

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

DEMOCRATIC NATIONAL COMMITTEE, et al.,
Plaintiffs,

v.

MARGE BOSTELMANN, et al.,
Defendants,

Civil Action No.: 3:20-cv-249-wmc

and

REPUBLICAN NATIONAL COMMITTEE, et al.,
Intervening Defendants.

SYLVIA GEAR, et al.,
Plaintiffs,

v.

MARGE BOSTELMANN, et al.,
Defendants,

Civil Action No.: 3:20-cv-278-wmc

and

REPUBLICAN NATIONAL COMMITTEE, et al.,
Intervening Defendants.

CHRYSTAL EDWARDS, et al.,
Plaintiffs,

v.

ROBIN VOS, et al.,
Defendants.

Civil Action No. 3:20-cv-340-wmc

and

REPUBLICAN NATIONAL COMMITTEE, et al.,
Intervening Defendants.

JILL SWENSON, et al.,

Plaintiffs,

v.

MARGE BOSTELMANN, et al.,

Civil Action No. 3:20-cv-459-wmc

and

REPUBLICAN NATIONAL COMMITTEE, et al.,

Intervening Defendants

**WEC DEFENDANTS' RESPONSE TO DEMOCRATIC NATIONAL
COMMITTEE PLAINTIFFS' STATEMENT OF FACTS**

The WEC Defendants respond to the Democratic National Committee Plaintiffs'

Statement of Facts as follows:

1. Since mid-March, 2020, virtually every jurisdiction in the United States outside Wisconsin has postponed in-person voting or switched to voting by mail with extended deadlines, because of the obvious public health risks related to the COVID-19 pandemic. *See, e.g.*, Declaration of Michelle M. Umberger in Support of Plaintiffs' Motion for Preliminary Injunction ("Umberger Decl."), submitted concurrently herewith, Ex. 82.

RESPONSE NO. 1: Disputed in part. It is not disputed that there were widespread changes for the primaries, but with respect to the November 3, 2020 election, the cited documents do not support the proposed fact.

2. On April 7, 2020, however, Wisconsin proceeded with its Spring election in the face of scathing criticism from throughout the country (the "April 7 election"). *See* ¶ 4, *infra*.

RESPONSE NO. 2: It is not disputed that Wisconsin held its Spring election on April 7, 2020.

3. Equally shocking was the breakdown in Wisconsin's absentee-voting process, with thousands of voters never even receiving their requested ballots in time to vote by election day, thus forcing them either to go to the polls during the pandemic and risk exposure to the COVID-19 virus or be disenfranchised altogether. *See* ¶¶ 73-93, *infra*.

RESPONSE NO. 3: Objection. This purported fact is actually an argument. Without waiving this objection, it is not disputed that some voters did not receive their absentee ballots on time.

4. The decision to proceed with the election and the manner in which it was conducted

have been branded a “travesty” and “an abomination, a civic tragedy that never should have occurred”;¹ “insane”;² “cruel”;³ “brazen”;⁴ “nightmarish” and “scandalous”;⁵ “appalling” and “terrifying”;⁶ “a dangerous spectacle that forced voters to choose between participating in an important election and protecting their health”;⁷ and “[o]ne of the most shameful chapters in American’s long history of voter suppression,” requiring voters “to make an unconscionable choice between their lives and their citizenship.”⁸

RESPONSE NO. 4: Objection. Relevance.

5. The harms resulting from the forced choice placed on voters fell disproportionately and with especially brutal impact on voters of color and economically disadvantaged voters.⁹

RESPONSE NO. 5: Objection, argumentative and vague. Without waiving this objection, disputed in part. Exhibit 6 is an article from the Daily Beast that does not mention the impact of the election on voters of color or economically disadvantaged voters and the last three pages of the attached exhibit are a story about liquor. The other cited article does not mention elections, although it discusses the heavy toll the Corona-virus is having on the minority and economically disadvantaged citizens of Wisconsin.

6. On May 15, five weeks after the election, the Wisconsin Department of Health Services reported that 71 people who voted in person or worked the polls on April 7—many of which experienced overcrowding, long lines, and a lack of proper social distancing (*infra* ¶¶ 55-66)—had tested positive for COVID-19 thus far. These numbers may grow.¹⁰

RESPONSE NO. 6: Not disputed that DHS reported 71 people who voted in person or worked the April 7, 2020 election tested positive for COVID-19. See WEC responses to ¶¶ 55-66.

7. Plaintiffs the Democratic National Committee and the Democratic Party of Wisconsin (“DNC” and “DPW,” respectively) filed this suit on March 18, 2020 with an emergency motion for a preliminary injunction, in an effort to avoid this calamity and ensure that Wisconsin voters—many of whom are their members and constituents—would be able to fully exercise their constitutional right to vote in the midst of this unprecedented public health crisis. *See* ECF Nos. 1 & 2.

¹ Umberger Decl., Ex 1.

² *Id.* Ex. 2.

³ *Id.* Ex. 3.

⁴ *Id.* Ex. 4.

⁵ *Id.* Ex. 5.

⁶ *Id.* Ex. 6.

⁷ *Id.* Ex. 7.

⁸ *Id.* Ex. 8.

⁹ *Id.* Exs. 6, 9; *see also* ¶ **Error! Reference source not found.**, *infra*.

¹⁰ *Id.* Ex. 40. “Several” of these people reported additional possible exposures, so it is unclear whether the election itself caused them to contract the virus. If they already had contracted the virus prior to the election, they may also have spread it to others at the polls on April 7.

RESPONSE NO. 7: Not disputed that the DNC, among others filed lawsuits in advance of the April 7, 2020 election.

8. This Court granted portions of that motion, including certain important relief that survived challenges in both the Seventh Circuit and the U.S. Supreme Court: enjoining defendants “from enforcing the requirement under Wis. Stat. § 6.87(6) that absentee ballots must be received by 8:00 p.m. on election day to be counted,” and extending that deadline for receipt of absentee ballots by six days, provided such ballots were mailed and postmarked on or before election day.¹¹

RESPONSE NO. 8: Disputed in part. The WEC defendants passed a motion indicating that they did not oppose extending the ballot receipt deadline.

9. The defendants and intervening defendants did not challenge this extension of the ballot-receipt deadline, and the Supreme Court relied on this extension in denying “an additional extension, which would allow voters to mail their ballots after election day.” 2020 WL 1672702, at *2.

RESPONSE NO. 9: See response to PFOF 8.

10. This Court’s April 2 preliminary injunction extending the ballot-receipt deadline from April 7 to April 13 appears to have resulted in over at least 80,000 Wisconsin citizens being able to cast their ballots by election day—ballots that would otherwise have been rejected and, thus, voters who would have been disenfranchised. See ¶¶ 122-148, *infra*.¹²

RESPONSE NO. 10: Not disputed.

11. Although the disastrous April 7 Spring Election is now past, several more elections will be held in Wisconsin in 2020, culminating in the November 3 General and Presidential Election (the “November 3 election”).

RESPONSE NO. 11: Objection. Argumentative, and the Plaintiffs have stated they are not seeking any relief with respect to any other election besides the November 3, 2020 election. Without waiving this objection, it is not disputed that the General election is slated for November 3, 2020.

12. On April 30, 2020, Plaintiffs DNC and DPW filed a Second Amended Complaint, which challenged the same statutory requirements for registering to vote and absentee voting that they challenged in their prior pleadings and added an additional challenge regarding early in-

¹¹ See *Democratic Nat’l Comm. v. Bostelmann*, Civ. No. 20-cv-249-wmc, 2020 WL 1638374, at *22 (W.D. Wis. Apr. 2, 2020), *clarified*, ECF No. 122 (W.D. Wis. Apr. 3, 2020), *stayed in part sub nom. Democratic Nat’l Comm. v. Republican Nat’l Comm.*, Nos. 20-1538 & 20-1546 (7th Cir. Apr. 3, 2020), *stayed in part*, No. 19A1016, 2020 WL 1672702 (U.S. Apr. 6, 2020).

¹² The data regarding ballots that arrived between April 8 and April 13 can be found at <https://elections.wi.gov/blog>; see also <https://electionlawblog.org/?p=110746>. As of 8 p.m. on April 7, there had been 990,129 absentee ballots returned. See Umberger Decl., Exs.12 - 13. WEC reports that, ultimately, 1,132,923 absentee ballots were returned and counted, suggesting that 142,794 ballots were able to be counted that would not otherwise have been. See *id.* Ex. 14.

person absentee voting and in-person voting on election day. *See* ECF Nos. 1, 55.

RESPONSE NO. 12: Not disputed.

13. Plaintiffs' original complaint challenged: (a) the requirement that polling places receive absentee ballots by 8:00 p.m. on election day for ballots to be counted ("Election Day Receipt Deadline"), Wis. Stat. § 6.87; (b) the requirement that for an absentee ballot to be counted, the absentee voter must have a witness certify to the truth of the information the voter provides on the ballot, *id.* § 6.87(2); (c) the requirement that copies or scans of photo identification accompany absentee ballot applications, *id.* § 6.86; (d) the requirement that copies of proof of residence accompany electronic and by-mail voter registration, *id.* § 6.34; and (e) the by-mail and electronic registration deadlines in § 6.28(1), which require the registration to "be delivered to the office of the municipal clerk or postmarked no later than the 3rd Wednesday preceding the election." *See* ECF No. 1.

RESPONSE NO. 13: It is not disputed that plaintiffs made these allegations.

14. Plaintiffs' Second Amended Complaint additionally challenged the defendants' failure to provide sufficient financial, personnel, and other resources to ensure an adequate number of early in-person absentee voting sites and election-day polling places throughout the State to accommodate in-person voters in a safe and secure manner. *See, e.g.*, ECF No. 198-1 ¶¶ 7, 83. (The combined challenges collectively referred to as the "challenged matters" or "challenged provisions.")

RESPONSE NO. 14: It is not disputed that plaintiffs are making these allegations.

15. Plaintiffs seek expanded injunctive relief enjoining the Election Day Receipt Deadline and allowing all ballots postmarked on or before an election day but received within a minimum of 10 days thereafter to be counted; enjoining in part the requirement that a voter submitting an absentee ballot have a witness certify to the accuracy of the voter's information on the ballot; suspending in part the requirements that copies of documents and photo IDs be included with voter registration and absentee ballot applications; extending the deadline for electronic and by-mail voter registration to the Friday before an election, or whenever in-person absentee voting ends; and requiring defendants to take immediate steps to ensure there will be an adequate number of early in-person absentee voting sites and election-day polling places throughout the State to accommodate in-person voters in a safe and secure manner. *See* ECF Nos. 1, 55.

RESPONSE NO. 15: It is not disputed that plaintiffs are requesting this relief.

I. Plaintiffs' Interests in Ensuring their Constituents' and Others' Right to Vote.

16. Plaintiff the Democratic National Committee (DNC) is a national committee, as that term is defined by and used in 52 U.S.C. § 30101(14), dedicated to electing local, state, and national candidates of the Democratic Party to public office throughout the United States. *See* Declaration of Reyna S. Walters-Morgan ("Walters-Morgan Decl."), submitted concurrently herewith, ¶ 1.

RESPONSE NO. 16: Not disputed.

17. In particular, the DNC is charged with facilitating the Democratic presidential nominating process, which culminates in the 2020 Convention that is scheduled to take place in Milwaukee, Wisconsin in August. *Id.* ¶ 1.

RESPONSE NO. 17: Not disputed.

18. The DNC has members and constituents across the United States, including eligible voters in Wisconsin whose rights to vote have been and will continue to be severely burdened and denied outright by the matters challenged in Plaintiffs' preliminary injunction motion during the current coronavirus crisis. *Id.* ¶ 2.

RESPONSE NO. 18: Objection. This is not a statement of fact, rather it is a conclusory statement of opinion. Without waiving this objection, the plaintiffs accurately paraphrased the declaration of Reyna S. Walters-Morgan.

19. Plaintiff the Democratic Party of Wisconsin (DPW) is a state committee, as defined by 52 U.S.C. § 30101(15), dedicated to electing candidates of the Democratic Party to public office throughout the State of Wisconsin. *See* Declaration of David Kronig ("Kronig Decl."), submitted concurrently herewith, ¶ 1.

RESPONSE NO. 19: Not disputed.

20. DPW has members and constituents from across Wisconsin, including many voters whose rights to vote have been and will continue to be severely burdened and denied outright by the matters challenged in Plaintiffs' preliminary injunction motion during the current coronavirus crisis. *Id.* ¶ 2.

RESPONSE NO. 20: Objection. This is not a statement of fact, rather it is a conclusory statement of opinion. Without waiving this objection, the plaintiffs accurately paraphrased the declaration of David Kronig.

21. As part of their missions, both plaintiffs work to ensure that their members and constituents are able to effectively exercise their right to vote for their chosen candidates. Walters-Morgan Decl. ¶ 3; Kronig Decl. ¶ 2.

RESPONSE NO. 21: Not disputed.

22. Plaintiffs are directly harmed by the challenged matters, which by making it more difficult for plaintiffs' members and constituents to register and vote, have required and will continue to require plaintiffs to expend additional resources assisting their members and constituents to overcome these burdens to exercise their right to vote. *Id.* These are resources that the plaintiffs could otherwise be spending in educating voters about core policy issues and preparing for the November 3, 2020 general election. *Id.*

RESPONSE NO. 22: Objection. This is not a statement of fact, rather it is a conclusory statement of opinion. Without waiving this objection, the plaintiffs have accurately paraphrased the declarations.

II. Wisconsin Registration and Absentee Laws.

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

RESPONSE NO. 23: Objection. This is a legal conclusion and the statute speaks for itself.

24. Individuals registering by mail or electronically must provide a copy of an “identifying document that establishes proof of residence.” *Id.* § 6.34(2). The only exception to this rule is for individuals registering electronically who do not have to provide such documentation if they provide “the number of a current and valid operator’s license [or] identification card.” *Id.* (2m).

RESPONSE NO. 24: Objection. This is a legal conclusion and the statute speaks for itself.

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

RESPONSE NO. 25: Objection. This is a legal conclusion and the statute speaks for itself.

26. Historically, Wisconsin voters have relied heavily on same day registration. Between 2008 and 2016, for example, 10 to 15% of all registrations took place on election day. Umberger Decl., Ex. 61; *see also* Expert Report of Patrick Remington, M.D. (Case No. 20-cv-459, ECF No. 44) (“Remington Rep.”) at 5.

RESPONSE NO. 26: Not disputed.

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

RESPONSE NO. 27: Objection. This is a legal conclusion and the statute speaks for itself.

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

RESPONSE NO. 28: Objection. This is a legal conclusion and the statute speaks for itself.

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

RESPONSE NO. 29: Objection. This is a legal conclusion and the statute speaks for itself.

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

30. The United States remains in the midst of the worst national health emergency since at least the Great Influenza of 1918-20, with no sign of slowing down.

RESPONSE NO. 30: Not disputed.

31. As of July 4, 2020, Wisconsin had had more than 31,000 reported cases of the COVID-19 coronavirus, and at least 795 Wisconsinites had died from it, with the death toll continuing to rise. Umberger Decl., Ex. 62.

RESPONSE NO. 31: Disputed to the extent that the cited exhibit is the WEC's ballot report and does not support the proposed fact.

32. The pandemic's acceleration has become especially pronounced in the days leading up to the filing of Plaintiffs' Motion, with reported cases skyrocketing in several states, and steadily increasing in more than forty states, including in Wisconsin. *See, e.g.*, Umberger Decl., Ex. 77; *id.* Ex. 69 (also noting that "[a]s of Thursday [June 25, 2020], the nation's seven-day average of new Covid-19 cases increased more than 38% compared with a week ago ... reaching a record high average of more than 33,000 daily new cases."); *id.* Ex. 78 (noting that "the United States saw a 27% increase in new cases of COVID-19 in the week ended July 5 compared to the previous seven days, with 24 states reporting positivity test rates above the level that the World Health Organization has flagged as concerning.").

RESPONSE NO. 32: Not disputed.

33. Indeed, on June 30, 2020, the Director of the National Institute of Allergy and Infectious Diseases, Dr. Anthony Fauci, warned that the United States could soon see more than 100,000 confirmed COVID-19 cases per day if the current trajectory is not changed. Umberger Decl., Ex. 64.

RESPONSE NO. 33: Not disputed.

34. As a result, Wisconsinites and Americans nationwide are continually encouraged to socially distance themselves from each other to try to slow the spread of the disease, in a collective effort to save their friends, neighbors, and families, with no clear end in sight. *See, e.g.*, Umberger Decl., Ex. 80 (cautioning against July 4th gatherings); *id.* Ex. 79 (rolling back reopening plan)

RESPONSE NO. 34: Not disputed.

35. Projections by the federal government indicate that the virus will persist at least into the fall, if not longer. *See* Umberger Decl., Ex. 15 (Director of the Centers for Disease Control and Prevention recently warning that the country may encounter a second, more deadly wave of COVID-19 in the fall, which will "be even more difficult than the one we just went through.").

RESPONSE NO. 35: Not disputed.

36. This means that the November 3 election will occur in the middle or immediate aftermath of the worst public health crisis in over a century, giving rise to "a significant risk of contracting and transmitting COVID-19 in Wisconsin during any in-person voting for the November 2020 election in Wisconsin." Remington Rep. at 7-10; *see also* Swenson PFFs

¶¶ 6-10¹³.

RESPONSE NO. 36: Not disputed.

37. On March 24, 2020, Governor Evers issued a “Safer-at-Home Order,” which remained in effect through May 13, 2020. *See* Emergency Order No. 12, attached as Exhibit 11 to the Declaration of Rachel Goodman in support of plaintiffs’ preliminary injunction motion in consolidated Case No. 3:20-cv-00459-wmc (“Goodman Decl.”).

RESPONSE NO. 37: Not disputed.

38. Under that Order, all Wisconsinites were required to stay at home as much as possible; non-essential businesses and operations were closed, with limited exceptions; and all forms of travel were generally prohibited unless explicitly excepted. *Id.*

RESPONSE NO. 38: Not disputed.

39. Following the termination of Governor Evers’ Safer-at-Home Order, local municipalities adopted varying policies of their own to address the continuing spread of COVID-19, many of which continue to be implemented across the state. Umberger Decl., Ex. 65 (surveying restrictions of Wisconsin counties still in effect).

RESPONSE NO. 39: Disputed to the extent that the article is from May 2020 and there have been changes and updates to these orders since that date.

40. Dane County, for example, moved to “Phase 2” of its “Forward Dane” reopening plan on June 15, 2020, but immediate increases in case numbers required that restrictions be re-imposed just two weeks later, in an Emergency Order effective as of July 2, 2020. *See* Umberger Decl., Ex. 66.

RESPONSE NO. 40: Not disputed.

41. Similarly, the City of Milwaukee issued an its “Moving Milwaukee Forward” Order on May 15, 2020, setting out comprehensive restrictions and related policies in the City’s COVID-19 Public Health Plan. Umberger Decl., Ex. 67. A July 3, 2020 Assessment Update, however, explained that “[o]ne of the five indicators” used to monitor progress with the pandemic “regressed this week”—“[c]ases moved to RED,” and thus the City would not consider moving forward any further for a minimum of two weeks at a time, starting July 17th. *Id.* at 1. The “RED” indication, meaning that there was a “[s]tatistically [s]ignificant positive slope trend for cases ... or positivity rate ... as of 7/1,” had “[d]eclined from yellow last week.” *Id.*

RESPONSE NO. 41: Not disputed.

42. Whether under these respective plans, or pursuant to guidance from the Centers for

¹³ “Swenson PFF ¶ __” refers to the specific numbered statements in the Statement of Proposed Facts in Support of Plaintiffs’ Motion for a Preliminary Injunction, filed on June 24, 2020, as ECF No. 42 in consolidated Case No. 3:20-cv-00459-wmc.

Disease Control, or both, virtually all public and private gatherings of any significant number of people continue to be strongly discouraged if not forbidden.

RESPONSE NO. 42: Objection. Vague as to time and place. Without waiving this objection, it is not disputed that Dane County and Milwaukee county have restrictions in place with respect to the number of people who can gather in one place and the CDC has recommendations about the number of people who should gather in one place.

43. Indeed, recommendations from the Centers for Disease Control and Prevention (“CDC”) and the Wisconsin Economic Development Corporation continue to “emphasize the necessity of incorporating social distancing and sanitization measures into all public and social interactions.” 6/25/2020 Expert Report of Kevin J. Kennedy (ECF No. 45) (“Kennedy Rep.”), ¶ 36 (citing Ctrs. for Disease Control and Prevention, “Coronavirus (COVID-19),” (accessed Jun. 4, 2020), *available at* <https://www.cdc.gov/coronavirus/2019-ncov/index.html>; Wisconsin Economic Development Corporation, “Relief and Recovery Resources for Your Business,” (accessed Jun. 4, 2020), *available at* <https://wedc.org/reopenguidelines/>).

RESPONSE NO. 43: Not disputed.

44. Public and private K-12 schools closed several months prior to completing the 2019-20 school year, and there remains significant concern and uncertainty as to plans for starting the 2020-21 year with in-person instruction. *See, e.g.*, Umberger Decl., Ex. 68, at 4, 7 (87-page, “Education Forward” guidance issued June 22, 2020 by Wisconsin Department of Public Instruction, recognizing that “[t]here will be students who are not able to return to school due to health concerns and students and staff who may be quarantined due to exposure” and thus “every school district will need to plan for both school operations on campus *and remote* learning,” with underlying assumptions of DPI guidance including that “[t]he virus will remain in circulation until a vaccine is developed and widely used,” which “is not likely ... during the next 12-18 months,” and that “[a]nother wave of infections could occur resulting in changes to operations or closure.”).

RESPONSE NO. 44: Not disputed.

45. These county orders and policies remain enforceable by local law enforcement officials and county sheriffs, with violations or obstruction punishable by imprisonment, fines, or both. Wis. Stat. § 252.25.

RESPONSE NO. 45: Not disputed.

46. While the number and extent of local restrictions in place in November 2020 may be lesser or greater than at the current time, it is reasonably clear, at a minimum, that the pandemic will continue, showing no sign of slowing down this year, and may well extend into 2021 or even 2022. *See* ¶¶ 30-36, *supra*.

RESPONSE NO. 46: Not disputed.

47. Indeed, many Wisconsin counties have rolled back their reopening plans in response to the spike in new cases and continue to warn against mass gatherings. *See* Umberger Decl., Ex. 79.

RESPONSE NO. 47: Disputed to the extent that the cited article only discusses changes to the Dane County re-opening plan.

48. Wisconsin citizens continue to distance themselves to ensure their safety and to comply with applicable orders and county health plans. These concerns rendered many Wisconsin voters unwilling to risk their safety and the safety of others by waiting in line to register to vote or cast their ballot during the April 7 election. *See, e.g.*, Voter Declarations of Terry Burns, Emily Del Suarez, Muawia Albanaweh, Preston Copeland, Phyllis Cox, William Erickson, Diane Fergot, Sharon Fialkowski, Roger Luhn, Judith Bergeson, Debra Bjugstad, Rebecca Crowder, Katherine Kohlbeck, Roger Kordus, Paula LeBouton, Roger LeBouton, Rich Plachinski, Patricia Sherman-Cisler, Susan Heinz, Juan Molina Morales, Christy Mouglin, Elsie Thomas, Nick Thomas, Michael Tucker, Eric Vanvught, Michael Cira, Joann Cross, John Cross, Lori Fares, Carol Graham, Peter Michaud, Sandra Pfister, Steven Reigle, Julia Richards, Sue Rukamp, Hannah Saxman, Nicole Waltemath, Casey Hines, David Johnson, Fay Liberty, Eric Lind, Sonya Williams, Brian Dahmen, Hannah Gleeson, Elizabeth Trogdon, Shirley Powell, Dexter Peterson, Christy Moore, and Dolores Garm.¹⁴

RESPONSE NO. 48: Objection. Foundation. Without waiving this objection, it is not disputed that the individuals listed in this proposed fact expressed the concerns noted.

49. The frightening results of the April 7 election, *see supra* ¶¶ 1-6, give voters good cause for these concerns, should the pandemic continue to accelerate as predicted through the November 3 election. Indeed, widely accepted predictions anticipate that public-health conditions in November are likely to be at least similar to, if not worse than, the April 7 election. *See* ¶¶ 30-36, *supra*.

RESPONSE NO. 49: Objection. This proposed finding of fact represents opinion and is argumentative. Without waiving this objection, see WEC defendants' responses to the listed proposed findings of fact.

50. Given the above, there is no reason to expect that, absent additional judicial intervention and relief, voters' experiences during the November 3 election will be any different than the frightening experience seen on April 7.

RESPONSE NO. 50: Objection. This proposed finding represents opinion and is argumentative. Without waiving this objection these answering defendants can neither dispute or affirm this claim as they do not know what legislation may or may not be passed. Additionally, the WEC defendants have taken numerous steps in anticipation of the pandemic impacting the November 3, 2020 election, (See 20 CV 249, Dkt.227).

51. Thus, Wisconsin voters are likely to choose absentee voting at least at the same—and likely higher—rate than in the April 7 election. *See, e.g.*, Umberger Decl., Ex. 57 (Elections Commission's May 15, 2020 report titled April 7, 2020 Absentee Voting Report) at 12 (WEC

¹⁴ As explained in the Declaration of David Kronig, paragraphs 3-5, submitted concurrently herewith, Plaintiffs have also filed with their preliminary injunction filings approximately 116 declarations of approximately 224 declarations obtained from Wisconsin citizens that describe their experience trying to vote in the April 7, 2020 election (referred to below as "Voter Declaration of ___").

conceding that “[i]f voting patterns from April hold true, the state could see more than 1.8 million requests for absentee ballots by mail.”).

RESPONSE NO. 51: Objection. Speculative. Without waiving this objection, it is not disputed that the WEC is preparing for 1.8 million absentee ballot requests.

A. In-person registration and voting challenges.

52. Prior to the April 7 election, cities and towns across Wisconsin took steps to limit in-person registration in light of the COVID-19 pandemic. For instance, the City of Milwaukee shut down in-person registrations on March 23, 2020. ECF No. 63-1 (“Burden Rep.”) at 8; *see also* ECF No. 63-9; Second Burden Rep. at 8-9¹⁵. Other localities did as well.

RESPONSE NO. 52: Not disputed.

53. As a result of early in-person registration closures, for many Wisconsin citizens, registering by mail or electronically was the only alternative to in-person registration on election day. ECF No. 63-1 at 8; Second Burden Rep. at 8-9.

RESPONSE NO. 53: Not disputed.

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

RESPONSE NO. 54: Not disputed.

55. In-person election day voting on April 7 was most severely impacted, due to staffing shortages, and reduced numbers of polling sites requiring further travel for many voters, overcrowding, and very long lines. *See, e.g.*, Umberger Decl., Ex. 16; *id.* at Ex. 17 (Milwaukee only opened five of its usual 180 sites; Green Bay opened only two of its usual 30 sites; Waukesha opened just one of 13; and Kenosha opened only 10 of its usual 22 sites); *see also* Voter Declarations of Jeannie Berry-Matos, Latoya Washington, Marquisha Wortham, Christy Moore, Keri Petrie, Susan Scaffidi, Muawia Albanaweh, and Preston Copeland (discussing having to wait in long lines to vote in-person, or deciding not to vote in-person in-part because of overcrowding and lines).

RESPONSE NO. 55: Not disputed.

56. Indeed, in Milwaukee, the dramatically reduced number of polling sites—from 180 to 5—resulted in thousands of voters being forced to wait in line for hours in close quarters with other voters. Umberger Decl., Ex. 18. The lines were consistently long throughout the day; according to poll workers at one location in north Milwaukee, no fewer than 350 voters were in

¹⁵ “Second Burden Rep.” refers to the July 8, 2020 Expert Report of Barry C. Burden, which has been filed by Plaintiffs DNC and DPW concurrently herewith.

line throughout the day. Umberger Decl., Ex. 19.

RESPONSE NO. 56: Not disputed.

57. Voters in Green Bay also waited for as many as four hours to cast a ballot at one of two locations during the April 7 election—down from the normal 30 polling places available in prior elections. Umberger Decl., Ex. 20.

RESPONSE NO. 57: Not disputed.

58. The result was “unacceptable,” according to one Green Bay voter who waited in line for 3.5 hours. *See* Umberger Decl., Ex. 59 at 20.

RESPONSE NO. 58: It is not disputed that the voter said that it was unacceptable.

59. Another Green Bay voter “stood in the rain . . . 5 hours and [explained] I’m high risk for the virus and I’m scared.” *Id.*

RESPONSE NO. 59: Not disputed.

60. A Milwaukee voter describing a relative’s three-hour wait called it “despicable that citizens are forced to choose between being healthy and voting.” *Id.*

RESPONSE NO. 60: Not disputed.

61. Some Wisconsinites simply could not vote, such as the Milwaukeean who “went to the voting site every two hours over the course of the day, but the line was always at least 300 people and at 81 years old with some lung issues, I could not join the end of the line.” *Id.* at 21.

RESPONSE NO. 61: Not disputed.

62. Jeannie Berry-Matos’s experience illustrates the type of polling site conditions many Wisconsinites were forced to confront to exercise their right to vote. *See* Voter Declaration of Jeannie Berry Matos. As Ms. Berry-Matos’s declaration describes, she is a 55-year-old African-American resident of Milwaukee. She suffers from asthma, so is at high-risk for complications if she were to contract COVID-19. She requested and received her absentee ballot to avoid going to the polls in person, but when her ballot arrived, she discovered it was for the wrong ward. She contacted both the Milwaukee city elections clerk and the state government to try to correct the error, but was unable to get the right ballot mailed to her. She went to vote in person on April 7 at Washington High School, and found a line stretching several blocks and the only available parking a significant distance away. There were no markers in the lines or poll workers to enforce proper social distancing, and, though she brought her own mask, many voters did not, and there was no way to sanitize the pens nor her photo ID. All in all, it took her an hour and thirty-five minutes.

RESPONSE NO. 62: Not disputed that Ms. Berry-Matos accurately described her voting experience in the April election.

63. Other voters that were forced to confront similar polling site conditions after

properly requested absentee ballots did not arrive did not ultimately get a chance to cast their vote. *See, e.g.,* Voter Declarations of Marquisha Wortham, Christy Moore, and Latoya Washington.

RESPONSE NO. 63: Not disputed.

64. Marquisha Wortham, for instance, describes that she tried to avoid the polls by requesting an absentee ballot, but it did not arrive and it eventually became too late to get a replacement. Ms. Wortham thus decided that, despite concerns with her daughter's health and potentially contracting COVID-19, she would still try to vote-person. After arriving at the polling site, however, she felt the conditions were too unsafe as a result of overcrowding and long lines, and left after 30 minutes without voting. *See* Voter Declaration of Marquisha Wortham.

RESPONSE NO. 64: Not disputed.

65. Christy Moore similarly explains that she attempted to vote absentee to avoid the polls, but made a mistake filling out her ballot and did not have time to request a replacement. She too thus attempted to vote in-person, and finally located an open polling site on her third attempt. Once there, however, she observed people standing in a line that did not seem safe, and instead chose to wait in her vehicle in a line so long it was not clear whether it was a line to vote or to park. She waited for an hour and a half, but had to leave at 5:30 p.m. without voting to pick her husband up from work. *See* Voter Declaration of Christy Moore.

RESPONSE NO. 65: Not disputed.

66. Latoya Washington likewise attempted to vote in-person after her requested absentee ballot did not arrive. She followed-up multiple times before election day to see where it was, and was told in the last of those calls that it should arrive on April 7th. After waiting for the mail to come, which did not include her ballot, she chose to try voting in-person, arriving at the polls at 6:00 p.m. The lines, which were over three blocks long and monitored by police and the national guard, did not move fast enough. At 8:00 p.m., Ms. Washington and others were informed the polls were closed and thus were unable to vote. *See* Voter Declaration of Latoya Washington.

RESPONSE NO. 66: Not disputed.

B. Roadblocks to absentee voting.

67. Voters who intended to cast absentee ballots and avoid polling site crowds faced a number of obstacles in order to cast a vote that would be counted, such as (1) submitting acceptable photo ID to register or request a ballot; (2) dealing with delays caused by the WEC and/or the USPS in delivering requested ballots to voters; (3) properly marking the ballot once received, which includes the need to find an adult U.S. citizen to serve as a witness and provide their signature and address; and (4) returning the properly completed ballot in time to be counted. *See, e.g.,* Burden Rep. at 7-10; Second Burden Rep. at 8-11.

RESPONSE NO. 67: Objection. The proposed fact is an opinion. Without waiving this objection, disputed in part. Wisconsin statutes set forth the requirements for voting absentee and the WEC defendants have no ability to change these laws. The WEC defendants do not send out ballots to voters, that is done by the municipal clerk pursuant

to statute.

1. Photo ID.

68. *First*, many voters attempting to obtain absentee ballots for the April 7 election had difficulty uploading or could otherwise not provide the required identification to request an absentee ballot. *See, e.g.*, Umberger Decl., Ex. 24 (quoting Wisconsinite on how some voters lacked the “wherewithal to request absentee ballots or the inclination to vote in person on April 7”); *see also* Voter Declarations of Sue Rukamp, Shirley Powell, Sharon Gamm, and Marlene Sorenson.

RESPONSE NO. 68: Not disputed that the declarants had trouble using the online system to upload their photo identification.

69. For example, Sue Rukamp of Green Bay faced technological issues and difficulty uploading her driver’s license to MyVote prior to the April 7 election, and, because she was recovering from back surgery, would have had difficulty voting in person because she could not stand in a long line (especially the lines in Green Bay where only two of fifty polling locations were open). *See* Voter Declaration of Sue Rukamp. When Ms. Rukamp called DPW’s Voter Assistance Hotline, a volunteer checked her records on MyVote, which showed that Ms. Rukamp had successfully requested her ballot despite her technical difficulties, but that, as of election day, the ballot had not been mailed out, leaving her unable to vote. *Id.*

RESPONSE NO. 69: Disputed to the extent that the proposed fact misstates the number of polling places in Green Bay. *See* PFOF 56 and 58.

70. Shirley Powell is another individual who was not able to vote in the April 7 election due to confusion caused by photo ID requirements. *See* Voter Declaration of Shirley Powell. As a registered voter, Ms. Powell was unclear whether she needed to provide a photo ID, and would have had difficulty doing so given her high-risk status for COVID-19 complications, and the need to leave the house to find somewhere she could get a suitable copy. *Id.* As a result, she did not receive an absentee ballot, and was also unable to vote early as she did not have could not arrange for suitable transportation on those days. *Id.* Ms. Powell even tried take a public bus in order to vote in-person, but ultimately did not after realizing that multiple additional routes would be required to reach a polling site that was not closed. *Id.*

RESPONSE NO. 70: Not disputed.

71. As a result of the difficulties faced in uploading or mailing a copy of acceptable identification, some local officials recommended that all voters consider themselves indefinitely confined and therefore exempt from the photo identification requirement. Umberger Decl., Ex. 25.

RESPONSE NO. 71: Not disputed.

72. The Wisconsin Supreme Court, however, held that each voter had to assess, based on their own individual circumstances, whether they were “indefinitely confined” and thus exempt from the photo identification requirement. The court added that a voter did not need to be

completely or permanently confined to claim the exemption. *Jefferson v. Dane Cty.*, No. 2020AP557-OA (Wis. Mar. 31, 2020).

RESPONSE NO. 72: Not disputed.

2. *Delays and failures in processing and delivering requested ballots.*

73. *Second*, many timely requested absentee ballots for the April 7 election failed to arrive until *after* April 7, effectively denying the voters who received their ballots late even the opportunity to cast their vote. *See, e.g.*, Umberger Decl., Ex. 26 (discussing voters, such as a pregnant health care worker, who did not receive their absentee ballot by the deadline and could not vote in-person); *see also* Voter Declarations of Muawia Albanaweh, Hannah Gleeson, Rebecca Crowder, Neil Daniels, Patricia Sherman-Cisler, Susan Heinz, Elsie Thomas, Eric Vanvught, Lori Fares, Bridget Fogerty, Keri Petrie, Steven Reigle, Hannah Saxman, Eric Lind, Nathaniel Rendall, Katherine Ruh, Delany Zimmer.

RESPONSE NO. 73: Disputed in part. It is not disputed that the named declarants did not receive their timely requested absentee ballots prior to the April 7 election.

74. Indeed, between April 3 and April 6 (the day before election day), local officials mailed more than 92,000 absentee ballots to voters across the state, all of which were too late to be mailed back by election day. *See* Umberger Decl., Ex. 70 (WEC Response to Interrogatory No. 5) at 6.

RESPONSE NO. 74: Not disputed.

75. Moreover, according to statistics from the WEC, as of April 7, there were 1,282,762 absentee ballot applications but only 1,273,374 absentee ballots sent out—a difference of 9,388 absentee ballots that had not even been sent to the requesting voters as of *the day the voters had to mail them back*. Umberger Decl., Ex. 27; *see also id.*, Ex. 70 (Response to Interrogatory No. 4).

RESPONSE NO. 75: Not disputed that WEC reported this figure. However, due to a lag in reporting it was later learned that the number was lower.

76. Other ballots were mailed but never delivered to voters for various reasons. *See* ECF No. 247 (Wolfe 30(b)(6) Dep.) at 89:16-95:18; *see also* Kennedy Rep. ¶ 118, nn. 72-73.

RESPONSE NO. 76: Not disputed.

77. For example, one source of ballots that were mailed but not delivered was discovered by a postal worker in Milwaukee, who located three bins of absentee ballots that never reached their destinations in Oshkosh and Appleton. Umberger Decl., Ex. 72.

RESPONSE NO. 77: Not disputed.

78. These events caused WEC Commissioner Spindell to admit that the 1.2 million mail-in votes in the April 7, 2020 election in Wisconsin “completely overwhelmed our election system.” Umberger Decl. Ex. 86 at 3; *See also* ECF No. 413 (Spindell Dep.) at 47:20-49:9.

RESPONSE NO. 78: Not disputed.

79. Commissioner Spindell stated that thousands of mail-in ballots were “floating around” the post office and did not make it into the system. ECF No. 413 (Spindell Dep.) at 56:19-57:16.

RESPONSE NO. 79: Not disputed.

80. Indeed, one voter described Election Day as “a crushing day” because the voter’s sister, a cancer survivor, never received her absentee ballot, the “[f]irst time she will not be voting.” Umberger Decl., Ex. 59 (LWV Rpt.) at 5.

RESPONSE NO. 80: Not disputed.

81. A couple requested their absentee ballots at the same time. While one ballot arrived, the husband “had to call three times and finally received it three weeks after I did.” *Id.* at 12.

RESPONSE NO. 81: Not disputed.

82. Milwaukee voters reported their ballots did not arrive until the day after Election Day: “We weren’t able to get them into the mail until the 9th, which guaranteed our votes would not be counted.” *Id.* at 15.

RESPONSE NO. 82: Not disputed.

83. In response to reports that the U.S. Postal Service struggled to deliver mail ballots to voters—resulting in some ballots being delayed or, even worse, not arriving at all—both of Wisconsin’s U.S. Senators called on the Inspector General of the U.S. Postal Service to begin an investigation into “absentee ballots not being delivered in a timely manner.” Umberger Decl., Ex. 29; *see also id.*, Ex. 30 (discussing how one investigation “into Wisconsin’s missing ballot crisis reveal[ed] a system leaking from all sides,” including through “[i]nadequate computer systems, overwhelmed clerks and misleading ballot information [that] hampered Wisconsin’s historic—and historically troubling—spring election.”).

RESPONSE NO. 83: Not disputed.

84. As of the beginning of July, however, WEC’s 30(b)(6) representative testified that defendants still had no answer or explanation for what led to the failure to deliver these bins of absentee ballots to voters. *See* ECF No. 247 (Wolfe 30(b)(6) Dep.) at 89:20-92:2; and the United States Post Office (USPS) has given no indication that it has addressed any of the issues that occurred in the April election and no assurance that these same problems will not happen again in November. *Id.* (Wolfe Dep.) at 89:10-95:3.

RESPONSE NO. 84: Disputed in part. The WEC has no control over the USPS and has no way of knowing why and how the USPS failed to deliver the ballots. Ms. Wolfe testified that WEC has gotten as much information as possible from the USPS on the missing ballots (ECF 247; p. 90-91).

85. The problems voters faced with the U.S. Postal Service during the recent election are not likely to abate any time soon—To the contrary, as more voters throughout the country turn to voting by mail in the coming months, that increased reliance in by-mail voting is likely to coincide with a budgetary crisis the U.S. Postal Service is facing due to COVID-19—a crisis that threatens to shutter the entire agency by this summer. *See* Umberger Decl., Ex. 31; *see also id.*, Ex. 32 (Postal Service experiencing dramatic decreases in mail volume compared to last year and, “[a]s a result, . . . is projecting a \$13 billion revenue shortfall this fiscal year because of the pandemic and another \$54 billion in losses over 10 years.”); Kennedy Rep. ¶ 113, n.70; Second Burden Rep. at 11-12.

RESPONSE NO. 85: Objection. This proposed fact is argument. Without waiving this objection, it is not disputed that U.S.P.S is facing budget shortfalls.

86. Adding to the challenge, tens or hundreds of thousands of voters will be voting absentee for the first time, which materially increases the likelihood that large numbers of voters will be disenfranchised without relief from the absentee ballot deadline. *See* Second Burden Rep. at 7-9.

RESPONSE NO. 86: Objection. This proposed fact is argument.

87. County clerks will thus continue to be overtaxed; issues posed by first-time absentee voters will continue; and the problems of delays and mishandling of absentee ballots by the U.S. Post Office will not have been fixed. *See* ¶¶ 73-75, *supra*.

RESPONSE NO. 87: See the WEC responses to ¶¶ 73-75. In addition, County clerks do not issue absentee ballots.

88. The WEC itself concedes that their own forecasted demand for absentee ballots will “present terrific challenges for Wisconsin election officials at all levels.” Umberger Decl., Ex. 57 at 12.

RESPONSE NO. 88: Not disputed.

89. Commissioner Spindell put it bluntly, stating that the problems of ballots “not sent to voters on time” and “ballots not returned on time” . . . “would only multiply and create more chaos and endless lawsuits in November.” ECF No. 413 (Spindell Dep.) at 46:520-49:9; Umberger Decl., Ex. 86, at 3.

RESPONSE NO. 89: Disputed. The testimony of Commissioner Spindell is misstated in this proposed finding of fact, the phrase “would only multiply... “ is found on page 60 of his deposition and has nothing to do with the testimony regarding the ballots from the April election.

90. Nonetheless, Commissioner Spindell made clear when he testified in deposition that he sees no reason to extend the Election Day Receipt Deadline for the November election. ECF No. 413 (Spindell Dep.) at 67:17-68:20.

RESPONSE NO. 90: Objection. Relevance. The WEC acts only based on the vote of

the commission and an individual commissioner has no authority to bind the commission. See Wis. Stat. § 5.05(1e).

91. U.S. Postal Service efficiencies are also threatened by increasing infections among postal workers as the pandemic continues to spread. *See* Umberger Decl., Ex. 33 (as of April 11, nearly 500 postal workers had already tested positive, 19 had died, and more than 6,000 were in self-quarantine because of exposure to COVID-19).

RESPONSE NO. 91: Not disputed.

92. Based on past experience, the current state of the U.S. Postal Service, and the additional challenges it faces in the context of the current accelerating pandemic, it is increasingly likely that voters will face similar delays and failures to deliver requested absentee ballots in connection with the November 3 election. *See* ¶¶ 73-92, *supra*; *see also* Umberger Decl., Ex. 34 (budget crises in years past has led to closure of hundreds of mail processing centers).

RESPONSE NO. 92: Objection. This proposed fact is argument/opinion.

93. Postal Service-related delays will be acutely felt in Wisconsin, where mail routing is already circuitous. *See* ECF No. 72 ¶¶ 6-7 (describing how mail takes five days to go across Madison); *see also* ECF No. 75 ¶ 6 (describing how mail in Viroqua is routed through Minneapolis).

RESPONSE NO. 93: Objection, speculation. Without waiving this objection, the mail routes described are not disputed.

3. *Timely submitted ballots still rejected.*

94. *Finally*, even the votes from Wisconsinites who successfully requested, received and returned their absentee ballots on time for the April 7 election were not guaranteed to count, and could be rejected for a number of reasons. *See, e.g.*, Swenson PFF ¶ 89, and evidence cited therein.

RESPONSE NO. 94: It is not disputed that Wisconsin law has requirements that must be followed in order for the ballot to count.

95. For example, many returned ballots were rejected for failing to comply with the witness signature requirement. *See, e.g.*, Umberger Decl., Ex. 18 (at least 750 absentee ballots in Milwaukee missing witness signature and not counted); *see also* Swenson PFF ¶ 90 (noting that “more than 14,000 ballots were rejected for an insufficient certification and thousands of other ballots were rejected for other reasons.”) (citing Kennedy Rep. ¶ 30; Goodman Decl., Ex. 18 (WEC May 20 Meeting Materials), at 26).

RESPONSE NO. 95: It is not disputed that Wisconsin law has requirements that must be followed in order for the ballot to count, including absentee ballot witness signature requirements.

96. Indeed, 14,042 absentee ballots returned in the April 7 election were rejected because of unspecified insufficient certifications; this does not include the much larger number of voters who received their absentee ballots but simply could not comply with all the certification and proof requirements. *See* Umberger Decl., Ex. 70 (Response to Interrogatory No. 8).

RESPONSE NO. 96: Not disputed.

97. Hundreds of returned absentee ballots in Marathon County were also rejected for various reasons, including 48 in the City of Marshfield either because of a late postmark or because of a missing witness signature. Umberger Decl., Ex. 35.

RESPONSE NO. 97: It is not disputed that Wisconsin law has requirements that must be followed for a ballot to count..

4. *Unprecedented proportion of absentee ballots still cast.*

98. In response to the pandemic, Wisconsin residents acted by requesting absentee ballots for the April 7 election at a rate never seen before in the state. Second Burden Rep. at 6.

RESPONSE NO. 98: Not disputed.

99. The WEC reports that in the four spring elections from 2016 to 2019, the number of absentee ballots issued ranged from a low of 103,533 in 2017 to a high of 249,503 in 2016. *Id.*

RESPONSE NO. 99: Not disputed.

100. In contrast, despite all the obstacles, the April 7 election saw 1,303,985 absentee ballots issued. Umberger Decl. Ex. 62, *see also id.* Ex 70 (Response to Interrogatory No. 4); Second Burden Rep. at 6

RESPONSE NO. 100: Not disputed.

101. Absentee ballots represented 73.8% of all ballots counted, a sea change from past elections when absentee votes never comprised more than one in five ballots and often represented less than 10% of ballots. Second Burden Rep. at 6; *see also* Umberger Decl., Ex. 37 (14% of the electorate voted absentee in the April 2019 election, 11% in the April 2018 election, and 27% in the 2016 general election).

RESPONSE NO. 101: Not disputed.

102. Of the votes cast as absentee ballots, a much larger share was issued and returned by mail than in the past. Second Burden Rep. at 7.

RESPONSE NO. 102: Not disputed.

103. In previous spring elections, absentee ballots were about as likely to be cast in person as by mail. *Id.*

RESPONSE NO. 103: Not disputed.

104. For example, in the 2019 spring election, officials issued 80,577 absentees in person, but 89,218 absentees by mail. Id.

RESPONSE NO. 104: Not disputed.

105. In 2018, officials issued 55,457 absentees in person, and 74,354 by mail. Id.

RESPONSE NO. 105: Not disputed.

106. In contrast, data from the April 7 election indicate that 196,716 absentee ballots were issued in person and 1,116,833 were issued by mail, thus making mail ballots about 85% of the total absentees issued in 2020. Id.

RESPONSE NO. 106: Not disputed.

107. For many of these absentee voters, however, repeated follow-up efforts and persistence was required to request, receive, and ultimately return their ballots in time to be counted. See, e.g., Voter Declarations of Patricia Renner, Joanne Glasser, and Gretchen Weiss.

RESPONSE NO. 107: Not disputed that the declarants had the issues described in their declarations.

108. Patricia Renner stands out for her persistence. She not only is immune compromised herself, suffering from adrenal fatigue, but she is also the primary caregiver to her 89-year-old father (though they live in separate residences). She wanted to vote absentee to keep both herself and her father safe. She made no fewer than nine attempts to request an absentee ballot online and sought assistance from a friend with an iPhone, who tried three times. Ultimately, she gave up and submitted a request by mail, but this required her to go out to a local UPS store to photocopy her ID—an experience that left her feeling deeply unsafe because the cold weather forced people inside, rather than waiting with appropriate social distancing in line outside. Once she obtained her ballot, she then had to get a neighbor to witness her ballot, which again left her feeling unsafe; they attempted to maintain proper distancing, but she had no way to be sure that they did not expose one another. Finally, because her ballot did not arrive until shortly before election day, she had to leave her home again to return the ballot in person at city hall.

RESPONSE NO. 108: Not disputed.

109. Joanne Glasser, for example, requested an absentee ballot on March 26. Having not arrived by the Friday before the election, April 3, Ms. Glasser emailed the clerk to inquire about its status and what the cut-off was for returning ballots. After learning from DPW that she could request a ballot by email, she followed-up with the clerk again on Monday to do so. The clerk confirmed a ballot could be emailed, but that it would not be able to do so until that night given the busy schedule around the election. But even then, the email ballot never came. Ms.

Glasser again followed up the next morning—election day—but was then told new instructions had come in and ballots could not be emailed, and she would need to vote in-person. Feeling very conflicted about voting in person given her age, Ms. Glasser got lucky, and her ballot arrived at 12:30p.m. that day. She was thus able to complete and drop off her before the deadline that night. See Declaration of Joanne Glasser.

RESPONSE NO. 109: Not disputed.

110. Given the extraordinary public health-related circumstances of the April 7 election that are likely to continue for the foreseeable future, it is not surprising that Wisconsinites relied on absentee voting at record levels, and that such unprecedented demand will exist in connection with the November 3 election, as well. See, e.g., Kennedy Rep. ¶¶ 98-100; Umberger Decl., Ex. 57 at 12-13 (“Looking ahead to the remainder of 2020, the WEC staff anticipate continued high demand for by mail absentee voting, even if the COVID-19 pandemic begins to subside.”).

RESPONSE NO. 110: Objection. This proposed fact is argument. Without waiving this objection, it is not disputed that WEC is anticipating a high demand for absentee ballots.

C. Disenfranchisement caused by challenged in-person and absentee voting hurdles in the time of a pandemic.

111. Faced with few options to safely vote in-person and stymied at multiple points in obtaining and casting an absentee ballot, the record levels of absentee voting during the April 7 election did not make up for the larger percentage of Wisconsinites who chose not to or were unable to cast votes they would have normally made. See, e.g., Fowler Rep. at 8-11 ; Second Burden Rep. at 6-7.

RESPONSE NO. 111: Objection. This proposed fact is argument. Without waiving this objection, it is not disputed that these witnesses drew these conclusions.

112. Because absentee voting is not sufficient for all individuals to participate, counties with a higher COVID-19 prevalence saw total voter turnout drop by an estimated 3.8 percentage points. Second Burden Rep. at 6.

RESPONSE NO. 112: Objection. This proposed finding is argument. Without waiving this objection, it is not disputed that this is a conclusion of the Burden report.

113. Milwaukee voters, for example, turned out in far fewer numbers than expected. See Umberger Decl., Ex. 60 (highlighting one political scientist’s estimate that the City of Milwaukee “saw nearly 16,000 fewer votes than it should have, given the performance of other municipalities in the county.”); Fowler Rep. at 9 (participation data “suggests that at least 21,000 registered voters were deterred by COVID-19 in Milwaukee County alone.”)

RESPONSE NO. 113: Not disputed.

114. Voter turnout in the City of Green Bay was likewise reportedly down 50% from the 2016 presidential primary election and 25% from a 2019 mayoral race. Umberger Decl., Ex. 21.

RESPONSE NO. 114: Not disputed.

115. Even worse, the voters who stood in line to cast ballots on April 7 faced public health risks—including exposure to the highly contagious COVID-19 virus. In its aftermath, the Wisconsin Department of Health hired 120 additional contact tracers specifically “to gear up for potential cases resulting from exposure at Tuesday’s Spring General Election.” Umberger Decl., Ex. 22. The Wisconsin Department of Health Services reported on May 15 that 71 people who voted in-person or worked as poll workers on April 7 have tested positive for COVID-19. See supra ¶ 6; see also Umberger Decl., Ex. 23; id. Ex. 72-73.

RESPONSE NO. 115: Not disputed except that April was not the general election.

116. Ultimately, the burdens and risks imposed by Wisconsin’s restrictions on in-person registration, early in-person absentee voting, and in-person voting on election day fell disproportionately on African-American, Latino, and Hmong voters and on economically disadvantaged communities. See supra ¶ 5 n.9; Second Burden Rep. at 8; Fowler Rep. at 14-20; Kennedy Rep. ¶ 28; Swenson PFFs ¶¶ 144-49.

RESPONSE NO. 116: Objection, this proposed fact is argument/opinion.

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

117. As the nation witnessed during the April 7 election, Wisconsin’s regulatory scheme is hostile to voting rights as applied in the context of the COVID-19 pandemic. See, e.g., ¶¶ 111-116, supra.

RESPONSE NO. 117: Objection. This proposed finding is argument.

118. As a direct result, without additional action by this Court, thousands of Wisconsin voters, at a minimum, will be disenfranchised in the November 3 election. See, e.g., Burden Rep. at 10; Second Burden Rep. at 12; Fowler Rep. at 20.

RESPONSE NO. 118: Objection. This proposed finding is argument.

119. Many thousands more, at a minimum, will vote only by overcoming unconscionable burdens, including potential exposure to the COVID-19 virus. See, e.g., Remington Rep. at 8-12.

RESPONSE NO. 119: Objection. This proposed fact is argument.

120. These burdens disproportionately impact voters of color and economically disadvantaged communities. See ¶ 116, supra.

RESPONSE NO. 120: Objection, this proposed fact is argument.

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

RESPONSE NO. 121: Objection. This proposed fact is argument.

A. Deadline for Receipt of Absentee Ballots and Postal Service Deficiencies.

122. In the upcoming November 3 election, it is highly likely that thousands of absentee ballots will arrive after the Election Day Receipt Deadline imposed by Wis. Stat. § 8.87(6), due to no fault of the voters. See, e.g., ¶¶ 73-93, supra; see also Swenson PFFs ¶¶ 225-38, and evidence cited therein.

RESPONSE NO. 122: Objection. Speculation. Without waiving this objection see WEC defendants' responses to ¶¶ 73-93, supra; see also WEC defendants' responses to Swenson PFFs ¶¶ 225-38

123. In the weeks leading up to the April 7 election, municipal clerks were inundated with an unprecedented number of absentee ballot requests. See Umberger Decl., Ex. 57 at 17 (showing high volume of requests just in week preceding the election); cf. Kennedy Rep. ¶ 124 (“absentee ballot requests peak immediately before the request deadline”).

RESPONSE NO. 123: Not disputed.

124. Despite valiant efforts from understaffed clerk's offices, over 9,300 absentee ballots that were timely requested were not even mailed out by election day. See supra ¶ 74. That figure apparently does not include the additional large tubs of undelivered absentee ballots found on election day. Id.

RESPONSE NO. 124: Not disputed that this is what is reported on the WEC website, however given the lag in reporting, the actual number is not known.

125. Indeed, a post-election analysis that the WEC conducted describes a disturbing sequence of events involving lost ballots, starting on April 8, when a member of the WEC staff received a call from a USPS official in Chicago reporting that “three tubs” of absentee ballots—about 1,600 ballots—from the Appleton/Oshkosh area had been found in a postal office in Chicago. See Umberger Decl., Ex. 57 at 16.

RESPONSE NO. 125: Not disputed.

126. Around the same time, a large number of voters in Fox Valley and Oshkosh reported that they had not received the absentee ballots they had requested or that they received them after election day. Id.

RESPONSE NO. 126: Not disputed.

127. And, in the Village of Fox Point, a bin containing about 175 ballots was delivered to the clerk's office on the morning of election day—all of the ballots were unopened and had never been received by the voters. Id.

RESPONSE NO. 127: Not disputed.

128. Many thousands more voters received their ballots just days before the election, often leaving insufficient time for them to return their ballots through the mail by election day. See, e.g., Voter Declarations of Jesse Cook (ballot arrived evening of April 6th, but he had to leave to help a family member out of state that morning before it arrived, and had also hoped the then-in place extension would have allowed him to return his ballot after he returned but before April 13th).

RESPONSE NO. 128: Disputed in part. WEC guidance to the clerks allows for overnight delivery of ballots however the cost of the postage is to be paid by the voter.

129. At least 80,000 absentee ballots arrived during the six- day extension granted by this Court, between April 7 and April 13. See supra ¶ 10.

RESPONSE NO. 129: Disputed. The cited figure is 79,054.

130. Had this Court not extended the absentee-ballot-receipt deadline, the voters casting these ballots would have been disenfranchised. See, e.g., Second Burden Rep. at 9-10, 19.

RESPONSE NO. 130: Objection. This proposed fact is speculative. Without waiving this objection, it is not disputed that some of these votes likely would not have been counted, while some voters may have taken a different approach had they known there would be no extension.

131. In addition, approximately 4,678 additional absentee ballots were rejected because they arrived after 4:00 p.m. on April 13; it is not yet known how many of these rejected ballots were timely mailed on or before April 7. Umberger Decl., Ex. 14.

RESPONSE NO. 131: Not disputed that the votes were counted, however the statute and the court decisions required the ballots to arrive by 4:00 p.m. on April, 13, 2020.

132. All evidence indicates the situation will at a minimum remain the same, if not become much worse for November 3 election, given the U.S. Postal Service's apparently very significant struggles in keeping up with surges in connection with pandemic-era elections. See, e.g., Fowler Rep. at 20; Umberger Decl., Ex. 57 at 12-13 ("WEC staff anticipate continued high demand for by mail absentee voting" which could "present terrific challenges for Wisconsin election officials at all levels.").

RESPONSE NO. 132: Objection, speculation. Without waiving this objection it is not disputed the WEC is anticipating a high volume of absentee ballot requests.

133. Indeed, other states with elections since Wisconsin's on April 7 have reported significant problems with voters receiving absentee ballots on time and elections officials receiving timely mailed ballots. See *infra* ¶¶ 134-138; Umberger Decl., Exs. 94-98.

RESPONSE NO. 133: Not disputed.

134. Almost 5,500 South Carolinians who timely requested absentee ballots for its June 9 election had not received them by the end of election day. See Umberger Decl., Exs. 94, 95.

RESPONSE NO. 134: Not disputed.

135. During the June 9 primary, Georgia's overwhelmed system lost some voters' absentee ballot requests and some Georgians reported that they had not received their requested ballot on the eve of the election. *Id.* Ex. 97.

RESPONSE NO. 135: Not disputed.

136. Some Georgians who mailed in their ballots by the recommended time and even by overnight mail were surprised to learn that the ballots did not arrive on time to be counted. *Id.* Ex. 101.

RESPONSE NO. 136: Not disputed.

137. Georgia rejected at least 8,000 ballots for arriving late. See *id.*

RESPONSE NO. 137: Not disputed.

138. Pennsylvania and New York extended their ballot receipt deadlines through judicial decisions, executive action, or both. See *id.* Exs. 98, 99; see also *In re Extension of Time for Absentee & Mail-in Ballots to Be Received by Mail & Counted in 2020 Primary Election*, No. 2020-003416, slip op. at 2-3 (Ct. of Common Pleas of Delaware Cty, Pa. June 2, 2020); *In re Extension of time for Absentee and Mail-in Ballots*, No. 2020-02322-37, slip op. at 2 (Ct. Common Pleas, Bucks Cty., Pa. June 2, 2020).

RESPONSE NO. 138: Not disputed.

139. And the Postal Service, already "pushed to the brink of [its] capabilities" during Wisconsin's April 7 election, is on the verge of bankruptcy. *Supra* ¶¶ 73-93.

RESPONSE NO. 139: Not disputed.

140. WEC's 30(b)(6) representative Meagan Wolfe thus unsurprisingly acknowledged she "had significant concerns about the performance of the postal service in connection with the April 7 election." ECF No. 247 (Wolfe 30(b)(6) Dep.) at 89:10-15.

RESPONSE NO. 140: Not disputed.

141. And Commissioner Spindell testified that the handling of ballots by the USPS during the April election was the "wild, wild west," and he "still [doesn't] understand what happened." ECF No. 413 (Spindell Dep.) at 63:11-64:1; 54:16-55:17.

RESPONSE NO. 141: Not disputed.

142. Ms. Wolfe also described that voters should assume for the November 3 election that it will take two weeks for an absentee ballot to make its way through the mail from a clerk's office to a voter and back again. ECF No. 247 (Wolfe 30(b)(6) Dep.) at 51-52.

RESPONSE NO. 142: Disputed. The deposition testimony reads "...we should advise voters that it may take up to seven days, especially if they live out of state."

143. Ms. Wolfe testified, however, that the WEC has no ability to ensure the USPS adopts adequate measures to prevent delays from occurring again during the November 3 election. See ECF No. 247 (Wolfe 30(b)(6) Dep.) at 98:22-99:7 (responding to question asking "[w]hat steps has the Commission taken ... to ensure that the types of errors we see here don't occur again with the post office," by noting "we don't have any control or authority over the post office, so we have to take a look at our process, our system, our best practices for our clerks and figure out how we can help them to identify if there are issues.").

RESPONSE NO. 143: Not disputed.

144. As Commissioner Spindell and Ms. Wolfe confirmed, the WEC is not engaged in any ongoing efforts with the USPS to develop a plan for avoiding the many problems that occurred in April. ECF No. 247 (Wolfe 30(b)(6) Dep.) at 52:3-21; ECF No. 413 (Spindell Dep.) at 59:13-60:14.

RESPONSE NO. 144: Not disputed.

145. It is thus likely that thousands of voters will once again receive their timely requested absentee ballots too late to be able to cast and return them such that they are received by the election day deadline of November 3, 2020 at 8:00 p.m. See supra ¶¶ 73-93; Burden Rep. at 11.

RESPONSE NO. 145: Objection, speculation. In addition, this proposed fact is argument.

146. As described by plaintiffs' expert, Barry Burden, the use of a strict ballot receipt deadline in this circumstance results in a system that is designed to fail, which of course presents the highest of hurdles. Second Burden Rep. at 12.

RESPONSE NO. 146: Objection. This proposed fact is an opinion and argument.

147. The April 7, 2020 election results provide probative evidence that thousands of voters did not receive their requested ballots until after election day, through no fault of their own. See supra ¶¶ 73-74.

RESPONSE NO. 147: Not disputed.

148. These voters were all in “a substantially different position from late-requesting voters in previous elections that did not coincide with a pandemic, who presumably could receive their ballots in time to return them on election day. Cf. Voter Declaration of David Mouradian (“generally vote[s] by absentee ballot because [he does] a lot of travelling,” but describing confusion over witness requirement led to return of ballot to him too late on April 8 to correct and drop off in time).

RESPONSE NO. 148: Not disputed that David Mouradian had the issues stated in his declaration.

B. Witness Signature Requirement for Absentee Ballots.

149. Wisconsin’s requirement that each voter submitting an absentee ballot have another adult witness and sign their ballot puts tens of thousands of Wisconsin voters in an untenable situation and unconstitutionally burdens their right to vote. See Wis. Stat. § 6.87(2); see also, e.g., Swenson PFF ¶¶ 78-83, and evidence cited therein.

RESPONSE NO. 149: Objection. This proposed fact is argument.

150. Over 600,000 Wisconsinites live alone, and even more live with an individual who is unqualified to be a witness (e.g., a child or non-citizen). See, e.g., Umberger Decl., Ex. 83, at 6.

RESPONSE NO. 150: Not disputed.

151. With the health risks of venturing out to find a witness during the COVID-19 pandemic, and any requirements of local orders regarding social distancing that may be in place at the time, many voters who live alone will not have a witness to attest to their absentee ballots in November 2020. See, e.g., Burden Rep. at 9; Second Burden Rep. at 10; Remington Rep. at 13-14; Swenson PFF ¶ 77.

RESPONSE NO. 151: Objection. Speculation.

152. Absent court intervention, voters without an eligible witness who are unable or unwilling to vote in-person will not be able to vote. See Wis. Stat. § 6.87(2); Kennedy Rep. ¶¶ 127-30; see also Swenson PFF ¶ 83 and evidence cited therein.

RESPONSE NO. 152: Objection. This proposed fact is argument.

153. A significant portion of this population of voters—i.e., voters that do not live with a qualified witness to satisfy Wis. Stat. § 6.87(2)—is comprised of senior citizens who are most at risk from the coronavirus and who could not interact with a witness even if they could find one. See, e.g., Fowler Rep. at 12-13.

RESPONSE NO. 153: Not disputed.

154. Despite this, Commissioner Spindell testified that even someone who has been diagnosed with COVID-19 should be required to interact with a witness to have her ballot signed because that is the law. ECF No. 413 (Spindell Dep.) at 82:6-83:7.

RESPONSE NO. 154: Objection. Relevance. The WEC can only act through a 2/3 majority vote of the commission. Wis. Stats. § 5.05(1e). Without waiving this objection, it is not disputed that Commissioner Spindell provided this testimony.

155. WEC's previously proposed "alternative suggestions" for fulfilling the witness requirement included having the witness observe the voter over Skype, the voter mail the completed ballot to the witness, and the witness sign and date the ballot. Democratic Nat'l Comm. v. Republican Nat'l Comm., Nos. 20-1538 & 20-1546, at *3.

RESPONSE NO. 155: Not disputed.

156. WEC's proposed alternatives to fulfilling the witness requirement proved insufficient during the April 7, 2020 election. According to reporting by local election officials, 14,042 returned absentee ballots were rejected because of "insufficient" certification. See Umberger Decl., Ex. 70 (Response to Interrogatory No. 8).

RESPONSE NO. 156: Objection. This proposed fact is speculative as to why the certifications were insufficient. Without waiving this objection, it is not disputed that 14,042 ballots were rejected for insufficient certification.

157. There are also strong grounds to believe that many of the 135,417 unreturned ballots—over 10% of all ballots sent out—were not returned because the voters who had requested these ballots were unable to navigate the witnessing requirements in the midst of the pandemic and resulting isolation from others. Supra ¶¶ 74; see also Voter Declarations of Elizabeth Trogdon, Dolores Garm, Susan Heinz, David Mouradian, Casey Hines, Stephan Thomas, Quinten Nunley and Leah Mann.

RESPONSE NO. 157: Objection, speculation. Without waiving this objection, it is not disputed that the declarants listed had problems with witness requirements.

158. For example, Dolores Garm is one such voter that received her ballot on time, but whose vote was never cast because of an inability to comply with the witness requirement. Being disabled with heart disease and other risk factors, she knew she could not go out during the

pandemic. When she saw the witness portion of the ballot, she called the municipal clerk to ask if she had any option given that she lived alone. Unfortunately, given that the answer was no, Ms. Garm did not send in her ballot. She had no way to satisfy the witness requirement, and she knew her ballot would not be counted. See Declaration of Dolores Garm.

RESPONSE NO. 158: Not disputed.

159. Elizabeth Trogdon provides yet another example of a voter stymied by the witness requirement in the time of a pandemic. As Ms. Trogdon explains, she could not vote in person given certain health conditions, and was also experiencing symptoms of COVID-19. She consulted with the Veteran's Administration, and told that based on the symptoms described, she was considered positive for COVID-19 and told to self-isolate. Ms. Trogdon was able to request and receive an absentee ballot on time to send it in, but was not able to do so with a witness signature given her instructions to self-isolate. While she mailed in her ballot during a time when the witness requirement had been waived, that ruling was reversed and Ms. Trogdon was thus unable to cast an effective vote. See Declaration of Elizabeth Trogdon.

RESPONSE NO. 159: Not disputed.

160. Quinten Nunley likewise was unable to find a witness while in isolation because of the coronavirus. Mr. Nunley received an absentee ballot prior to election day. He filled it out and put it into the post box in his apartment building, but because he lives alone there was no one available to act as his witness. The quarantine required that no one come into his apartment and that he not go out. He did not feel he could break quarantine to seek someone out because he is in a high-risk group.

RESPONSE NO. 160: Not disputed.

161. While the Seventh Circuit suggested that one way for a voter to "satisfy the statutory signature requirement" might be "by maintaining the statutory presence requirement but not requiring the witness's physical signature," *Democratic Nat'l Comm. v. Republican Nat'l Comm.*, Nos. 20-1538 & 20-1546, at *4, the WEC does not believe it has the authority to make such an "accommodat[ion]." See, e.g., *Umberger Decl.*, Ex. 36.

RESPONSE NO. 161: Objection, speculation. Without waiving this objection, it is not disputed that case cited above contains the Seventh Circuit "suggestion."

C. Proof of Identification Requirement.

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

RESPONSE NO. 162: Objection. This proposed fact is argument.

163. As discussed supra ¶¶ 68-72, many voters did not attempt to vote absentee during the April 7, 2020 election because the photo ID requirements were too burdensome, especially for those without access to smartphones or the Internet.

RESPONSE NO. 163: Objection, speculation, foundation. Without waiving this objection, not disputed that the voters identified in paragraphs 71-72 had problems with the photo ID requirements.

164. Because many workplaces, public libraries, and copy shops may remain or become closed given the pandemic's acceleration in the U.S., many voters will continue to face substantial burdens in obtaining the copies or scans they need to complete their absentee ballot applications and will continue to be prevented from voting. In addition, even if those establishments were open, many voters are fearful of leaving their homes because of the health risks of the coronavirus pandemic and the restrictions imposed under their respective County's health orders. See ¶ 48, supra, including cited declarations from individuals unwilling to vote in-person; see also Voter Declarations cited above in ¶¶ 107-109 (describing reluctance to vote in-person given COVID-19).

RESPONSE NO. 164: Objection, speculation, foundation. Without waiving this objection, not disputed that the voters identified had problems identified.

165. Wisconsin law specifically exempts a voter from the requirement of providing a photo ID with a request for an absentee ballot if the voter is "indefinitely confined" because of age, illness, infirmity, or disability. Wis. Stat. §§ 6.86(2)(a), 6.87(4)(b)(2).

RESPONSE NO. 165: Not disputed.

166. Under Wisconsin law, "[d]esignation of indefinitely confined status is for each individual voter to make based upon their current circumstances. It does not require permanent or total inability to travel outside of the residence." Jefferson, No. 2020AP557-OA, at *2.

RESPONSE NO. 166: Not disputed.

167. The "indefinitely confined" option, however, gets only passing mention in WEC's currently proposed instructions to voters that request an absentee ballot. See ¶¶ 203-210, below (addressing WEC Status Report and proposed Informational Mailer).

RESPONSE NO. 167: Objection, argumentative. Without waiving this objection, not disputed that the indefinitely confined option is included in the informational mailer.

168. WEC's proposed instructions do not tell voters that designation of indefinitely confined status is for each individual voter to make based on how they feel about their own current circumstances, nor are they told that a claim of indefinitely confined status does not require permanent or total inability to travel outside of their residence. Id.

RESPONSE NO. 168: Not disputed.

169. The instructions to voters do warn, however, that they may be fined \$1,000 or imprisoned up to 6 months for falsely making an assertion in connection with the indefinitely confined option. Id.

RESPONSE NO. 169: Not disputed that the informational mailer sets forth the penalty for falsifying an absentee ballot request..

170. “Indefinitely confined” is not a self-defining term, and in the absence of explicit, prominent instructions on the absentee ballot request form, many voters are likely to misunderstand their entitlement to claim this status and, if they are otherwise unable to copy or upload an acceptable photo ID, may forego attempting to obtain an absentee ballot. See Burden Rep. at 12-13.

RESPONSE NO. 170: Objection, speculation. In addition, this proposed fact is argument/opinion.

171. Shortly after the April 7 election, the League of Women Voters of Wisconsin explained that “few voters” were aware of the law and there was not an “adequate, broad public education campaign” to assist voters who would qualify under it. Umberger Decl., Ex. 59 at 9.

RESPONSE NO. 171: Objection, speculation. In addition, this proposed fact is argument/opinion.

172. Instead, they described that voters learned about it “in a piecemeal way,” through groups like the League. Id.

RESPONSE NO. 172: Objection, speculation. In addition, this proposed fact is argument/opinion.

173. Both Ms. Wolfe and Commissioner Spindell are unaware of any plans the WEC has to modify its guidance on indefinitely confined status to clarify that COVID is a qualifying condition. ECF No. 247 (Wolfe 30(b)(6) Dep.) at 42:9-14; ECF No. 413 (Spindell Dep.) at 86:1-87:9.

RESPONSE NO. 173: Not disputed.

D. Proof of Residence Requirement.

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

RESPONSE NO. 174: Not disputed.

175. Wisconsin’s Proof of Residence Requirement operated to burden eligible voters in the April 7 election, and will continue to do so in connection with the upcoming November 3 election. See *infra* ¶¶ 176-181.

RESPONSE NO. 175: Objection, the proposed fact is argument.

176. The scanners and printers that many would-be electronic or by-mail registrants would typically use are often located at places of work, libraries, and commercial establishments (e.g., UPS locations) that may very well be closed or at a minimum seen as unsafe to visit. See, e.g., Voter Declarations of Patricia Renner (reluctantly going to UPS store to copy ID, which felt unsafe); see also Second Burden Rep. at 21.

RESPONSE NO. 176: Not disputed.

177. As a result of the hurdle to access to such technologies, many Wisconsin citizens will be unable to obtain the copies they need to complete their voter registration applications and will be prevented from registering. *Id.*

RESPONSE NO. 177: Objection, speculation Without waiving this objection it is not disputed that the voters identified had these issues.

178. Wisconsin’s Photo ID and Proof of Residency requirements share similar if not identical purported anti-fraud and verification purposes. Cf. Second Burden Rep. at 20-22.

RESPONSE NO. 178: Not disputed.

179. There is no reasonable public purpose, however, for Wisconsin law to inconsistently exempt self-identified “indefinitely confined” voters from having to comply with some documentary proof requirements (i.e., photo ID requirements, see *supra* ¶¶ 68-72) while refusing to exempt such voters from other documentary proof requirements (i.e., proof of residency requirements), with similar if not identical purported justifications. *Id.*

RESPONSE NO. 179: Objection. This proposed fact is argument.

180. Neither WEC’s 30(b)(6) deponent nor Commissioner Spindell could identify any incident of voter fraud in connection with the April 7 election. See ECF No. 247 (Wolfe 30(b)(6) Dep.) at 124: 6-12; ECF No. 413 (Spindell Dep.) at 26:3-7; 29:9-31:3.

RESPONSE NO. 180: Not disputed.

181. Indeed, while referring to “rumors” of improper voting and asserting that even the availability of absentee voting is a “hot button” issue for Republicans, Commissioner Spindell ultimately conceded that he knows of not a single incident of improper voting in April when approximately 1.2 million absentee ballots were cast. ECF No. 413 (Spindell Dep.) at 28:19-31:3.

RESPONSE NO. 181: Not disputed.

E. Mail-In and Electronic Registration Deadline Extensions.

182. Under Wis. Stat. § 6.28(1), the deadlines for registrations in person, by mail, and electronically all close on “the 3rd Wednesday preceding the election”—i.e., 21 days before the election.

RESPONSE NO. 182: Not disputed.

183. Wis. Stat. § 6.28(1) does authorize, however, registrations in person (but not by mail or electronically) to continue for those voters who cast “in-person absentee ballot[s]” or vote at the polls on election day. *Id.*

RESPONSE NO. 183: Disputed, see §6.29 stats..

184. Thus, those casting in-person absentee ballots may continue to register until the Sunday before the election, see *id.*; *id.* § 6.86(b), and those voting at the polls may register on election day itself, but those seeking to register by mail or electronically must do so no later than three full weeks before the election.

RESPONSE NO. 184: Not disputed.

185. The third and final 2020 Presidential Debate, however, will occur on October 22, 2020—only 12 days before election day. See Umberger Decl., Ex. 100.

RESPONSE NO. 185: Not disputed.

186. As noted above, historically, Wisconsin voters have registered to vote in person in large numbers, relying heavily on same-day registration during in-person absentee voting or on election day. See ¶ 26, above.

RESPONSE NO. 186: Not disputed.

187. As a result, thousands of Wisconsin voters typically do not register before they vote. *Id.*

RESPONSE NO. 187: Objection, speculation. In addition, this proposed fact is argument/opinion. Without waiving this objection, registration is controlled by Wis. Stat. § 6.27.

188. Unlike in past elections, however, many Wisconsin voters did not have viable in-person registration options for the April 7 elections. See, e.g., supra ¶ 54 (discussing how in-person absentee voting was shut down in many parts of Wisconsin); see also Voter Declarations cited in ¶¶ 48, 55, 107-109, supra (illustrating how so many Wisconsinites were understandably reluctant—if not altogether unable—to venture out in public to register and vote either through in-person absentee voting or at the polls, given the public health risks during the pandemic).

RESPONSE NO. 188: Objection, speculation. In addition, this proposed fact is argument/opinion.

189. For these voters, without viable in-person registration options, failure to register 21 days prior to the election effectively meant they could not vote. See Wis. Stat. § 6.28(1).

RESPONSE NO. 189: Objection, speculation. In addition, this proposed fact is argument/opinion.

190. No valid, reasonable state interests are served by the disparity and discrimination against by-mail and electronic registration in comparison to in-person registration options. See, e.g., Second Burden Rep. at 8-9, 22.

RESPONSE NO. 190: Objection. This proposed fact is argument/opinion.

191. If Wisconsin's election officials can accommodate registrations as late as election day when done in person, there is no sufficient reason for why they cannot accommodate by-mail and electronic registrations much closer to the election than "the 3rd Wednesday preceding" it. Id.

RESPONSE NO. 191: Objection. This proposed fact is argument.

192. Wisconsin voters who missed the statutory deadline for by-mail or electronic registration for the April 7, 2020 election faced an "excruciating dilemma"—"either venture into public spaces, contrary to public directives and health guidelines or stay at home and lose the opportunity to vote." ECF No. 37 at 11 (March 20, 2020 Opinion and Order).

RESPONSE NO. 192: Objection, speculation. In addition, this proposed fact is argument/opinion. Without waiving these objections, do not dispute that source contains the quote cited above.

193. Prior to the April 7 election, this Court predicted that extending the registration deadline would "impose only a minimal burden while potentially affording a great number of as yet unregistered voters the opportunity to exercise their franchise by safely voting absentee." Id. at 12, 15. The Court ordered that the "deadline by which individuals may register to vote electronically" be extended from March 18 to March 30 but declined to extend the by-mail registration deadline. Id. at 14-15, 20.

RESPONSE NO. 193: Not disputed.

194. As the Court predicted, the evidence demonstrates that the extension of the electronic registration deadline to March 30 imposed only minimal burdens. See, e.g., Second Burden Rep. at 8-9, 22. In fact, the evidence shows that election administrators could have accommodated an extension of both the electronic and the by-mail registration deadlines to April 3, the Friday before the election. Id.

RESPONSE NO. 194: Objection. This proposed fact is argument/opinion. Without waiving this objection, it is not disputed that the municipal clerks processed the registrations.

195. Indeed, WEC Elections Administrator, Meagan Wolfe, testified election officials were able to meet all post-election canvassing deadlines notwithstanding this Court's six-day extension of the deadline in April, and the extension gave election officials time to tabulate and report election results more efficiently and accurately. ECF No. 247 (Wolfe 30(b)(6) Dep.) at 45:10-48:16.

RESPONSE NO. 195: Not disputed.

196. Likewise, the Court accurately predicted that extension of the electronic registration deadline afforded many voters the opportunity both to register and to vote without risking exposure to the COVID-19 virus. See Umberger Decl., Ex. 70 (Response to Interrogatory No. 2); ECF No. 247 (Wolfe 30(b)(6) Dep.) at 14:17-15-12.

RESPONSE NO. 196: Not disputed.

197. Indeed, an astonishing 57,187 voters were able to successfully register to vote online for the April 7 election after the deadline for online voter registration was extended by this Court from March 18 to March 30, 2020. Umberger Decl., Ex. 70 (Response to Interrogatory No. 2).

RESPONSE NO. 197: Not disputed that 57,187 voters registered between March 18, and March 30, 2020.

198. The Court's extension of the ballot return deadline to 4:00 p.m. on April 13, 2020 resulted in another 79,054 ballots being counted for the April 7, 2020 election. Umberger Decl. Ex. 57 (Elections Commission's May 15, 2020 report titled April 7, 2020 Absentee Voting Report) at 7.

RESPONSE NO. 198: Not disputed.

199. The Court's concerns about by-mail registrations received even closer to the election than this, see ECF No. 37 at 14-15, could be resolved by requiring that by-mail requests be received by the Friday before the election. See, e.g., Second Burden Rep. at 12-13.

RESPONSE NO. 199: Objection. This proposed fact is argument.

200. Absent relief by this Court, unregistered but eligible voters who decide to register and vote shortly before one of the upcoming 2020 elections will face the same "excruciating dilemma" identified by this Court—"either venture into public spaces, contrary to public directives and health guidelines or stay at home and lose the opportunity to vote." *Id.* at 11; see also, e.g., Remington Rep. at 10-12.

RESPONSE NO. 200: Objection. This proposed fact is argument.

201. The individual and cumulative impacts of the challenged statutory provisions discussed supra ¶¶ 117-200 (together with defendants' failure to ensure a sufficient number of safe early absentee-voting sites and election-day polling places) will, absent injunctive relief, cause plaintiffs, their members, and their constituents irreparable injuries that cannot be adequately redressed by money damages. See, e.g., Burden Rep. at 10; Second Burden Rep. at 12; Fowler Rep. at 20.

RESPONSE NO. 201: Objection. This proposed fact is argument.

202. Those injuries greatly outweigh any alleged injuries that defendants and intervenor-defendants may claim to face from the requested injunctive relief. Cf. Burden Rep. at 10-13;

RESPONSE NO. 202: Objection. This proposed fact is argument.

V. WEC's Insufficient Proposed Actions and Informational Mailing to Address the Impact of COVID-19 on the November 3 Election.

203. On June 25, 2020, WEC submitted a Status Report in response to this Court's June 10, 2020 Order, addressing what actions it has taken or intends to take to account for increased absentee voting in connection with the upcoming August and November elections. ECF No. 227.

RESPONSE NO. 203: Not disputed.

204. The Status Report acknowledges once again, however, that the WEC has no authority to modify statutory deadlines or proof requirements like those challenged by the DNC/DPW. ECF No. 227 at 15.

RESPONSE NO. 204: Not disputed.

205. As part of the WEC's Status Report, it explained its intent to send Absentee Ballot Mailers "to registered voters who do not have an active absentee ballot request on file and who are not on the Electronic Registration Information Center (ERIC) Movers List." ECF No. 227 at 3; see also ECF No. 227-3 (copy of proposed informational mailing).

RESPONSE NO. 205: Not disputed.

206. The Informational Mailers described in WEC's Status Report are intended to "provide[] information about the options for voting at the 2020 General Election." Id.

RESPONSE NO. 206: Not disputed.

207. With respect to voters who may be "indefinitely confined" under Wis. Stat. §§ 6.86(2)(a) and 6.87(4)(b)(2), the Informational Mailer states only that "[i]f you are indefinitely confined due to age, illness, infirmity, or disability, you may certify your status by checking

“indefinitely confined” on the enclosed application. Wisconsin law exempts indefinitely confined voters from the requirement to provide a photo ID when requesting an absentee ballot by mail.” ECF No. 227-3 at 2.

RESPONSE NO. 207: Not disputed.

208. The Informational Mailer does not indicate that what constitutes “indefinitely confined” under Wisconsin law, or that it is a decision to be made in the mind of the voter. Id.

RESPONSE NO. 208: Not disputed.

209. WEC’s 30(b)(6) representative also testified that WEC has no “plans to clarify for the public whether ... concerns about COVID[-19] infection can give rise to an indefinitely confined status of a voter[.]” ECF No. 247 (Wolfe 30(b)(6) Dep.) at 42:9-14.

RESPONSE NO. 209: Not disputed.

210. The absentee ballot request form attached to the Informational Mailer does warn, however, that “[a]nyone who makes false statements in order to obtain an absentee ballot may be fined not more than \$1,000 or imprisoned for not more than 6 months or both.” ECF No. 227-3 at 3.

RESPONSE NO. 210: Not disputed.

VI. Additional findings.

211. The ID Petition Process (“IDPP”) is initiated through Wisconsin Form MV 3012, titled DMV Administrator Petition—Unavailable Documentation, which includes detailed personal disclosures and a personal signature confirming that “[t]he information that I have provided on this petition application is true under penalty of perjury and I am a resident of Wisconsin. (s. 343.14(5) Wis. Stats.)” Umberger Decl., Ex. 81.

RESPONSE NO. 211: Not disputed.

212. An IDPP applicant must provide “contact information” including telephone number and email address, and is told that “Wisconsin DMV or Vital Records may contact you for any follow-up information which may be necessary to complete the verification process.” Id.

RESPONSE NO. 212: Not disputed.

213. Mr. Johnny Martin Randle has never changed his name—he has always lived his life as Johnny Martin Randle. See *One Wisconsin Institute, Inc. v. Thomsen*, No. 15-cv-324-jdp, ECF No. 208 at 66, 71, 90, 94, 96, 99, 110 and cited record evidence; *One Wisconsin*, PX 340-42, 367.

RESPONSE NO. 213: Not disputed.

214. The May 11 Wisconsin Election Protection 2020 Spring Election Report—an investigation conducted by “non-partisan observers”—found that “Confusion about ‘Indefinitely Confined’ Voters” had been a rampant problem in the weeks leading up to the April 7 election. See Umberger Decl., Ex. 59 at 9-10.

RESPONSE NO. 214: Not disputed that the report found this.

215. The six Commissioners of the WEC, on a 3-3 tie vote, largely failed to agree on how election officials should address issues related to the Supreme Court’s requirement that absentee ballots be “postmarked by election day,” leaving local election officials throughout Wisconsin to make these decisions without any uniform standards ensuring consistent treatment throughout the State, rather than through discretion exercised locality by locality. See, e.g., 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.

RESPONSE NO. 215: Disputed. Dispute – the WEC issued guidance on the postmark issue: <https://elections.wi.gov/node/6835>; <https://elections.wi.gov/node/6846>

Dated: July 20, 2020

LAWTON & CATES, S.C.

/s/ Dixon R. Gahnz

Dixon R. Gahnz, SBN: 1024367

Daniel P. Bach, SBN: 1005751

Daniel S. Lenz, SBN: 1082058

Terrence M. Polich, SBN: 1031375

345 W. Washington Avenue, Suite 201
P.O. Box 2965
Madison, WI 53701-2965
Phone: (608) 282-6200
Fax: (608) 282-6252
dgahnz@lawtoncates.com
dbach@lawtoncates.com
dlenz@lawtoncates.com
tpolich@lawtoncates.com