2312%20Safer%20At%20Home.pdf>).

**RESPONSE:** Not disputed.

23. The Order banned all public and private gatherings, closed nonessential businesses, and required that everyone maintain social distancing of at least six feet from any other person. *Id.*

**RESPONSE:** Not disputed.

24. The next day, Wisconsin Assembly Speaker Robin Vos and Senate Majority Leader Scott Fitzgerald said they did not expect to change the date of the election. Goodman Decl., Ex. 12 (Will Kenneally, *Legislative Leaders Want April Election to Move Forward*, PBS Wisconsin (Mar. 25, 2020), <https://pbswisconsin.org/news-item/legislative-leaders-want-april-election-to-move-forward/>).

**RESPONSE:** Not disputed.

25. Several plaintiffs filed suit, seeking to ensure that all Wisconsinites could safely and effectively cast a ballot. *See Democratic Nat'l Comm. v. Bostelmann*, No. 20-CV-249-wmc (W.D. Wis. filed Mar. 18, 2020); *Gear v. Knudson*, No. 20-CV-278-wmc (W.D. Wis. filed Mar. 26, 2020); *Lewis v. Knudson*, No. 20-CV-284-wmc (W.D. Wis. filed Mar. 26, 2020).

**RESPONSE:** Disputed in part. There were various lawsuits filed that requested a variety of relief which included postponing elections, enjoining the enforcement of various laws some of which were designed to make it easier to vote.

26. On April 2, 2020, this Court entered an injunction (a) ordering that absentee ballots received by April 13 at 4 p.m. be counted; (b) extending by one day, to April 3, the window to request an absentee ballot; and (c) adjusting the requirement under Wisconsin Statute section 6.87(2) that absentee voters have a witness sign their ballot, instead requiring Defendants to “accept an unwitnessed ballot” if it contains a sufficient affirmation or statement averring that the voter was unable “to safely obtain a witness certification” despite using “reasonable efforts to do so.” *Democratic Nat'l Comm. v. Bostelmann*, 2020 WL 1638374, \*20, 22 (W.D. Wis. Apr. 2, 2020) (hereinafter “DNC”).

**RESPONSE:** Not disputed.



27. The Seventh Circuit stayed the portion of this Court’s decision requiring Defendants to accept unwitnessed ballots, and declined to stay this Court’s extension of the absentee ballot deadline. Goodman Decl., Ex. 55 (*Democratic Nat’l Comm. v. Bostelmann*, Nos. 20-1538, 1539, 1545, 1546, Order (7th Cir. April 3, 2020)), at 3.

**RESPONSE:** Not disputed.

28. On April 3, 2020, Governor Evers called a special legislative session for the Legislature to consider postponing the April 7 election. Goodman Decl., Ex. 13 (Wis. Exec. Dep’t, *Exec. Order No. 73, Relating to a Special Session of the Legislature to Provide for an All-Mail Spring Election and Special Election for the 7th Congressional District During the COVID-19 Pandemic* (Apr. 3, 2020),

[https://docs.legis.wisconsin.gov/code/executive\\_orders/2019\\_tony\\_evers/2020-73.pdf](https://docs.legis.wisconsin.gov/code/executive_orders/2019_tony_evers/2020-73.pdf)).

**RESPONSE:** Not disputed.

29. Both the Wisconsin Assembly and the Senate immediately adjourned the special session, ensuring that the April 7 election would go forward as planned. Goodman Decl., Ex. 14 (Bill Glauber & Patrick Marley, *Wisconsin Republicans Reject Governor’s Move to Postpone Tuesday Election*, USA Today (Apr. 4, 2020),

<https://www.usatoday.com/story/news/politics/elections/2020/04/04/coronavirus-wisconsin-legislature-stalls-move-postpone-election/2949675001/>), at 3.

**RESPONSE:** Not disputed.

30. As this Court noted, the Legislature’s decision was “[c]ontrary to the view of at least a dozen other states, as well as the consensus of medical experts across the country as to the gathering of large groups of people.” *DNC*, 2020 WL 1638374, at \*1.

**RESPONSE:** Not disputed.

31. On April 6, Governor Evers issued an executive order suspending in-person voting.

Goodman Decl., Ex. 15 (Wis. Office of the Governor, *Gov. Evers Suspends In-Person Voting, Calls Legislature into Special Session on April 7 Election* (Apr. 6, 2020),

<https://content.govdelivery.com/accounts/WIGOV/bulletins/2852119>); Goodman Decl.,

Ex. 16 (Wis. Office of the Governor, *Exec. Order No. 74, Relating to Suspending In-Person Voting on April 7, 2020, Due to the COVID-19 Pandemic* (Apr. 6, 2020),

[https://content.govdelivery.com/attachments/WIGOV/2020/04/06/file\\_attachments/1420231/EO074-SuspendingInPersonVotingAndSpecialSession.pdf](https://content.govdelivery.com/attachments/WIGOV/2020/04/06/file_attachments/1420231/EO074-SuspendingInPersonVotingAndSpecialSession.pdf)).

**RESPONSE:** Not disputed.

32. Later that day, the Wisconsin Supreme Court enjoined the Governor's order.

Goodman Decl., Ex. 17 (Jerrick Adams, *Wisconsin Supreme Court Enjoins Governor's Order Postponing the Election, Allowing Voting to Continue as Scheduled April 7*,

Ballotpedia News (Apr. 7, 2020), <https://news.ballotpedia.org/2020/04/07/wisconsin-supreme-court-enjoins-governors-order-postponing-the-election-allowing-voting-to-continue-as-scheduled-april-7/>).

**RESPONSE:** Not disputed.

33. Shortly thereafter, the United States Supreme Court held that all absentee ballots had to be postmarked by April 7 and received by 4 p.m. on April 13 to be counted, partially overturning this Court's order. *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205 (2020) (hereinafter "*RNC*").

**RESPONSE:** Not disputed.

34. Writing for the majority, Justice Kavanaugh noted that “[t]his Court has repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election.” *Id.* at 1207.

**RESPONSE:** Not disputed.

**Widespread Disenfranchisement During the April 7 Election.**

35. During the April 7 election, voters attempted to utilize the absentee ballot process in historically high numbers. Goodman Decl., Ex. 18 (Wis. Elections Comm’n, *May 20, 2020 Meeting Materials* (May 20, 2020),

[https://elections.wi.gov/sites/elections.wi.gov/files/2020-](https://elections.wi.gov/sites/elections.wi.gov/files/2020-05/May%202020%2C%202020.Final_.pdf)

[05/May%202020%2C%202020.Final\\_.pdf](https://elections.wi.gov/sites/elections.wi.gov/files/2020-05/May%202020%2C%202020.Final_.pdf)) (“*WEC May 20 Meeting Materials*”), at 7.

**RESPONSE:** Not disputed.

36. Voters who sought to vote in-person faced huge waits and unsafe conditions due to the mass closure of polling locations and shortage of poll workers. Goodman Decl., Ex. 44 (Wis. Election Protection & League of Women Voters of Wis., *Wisconsin Election Protection, 2020 Spring Election Report* (May 11, 2020),

[http://www.thewheelerreport.com/wheeler\\_docs/files/051120lwvreport.pdf](http://www.thewheelerreport.com/wheeler_docs/files/051120lwvreport.pdf)) (“*Wis.*

*Election Protection 2020 Spring Election Report*”), at 19-22.

**RESPONSE:** Disputed in part. Contrary evidence. Some voters had little to no waiting times, some were able to vote curbside, and some municipalities had most or all of their polling places open. (See WEC responses to PFOF 111, 113 and 114).

*Technical Deficiencies*

37. Defendants administer a website called MyVote Wisconsin that, among other things, allows eligible Wisconsin residents to register to vote, request an absentee ballot, and find their polling place. Goodman Decl., Ex. 20 (MyVote Wisconsin, <https://myvote.wi.gov/en-us/> (last visited June 15, 2020)), at 1.

**RESPONSE:** Not disputed.

38. Months before the election, Defendants were aware that the website experienced outages. Goodman Decl., Ex. 21 (Wis. Elections Comm'n, *Update for Clerks on MyVote Address Problems* (Feb. 18, 2020), <https://elections.wi.gov/node/6688>).

**RESPONSE:** Disputed in part. There were technical difficulties with MyVote's address functionality which were being addressed in February and the WEC had an alternative method for voters to use to access ballot information in accordance with its contingency plan. (Ex. 21).

39. Defendants had knowledge of problems with MyVote as early as February 2020.

Goodman Decl., Ex. 56 (Wis. Elections Comm'n, *MyVote Wisconsin Website Address Lookup Working Again after Experiencing Issues* (Feb. 18, 2020), <https://elections.wi.gov/node/6687>).

**RESPONSE:** See response to PFOF 38.

40. There was an increase in voters' use of and reliance on MyVote due to the pandemic.

Goodman Decl., Ex. 22 (Wis. Elections Comm'n, *Absentee Ballot Requests for April 7 Already Exceed Last Three Spring Election Numbers Due to COVID-19* (Mar. 17, 2020), <https://elections.wi.gov/index.php/node/6731>).

**RESPONSE:** Not disputed.

41. Wisconsin voters using MyVote for the April 7 election faced system crashes that prevented them from accessing the site. Goodman Decl., Ex. 23 (Daphne Chen, et al., ‘They Should Have Done Something’: Broad Failures Fueled Wisconsin Ballot Crisis, Investigation Shows, Frontline PBS (Apr. 21, 2020), <https://www.pbs.org/wgbh/frontline/article/wisconsin-election-coronavirus-absentee-ballots/>), at 1.

**RESPONSE:** Disputed in part. There were technical difficulties with MyVote’s address functionality which were being addressed in February and the WEC had an alternative method for voters to use to access ballot information in accordance with its contingency plan. (Ex. 21).

42. The site also failed to record ballot requests properly and to provide accurate information about the status of absentee ballot requests. *Id.*

**RESPONSE:** Disputed. The system worked as designed. In addition, tracking absentee ballots is the municipal clerks’ responsibility. (Wolfe 7/20/2020 Decl. Exh. D. pp. 18-19).

43. An investigation by the Milwaukee Journal Sentinel found that eligible voters in Lodi, Pewaukee, Marshfield, Shorewood, and Bristol had trouble requesting absentee ballots online, either because the MyVote system crashed or because they finally gave up after spending hours trying to make their request via MyVote. *Id.* at 1.

**RESPONSE:** Disputed. The WEC did a rigorous post-election review of the system and found that it worked with few exceptions. (Wolfe 7/20/2020 Decl. Exh. D. pp. 18-19).

44. Some Wisconsin voters requested absentee ballots through MyVote, the investigation found, only to be later informed the MyVote system had no record of their request. *Id.* at 3.

**RESPONSE:** Not disputed.

45. Other voters received inaccurate information from MyVote's ballot tracker system regarding whether their absentee ballot had been mailed. *Id.* at 4.

**RESPONSE:** Disputed in part. See responses to PFOF 43 and 44

46. Defendant Wolfe acknowledged these failures, writing that voters attempting to use MyVote experienced "unique challenges and obstacles" during the April election. Goodman Decl., Ex. 24 (Wis. Elections Comm'n, *Summary of April 7, 2020 Election* (Apr. 18, 2020), <https://elections.wi.gov/sites/elections.wi.gov/files/2020-04/April%207%20Election%20Summary%20and%20Next%20Steps.pdf>), at 4.

**RESPONSE:** Disputed. Ms. Wolfe's actual statement was: Certainly there were unique challenges and obstacles for some voters at the election, but the work of WEC program and IT staff in maintaining and modifying MyVote, as well as the performance of the website itself, was a key factor in accommodating a significant level of voter turnout, second only to the record turnout for the 2016 Spring Election and Presidential Primary.

47. In Milwaukee alone, 2,693 requests for absentee ballots made through MyVote were never processed due to "technical problems" and "oversight[s]." Goodman Decl., Ex. 18 (*WEC May 20 Meeting Materials*), at 19-21.

**RESPONSE:** Disputed in part. There was a technical error as a result of a unique confluence of events and 52.5% of the affected voters in that sample voted by other means. (Ex. 18, pp. 19-21).

Absentee Voting Problems

48. As a result of the pandemic, absentee ballots cast by mail made up 61.8 percent of the total votes in the April 2020 election. *Id.* at 7.

**RESPONSE:** Not disputed.

49. This represented an increase from other recent elections where the proportion of ballots cast by mail ranged between 4.8 and 8.1 percent. *Id.*

**RESPONSE:** Not disputed.

50. Defendants acknowledge that the increases in absentee voting “created resource issues for a system primarily designed to support polling place voting.” *Id.* at 6.

**RESPONSE:** Not disputed.

51. Some voters, like Plaintiffs Melody McCurtis and Maria Nelson, timely requested absentee ballots but never received them. Declaration of Melody McCurtis in Supp. of Pls.’ Mot. for Prelim. Inj. (“McCurtis Decl.”) ¶¶ 5-7; Declaration of Maria Nelson in Supp. of Pls.’ Mot. for Prelim. Inj. (“Nelson Decl.”) ¶¶ 5-9.

**RESPONSE:** Not disputed.

52. Many of these voters, like Plaintiffs McCurtis and Nelson, never received an explanation for the denial of an absentee ballot: one simply never arrived. Nelson Decl. ¶¶ 7-9; McCurtis Decl. ¶¶ 5-7; Expert Report of Kevin J. Kennedy (“Kennedy Report”) ¶ 30.

**RESPONSE:** Not disputed that McCurtis and Nelson did not receive an explanation as to why they did not receive a ballot. There is no evidence that there was any decision to deny them a ballot. It is not the job of the WEC to provide absentee ballots.

53. More than 2,600 absentee ballots requested by voters in the City of Milwaukee were never sent as the result of a technical failure in the WisVote system. Goodman Decl., Ex. 18 (*WEC May 20 Meeting Materials*), at 19-21.

**RESPONSE:** This PFOF is duplicative. See response 47.

54. Hundreds of absentee ballots were never delivered to voters in Appleton, Oshkosh, and Fox Point. *Id.*, at 17-18; Goodman Decl., Ex. 25 (Jeff Ramage, *Post Office Returns Hundreds of Absentee Ballots That Were Supposed to Be Delivered to Fox Point Voters*, Milwaukee Journal Sentinel (Apr. 8, 2020), <https://www.jsonline.com/story/communities/northshore/news/fox-point/2020/04/08/wisconsin-election-fox-point-absentee-ballots-never-made-voters/5119812002/>).

**RESPONSE:** Objection, relevance. Without waiving this objection, not disputed.

55. Some municipalities—like Whitefish Bay and Bayside—timely mailed every registered voter an absentee ballot request form, with the predictable result of significantly boosting voter participation rates through the absentee process. Goodman Decl., Ex. 58 (Craig Gilbert, *How Two Communities on Milwaukee's North Shore Achieved Sky-High Levels of Absentee Voting Despite Coronavirus*, Milwaukee Journal Sentinel (Apr. 10, 2020), <https://www.jsonline.com/story/news/politics/elections/2020/04/10/wisconsin-absentee-ballot-forms-sent-whitefish-bay-bayside-voters/5129125002/>), at 3.

**RESPONSE:** Objection. This PFOF is not relevant to any of the issues in this case. The municipal clerks are charged with sending out the absentee ballots requested of them. The process is controlled by Wis. Stats. §§6.84-6.89. Without waiving this objection, not disputed.



56. Inadequately staffed offices were nearly overwhelmed by the demand for absentee ballots. Goodman Decl., Ex. 18 (*WEC May 20 Meeting Materials*), at 6.

**RESPONSE:** Not disputed.

57. Clerks across the state reported a shortage of 600,000 absentee certificate envelopes for voters to use when returning their absentee ballots. Goodman Decl., Ex. 9 (Wis. Elections Comm'n, *Update Regarding COVID-19 Election Planning* (Mar. 18, 2020), [https://elections.wi.gov/sites/elections.wi.gov/files/2020-03/Com\\_.%20memo%20re%20COVID-19%20Election%20Planning%203.18.20.pdf](https://elections.wi.gov/sites/elections.wi.gov/files/2020-03/Com_.%20memo%20re%20COVID-19%20Election%20Planning%203.18.20.pdf)), at 3.

**RESPONSE:** Disputed in part. Local clerks purchased envelopes based on historic needs and given the pandemic, quickly ran out. The cited shortage was rectified by the purchase of additional envelopes. (Goodman Decl., Ex. 24, p. 6).

58. Issues with mail delivery led to absentee ballots never reaching voters or being returned to the clerks' offices. Goodman Decl., Ex. 18 (*WEC May 20 Meeting Materials*), at 17.

**RESPONSE:** Not disputed.

59. Defendants failed to issue clear, statewide guidance about how municipal clerks must permit a voter to obtain an absentee ballot in the event their first request was rejected or simply not processed in a timely fashion. Kennedy Report ¶ 25.

**RESPONSE:** Objection. This proposed fact is opinion. Without waiving this objection, disputed. (See WEC guidance, <https://elections.wi.gov/covid-19>).

60. Wisconsin law requires the rejection of absentee ballots that do not *arrive* at the polling place by 8 p.m. on election day. Wis. Stat § 6.87(6).

**RESPONSE:** Not disputed.

61. Under the Supreme Court’s order, “a voter’s absentee ballot [had to] be either (i) postmarked by election day, April 7, 2020, and received by April 13, 2020, at 4:00 p.m., or (ii) hand-delivered as provided under state law by April 7, 2020, at 8:00 p.m.” *RNC*, 140 S. Ct. at 1208.

**RESPONSE:** Not disputed.

62. For many voters at high risk from COVID-19, including Plaintiffs Swenson and Nelson, hand-delivering a ballot to the municipal clerk was not an option—social distance was imperative to preserve their health and safety. Declaration of Jill Swenson in Supp. of Pls.’ Mot. for Prelim. Inj. (“Swenson Decl.”) ¶ 15; Nelson Decl. ¶¶ 5, 10.

**RESPONSE:** Not disputed.

63. While Defendant Wolfe identified absentee ballot drop boxes as a potential solution—in which voters could return ballots while maintaining social distancing—the idea was not uniformly required or implemented. Goodman Decl., Ex. 26 (Wis. Elections Comm’n, *FAQs: Absentee Ballot Return Options: USPS Coordination and Drop Boxes* (Mar. 31, 2020), <https://elections.wi.gov/sites/elections.wi.gov/files/2020-03/Ballot%20Return%20Options%203.31.2020.pdf>).

**RESPONSE:** Disputed in part. The WEC recommended that local election officials offer drop boxes as an alternative to going into the clerks’ office. The cited evidence does not support the contention that this option was not widely or uniformly used.

64. Drive-through and curbside voting were not widely administered. Goodman Decl., Ex. 27 (Bill Ruthhart, *In Battleground Wisconsin, Long Voter Lines, No Election Results and a Missed Opportunity to Build Toward November*, *Chicago Tribune* (Apr. 7, 2020), <https://www.chicagotribune.com/election-2020/ct-wisconsin-primary-election-20200407->

[ge26ymidnje65iqdrfcvnziixm-story.html](#)), at 4; Declaration of Kit Kerschensteiner in Supp. of Pls.’ Mot. for Prelim. Inj. (“Kerschensteiner Decl.”) ¶¶ 18-19.

**RESPONSE:** Objection. The underlying source for this proposed finding is double hearsay, based on reports from two communities and though 7<sup>th</sup> Circuit does not preclude the use of hearsay in a preliminary injunction setting, there should be at least an indicia of reliability. As a further objection, the cited article does not support the contention in this paragraph and does not mention curbside voting.

65. In Green Bay, in-person absentee voting was confined to a single site that was open for only ten weekdays with sporadic hours. Goodman Decl., Ex. 28 (*Early Voting Begins in Green Bay*, Fox 11 News (Mar. 19, 2020), <https://fox11online.com/news/local/early-voting-begins-in-green-bay>).

**RESPONSE:** Not disputed.

66. In Milwaukee, the city briefly had just three in-person early absentee voting sites; then had no early absentee voting sites for nearly a full week; and finally opened a single drive-through absentee voting location at the municipal building. Goodman Decl., Ex. 59 (*Katie DeLong, Milwaukee’s 3 Early Voting Sites Shut Down ‘Due to Increased COVID-19 Exposure Risk’*, Fox6 News (Mar. 22, 2020), <https://fox6now.com/2020/03/22/milwaukees-3-early-voting-sites-shut-down-due-to-increased-covid-19-exposure-risk/>); Goodman Decl., Ex. 60 (*Milwaukee to Launch Drive-Up Early Voting on Saturday, March 28*, Fox6 News (Mar. 27, 2020), <https://fox6now.com/2020/03/27/milwaukee-to-launch-drive-up-early-voting-on-saturday-march-28>).

**RESPONSE:** Not disputed.

67. Authorizing the acceptance of ballots postmarked by election day (and received by 4 p.m. on April 13), rather than received by election day, resulted in unpostmarked ballots being counted that would have otherwise been rejected. Goodman Decl., Ex. 18 (*WEC May 20 Meeting Materials*), at 8.

**RESPONSE:** Not disputed.

68. Defendants failed to promulgate rules or issue guidance with respect to postmarks to ensure the uniform and fair treatment of ballots received by mail. Goodman Decl., Ex. 57 (Wis. Elections Comm'n, *Postmark Issues and Processing Absentee Ballots* (Apr. 11, 2020), <https://elections.wi.gov/sites/elections.wi.gov/files/2020-04/Timely%20Postmark%20Issues%20and%20Absentee%20Ballot%20Counting%204.11.20%20REVISED.pdf>), at 3-4.

**RESPONSE:** Disputed in part. The WEC provided the guidance referenced in Ex. 57.

69. Clerks received ballots bearing no postmarks, two postmarks, or postmarks that did not clearly indicate a date. Goodman Decl., Ex. 29 (Riley Vetterkind, *Elections Commission Deadlocks Over Whether to Count Ballots Without Postmarks*, Wis. State Journal (Apr. 11, 2020), [https://madison.com/wsj/news/local/govt-and-politics/elections-commission-deadlocks-over-whether-to-count-ballots-without-postmarks/article\\_74e0285c-76d7-5471-a82e-144b78609f48.html](https://madison.com/wsj/news/local/govt-and-politics/elections-commission-deadlocks-over-whether-to-count-ballots-without-postmarks/article_74e0285c-76d7-5471-a82e-144b78609f48.html)), at 2-3.

**RESPONSE:** Not disputed.

70. As a result, some jurisdictions counted ballots without a postmark, while others rejected such ballots. Goodman Decl., Ex. 30 (Amy Gardner, et al., *Unexpected Outcome in Wisconsin: Tens of Thousands of Ballots That Arrived After Election Day Were Counted, Thanks to Court Decisions*, Wash. Post (May 3, 2020),

[https://www.washingtonpost.com/politics/unexpected-outcome-in-wisconsin-tens-of-thousands-of-ballots-that-arrived-after-voting-day-were-counted-thanks-to-court-decisions/2020/05/03/20c036f0-8a59-11ea-9dfd-990f9dcc71fc\\_story.html](https://www.washingtonpost.com/politics/unexpected-outcome-in-wisconsin-tens-of-thousands-of-ballots-that-arrived-after-voting-day-were-counted-thanks-to-court-decisions/2020/05/03/20c036f0-8a59-11ea-9dfd-990f9dcc71fc_story.html)), at 10.

**RESPONSE:** Disputed in part. The article states that Milwaukee counted 390 ballots with either no postmark or an illegible postmark. There is nothing in the article that states how many of the 390 ballots were received before April 7 or how many of the counted ballots contained no postmark.

71. Some Wisconsin voters who requested ballots received envelopes with no ballots inside (or duplicate ballots). Goodman Decl., Ex. 23 (Daphne Chen, et al., *'They Should Have Done Something': Broad Failures Fueled Wisconsin Ballot Crisis, Investigation Shows*, Frontline PBS (Apr. 21, 2020), <https://www.pbs.org/wgbh/frontline/article/wisconsin-election-coronavirus-absentee-ballots/>), at 3.

**RESPONSE:** Not disputed.

72. Some voters timely requested absentee ballots but did not receive their ballot in time to vote. McCurtis Decl. ¶¶ 5-8; Nelson Decl. ¶¶ 7-9; Goodman Decl., Ex. 25 (Jeff Ramage, *Post Office Returns Hundreds of Absentee Ballots That Were Supposed to Be Delivered to Fox Point Voters*, Milwaukee Journal Sentinel (Apr. 8, 2020), <https://www.jsonline.com/story/communities/northshore/news/fox-point/2020/04/08/wisconsin-election-fox-point-absentee-ballots-never-made-voters/5119812002/>).

**RESPONSE:** Not disputed.

73. Some voters timely requested absentee ballots but were unable to return ballots to the clerks' offices due to mail delivery problems. Goodman Decl., Ex. 18 (*WEC May 20 Meeting Materials*), at 13.

**RESPONSE:** Not disputed.

74. The combined result of the above errors was that more than 120,000 people who requested absentee ballots did not return them as of election day. *Id.* at 7.

**RESPONSE:** Disputed. The report indicates that voters did not return 121,000 ballots, but then goes on to state that this rate of unreturned ballots is consistent with previous spring elections. (Goodman Decl., Ex. 18, pp. 7-8).

75. Under Wisconsin law, mail-in absentee ballots must be witnessed and signed by another adult U.S. citizen who is not a candidate on the ballot. Wis. Stat. § 6.87(4).

**RESPONSE:** Not disputed.

76. For high-risk voters, including Plaintiff Jill Swenson, satisfying this requirement meant coming into contact with others and putting their lives in danger. Swenson Decl. ¶¶ 11-13.

**RESPONSE:** Disputed in part. Although Ms. Swenson did not avail herself of the option, the WEC provided guidance as to how the witness process could be completed without coming into contact with another person. (Expert report of Dr. Remington, p. 13).

77. For voters that live alone, satisfying the witness requirement while maintaining social distancing is problematic, even if the voter is not considered high risk. Remington Report at 13.

**RESPONSE:** Not disputed.

78. The evidence now available from the April 7 election shows that maintaining the witness requirement for immunocompromised voters did in fact disenfranchise voters. Kennedy Report ¶ 131.

**RESPONSE:** It is not disputed that the law required a witness signature and that as a result some voters did not vote.

79. Ms. Swenson, for instance, was unable to find anyone who could safely witness her ballot. Swenson Decl. ¶¶ 12-14.

**RESPONSE:** Not disputed.

80. The Wisconsin Election Commission proposed an elaborate 11-part method for witnessing their ballots, which required that the “witness should be prepared to watch the voter mark their ballot through a window or by video chat.” Remington Report at 13.

**RESPONSE:** Not disputed.

81. However, this complicated advice was not easily applied, “may be difficult to understand by the homebound individual and witness,” and “may be impractical in certain situations, such as for persons living in multi-level or multi-unit apartment complexes.” Remington Report at 14.

**RESPONSE:** Not disputed that this is the opinion set forth in Dr. Remington’s report.

82. This Court has already recognized this danger. *See DNC*, 2020 WL 1638374, at \*2.

**RESPONSE:** Not disputed.

83. After the Seventh Circuit stayed enforcement of this aspect of this Court’s injunction, Wisconsin Statute section 6.87(4) deprived voters unable to secure a witness, including Plaintiff Swenson, of the ability to cast an effective absentee ballot. Swenson Decl. ¶¶ 16-18; Goodman Decl., Ex. 31 (Wis. Elections Comm’n, *Updated Absentee Witness*

*Signature Requirement Guidance - COVID-19* (Apr. 5, 2020),  
<https://elections.wi.gov/node/6816>).

**RESPONSE:** Disputed. Under the WEC guidance, Ms. Swenson could have gotten her ballot witnessed.

84. Defendants' policy allows the witness to be a mail or food delivery person. Goodman Decl., Ex. 61 (Wis. Elections Comm'n, *Absentee Witness Signature Requirement Guidance* (Mar. 29, 2020), [https://elections.wi.gov/sites/elections.wi.gov/files/2020-03/Absentee%20Witness%20Guidance\\_0.pdf](https://elections.wi.gov/sites/elections.wi.gov/files/2020-03/Absentee%20Witness%20Guidance_0.pdf)), at 2.

**RESPONSE:** Not disputed that state law allows these people to be witnesses. Wis. Stat. § 6.87(2).

85. Those "witnesses" must certify that "the voter who requested the ballot is the person who actually received and voted the ballot." *Id.* at 1.

**RESPONSE:** Not disputed.

86. Defendants have suggested that voters should leave their certificate envelopes outside unattended for 24 hours to avoid COVID-19 transmission before and after witnessing. *Id.* at 2.

**RESPONSE:** Not disputed.

87. Wisconsin law also instructs election officials, upon receipt of an absentee ballot, to "enclose it, unopened, in a carrier envelope" and to leave it untouched until election day. Wis. Stat. § 6.88.

**RESPONSE:** Not disputed.

88. Wisconsin does not notify voters whether their ballot has been counted until 30 or 45 days post-election, well after results have been certified and too late to remedy an



erroneous ballot rejection. *See* Wis. Stat. § 6.275 (30-day deadline to report); § 6.33(5)(a)(3) (45-day deadline to report on General Election); § 7.60(5) (deadlines to certify county results); § 7.70(3)(a) (deadlines to certify statewide results); *see generally* Goodman Decl., Ex. 62 (Wis. Elections Comm’n, *Calendar of Election Events, November 2019 – January 2021* (2019), <https://elections.wi.gov/sites/elections.wi.gov/files/2020-01/2020%20Calendar%20of%20Election%20Events%20WORD%28rev%202020-01%29.pdf>).

**RESPONSE:** Not disputed.

89. Wisconsin law allows officials to reject an absentee ballot for numerous reasons including, for example, if the witness certification is “insufficient,” Wis. Stat. §§ 6.88(3)(b), 7.52(3)(b), if a person “is not a qualified elector in the ward or election district,” *id.*, and if a voter appears on a list provided by the Department of Corrections of people disenfranchised because they remain under supervision on a felony conviction, *id.* § 6.29(2)(am).

**RESPONSE:** Not disputed.

90. In the April 7 election, more than 14,000 ballots were rejected for an insufficient certification and thousands of other ballots were rejected for other reasons. Kennedy Report ¶ 30; Goodman Decl., Ex. 18 (*WEC May 20 Meeting Materials*), at 26.

**RESPONSE:** Not disputed.

91. Election inspectors also retain broad discretion to challenge absentee ballots for other reasons when ballots are canvassed. Wis. Stat. §§ 6.93, 7.52(5).

**RESPONSE:** Not disputed.

92. Wisconsin does not guarantee individual voters any opportunity to be heard on whether such rejections are incorrect. *See Wis. Stat. § 7.52.*

**RESPONSE:** Not disputed.

93. Because many voters with disabilities felt unsafe voting in person, being unable to vote absentee meant that they were unable to vote at all. Kerschensteiner Decl. ¶ 16.

**RESPONSE:** Not disputed.

94. Voters who are immunocompromised or at high risk from COVID-19, or who have COVID-19, will be confined at home, and so not able to vote in person. Kennedy Report ¶ 128.

**RESPONSE:** Not disputed.

95. These voters will also face particular challenges in obtaining a witness for their mail-in absentee ballot. *Id.*

**RESPONSE:** Disputed. There have been voters confined at home based on health conditions in other elections that have faced the same requirements and challenges posed by the current situation.

96. One blind voter who Plaintiff Disability Rights Wisconsin (“DRW”) was in contact with was unable to safely vote in person during the pandemic and lacked a private and independent at-home voting option. *Id.* ¶ 17.

**RESPONSE:** Not disputed.

97. Defendants did not offer online ballots accessible to voters with print disabilities. *Id.*

**RESPONSE:** Not disputed that there is no provision in state law to provide online ballots to voters with print disabilities.

*Insufficient Poll Workers and Polling Places.*

98. Nearly a month before the April 7 election, Defendants began to suspect that poll worker shortages would reduce voting access. Goodman Decl., Ex. 32 (Wis. Elections Comm’n, *COVID-19 Frequently Asked Questions (FAQ’s) and Guidance on Procedural Changes for Care Facility Absentee Voting and Polling Place Relocation* (Mar. 13, 2020), [https://elections.wi.gov/sites/elections.wi.gov/files/2020-03/UPDATED%20-%20Clerk%20comm%20re%20FAQ%20and%20SVD%20and%20Polling%20Place%20Procs\\_3\\_13\\_20.pdf](https://elections.wi.gov/sites/elections.wi.gov/files/2020-03/UPDATED%20-%20Clerk%20comm%20re%20FAQ%20and%20SVD%20and%20Polling%20Place%20Procs_3_13_20.pdf)), at 4.

**RESPONSE:** Not disputed.

99. According to a survey conducted by Defendants, one week before the election 111 voting jurisdictions believed they would not have enough workers to open even one polling place on election day, and 126 additional jurisdictions thought they would not have enough workers to open “all desired polling places.” Goodman Decl., Ex. 33 (Wis. Elections Comm’n, *Special Teleconference-Only Meeting, Polling Place Supply and Personnel Shortages* (Mar. 31, 2020), [https://elections.wi.gov/sites/elections.wi.gov/files/2020-03/Complete%20Packet%203\\_31.pdf](https://elections.wi.gov/sites/elections.wi.gov/files/2020-03/Complete%20Packet%203_31.pdf)), at 12.

**RESPONSE:** Not disputed.

100. In a memorandum issued to clerks across Wisconsin on March 13, 2020, Defendants, aware of the impending shortages, stated that municipalities had attempted to recruit extra poll workers, and that the Commission was trying to assign state and county employees to serve as reserve poll workers. *Id.* at 13.

**RESPONSE:** Not disputed.

101. Wisconsin statutes mandate that each election official, including each poll worker, be “a qualified elector of a county in which the municipality where the official serves is located,” Wis. Stat. § 7.30(2)(a).

**RESPONSE:** Not disputed.

102. While Defendants suggested that counties could serve as a clearinghouse for available election inspectors, they made no efforts to facilitate or coordinate intra-county poll worker sharing. Goodman Decl., Ex. 32 (Wis. Elections Comm’n, *COVID-19 Frequently Asked Questions (FAQ’s) and Guidance on Procedural Changes for Care Facility Absentee Voting and Polling Place Relocation* (Mar. 13, 2020), [https://elections.wi.gov/sites/elections.wi.gov/files/2020-03/UPDATED%20-%20Clerk%20comm%20re%20FAQ%20and%20SVD%20and%20Polling%20Place%20Procs\\_3\\_13\\_20.pdf](https://elections.wi.gov/sites/elections.wi.gov/files/2020-03/UPDATED%20-%20Clerk%20comm%20re%20FAQ%20and%20SVD%20and%20Polling%20Place%20Procs_3_13_20.pdf)), at 4.

**RESPONSE:** Disputed. The WEC requested that clerks call the WEC if they were having problems recruiting poll workers. In addition, the guidance provided a number of options to the local officials to employ to recruit poll workers.

103. Milwaukee was able to open only five of its usual 180 polling sites. Goodman Decl., Ex. 34 (*Milwaukee IDs 5 In-Person Voting Centers for Election Day, Expands Weekend Drive-Up Hours*, Fox6 News (Apr. 3, 2020), <https://fox6now.com/2020/04/03/milwaukee-ids-5-in-person-voting-centers-for-election-day-expands-weekend-drive-up-hours/>).

**RESPONSE:** Not disputed.

104. Milwaukee is home to 69.4 percent of Wisconsin’s Black population. Goodman Decl., Ex. 52 (Wis. Dep’t of Health Servs., *African Americans in Wisconsin: Overview*,

<https://www.dhs.wisconsin.gov/minority-health/population/afriamer-pop.htm> (last updated Sept. 10, 2018)).

**RESPONSE:** Not disputed.

105. As a result, voters, including Plaintiff Melody McCurtis, were forced to endure wait times of up to two-and-a-half hours to cast an in-person ballot. McCurtis Decl. ¶ 9; Goodman Decl., Ex. 35 (Mary Spicuzza, ‘*A Very Sad Situation for Voters*’:

*Milwaukeeans Brave Wait Times as Long as 2 1/2 Hours, Top Election Official Says*, Milwaukee Journal Sentinel (Apr. 7, 2020),

<https://www.jsonline.com/story/news/politics/elections/2020/04/07/wisconsin-election-milwaukee-voters-brave-long-wait-lines-polls/2962228001/>).

**RESPONSE:** Not disputed.

106. Milwaukee Election Commission executive director Neil Albrecht told reporters that he learned through media reports that National Guard members could be used at polling sites—a request he had made in the lead up to the election, but was denied at the time.

Goodman Decl., Ex. 36 (Molly Beck, *Gov. Tony Evers to Use National Guard Members to Work the Polls Amid Massive Shortage of Workers*, Milwaukee Journal Sentinel (Apr.

1, 2020), <https://www.jsonline.com/story/news/politics/elections/2020/04/01/tony-evers-use-national-guard-members-workpolls-amid-massive-shortage-workers/5102869002/>), at 2.

**RESPONSE:** Objection. Double hearsay. Without waiving this objection, not disputed that the proposed fact accurately states what was contained in the newspaper article.

107. Had Albrecht known about the National Guard’s availability earlier, Milwaukee could have opened additional voting centers. Goodman Decl., Ex. 37 (Briana Reilly, *Madison*

*has 66 Polling Sites on Election Day, Milwaukee Has Five. What's the Deal?*, The Cap Times (Apr. 7, 2020), [https://madison.com/ct/news/local/govt-and-politics/madison-has-66-polling-sites-on-election-day-milwaukee-has-five-whats-the-deal/article\\_8868bacf-6697-5cf4-aa4f-d85fb37cf846.html](https://madison.com/ct/news/local/govt-and-politics/madison-has-66-polling-sites-on-election-day-milwaukee-has-five-whats-the-deal/article_8868bacf-6697-5cf4-aa4f-d85fb37cf846.html)), at 2.

**RESPONSE:** Objection. Double hearsay. Without waiving this objection, disputed. Mr. Albrecht stated that he would have like to know how many of the 250 National Guard members he requested were being sent to Milwaukee prior to Monday afternoon.

108. Poll worker shortages led Green Bay to reduce its usual 31 polling sites to just two high school gymnasiums. Goodman Decl., Ex. 27 (Bill Ruthhart, *In Battleground Wisconsin, Long Voter Lines, No Election Results and a Missed Opportunity to Build Toward November*, Chicago Tribune (Apr. 7, 2020), <https://www.chicagotribune.com/election-2020/ct-wisconsin-primary-election-20200407-ge26ymidnje65iqdrfcvnziixm-story.html>), at 4.

**RESPONSE:** Not disputed.

109. Voters in Green Bay faced wait times of up to four hours. Goodman Decl., Ex. 38 (Kati Anderson, *Green Bay Voters Wait in Line Past Midnight to Cast Ballot in Primary Election*, WBAY (Apr. 7, 2020), <https://www.wbay.com/content/news/Long-lines-cause-hours-long-wait-to-cast-ballots-in-Green-Bay-569461981.html>), at 1.

**RESPONSE:** Not disputed.

110. Waukesha, a city of 70,000, was only able to open one polling place. Goodman Decl., Ex. 39 (Adam Brewster, *A Week Before Primary, Wisconsin Faces Poll Worker Shortage in Over Half of Municipalities*, CBS News (Mar. 31, 2020),

<https://www.cbsnews.com/news/coronavirus-wisconsin-primary-poll-worker-shortage-in-60-of-municipalities/>).

**RESPONSE:** Not disputed.

111. Madison was able to open 66 of its usual 92 polling sites. Goodman Decl., Ex. 37 (Briana Reilly, *Madison has 66 Polling Sites on Election Day, Milwaukee Has Five. What's the Deal?*, The Cap Times (Apr. 7, 2020), [https://madison.com/ct/news/local/govt-and-politics/madison-has-66-polling-sites-on-election-day-milwaukee-has-five-whats-the-deal/article\\_8868bacf-6697-5cf4-aa4f-d85fb37cf846.html](https://madison.com/ct/news/local/govt-and-politics/madison-has-66-polling-sites-on-election-day-milwaukee-has-five-whats-the-deal/article_8868bacf-6697-5cf4-aa4f-d85fb37cf846.html)), at 1.

**RESPONSE:** Not disputed.

112. Madison City Clerk Maribeth Witzel-Behl credited the city's commitment to staffing polling locations, noting that the Emergency Operations Center and Planning staff pushed to fill shifts. *Id.* at 2.

**RESPONSE:** Not disputed.

113. Generally, smaller towns and suburban areas were less affected by the pandemic, more fully staffed, and had shorter wait times. Goodman Decl., Ex. 27 (Bill Ruthhart, *In Battleground Wisconsin, Long Voter Lines, No Election Results and a Missed Opportunity to Build Toward November*, Chicago Tribune (Apr. 7, 2020), <https://www.chicagotribune.com/election-2020/ct-wisconsin-primary-election-20200407-ge26ymidnje65iqdrfcvzniixm-story.html>), at 4; Goodman Decl., Ex. 40 (Astead W. Herndon & Alexander Burns, *Voting in Wisconsin During a Pandemic: Lines, Masks and Plenty of Fear*, N.Y. Times (Apr. 7, 2020), <https://www.nytimes.com/2020/04/07/us/politics/wisconsin-election-coronavirus.html>), at 1.

**RESPONSE:** Not disputed.

114. Even some cities in Milwaukee County, such as Wauwatosa and Germantown, reported empty polling places with short wait times. Goodman Decl., Ex. 41 (*Election Day Blog Recap: Milwaukee Releases Tuesday's Voter Turnout; Late Lines After Polls Closed*, Milwaukee Journal Sentinel (Apr. 7, 2020), <https://www.jsonline.com/story/news/politics/2020/04/07/wisconsin-april-7-presidential-primary-election-updatesvoting-pandemic-milwaukee-polling-places/2959757001/>), at 5, 13.

**RESPONSE:** Not disputed.

*Unsafe In-Person Voting*

115. Defendants acknowledged in a memorandum summarizing the April 7 election that they knew “in early March that local election officials were unable to procure supplies needed for in-person voting.” Goodman Decl., Ex. 24 (Wis. Elections Comm’n, *Summary of April 7, 2020 Election* (Apr. 18, 2020), <https://elections.wi.gov/sites/elections.wi.gov/files/2020-04/April%207%20Election%20Summary%20and%20Next%20Steps.pdf>), at 1.

**RESPONSE:** Disputed in part. The cited portion of the report is incomplete. The report continues on the next page and provides: Ultimately, WEC worked with SEOC and state procurement to send the supplies needed to **all** polling places in Wisconsin. In addition, Megan Wolfe testified that the WEC has already ordered supplies for the November election in an effort to avoid the last-minute difficulties of procuring supplies. (Wolfe Dep. p. 68:10-69:6).

116. Defendants themselves experienced trouble procuring necessary supplies. *Id.* at 2.



**RESPONSE:** Disputed in part. See response to PFFOF 115.

117. Although some of those supplies—such as personal protective equipment (“PPE”), masks and gloves, and equipment to sanitize voting machines—were ultimately delivered, Defendants took no action to require voters or poll workers to employ those supplies or take other precautions to maintain safety at polling places. *Id.* at 2; Goodman Decl., Ex. 43 (Nathaniel Rakich, *Here’s What Voters Told Us About Voting in Wisconsin’s Primary*, FiveThirtyEight (Apr. 8, 2020), <https://fivethirtyeight.com/features/voters-experiences-in-wisconsin-amid-the-coronavirus/>), at 2.

**RESPONSE:** Objection. The WEC does not have the statutory authority to require municipalities to take any particular measures with respect to an election. Without waiving this objection, disputed. The cited news article does not mention anything about what the WEC did or did not do. It does state that “Everywhere, though, election officials took extraordinary measures to keep voters safe.” (Goodman Decl., Ex. 43, p. 3).

118. During the April 7 election, many polling locations-, including in parts of the state most acutely affected by COVID-19, lacked the social distancing protocols and safety equipment—such as PPE and sanitary voting machines—necessary to ensure safe voting. Goodman Decl., Ex. 44 (*Wis. Election Protection 2020 Spring Election Report*), at 21-22; Expert Report of Anthony Fowler, Ph.D., (“Fowler Report”) at 8; *see also* McCurtis Decl. ¶¶ 3-15; Remington Report at 5-6, 9-11; Kennedy Report ¶¶ 24-29.

**RESPONSE:** Not disputed.

119. In Milwaukee, voters were crowded together indoors for much of the hours-long wait to vote, such that social distancing was impossible to maintain. Goodman Decl., Ex. 44 (*Wis. Election Protection 2020 Spring Election Report*), at 22.

**RESPONSE:** Not disputed.

120. Plaintiff McCurtis, who was forced to vote in person at Washington High School in Milwaukee, noted that officials made no attempt to enforce social distancing. McCurtis Decl. ¶ 12.

**RESPONSE:** Objection, argumentative. The municipality is responsible for choosing polling places.

121. Washington High School did not provide PPE to voters, and when Plaintiff McCurtis finally made it to the front of the line, no sanitized pens were made available for voters to use. *Id.* ¶ 9.

**RESPONSE:** Not disputed.

122. In Green Bay, voters were not directed to use sanitization supplies (although poll workers used such supplies). Goodman Decl., Ex. 44 (*Wis. Election Protection 2020 Spring Election Report*), at 21.

**RESPONSE:** Not disputed.

123. In Oshkosh, poll workers wore masks, but not properly, and reused paper towels to clean voter booths between voters. *Id.* at 22.

**RESPONSE:** Not disputed.

124. In Beloit, many poll workers were not wearing any PPE at all. Goodman Decl., Ex. 43 (Nathaniel Rakich, *Here's What Voters Told Us About Voting in Wisconsin's Primary*,

FiveThirtyEight (Apr. 8, 2020), <https://fivethirtyeight.com/features/voters-experiences-in-wisconsin-amid-the-coronavirus/>), at 2.

**RESPONSE:** Not disputed.

125. As many as 8.4% of voters in these high-prevalence counties were deterred from casting a ballot. Fowler Report at 9-10.

**RESPONSE:** Disputed in part. The Fowler report is an analysis of the impact of the COVID 19 pandemic on voting. It does not purport to quantify the impact of any safety measures that were taken at any polling location. (Fowler report pp. 7-9). The implication of the plaintiffs' proposed fact is that there is a relationship between the safety conditions at particular polling places and the participation rates. This is not addressed by the Fowler report.

126. In Madison, city workers erected Plexiglas barriers to protect poll workers. Goodman Decl., Ex. 45 (Rebecca Shabad, et al., *Wisconsin Voters Face Long Waits, Lines Amid Coronavirus Outbreak*, NBC News (Apr. 7, 2020), <https://www.nbcnews.com/politics/2020-election/wisconsin-set-vote-national-guard-called-out-many-polling-places-n1178206>), at 3.

**RESPONSE:** Not disputed.

127. The Mayor of Neenah, Dean Kaufert, similarly had Plexiglas screens erected. Goodman Decl., Ex. 46 (Laurel White, *'It's Madness.'* *Wisconsin's Election Amid Coronavirus Sparks Anger*, NPR (Apr. 6, 2020), <https://www.npr.org/2020/04/06/827122852/it-s-madness-wisconsin-s-election-amid-coronavirus-sparks-anger>), at 3.

**RESPONSE:** Not disputed.

128. Mayor Kaufert also advocated use of Q-tips and aluminum foil to make reusable touchscreen styluses to reduce the risk of touching potentially contaminated poll books.

*Id.* at 4.

**RESPONSE:** Not disputed.

129. The city of Fitchburg sent out detailed notes explaining how poll workers and voters would be kept safe: equipment was to be wiped down every 15 minutes, lines were to be taped off to encourage social distancing, and all poll workers were to be given masks and gloves. Goodman Decl., Ex. 47 (Laura Schulte & Alison Dirr, *Wisconsin Election Poll Workers Fear Catching, Spreading Coronavirus as Thousands Will Congregate to Vote Tuesday*, Milwaukee Journal Sentinel (Apr. 6, 2020),

<https://www.jsonline.com/story/news/2020/04/06/wisconsin-april-7-election-polling-place-workers-fear-safety-during-coronavirus/2944702001/>), at 3.

**RESPONSE:** Not disputed.

*Uneven Effects*

130. The effects of COVID-19 on the April 2020 election “systematically harmed” those who had not previously voted absentee, those in urban areas, and those in economically depressed communities. Fowler Report at 20.

**RESPONSE:** Disputed to the extent that the plaintiffs are inferring that the defendants were responsible. As noted above, the Fowler report indicates the impact of the virus on voting, not any actions taken by the defendants.

131. Thousands of voters were deterred from or otherwise prevented from voting, with the voters who live in hardest hit parts of the state experiencing the highest rates of disenfranchisement. *See, e.g.*, Fowler Report, at 8-20.

**RESPONSE:** Disputed to the extent that the plaintiffs are inferring that the defendants were responsible. As noted above, the Fowler report indicates the impact of the virus on voting, not any actions taken by the defendants.

132. Indeed, in Milwaukee County alone, about 36,000 voters were deterred from voting at the polls by the unsafe conditions. *Id.* at 11.

**RESPONSE:** Disputed to the extent that the plaintiffs are inferring that the defendants were responsible. As noted above, the Fowler report indicates the impact of the virus on voting, not any actions taken by the defendants.

133. In Milwaukee County, the county with the highest COVID-19 prevalence in the state at the time of the election, turnout was at least 4.3 percentage points lower than expected when controlling for prior voter histories. *Id.* at 9.

**RESPONSE:** Not disputed.

134. This is a lower bound estimate based on the assumption that there was no deterrent effect in counties with the lowest COVID-19 prevalence, and thus likely understates the true impact on turnout. *Id.*

**RESPONSE:** Not disputed.

135. Turnout was particularly low not just in Milwaukee County, but also in other urban zip codes where people regularly rely on public transportation, in economically depressed zip codes with higher rates of unemployment, and in zip codes with greater shares of residents without health insurance. *Id.* at 17.

**RESPONSE:** Not disputed.

136. Dr. Fowler's study indicates that the pandemic especially affected in-person voting. *Id.* at 10-11.

**RESPONSE:** Not disputed.

137. In counties with high prevalence of COVID-19, in-person voting decreased by 7.4 percentage points, when compared to counties with low prevalence. *Id.*

**RESPONSE:** Not disputed.

138. For example, in Milwaukee County, where there were nearly 490,000 voters in Dr. Fowler's sample, approximately 36,000 were deterred from voting in person. *Id.* at 11.

**RESPONSE:** Disputed to the extent that the plaintiffs are inferring that the defendants were responsible. As noted above, the Fowler report indicates the impact of the virus on voting, not any actions taken by the defendants.

139. While COVID-19 may have increased absentee voting, this effect was not nearly large enough to make up for the decrease in voting at the polls. *Id.* at 10.

**RESPONSE:** Objection. This conclusion is speculative.

140. Voters across the state who had not previously navigated the absentee ballot process—68 percent of the registered voters in Dr. Fowler's sample—were 7.5 percent less likely to vote in the April 2020 than other registered voters. *Id.* at 11-12.

**RESPONSE:** Not disputed.

141. Applying this estimate to the number of registered voters who had never before voted absentee, Dr. Fowler estimated that approximately 166,000 people across the state who had not previously voted by mail were deterred from voting in April 2020. *Id.* at 11-12.

**RESPONSE:** Disputed to the extent that the plaintiffs are inferring that the defendants were responsible. As noted above, the Fowler report indicates the impact of the virus on voting, not any actions taken by the defendants.

142. In higher-prevalence counties like Milwaukee County, as many as 9.2 percent of voters who had never voted by mail—at least 30,000 people—were deterred from voting. *Id.* at 12.

**RESPONSE:** Disputed to the extent that the plaintiffs are inferring that the defendants were responsible. As noted above, the Fowler report indicates the impact of the virus on voting, not any actions taken by the defendants.

143. Individuals over the age of 65—a demographic usually overrepresented at the polls—were 6.2 percentage points less likely to vote in the April 2020 election compared to other voters in the same counties with the same voting histories, whether or not they lived in a county with high COVID-19 prevalence. *Id.* at 13-14.

**RESPONSE:** Disputed to the extent that the plaintiffs are inferring that the defendants were responsible. As noted above, the Fowler report indicates the impact of the virus on voting, not any actions taken by the defendants.

144. Estimates suggest voter participation in zip codes with higher proportions of Black and Hispanic voters was significantly lower in April than would be expected given prior voting history. *Id.* at 14.

**RESPONSE:** Disputed to the extent that the plaintiffs are inferring that the defendants were responsible. As noted above, the Fowler report indicates the impact of the virus on voting, not any actions taken by the defendants.

145. Based on the available data, compared to zip codes in Milwaukee County that are entirely non-minority, turnout in hypothetical zip codes consisting entirely of Black or Hispanic residence was 14.8 and 16.6 percentage points lower, respectively, than would be expected for other voters in the county with the same prior voting history. *Id.* at 14-15.

**RESPONSE:** Disputed to the extent that the plaintiffs are inferring that the defendants were responsible. As noted above, the Fowler report indicates the impact of the virus on voting, not any actions taken by the defendants.

146. Applying these results to actual zip codes, Dr. Fowler found, for example, that the zip code 53204, which consists of 70 percent Hispanic residents and 11 percent Black residents, had a turnout 13 percentage points lower than expected compared to a zip code with no Hispanic or Black residents but identical voting history. *Id.* at 15.

**RESPONSE:** Disputed to the extent that the plaintiffs are inferring that the defendants were responsible. As noted above, the Fowler report indicates the impact of the virus on voting, not any actions taken by the defendants.

147. Similarly, Dr. Fowler found that turnout was 14 percent lower than expected in zip code 53206, which has 94 percent Black residents and 2 percent Hispanic residents. *Id.*

**RESPONSE:** Disputed to the extent that the plaintiffs are inferring that the defendants were responsible. As noted above, the Fowler report indicates the impact of the virus on voting, not any actions taken by the defendants.

148. In all, Dr. Fowler identified 14 zip codes where minority turnout dropped by more than 5 percentage points compared to similarly situated voters with identical voting history. *Id.*

**RESPONSE:** Disputed to the extent that the plaintiffs are inferring that the defendants were responsible. As noted above, the Fowler report indicates the impact of the virus on voting, not any actions taken by the defendants.

149. Black and Hispanic Americans are more likely to die from COVID-19 than others. *Id.* at 14.



**RESPONSE:** Disputed to the extent that the plaintiffs are inferring that the defendants were responsible. As noted above, the Fowler report indicates the impact of the virus on voting, not any actions taken by the defendants.

### **Plaintiffs' Injuries**

#### *Jill Swenson*

150. Plaintiff Jill Swenson has chronic obstructive pulmonary disease, an inflammatory lung disease, and is at high risk of complications, severe symptoms or death if she is infected with COVID-19. Swenson Decl. ¶¶ 5-6.

**RESPONSE:** Not disputed.

151. Ms. Swenson is sixty-one years old, a resident of Appleton, Wisconsin and a registered voter. *Id.* ¶¶ 5, 2.

**RESPONSE:** Not disputed.

152. To protect her safety during the COVID-19 pandemic, Ms. Swenson self-quarantined and requested an absentee ballot. *Id.* ¶¶ 8, 11.

**RESPONSE:** Not disputed.

153. She felt unsafe voting in person because of the risk to her physical health posed by the COVID-19 pandemic. *Id.* ¶¶ 6, 8, 11-12.

**RESPONSE:** Not disputed.

154. Ms. Swenson lives alone and was unable to find an in-person witness for the absentee ballot she received in the mail. *Id.* ¶¶ 10-14.

**RESPONSE:** Not disputed.

155. After weeks of unsuccessfully searching for a safe way to have her ballot witnessed, Ms. Swenson relied on this Court's decision in *DNC*, 2020 WL 1638374, at \*18-20, and

submitted her unwitnessed ballot on April 3, complying with all requirements for doing so. Swenson Decl. ¶¶ 12-14, 16.

**RESPONSE:** Not disputed.

156. Ms. Swenson subsequently learned through news reports that her ballot would be invalidated and would not count. *Id.* ¶ 17.

**RESPONSE:** Not disputed.

157. Ms. Swenson contacted the Commission to seek alternative ways of casting her vote; none were available to her. *Id.* ¶ 18.

**RESPONSE:** Not disputed.

158. As a result, Ms. Swenson was disenfranchised and her vote was not counted, leaving her deeply upset. *Id.* ¶¶ 17-19.

**RESPONSE:** Objection. This fact is a legal conclusion. Without waiving this objection, it is not disputed that Ms. Swenson's vote was not counted and that she was upset.

159. Ms. Swenson is in need of a safe and effective way to vote—and to ensure her vote is counted—in Wisconsin's fall elections. *Id.* ¶ 19.

**RESPONSE:** Not disputed.

*Melody McCurtis*

160. Plaintiff Melody McCurtis is a registered voter and a resident of Sherman Park in Northwest Milwaukee, Wisconsin. McCurtis Decl. ¶ 2.

**RESPONSE:** Not disputed.

161. Ms. McCurtis requested her absentee ballot on March 22, 2020, but never received it, and was forced to vote in person at Washington High School in order to cast a ballot. *Id.* ¶¶ 5-8.

**RESPONSE:** Not disputed.

162. In doing so, Ms. McCurtis was forced to put her immunocompromised mother, who lives with her, at risk. *Id.* ¶¶ 3, 8, 9.

**RESPONSE:** Not disputed.

163. As a Black community organizer, she was also aware of the disparate impact that COVID-19 had on the Black community in Milwaukee and particularly her neighborhood of Sherman Park, in the weeks leading up to April 7. *Id.* ¶ 4.

**RESPONSE:** Not disputed.

164. In order to vote, Ms. McCurtis was forced to endure an over two-and-a-half-hour wait during which she was surrounded by a large number of people, social distancing was not enforced, and a member of the National Guard discouraged her from remaining in line. *Id.* ¶¶ 8-11.

**RESPONSE:** Not disputed.

165. Washington High School did not provide PPE to voters, and when Ms. McCurtis finally made it to the front of the line, no sanitary pens were made available for voters to use. *Id.* ¶ 9.

**RESPONSE:** Not disputed.

166. These conditions caused McCurtis to fear that she would infect and seriously harm her own mother. *Id.* ¶¶ 3, 5, 8, 9, 14, 15.

**RESPONSE:** Not disputed.

167. Ms. McCurtis experienced intimidation, fear, stigmatization, and frustration in order to vote. *Id.* ¶ 9.

**RESPONSE:** Not disputed.

168. As a Black Milwaukeean, Ms. McCurtis was devastated by the lack of respect shown to her community on April 7. *See e.g., id.* ¶¶ 11, 14.

**RESPONSE:** Not disputed.

169. Moreover, she still feels the traumatic impact of her voting experience and is afraid that if she wants to exercise her right to vote this fall, she will be forced to place her and her mother's health at risk again. *Id.* ¶¶ 14, 15.

**RESPONSE:** Not disputed.

170. Ms. McCurtis will still be living with her immunocompromised mother in November. *Id.* ¶ 15.

**RESPONSE:** Not disputed.

171. In light of her experience in April, Ms. McCurtis remains scared that she will not be able to exercise her right to vote in this year's forthcoming elections without exposing herself—and therefore her mother—to significant health risks. *Id.*

**RESPONSE:** Not disputed.

*Maria Nelson*

172. Plaintiff Maria Nelson is undergoing treatment for breast cancer and believes herself to be immunocompromised. Nelson Decl. ¶ 3.

**RESPONSE:** Not disputed.

173. Ms. Nelson is a resident of Appleton, Wisconsin, and a registered voter. *Id.* ¶ 2.

**RESPONSE:** Not disputed.

174. As a mother to young children already undergoing grueling medical treatment, Ms. Nelson was afraid to risk her health and her life by voting in person on April 7. *Id.* ¶ 5.

**RESPONSE:** Not disputed.

175. For that reason, she timely requested an absentee ballot in order to vote from the safety of her home—but it did not arrive until after April 7. *Id.* ¶¶ 5-7, 9.

**RESPONSE:** Not disputed.

176. Ms. Nelson did not feel safe voting in person on April 7 and is not able to risk her health or her children’s security by voting in person during the COVID-19 pandemic. *Id.* ¶¶ 10, 12.

**RESPONSE:** Not disputed.

177. As a result, she was disenfranchised and was not able to cast a ballot. *Id.* ¶ 11.

**RESPONSE:** Disputed in part. Ms. Nelson was not disenfranchised. Ms. Nelson had the ability to vote through alternative means.

178. Plaintiff Nelson, like Plaintiff Swenson, was so intimidated and threatened by the in-person voting environment that she reasonably concluded her only safe option to exercise the franchise was to vote absentee. *Id.* ¶¶ 5-8, 10, 11; *see* Swenson Decl. ¶¶ 5-8.

**RESPONSE:** Not disputed.

179. Plaintiffs Swenson and Nelson have health conditions that will continue to place them at high risk for complications, serious illness and death if they contract COVID-19 in November. *See* Swenson Decl. ¶¶ 5-6; Nelson Decl. ¶¶ 3, 5.

**RESPONSE:** Not disputed.

180. Ms. Nelson intends to request an absentee ballot in this year’s coming elections because she is afraid to risk her health or the security of her children to vote in person. However, she has no confidence that her ballot will arrive and that her vote will actually be counted. Nelson Decl. ¶ 12.

**RESPONSE:** Not disputed.

*Black Leaders Organizing for Communities*

181. In the run-up to the April 7 election, Plaintiff Black Leaders Organizing for Communities (“BLOC”) was forced to divert significant time and resources in response to the failure of Wisconsin’s election officials to ensure that every voter in the communities BLOC serves had a safe and accessible way to participate. This hurt BLOC’s ability to fulfill its mission and serve its community. Declaration of Angela Lang in Supp. of Pls.’ Mot. for Prelim. Inj. ¶ 7.

**RESPONSE:** Not disputed.

182. BLOC is a civic engagement project based in Milwaukee, Wisconsin, and is fiscally sponsored by Tides Advocacy, a California nonprofit. *Id.* ¶ 2.

**RESPONSE:** Not disputed.

183. BLOC’s mission is to mobilize Black Wisconsinites to participate at all levels of government, including by educating voters about the importance of voting and rules for casting a ballot and by operating a robust field operation ahead of elections. *Id.* ¶¶ 3, 4.

**RESPONSE:** Not disputed.

184. To do this during the pandemic, BLOC created a phone- and text-banking operation to encourage voters to vote and to talk to voters about their issues and endorsed candidates.

*Id.* ¶ 6.

**RESPONSE:** Not disputed.

185. Staff were at reduced time, given the pandemic. *Id.* ¶ 8.

**RESPONSE:** Not disputed.

186. In the run-up to the April 7 election, BLOC was forced to divert significant time and resources in response to the lack of clear information about safely voting. *Id.* ¶ 7.

**RESPONSE:** Not disputed.

187. As Defendants' policies and deadlines rapidly shifted, BLOC had to repeatedly push out new training to its staff and ensure that updated messages were sent to constituents who had received now-outdated language. *Id.* ¶ 8.

**RESPONSE:** Disputed in part. The WEC policies and procedures were changed to conform to the various court rulings and were consistent with applicable election law.

188. This required BLOC's staff to devote their limited time, which they had planned to use for efforts to contact voters, to instead address the Commission's rapidly changing rules. *Id.*

**RESPONSE:** Not disputed.

189. When BLOC's staff did reach out to voters, they had to spend more time than usual and had to provide case management-type services for many voters, helping with online registration and absentee ballot request issues, navigating photo ID uploading, and discussing how to safely vote. *Id.* ¶ 9.

**RESPONSE:** Not disputed.

190. Because of this, BLOC staff were able to have very few, if any, substantive conversations focused on BLOC's issues or candidates. *Id.*

**RESPONSE:** Not disputed.

191. In order to ensure their constituents were receiving accurate information, BLOC also had to create new, single-use digital and social media materials. *Id.* ¶ 10.

**RESPONSE:** Not disputed.

192. Due to Defendants' failures administering the April 7 election, much of BLOC's work to empower the community has been eroded. *Id.* ¶ 13.

**RESPONSE:** Objection. This proposed fact is an opinion. Without waiving this objection, the WEC acted at all times pursuant to the various court rulings and applicable election laws. The WEC does not have authority to waive or modify Wisconsin’s election statutes.

193. BLOC’s efforts to build constituents’ trust in the democratic system were squandered by how the state treated voters generally and BLOC’s constituents specifically. *Id.*

**RESPONSE:** Objection. This conclusion is speculative.

194. As a result, BLOC’s work is now harder because it not only has to continue its usual educational and outreach efforts, but it also must convince members of the Black community in Milwaukee that there is a safe way to cast their ballots—when BLOC staff is not currently sure whether that is true. *Id.*

**RESPONSE:** Not disputed that the pandemic has made everyone’s work more challenging for the upcoming election.

195. This is a significant setback for BLOC’s mission and work. *Id.*

**RESPONSE:** Disputed in part. BLOC’s stated mission is to mobilize Black Wisconsin voters. To the extent that the pandemic will continue in the fall, it would be within BLOC’s mission to assist voters with absentee voting.

196. BLOC’s diversion of resources has continued and will continue through the fall if statewide changes are not implemented. *Id.* ¶¶ 11, 12, 14.

**RESPONSE:** Objection, this proposed fact is argument.

*Disability Rights Wisconsin*

197. Plaintiff Disability Rights Wisconsin (“DRW”) was likewise forced to divert significant time and resources to keeping its constituents—including individual voters with



disabilities and disability-services organizations across the state—updated with accurate, comprehensive election information in advance of the April 7 election. Kerschensteiner Decl. ¶¶ 9-26.

**RESPONSE:** Not disputed.

198. DRW is a statewide nonpartisan, nonprofit, non-stock corporation organized under the laws of Wisconsin. DRW is based in Madison, and maintains offices across the state, including in Menasha, Milwaukee, Green Bay, and Rice Lake. *Id.* ¶ 2.

**RESPONSE:** Not disputed.

199. DRW is a member of the National Disability Rights Network and is designated by the Governor of Wisconsin to act as the congressionally mandated protection and advocacy system for Wisconsin citizens with disabilities, pursuant to Wis. Stat. § 51.62; 29 U.S.C. § 794e; 42 U.S.C. §§ 15041, et seq.; and 42 U.S.C. §§ 10801, et seq. Accordingly, DRW has a state and federal mandate to protect and advocate for the rights of people with disabilities in Wisconsin. *Id.* ¶ 5.

**RESPONSE:** Not disputed.

200. As part of this mandate, DRW oversees self-advocacy training and other programs and services to assist people with disabilities, including to secure election access, registering to vote, accessing polling places, and casting their ballots. *Id.* ¶ 6.

**RESPONSE:** Not disputed.

201. DRW runs a voter hotline and leads a coalition of disability-services organizations from across the state. *Id.* ¶¶ 6, 7.

**RESPONSE:** Not disputed.

202. Voters and coalition members rely on DRW to provide updated and accurate information about how Wisconsin voters with disabilities can register to vote and vote. *Id.* ¶ 15.

**RESPONSE:** Not disputed.

203. In order to do so ahead of the April 7 election, DRW diverted staff time and resources to creating multiple Zoom trainings for voters and coalition partners, preparing for and attending emergency Commission meetings, and directly liaising with the Commission. *Id.* ¶¶ 10, 13.

**RESPONSE:** Not disputed.

204. DRW was forced to create new resources explaining how voters with disabilities could vote absentee, and had to rewrite existing resources multiple times, checking with the Commission each time to ensure accuracy. *Id.* ¶¶ 11, 12.

**RESPONSE:** Not disputed.

205. Through both DRW's hotline and its coalition partners, DRW staff fielded reports of significant barriers faced by voters with disabilities. *Id.* ¶¶ 14-22.

**RESPONSE:** Not disputed.

206. Voters with disabilities who tried to vote in person faced a lack of curbside voting, lack of assistance, and long lines in various locations, as well as significant trouble finding safe transportation to the polls. *Id.* ¶¶ 18-20.

**RESPONSE:** Disputed in part. Disputed to the extent that this statement indicates that all voters with disabilities faced the barriers identified. Local election officials control and operate polling locations, including curbside voting, assistance and staffing. §§ 6.82, 7.15, and 7.30. stats.

207. Voters with disabilities who sought to vote safely at home faced trouble safely finding witnesses, and some voters, particularly those with visual impairment, were unable to vote privately due to Defendants' failure to provide accessible absentee voting. *Id.* ¶¶ 16, 17.

**RESPONSE:** Disputed in part. Disputed to the extent that this statement indicates that all voters with disabilities faced the barriers identified. The Defendants do not have the authority to waive or modify Wisconsin's election statutes, including the witness certification requirement. Wis. Stat. § 6.87(4)(b)1; Wis. Stat. § 5.05. The Defendants acted at all times pursuant to their statutory authority and this Court's Preliminary Injunction and Amended Preliminary Injunction in *DNC et al. v. Bostelmann et al.*, as modified by the Court of Appeals for the Seventh Circuit and United States Supreme Court.

208. Absent Defendants' failures, DRW would not have had to divert resources to helping voters surmount these barriers. *See id.* ¶¶ 9-26.

**RESPONSE:** Disputed in part. Disputed to the extent that this statement attributes any diversion to alleged "failures." Local election officials control and operate polling locations, including curbside voting, assistance and staffing. The Defendants do not have the authority to waive or modify Wisconsin's election statutes, including the witness certification requirement. Wis. Stat. § 6.87(4)(b)1; Wis. Stat. § 5.05. The Defendants acted at all times pursuant to their statutory authority and this Court's Preliminary Injunction and Amended Preliminary Injunction in *DNC et al. v. Bostelmann et al.*, as modified by the Court of Appeals for the Seventh Circuit and United States Supreme Court. [‘249 Case, Dkt. Nos. 171, 180].

209. This work took time and resources away from other DRW priorities, and negatively impacted its mission and constituents. *Id.* ¶¶ 9, 23.

**RESPONSE:** Not disputed.

210. Indeed, despite all of this work, DRW was not able to fully achieve its mission of empowering voters with disabilities to vote, because, as discussed above, Defendants' failures ensured that voters with disabilities struggled to, and in some cases could not, vote on April 7. *See e.g. id.* ¶¶ 16-22, 26.

**RESPONSE:** Disputed in part. Disputed to the extent that this statement attributes any diversion to alleged "failures." Local election officials control and operate polling locations, including curbside voting, assistance and staffing. Wis. Stat. §§ 6.82, 7.15, 7.30. The Defendants do not have the authority to waive or modify Wisconsin's election statutes, including the witness certification requirement. Wis. Stat. § 6.87(4)(b)1; Wis. Stat. § 5.05. The Defendants acted at all times pursuant to their statutory authority and this Court's Preliminary Injunction and Amended Preliminary Injunction in *DNC et al. v. Bostelmann et al.*, as modified by the Court of Appeals for the Seventh Circuit and United States Supreme Court. [‘249 Case, Dkt. Nos. 171, 180].

211. Many disabled voters require assistive technology available only at in-person polling locations. *See id.* ¶¶ 17, 22.

**RESPONSE:** Not disputed.

212. Given the poll closings and lack of safety protocols, those voters had no safe or practical way to cast a ballot in some parts of Wisconsin. *Id.* ¶¶ 16-21.

**RESPONSE:** Disputed in part. Disputed to the extent that this statement indicates that all voters with disabilities requiring assistive technology faced the barriers identified.

Local election officials control and operate polling locations, including curbside voting, assistance and staffing. Wis. Stat. §§ 6.82, 7.15, 7.30.

213. DRW’s diversion of resources has continued and will continue through the fall if statewide changes are not implemented. *Id.* ¶¶ 24-26.

**RESPONSE:** Disputed to the extent that this statement attributes any diversion to alleged “failures.” Local election officials control and operate polling locations, including curbside voting, assistance and staffing. Wis. Stat. §§ 6.82, 7.15, 7.30.

### **COVID-19’s Trajectory in Wisconsin**

214. Since Wisconsin’s first COVID-19 case on February 5, 2020, the number of cases has consistently increased, with more than 25,000 Wisconsinites testing positive for the disease. Goodman Decl., Ex. 19 (Wis. Dep’t of Health Servs.,

*COVID-19: Wisconsin Summary Data*, <https://www.dhs.wisconsin.gov/covid-19/data.htm> (last updated June 22, 2020)).

**RESPONSE:** Not disputed.

215. The state continues to experience “community spread,” meaning that there are too many COVID-19 cases to trace and isolate infections. Remington Report at 6.

**RESPONSE:** Not disputed.

216. According to a comprehensive model developed by the Institute for Health Metrics and Evaluation (IHME) at the University of Washington, “the evolution of the epidemic depends on the balance between relaxed social distancing, increasing temperature, and rising rates of testing and contact tracing.” Goodman Decl., Ex. 48 (Inst. for Health Metrics & Evaluation, *New IHME Forecast Projects Nearly 135,000 COVID-19 Deaths*

in US (May 4, 2020), <http://www.healthdata.org/news-release/new-ihme-forecast-projects-nearly-135000-covid-19-deaths-us>), at 1.

**RESPONSE:** Not disputed.

217. Because many states have begun to reopen, IMHE Director Dr. Christopher Murray “expects that the epidemic in many states will now extend through the summer.” *Id.*

**RESPONSE:** Not disputed.

218. Indeed, in the week ending June 20, ten states saw all-time highs in their seven-day average number of new positive COVID-19 cases per day. Goodman Decl., Ex. 63 (Holly Yan & Medline Holcombe, *10 States are Seeing their Highest Average of Daily New Covid-19 Cases since the Pandemic Started*, CNN (June 17, 2020), <https://www.cnn.com/2020/06/17/health/us-coronavirus-wednesday/index.html>), at 1.

**RESPONSE:** Not disputed.

219. Social distancing metrics (e.g., data from cell phones) indicate that social distancing in Wisconsin decreased from April to May. Goodman Decl., Ex. 49 (*Compare Your Community’s Social Distancing Activity to Its Activity Prior to COVID-19*, Unacast, <https://www.unacast.com/covid19/social-distancing-scoreboard?view=state&fips=55#scoreboard> (last visited June 18, 2020)).

**RESPONSE:** Not disputed.

220. The “Safer at Home” Order was in effect during the April election, but was later overturned by the Wisconsin Supreme Court. *See* Goodman Decl., Ex. 11 (Wis. Dep’t of Health Servs., *Emergency Order No. 12, Safer at Home Order* (Mar. 24, 2020), <https://elections.wi.gov/sites/elections.wi.gov/files/2020->

03/Health%20Order%20%2312%20Safer%20At%20Home.pdf); *Wisc. Legis. v. Palm*, 942 N.W.2d 900, 918 (Wis. May 13, 2020).

**RESPONSE:** Not disputed.

221. As a result, social distancing rates are likely to keep dropping. Remington Report at 7.

**RESPONSE:** Disputed in part. The course of COVID-19 and the public reaction to the disease is unknown.

222. Even assuming that “warming seasonal temperatures . . . could help slow transmission” during the summer (which is far from clear), COVID-19 will not recede during the summer because of rising mobility. Remington Report at 10.

**RESPONSE:** Not disputed.

223. Experts including Dr. Anthony Fauci have warned of a “bad fall and a bad winter” that may result in the increased spread of COVID-19. Goodman Decl., Ex. 50 (Nicole Chavez, *Another Wave of Coronavirus Will Likely Hit the US in the Fall. Here's Why and What We Can Do to Stop It*, CNN (May 2, 2020), <https://www.cnn.com/2020/05/02/health/coronavirus-second-wave-fall-season/index.html>) at 1.

**RESPONSE:** Not disputed.

224. Wisconsin and national public health officials expect the pandemic will continue and might well intensify between now and November. Remington Report at 10-11.

**RESPONSE:** Not disputed.

### **COVID-19's Impact on the November Election**

225. Based on the epidemiology of COVID-19 transmission in Wisconsin, there will accordingly be a significant risk of contracting and transmitting COVID-19 during the November 2020 election in Wisconsin. Remington Report at 8-11.

**RESPONSE:** Disputed in part. Not supported by the document cited. The document cited refers to a number of steps to mitigate the risk of COVID-19 transmission during the November 2020 election in Wisconsin, including a number of steps which the WEC and local election officials are already undertaking. Remington Report, pp. 14-17; [*WEC Defendants' Status Report*, '249 Case, Dkt. No. 227].

226. For some voters, including Plaintiffs Swenson and Nelson, voting absentee by mail is the only way to exercise the franchise without seriously jeopardizing their lives or health. *See* Remington Report at 12-14; Swenson Decl. ¶¶ 5-8, 11, 15; Nelson Decl. ¶¶ 3, 5, 6, 10.

**RESPONSE:** Not disputed.

227. For most others, mail-in absentee voting is far safer than voting in person on election day—both because of the risk to the voter's own health and the risk of viral transmission at the polls or afterwards. Remington Report at 12-17; McCurtis Decl. ¶¶ 3, 5, 8, 15.

**RESPONSE:** Not disputed.

228. In recent presidential elections, 200-300 percent more people have participated in the November general elections than in the April primaries. Goodman Decl., Ex. 51 (Wis. Elections Comm'n, *Voter Turnout Partisan-NonPartisan Through April 2018.xlsx*, <https://elections.wi.gov/elections-voting/statistics/turnout> (last visited May 27, 2020)).

**RESPONSE:** Disputed. Not supported by the document cited. For example, in 2016, general election participation was 142 percent more than participation in the April primary. In 2008, general election participation was 198 percent more than participation



in the April primary. Goodman Decl., Ex. 51 (*Voter Turnout Partisan-NonPartisan Through April 2018.xlsx*, <https://elections.wi.gov/elections-voting/statistics/turnout>).

229. Given the confined nature of many polling places, the need for additional space to accommodate additional voters in November, and the continued mandate that all absentee voters abide by the witnessing requirement, transmission risk in November will thus be significant, absent any changes. Remington Report at 9, 13.

**RESPONSE:** Disputed. Not supported by the document cited. The document cited refers to a number of steps to mitigate the risk of COVID-19 transmission during the November 2020 election in Wisconsin, including a number of steps which the WEC and local election officials are already undertaking. Remington Report, pp. 14-17; [*WEC Defendants' Status Report*, '249 Case, Dkt. No. 227].

230. Increased voter demand for absentee ballots and online registration—and possibly double the demand—will also continue to strain the MyVote platform. Kennedy Report ¶¶ 44, 47-48.

**RESPONSE:** Objection, foundation. Without waiving this objection, disputed. The WEC and its staff are already undertaking changes to MyVote to accommodate increased traffic. [*WEC Defendants' Status Report*, '249 Case, Dkt. No. 227, pp. 8-9].

231. A higher demand for absentee ballots also means a high likelihood that problems encountered in April will be compounded, meaning that voters either fail to receive their ballots or that those ballots themselves fail to make it back to their polling locations in time. *See, e.g., id.* ¶¶ 104-106, 110, 125.

**RESPONSE:** Disputed. The WEC and its staff are already undertaking changes to MyVote and WisVote to accommodate increased absentee ballot requests. In addition,

the WEC has already authorized and provided funding for tracking absentee ballots via the use of Intelligent Mail Barcodes. [*WEC Defendants' Status Report*, '249 Case, Dkt. No. 227, pp. 8-10].

232. Wisconsin statutes authorize voters to timely request an absentee ballot by mail up until five days before election day. Wis. Stat. § 6.86(1)(b).

**RESPONSE:** Not disputed.

233. The deadline for absentee ballot requests for the November election is the Thursday before election day. Kennedy Report ¶ 137.

**RESPONSE:** Not disputed that this is the deadline for most requestors, but there other applicable deadlines.

234. Given the expected high demand, there is not enough time between Thursday and election day for ballots to be processed by a clerk, mailed to the voter, completed by the voter, witnessed, and then returned. *Id.*

**RESPONSE:** Disputed. This statement makes assumptions not supported by the cited document, including the actual amount of time the ballot spends in the mail, and the method by which the ballot is returned. A voter may request a ballot on Thursday, receive it on Saturday, and return it via mail, drop box or by returning to the polling place or local election official. The WEC is providing supplemental funding to local election officials to help establish drop boxes. Kennedy Report, ¶ 3 (d)(vi); [*WEC Defendants' Status Report*, '249 Case, Dkt. No. 227].

235. Wisconsin clerks will again face unprecedented numbers of absentee ballot requests. Remington Report at 11-12; Goodman Decl., Ex. 18 (*WEC May 20 Meeting Materials*), at 13-14.

**RESPONSE:** Not disputed.

236. “[E]ven the most diligent voter may be unable to return his or her ballot in time to be counted.” *DNC*, 2020 WL 1638374, at \*17; Kennedy Report ¶¶ 15, 126-29.

**RESPONSE:** Disputed. Not supported by the document cited. This Court’s decision pertained to the April 7, 2020 election. *DNC v. Bostelmann*, No. 2:20-cv-249, 2020 WL 1638374 (W.D. Wis. April 2, 2020).

237. There is again an anticipated shortage of poll workers for the November election, which experts fear will grow worse. Kennedy Report ¶¶ 67-69; *see also* Goodman Decl., Ex. 64 (Sam , ‘*We’re Going to Have a Catastrophe’: US Faces November Election Fiasco*, The Guardian (June 12, 2020), <https://www.theguardian.com/us-news/2020/jun/12/us-presidential-election-fiasco-voter-suppression>) at 2.

**RESPONSE:** Disputed. Neither the WEC nor local election officials have reported a predicted shortfall of poll workers for the November election. The WEC has, however, undertaken additional steps to assist local election officials in recruiting poll workers, as well as developing plans in the event of a shortfall. [*WEC Defendants’ Status Report*, ‘249 Case, Dkt. No. 227, pp. 4-6, 11-12].

238. The problems in November are likely to be the same problems faced in April, only worse. Goodman Decl., Ex. 18 (*WEC May 20 Meeting Materials*) at 13-14.

**RESPONSE:** Disputed. Not supported by the document cited. For example, this document does not contain a forecast of poll worker staffing for the November 2020 election. Goodman Decl., Ex. 18 (*WEC May 20 Meeting Materials*) at 13-14. The document does described challenges for absentee ballot processing. The WEC and local election officials are making additional improvements in anticipation to this demand.

[*WEC Defendants' Status Report*, '249 Case, Dkt. No. 227, pp. 3-7, 9-10]; *Wolfe Dep.* 7/3/20.

### **Defendants' Current Inadequate Plans**

239. Defendants have urged Wisconsinites to vote absentee. Goodman Decl., Ex. 52 (Wis. Elections Commission, "Wisconsin Elections Commission Urges Absentee Voting in 7th CD Special Election May 12 due to COVID-19" (Apr. 23, 2020), *available at* <https://elections.wi.gov/index.php/node/6868>).

**RESPONSE:** Not disputed.

240. Defendants have issued "recommendations" in varying degrees of specificity. Goodman Decl., Ex. 53 (Shawn Johnson, *Elections Commission Could Send Absentee Ballot Forms to All Wisconsin Voters*, Wis. Public Radio (May 20, 2020), <https://www.wpr.org/elections-commission-could-send-absentee-ballot-forms-all-wisconsin-voters>).

**RESPONSE:** Disputed in part. The WEC's guidance speaks for itself. WEC publications are publicly available. <https://elections.wi.gov/>

241. Although Defendant Wolfe acknowledged in her May 20 CARES Grant Planning Memorandum the need for "software development and consultation" and "system load testing," she made no specific mention of adding additional capacity. Goodman Decl., Ex. 18 (*WEC May 20 Meeting Materials*), at 40.

**RESPONSE:** Not disputed. However, the WEC and Defendant Wolfe have provided additional information regarding planned upgrades. [*WEC Defendants' Status Report*, '249 Case, Dkt. No. 227, pp. 8-10]; *Wolfe Dep.* 7/3/20.

242. Defendants have reported data on thousands of disenfranchised voters. *Id.* at 30.

**RESPONSE:** Disputed. Not supported by the document cited. The data identified reflects the number of absentee ballots that were counted or rejected in the April 2020 election. It does not reflect a number of disenfranchised voters. Goodman Decl., Ex. 18 (*WEC May 20 Meeting Materials*), at 30.

243. The Commission now intends to mail absentee ballot applications to nearly all registered voters who have not already requested one. Goodman Decl., Ex. 42 (Mitchell Schmidt, *Elections Commission Gives Final Approval to Sending Absentee Ballot Applications to 2.7 million Wisconsinites*, Wis. State Journal (June 18, 2020), [https://madison.com/news/local/govt-and-politics/elections-commission-gives-final-approval-to-sending-absentee-ballot-applications-to-2-7-million-wisconsinites/article\\_ef20b423-1ebf-5f64-aecd-0c38cd758558.html](https://madison.com/news/local/govt-and-politics/elections-commission-gives-final-approval-to-sending-absentee-ballot-applications-to-2-7-million-wisconsinites/article_ef20b423-1ebf-5f64-aecd-0c38cd758558.html)).

**RESPONSE:** Not disputed.

244. Defendants have not taken the necessary concrete actions to *solve* the vast majority of the myriad problems they and Plaintiffs have identified, and that Wisconsin voters experienced in April. Kennedy Report ¶¶ 24-34.

**RESPONSE:** Disputed. The WEC has taken a number of additional actions. [*WEC Defendants' Status Report*, '249 Case, Dkt. No. 227, pp. 8-10]; *Wolfe Dep.* 7/3/20. In addition, a number of the "problems" identified are not within the control of the WEC, including poll worker shortages, polling place accessibility and the timely processing of absentee ballot requests. Finally, WEC cannot implement suggestions by Mr. Kennedy and others that violate state law.

245. The Commission may “conduct or prescribe requirements for educational programs to inform electors about voting procedures, voting rights, and voting technology.” Wis. Stat. § 5.05(12).

**RESPONSE:** Not disputed.

246. Estimates suggest that more than 1.8 million Wisconsin voters will request an absentee ballot for the November election. Goodman Decl., Ex. 54 (Scott Bauer, *Wisconsin Agrees to Broad Mailing of Absentee Applications*, Associated Press (May 27, 2020), <https://apnews.com/e738275687445170edf4a1fb54b3d6f0>); Ex. 18 (WEC May 20 Meeting Materials), at 13.

**RESPONSE:** Not disputed.

247. Wisconsin statutes prevent Defendants from making some of the necessary changes to policies and practices, including (1) the requirement that each election official be an elector of the county in which the municipality is located, Wis. Stat. § 7.30(2); (2) that voters secure an in-person witness, Wis. Stat. § 6.87(2); (3) that absentee ballots must be delivered to the polling place no later than 8 p.m. on election day, Wis. Stat. § 6.87(6); (4) that absentee ballots not be counted before election day, Wis. Stat. §§ 6.88, 7.51, 7.52; and (5) that locations for in-person absentee voting must have been determined already, by June 11, 2020, Wis. Stat. § 6.855(1), Goodman Decl., Ex. 62 (Wis. Elections Comm’n, *Calendar of Election Events, November 2019 - January 2021* (2019), <https://elections.wi.gov/sites/elections.wi.gov/files/2020-01/2020%20Calendar%20of%20Election%20Events%20WORD%28rev%202020-01%29.pdf>), at 11.

**RESPONSE:** Objection. This proposed fact is argument/opinion. Without waiving this objection, disputed in part. The WEC does not have the authority to waive or modify Wisconsin's election statutes. Wis. Stat. § 5.05. The WEC has made and is making other changes in anticipation of the November 2020 election. [*WEC Defendants' Status Report*, '249 Case, Dkt. No. 227, pp. 8-10].

248. The best available epidemiological evidence shows that administering ordinary in-person voting processes this fall would imperil most voters, a burden that will fall especially hard on immunocompromised individuals. Remington Report at 5-6, 9-11.

**RESPONSE:** Disputed in part. Dr. Remington's opinions described the method and rate of COVID-19 transmission and infection, which is undisputed. As indicated in Dr. Remington's report, the WEC and local election officials are taking measures to reduce the public-health risks associated with in-person voting and will continue to do so. [*WEC Defendants' Status Report*, '249 Case, Dkt. No. 227, pp. 8-10].

249. Defendants have still not taken "[s]ufficient measures to ensure that the significant failures of the April 7 election are not repeated in November." Kennedy Report ¶ 32; *see also id.* ¶¶ 31, 33-34.

**RESPONSE:** Objection, This proposed fact is argument/opinion. Without waiving this objection, disputed. The WEC and local election officials have undertaken certain steps allowed by law in advance of the November 3, 2020 election. [*WEC Defendants' Status Report*, '249 Case, Dkt. No. 227, pp. 8-10].

250. There are specific measures that would ensure voters enjoy substantially safer conditions when voting in November. *Id.* ¶¶ 42-156

**RESPONSE:** Objection. This proposed fact is argument/opinion. Without waiving this objection, disputed in part. The WEC does not dispute that there are measures that would improve voter safety. The WEC and local election officials are undertaking many such measures. [*WEC Defendants' Status Report*, '249 Case, Dkt. No. 227, pp. 8-10].

## **Defendants**

251. Defendants Marge Bostelmann, Julie M. Glancey, Ann S. Jacobs, Dean Knudson, Robert F. Spindell, Jr., and Mark L. Thomsen are the six Commissioners of the Wisconsin Elections Commission, the body that administers and enforces Wisconsin's election laws other than those related to campaign finance. Wis. Stat. § 5.05(1), (2w).

**RESPONSE:** Not disputed.

252. Defendant Meagan Wolfe is the Administrator of the Commission and chief elections officer of the state. Wis. Stat. § 5.05(3g).

**RESPONSE:** Not disputed.

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

**RESPONSE:** Disputed in part. Wisconsin has an intricate statutory scheme and a decentralized election system which has 1,850 municipal clerks who are responsible for applying the election laws in their municipality. (See Wis. Stats. Ch. 5-12; and WEC Administrative Rules).



254. Defendants are state officials located in Madison, Wisconsin. *See, e.g.,* Goodman Decl., Ex. 61 (Wis. Elections Comm'n, *Absentee Witness Signature Requirement Guidance* (Mar. 29, 2020), [https://elections.wi.gov/sites/elections.wi.gov/files/2020-03/Absentee%20Witness%20Guidance\\_0.pdf](https://elections.wi.gov/sites/elections.wi.gov/files/2020-03/Absentee%20Witness%20Guidance_0.pdf)) at 1.

**RESPONSE:** Not disputed.

255. A substantial part of the events giving rise to these claims occurred and continues to occur in this district. *See, e.g., id.*

**RESPONSE:** Not disputed.

Dated: July 20, 2020

LAWTON & CATES, S.C.

*/s/ Dixon R. Gahnz*

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