

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

Democratic National Committee *and* Democratic Party
of Wisconsin,

Plaintiffs,

v.

Marge Bostelmann, Julie M. Glancey, Ann S. Jacobs,
Dean Knudson, Robert F. Spindell, Jr., *and* Mark L.
Thomsen, *in their official capacities as Wisconsin
Elections Commissioners,*

Defendants,

and

Republican National Committee, Republican Party of
Wisconsin, *and* the Wisconsin State Legislature,

Intervenor-Defendants.

No. 3:20-cv-249-wmc
(consolidated with
Nos. 3:20-cv-278-wmc,
3:20-cv-284-wmc, 3:20-
cv-340-wmc, and 3:20-
cv-459-wmc)

**JOINT RESPONSE OF INTERVENOR-DEFENDANTS TO DNC
PLAINTIFFS' PROPOSED STATEMENT OF RECORD FACTS IN
SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY
INJUNCTION**

Under this Court's "Procedures to Be Followed on Motions for Injunctive Relief" Intervenor-Defendants, the Wisconsin Legislature, the Republican National Committee, and the Republican Party of Wisconsin (collectively "Intervenor-Defendants") submit the following joint response to the *DNC* Plaintiffs' Statement of Facts in Support of Plaintiffs' Motion for Preliminary Injunction. Dkt. 419.¹

1. This paragraph references information from a website that speaks for itself. To the extent the paragraph expresses an opinion, Intervenor-Defendants dispute that opinion.

¹ All citations to the "Dkt." refer to the docket in *Democratic National Committee, et al. v. Bostelmann, et al.*, No. 3:20-cv-249-wmc, unless otherwise noted.

2. Intervenor-Defendants admit that Wisconsin's April Election was held on April 7, 2020. The remaining statement in this paragraph references information from websites that speak for themselves.

3. Intervenor-Defendants dispute that there was a breakdown in Wisconsin's absentee-voting process. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the statement regarding the number of voters that did not timely receive their requested ballots, but note that "the final election data conclusively indicate[d] that the election did not produce an unusual number [of] unreturned or rejected [absentee] ballots." Dkt. 227-2 at 24 (hereinafter "WEC Absentee Voting Report").

4. This paragraph references information from publications that speak for themselves. To the extent the publications or the paragraph express opinions, Intervenor-Defendants dispute those opinions.

5. Intervenor-Defendants dispute the characterization of the phrase "forced choice," and dispute that harm befell voters, including voters of color or economically disadvantaged voters. Intervenor-Defendants note that the election was not associated with an increase in COVID-19 Infection Rates. *See* Declaration of Misha Tseytlin ("Tseytlin Decl.") Ex. 19 at 1–2, 9; *see also* Tseytlin Decl. Ex. 18 at 1–2.

6. This paragraph references information from a website that speaks for itself. Intervenor-Defendants dispute the remaining statement in this paragraph as unsupported by any non-conjectural evidence. By way of further answer, Intervenor-

Defendants note that “[i]t is possible that these people may have been infected elsewhere[,] although it is difficult to verify,” Dkt. 370 at 33 (Dr. Murray). Indeed, the Department of Health Services itself explained that it is “not clear how many of the infections may have been caused by the spring election because many of the people had other exposures.” Tseytlin Decl. Ex. 20; *see Swenson* Dkt. 44 at 10 n.34 (Dr. Remington) (citing same source).

7. Intervenor-Defendants admit that the *DNC* Plaintiffs filed this suit on March 18, 2020 and filed an emergency motion for a preliminary injunction. Intervenor-Defendants dispute the remaining statements in this paragraph as unsupported by any non-conjectural evidence.

8. This paragraph references a court ruling that speaks for itself.

9. Intervenor-Defendants admit that they did not present a challenge to the extension of the ballot-receipt deadline before the Supreme Court. Further, Intervenor-Defendants dispute that the Supreme Court relied on this extension when reversing portions of this Court’s order. The merits of that extension were not before the Court, so the Court focused only on the “sole,” “narrow, technical question” of whether “absentee ballots now must be mailed and postmarked by election day,” given this Court’s one-week extension. *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 140 S. Ct. 1205, 1206 (2020). Finally, the Court refused to “express[] an opinion on . . . whether other reforms or modification of election procedures in light of COVID-19 are appropriate,” a point that “cannot be stressed enough.” *Id.* at 1208.

10. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves. Intervenor-Defendants dispute that the referenced voters “would have been disenfranchised,” because there remained the option to safely vote in person. *See supra* ¶ 5.

11. Intervenor-Defendants admit that Wisconsin’s April Election is now past and that several more elections will be held in Wisconsin in 2020, including the November Election. Intervenor-Defendants dispute the characterization that Wisconsin’s April Election was “disastrous,” and note that turnout was exceptionally high, with 1,555,263 votes cast, *see* Tseytlin Decl. Ex. 16, representing 34.3% of eligible voters, *see* Tseytlin Decl. Ex. 17 (providing Wisconsin’s estimated voting-age population as 4,524,066).² In comparison, the turnout for previous Spring Elections was 27.2% (2019), 22.3% (2018), 15.9% (2017), 47.4% (2016), 26.1% (2012), and 34.9% (2008). *Id.* Intervenor-Defendants also note that the election was not associated with an increase in COVID-19 Infection Rates. *See supra* ¶ 5.

12. This paragraph references a court filing that speaks for itself.

13. This paragraph references a court filing that speaks for itself.

14. This paragraph references a court filing that speaks for itself.

15. This paragraph references court filings that speak for themselves.

² Available at <https://elections.wi.gov/blog>.

16. Intervenor-Defendants admit that the DNC is a Plaintiff in this action. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining statements in this paragraph.

17. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph.

18. Intervenor-Defendants admit that the Democratic National Committee “has members and constituents across the United States, including eligible voters in Wisconsin.” Intervenor-Defendants dispute the remaining statements in this paragraph as unsupported by any non-conjectural evidence. *See supra* ¶¶ 5, 11.

19. Intervenor-Defendants admit that the Democratic Party of Wisconsin is a Plaintiff in this action. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining statements in this paragraph.

20. Intervenor-Defendants admit that the DPW “has members and constituents from across Wisconsin.” Intervenor-Defendants dispute the remaining statements in this paragraph as unsupported by any non-conjectural evidence. *See supra* ¶¶ 5, 11.

21. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph.

22. Intervenor-Defendants dispute the statements in this paragraph as unsupported by any non-conjectural evidence.

23. This paragraph references a statutory provision that speaks for itself.

24. This paragraph references a statutory provision that speaks for itself.

25. This paragraph references a statutory provision that speaks for itself.

26. To the extent this paragraph offers an opinion, Intervenor-Defendants dispute the opinion that “Wisconsin voters have relied heavily on same day registration.” Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining statements in this paragraph.

27. This paragraph references a statutory provision that speaks for itself.

28. This paragraph references a statutory provision that speaks for itself.

29. This paragraph references a statutory provision that speaks for itself.

30. Intervenor-Defendants do not agree with all of the *DNC* Plaintiffs’ characterizations, but do not dispute that COVID-19 infections present health issues worldwide.

31. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves.

32. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves.

33. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves.

34. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves.

35. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves. Intervenor-Defendants note that projections regarding the state of the COVID-19 pandemic in the Fall are unsupported by any non-conjectural evidence. *See Swenson* Dkt. 43-49. By way of further answer, Intervenor-Defendants state that the Institute for Health Metrics and Evaluation (IHME) model that the *Swenson* Plaintiffs rely upon, *Swenson* Dkt. 42 ¶ 216, predicts that infection rates in Wisconsin for November will be substantially less than they were in April. *See Swenson* Dkt. 43-49; Tseytlin Decl. Ex. 43.

36. Intervenor-Defendants also note that projections regarding the state of the COVID-19 pandemic in the Fall are unsupported by any non-conjectural evidence. *See Swenson* Dkt. 43-49. By way of further answer, Intervenor-Defendants state that the IHME model that the *Swenson* Plaintiffs rely upon, *Swenson* Dkt. 42 ¶ 216, predicts that infection rates in Wisconsin for November will be substantially less than they were in April. Tseytlin Decl. Ex. 43. Intervenor-Defendants further note that in-person voting in Wisconsin's April Election was not associated with an increase in COVID-19 Infection Rates. *See supra* ¶ 5.

37. This paragraph references an order that speaks for itself.

38. This paragraph references an order that speaks for itself.

39. This paragraph references orders that speak for themselves.

40. This paragraph references an order that speaks for itself.

41. This paragraph references orders that speak for themselves.

42. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves.

43. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves.

44. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves. Intervenor-Defendants note that, as stated in the June 22, 2020 “Education Forward” guidance cited by the *DNC* Plaintiffs, Wisconsin schools, with limited exceptions, are slated to reopen for the coming school year.

45. This paragraph references a statutory provision that speaks for itself. By way of further answer, Intervenor-Defendants note that the referenced orders and policies have been subject to court challenge.

46. Intervenor-Defendants dispute the statements in this paragraph, regarding the state of the COVID-19 pandemic in the fall, as unsupported by any non-conjectural evidence.

47. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves.

48. Intervenor-Defendants do not dispute that many Wisconsin citizens distance themselves to ensure their safety and to comply with applicable orders and county health plans. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining statements in this paragraph. By way of further answer, Intervenor-Defendants note that turnout for the April 7 election was exceptionally high, with 1,555,263 votes cast, representing 34.3% of eligible voters. In comparison, the turnout for previous Spring Elections was 27.2% (2019), 22.3% (2018), 15.9% (2017), 47.4% (2016), 26.1% (2012), and 34.9% (2008). *See supra* ¶ 11. Furthermore, as far as Intervenor-Defendants are aware, every single county in Wisconsin permits voters to go to the polls under their applicable orders and county health plans, and to the extent any county tried to do otherwise, such an order would be unlawful and struck down.

49. Intervenor-Defendants dispute the characterization of Wisconsin's April Election as "frightening" and note that turnout for the April 7 election was exceptionally high, with 1,555,263 votes cast, representing 34.3% of eligible voters. In comparison, the turnout for previous Spring Elections was 27.2% (2019), 22.3% (2018), 15.9% (2017), 47.4% (2016), 26.1% (2012), and 34.9% (2008). *See supra* ¶ 11. Intervenor-Defendants also note that the election was not associated with an increase in COVID-19 Infection Rates. *See supra* ¶ 5. Intervenor-Defendants dispute the

remaining statements in this paragraph as unsupported by any non-conjectural evidence.

50. Intervenor-Defendants dispute the characterization of Wisconsin's April Election as "frightening" and note that turnout for the election was exceptionally high, with 1,555,263 votes cast, representing 34.3% of eligible voters. In comparison, the turnout for previous Spring Elections was 27.2% (2019), 22.3% (2018), 15.9% (2017), 47.4% (2016), 26.1% (2012), and 34.9% (2008). *See supra* ¶ 11. Intervenor-Defendants also note that the election was not associated with an increase in COVID-19 Infection Rates. *See supra* ¶ 5. Intervenor-Defendants dispute the remaining statements in this paragraph as unsupported by any non-conjectural evidence. Intervenor-Defendants further note that the Wisconsin Elections Commission ("WEC" or "Commission") has already taken numerous steps to enhance the State's readiness for the upcoming November 2020 Election. *See generally* Dkt. 227 at 2-14 (hereinafter "WEC Defendants' Status Report") (listing 15 detailed actions); Dkt. 247, Deposition of Meagan Wolfe 104:1–111:14, 121:2–122:20 (hereinafter "Wolfe Dep."). For example, the Commission has elected to mail absentee-ballot applications and informational material to "all voters without an active absentee request on file," making it even easier for voters to vote via absentee ballot for the November 2020 Election. Tseytlin Decl. Ex. 28; Tseytlin Decl. Ex. 29; WEC Defendants' Status Report at 3–4; Wolfe Dep. 26:16–27:7. The Commission plans to implement "intelligent mail barcodes into the existing [absentee-ballot-envelope] design" for the November 2020 Election, which will facilitate more detailed absentee-ballot tracking. Tseytlin Decl.

Ex. 28; WEC Defendants' Status Report at 6; Wolfe Dep. 54:14–60:12 (noting that the Commission expects most clerks to use the intelligent barcodes for the November 2020 Election), 99:8–17, 105:11–15 (expressly stating that the Commission approved use of intelligent barcode system). The Commission will provide up to \$4.1 million of a “CARES Act sub-grant to local election officials,” Tseytlin Decl. Ex. 28, “to help pay for increased election costs due to the COVID-19 pandemic.” WEC Defendants' Status Report at 5; Tseytlin Decl. Ex. 29; Wolfe Dep. 75:3–16; *accord* Wolfe Dep. 68:10–69:6 (explaining that the Commission has begun securing supplies for the November 2020 Election and has not encountered shortages). And the Commission has made, and will continue to make, numerous upgrades to the MyVote Website and WisVote system, to “meet the needs of clerks experiencing a large increase in the demand for absentee ballots.” WEC Defendants' Status Report at 8–9; Wolfe Dep. 70:9–73:14, 128:15–129:18; *see generally* WEC Defendants' Status Report at 2–14 (discussing other efforts, like poll-worker-recruitment efforts); Wolfe Dep. 75:17–78:4 (similar).

51. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves.

52. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph.

53. Intervenor-Defendants dispute the statements in this paragraph as unsupported by non-conjectural evidence.

54. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves. Intervenor-Defendants further state that the decision to close early in-person registrations were attributable to high-ranking local officials—who are not named as defendants here—not from the Wisconsin Election Commission or the Legislature. Dkt. 198-1 ¶ 36; *Swenson* Dkt. 37 ¶ 3; *see* Dkt. 413, Deposition of Robert Spindell 138:17–140:10 (hereinafter “Spindell Dep.”); Tseytlin Decl. Ex. 21 (noting “[d]iscussion of Milwaukee . . . Polling Place Consolidation” on agenda); *see also* Second Deposition of Meagan Wolfe 176:8-15 (hereinafter “Wolfe Dep. II”) (noting municipalities are responsible for their own consolidation decisions about polling places, including for April 7 election).

55. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves. By way of further answer, Intervenor-Defendants state that decisions regarding the number of polling sites were attributable to high-ranking local officials—who are not named as defendants here—not from the Wisconsin Election Commission or the Legislature. Dkt. 198-1 ¶ 36; *Swenson* Dkt. 37 ¶ 3; *see* Spindell Dep. 138:17–140:10; *see* Dkt. 227-1 at 7–8 (hereinafter “Wolfe Memo”); Tseytlin Decl. Ex. 21 (noting “[d]iscussion of Milwaukee . . . Polling Place Consolidation” on agenda); *see also* Wolfe Dep. II 176:8-15 (noting municipalities are responsible for their own consolidation decisions about polling places, including for April 7 election). For example, Milwaukee drastically cut and

consolidated its polling locations on Election Day for no sufficient reason. *Id.* In contrast, other major municipalities in Wisconsin, like Madison, did not unreasonably close polling locations and so did not experience these Election Day difficulties. *See* Wolfe Memo at 8; Tseytlin Decl. Ex. 22; *Swenson* Dkt. 37 ¶ 122.

56. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves. By way of further answer, Intervenor-Defendants state that decisions regarding the number of polling sites were attributable to high-ranking local officials—who are not named as defendants here—not from the Wisconsin Election Commission or the Legislature. Dkt. 198-1 ¶ 36; *Swenson* Dkt. 37 ¶ 3; *see* Spindell Dep. 138:17–140:10; Wolfe Memo at 7–8; Tseytlin Decl. Ex. 21 (noting “[d]iscussion of Milwaukee . . . Polling Place Consolidation” on agenda); *see also* Wolfe Dep. II 176:8-15 (noting municipalities are responsible for their own consolidation decisions about polling places, including for April 7 election). For example, Milwaukee drastically cut and consolidated its polling locations on Election Day for no sufficient reason. *Id.* In contrast, other major municipalities in Wisconsin, like Madison, did not unreasonably close polling locations and so did not experience these Election Day difficulties. *See* Wolfe Memo at 8; Tseytlin Decl. Ex. 22; *Swenson* Dkt. 37 ¶ 122.

57. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves. By way of further answer,

Intervenor-Defendants state that decisions regarding the number of polling sites were attributable to high-ranking local officials—who are not named as defendants here—not from the Wisconsin Election Commission or the Legislature. Dkt. 198-1 ¶ 36; *Swenson* Dkt. 37 ¶ 3; *see* Spindell Dep. 138:17–140:10; Wolfe Memo at 7–8; Tseytlin Decl. Ex. 21 (noting “[d]iscussion of Milwaukee . . . Polling Place Consolidation” on agenda); *see also* Wolfe Dep. II 176:8-15 (noting municipalities are responsible for their own consolidation decisions about polling places, including for April 7 election). For example, Milwaukee drastically cut and consolidated its polling locations on Election Day for no sufficient reason. *Id.* In contrast, other major municipalities in Wisconsin, like Madison, did not unreasonably close polling locations and so did not experience these Election Day difficulties. *See* Wolfe Memo at 8; Tseytlin Decl. Ex. 22; *Swenson* Dkt. 37 ¶ 122.

58. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves. By way of further answer, Intervenor-Defendants state that decisions regarding the number of polling sites were attributable to high-ranking local officials—who are not named as defendants here—not from the Wisconsin Election Commission or the Legislature. Dkt. 198-1 ¶ 36; *Swenson* Dkt. 37 ¶ 3; *see* Spindell Dep. 138:17–140:10; Wolfe Memo at 7–8; Tseytlin Decl. Ex. 21 (noting “[d]iscussion of Milwaukee . . . Polling Place Consolidation” on agenda); *see also* Wolfe Dep. II 176:8-15 (noting municipalities are responsible for their own consolidation decisions about polling places, including for

April 7 election). For example, Milwaukee drastically cut and consolidated its polling locations on Election Day for no sufficient reason. *Id.* In contrast, other major municipalities in Wisconsin, like Madison, did not unreasonably close polling locations and so did not experience these Election Day difficulties. *See Wolfe Memo at 8; Tseytlin Decl. Ex. 22; Swenson Dkt. 37 ¶ 122.*

59. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves. By way of further answer, Intervenor-Defendants state that decisions regarding the number of polling sites were attributable to high-ranking local officials—who are not named as defendants here—not from the Wisconsin Election Commission or the Legislature. *Dkt. 198-1 ¶ 36; Swenson Dkt. 37 ¶ 3; see Spindell Dep. 138:17–140:10; Wolfe Memo at 7–8; Tseytlin Decl. Ex. 21* (noting “[d]iscussion of Milwaukee . . . Polling Place Consolidation” on agenda); *see also Wolfe Dep. II 176:8-15* (noting municipalities are responsible for their own consolidation decisions about polling places, including for April 7 election). For example, Milwaukee drastically cut and consolidated its polling locations on Election Day for no sufficient reason. *Id.* In contrast, other major municipalities in Wisconsin, like Madison, did not unreasonably close polling locations and so did not experience these Election Day difficulties. *See Wolfe Memo at 8; Tseytlin Decl. Ex. 22.*

60. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the

materials cited in this paragraph speak for themselves. By way of further answer, Intervenor-Defendants state that the election was not associated with an increase in COVID-19 Infection Rates. *See supra* ¶ 5. Intervenor-Defendants further state that decisions regarding the number of polling sites were attributable to high-ranking local officials—who are not named as defendants here—not from the Wisconsin Election Commission or the Legislature. Dkt. 198-1 ¶ 36; *Swenson* Dkt. 37 ¶ 3; *see* Spindell Dep. 138:17–140:10; Wolfe Memo at 7–8; Tseytlin Decl. Ex. 21 (noting “[d]iscussion of Milwaukee . . . Polling Place Consolidation” on agenda); *see also* Wolfe Dep. II 176:8-15 (noting municipalities are responsible for their own consolidation decisions about polling places, including for April 7 election). For example, Milwaukee drastically cut and consolidated its polling locations on Election Day for no sufficient reason. *Id.* In contrast, other major municipalities in Wisconsin, like Madison, did not unreasonably close polling locations and so did not experience these Election Day difficulties. *See* Wolfe Memo at 8; Tseytlin Decl. Ex. 22; *Swenson* Dkt. 37 ¶ 122.

61. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves. By way of further answer, Intervenor-Defendants state that the election was not associated with an increase in COVID-19 Infection Rates. *See supra* ¶ 5. Intervenor-Defendants further state that decisions regarding the number of polling sites were attributable to high-ranking local officials—who are not named as defendants here—not from the Wisconsin

Election Commission or the Legislature. Dkt. 198-1 ¶ 36; *Swenson* Dkt. 37 ¶ 3; *see* Spindell Dep. 138:17–140:10; Wolfe Memo at 7–8; Tseytlin Decl. Ex. 21 (noting “[d]iscussion of Milwaukee . . . Polling Place Consolidation” on agenda); *see also* Wolfe Dep. II 176:8-15 (noting municipalities are responsible for their own consolidation decisions about polling places, including for April 7 election). For example, Milwaukee drastically cut and consolidated its polling locations on Election Day for no sufficient reason. *Id.* In contrast, other major municipalities in Wisconsin, like Madison, did not unreasonably close polling locations and so did not experience these Election Day difficulties. *See* Wolfe Memo at 8; Tseytlin Decl. Ex. 22; *Swenson* Dkt. 37 ¶ 122.

62. Intervenor-Defendants dispute the characterization that the experience described in this paragraph “illustrates the type of polling site conditions many Wisconsinites were forced to confront to exercise their right to vote.” Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining statements in this paragraph. By way of further answer, Intervenor-Defendants state that the election was not associated with an increase in COVID-19 Infection Rates. *See supra* ¶ 5. Intervenor-Defendants further state that decisions regarding the number of polling sites were attributable to high-ranking local officials—who are not named as defendants here—not from the Wisconsin Election Commission or the Legislature. Dkt. 198-1 ¶ 36; *Swenson* Dkt. 37 ¶ 3; *see* Spindell Dep. 138:17–140:10; Wolfe Memo at 7–8; Tseytlin Decl. Ex. 21 (noting “[d]iscussion of Milwaukee . . . Polling Place Consolidation” on agenda); *see also* Wolfe

Dep. II 176:8-15 (noting municipalities are responsible for their own consolidation decisions about polling places, including for April 7 election). For example, Milwaukee drastically cut and consolidated its polling locations on Election Day for no sufficient reason. *Id.* In contrast, other major municipalities in Wisconsin, like Madison, did not unreasonably close polling locations and so did not experience these Election Day difficulties. *See* Wolfe Memo at 8; Tseytlin Decl. Ex. 22; *Swenson* Dkt. 37 ¶ 122.

63. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining statements in this paragraph. By way of further response, Intervenor-Defendants note that turnout for the April 7 election was exceptionally high, with 1,555,263 votes cast, representing 34.3% of eligible voters. In comparison, the turnout for previous Spring Elections was 27.2% (2019), 22.3% (2018), 15.9% (2017), 47.4% (2016), 26.1% (2012), and 34.9% (2008). *See supra* ¶ 11. Intervenor-Defendants also note that the election was not associated with an increase in COVID-19 Infection Rates. *See supra* ¶ 5. Intervenor-Defendants further state that the election was not associated with an increase in COVID-19 Infection Rates. *See id.* Intervenor-Defendants further state that decisions regarding the number of polling sites were attributable to high-ranking local officials—who are not named as defendants here—not from the Wisconsin Election Commission or the Legislature. Dkt. 198-1 ¶ 36; *Swenson* Dkt. 37 ¶ 3; *see* Spindell Dep. 138:17–140:10; Wolfe Memo at 7–8; Tseytlin Decl. Ex. 21 (noting “[d]iscussion of Milwaukee . . . Polling Place Consolidation” on agenda); *see also* Wolfe Dep. II 176:8-15 (noting

municipalities are responsible for their own consolidation decisions about polling places, including for April 7 election). For example, Milwaukee drastically cut and consolidated its polling locations on Election Day for no sufficient reason. *Id.* In contrast, other major municipalities in Wisconsin, like Madison, did not unreasonably close polling locations and so did not experience these Election Day difficulties. *See Wolfe Memo at 8; Tseytlin Decl. Ex. 22; Swenson Dkt. 37 ¶ 122.*

64. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph. By way of further answer, Intervenor-Defendants state that the election was not associated with an increase in COVID-19 Infection Rates. *See supra ¶ 5.* Intervenor-Defendants further state that decisions regarding the number of polling sites were attributable to high-ranking local officials—who are not named as defendants here—not from the Wisconsin Election Commission or the Legislature. *Dkt. 198-1 ¶ 36; Swenson Dkt. 37 ¶ 3; see Spindell Dep. 138:17–140:10; Wolfe Memo at 7–8; Tseytlin Decl. Ex. 21* (noting “[d]iscussion of Milwaukee . . . Polling Place Consolidation” on agenda); *see also Wolfe Dep. II 176:8-15* (noting municipalities are responsible for their own consolidation decisions about polling places, including for April 7 election). For example, Milwaukee drastically cut and consolidated its polling locations on Election Day for no sufficient reason. *Id.* In contrast, other major municipalities in Wisconsin, like Madison, did not unreasonably close polling locations and so did not experience these Election Day difficulties. *See Wolfe Memo at 8; Tseytlin Decl. Ex. 22; Swenson Dkt. 37 ¶ 122.*

65. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph. By way of further answer, Intervenor-Defendants state that the election was not associated with an increase in COVID-19 Infection Rates. *See supra* ¶ 5. Intervenor-Defendants further state that decisions regarding the number of polling sites were attributable to high-ranking local officials—who are not named as defendants here—not from the Wisconsin Election Commission or the Legislature. Dkt. 198-1 ¶ 36; *Swenson* Dkt. 37 ¶ 3; *see* Spindell Dep. 138:17–140:10; Wolfe Memo at 7–8; Tseytlin Decl. Ex. 21 (noting “[d]iscussion of Milwaukee . . . Polling Place Consolidation” on agenda); *see also* Wolfe Dep. II 176:8-15 (noting municipalities are responsible for their own consolidation decisions about polling places, including for April 7 election). For example, Milwaukee drastically cut and consolidated its polling locations on Election Day for no sufficient reason. *Id.* In contrast, other major municipalities in Wisconsin, like Madison, did not unreasonably close polling locations and so did not experience these Election Day difficulties. *See* Wolfe Memo at 8; Tseytlin Decl. Ex. 22; *Swenson* Dkt. 37 ¶ 122.

66. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph. By way of further answer, Intervenor-Defendants state that the election was not associated with an increase in COVID-19 Infection Rates. *See supra* ¶ 5. Intervenor-Defendants further state that decisions regarding the number of polling sites were attributable to high-ranking local officials—who are not named as defendants here—not from the

Wisconsin Election Commission or the Legislature. Dkt. 198-1 ¶ 36; *Swenson* Dkt. 37 ¶ 3; *see* Spindell Dep. 138:17–140:10; Wolfe Memo at 7–8; Tseytlin Decl. Ex. 21 (noting “[d]iscussion of Milwaukee . . . Polling Place Consolidation” on agenda); *see also* Wolfe Dep. II 176:8-15 (noting municipalities are responsible for their own consolidation decisions about polling places, including for April 7 election). For example, Milwaukee drastically cut and consolidated its polling locations on Election Day for no sufficient reason. *Id.* In contrast, other major municipalities in Wisconsin, like Madison, did not unreasonably close polling locations and so did not experience these Election Day difficulties. *See* Wolfe Memo at 8; Tseytlin Decl. Ex. 22; *Swenson* Dkt. 37 ¶ 122.

67. Intervenor-Defendants dispute the characterization that voters who sought to cast absentee ballots “faced a number of obstacles in order to cast a vote that would be counted.” *See Luft v. Evers*, ___ F.3d ___, No. 16-3003, 2020 WL 3496860, at *3 (7th Cir. June 29, 2020) (holding that “Wisconsin has lots of rules that make voting easier” than the process “in many other states.”). Intervenor-Defendants dispute that photo ID is necessary to register to vote. *See* Wis. Stat. § 6.34(2) (merely requiring the completion of a simple registration form and, for most voters, providing “an identifying document that establishes proof of residence.”). Intervenor-Defendants are without knowledge or information sufficient to form a belief regarding delays by the United States Postal Service (“USPS”) and deny that the Wisconsin Election Commission (“WEC” or “Commission”) is responsible for delivering requested ballots to voters. Wolfe Dep. 11:22-12:3. Intervenor-Defendants do not

dispute that an absentee ballot must be properly marked, including the need for a signature from a witness, and note that the witness may observe the absentee voter through a window or over FaceTime or Skype, and so need not be face-to-face with the voter. *See* Wolfe Dep. 36:5–9; *see* Wolfe Memo at 2. Intervenor-Defendants do not dispute that the absentee ballot must be returned properly completed in time to be counted.

68. Intervenor-Defendants dispute the statement that “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” as unsupported by any non-conjectural evidence. Intervenor-Defendants dispute that voters lacked the “wherewithal to request absentee ballots or the inclination to vote in person on April,” noting that turnout was exceptionally high, with 1,555,263 representing 34.3% of eligible voters. In comparison, the turnout for previous Spring Elections was 27.2% (2019), 22.3% (2018), 15.9% (2017), 47.4% (2016), 26.1% (2012), and 34.9% (2008). *See supra* ¶ 11. Moreover, “the final election data conclusively indicate[d] that the election did not produce an unusual number [of] unreturned or rejected [absentee] ballots.” WEC Absentee Voting Report at 24.

69. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph.

70. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph.

71. Intervenor-Defendants do not dispute the statements in this paragraph, and note that the referenced activity was irresponsible and illegal, as held by the Wisconsin Supreme Court.

72. This paragraph references a court ruling that speaks for itself.

73. Intervenor-Defendants dispute the characterization that “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.” Those who received late absentee ballots had the right to vote in person safely. *See supra* ¶ 5. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining statements in this paragraph.

74. Intervenor-Defendants dispute the statement in this paragraph as unsupported by non-conjectural evidence.

75. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves.

76. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph.

77. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves.

78. Intervenor-Defendants do not dispute that Commissioner Spindell's testimony includes these statements. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of these statements.

79. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph.

80. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves.

81. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves.

82. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves. Those who received late absentee ballots had the right to vote in person safely. *See supra* ¶ 5.

83. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves.

84. Intervenor-Defendants do not dispute that the testimony of WEC's 30(b)(6) representative includes these statements. Intervenor-Defendants dispute that there has not been an answer or explanation for what led to the failure to deliver these bins of absentee ballots to voters. *See* Dkt. 433-1 at 4 (explaining that "three

tubs” of ballots from Appleton and Oshkosh were not delivered because those municipalities dropped the ballots off at USPS at the end of the day on April 7, 2020—*i.e.*, Election Day itself). Intervenor-Defendants also dispute that the 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.” *See id.* at 5–6, 8.

85. Intervenor-Defendants dispute the statements regarding the future performance of the USPS as unsupported by non-conjectural evidence. Intervenor-Defendants note that the Inspector General for the USPS has issued a report examining reports of untimely ballots and agreeing to implement numerous recommendations for the upcoming election, which postal officials agreed to follow, including “communicate with the Wisconsin Election Commission and associated election offices” about deadlines for timely delivery, the use of barcodes, and proper address labels; “ensure” relevant USPS staff and facilities are using the “political mail log to record ballot mail”; and “coordinate” with local “election offices” on “proper ballot mailing processes.” Dkt. 433-1 at 5–6, 8.

86. Intervenor-Defendants dispute the statements in this paragraph as unsupported by non-conjectural evidence. Intervenor-Defendants note that the Commission has already taken numerous steps to enhance the State’s readiness for the upcoming November 2020 Election and plans to take still more steps in the coming months. *See generally* WEC Defendants’ Status Report at 2-14 (listing 15 detailed actions); Wolfe Dep. 104:1–111:14, 121:2–122:20. For example, the

Commission has elected to mail absentee-ballot applications and informational material to “all voters without an active absentee request on file,” making it even easier for voters to vote via absentee ballot for the November 2020 Election. Tseytlin Decl. Ex. 28; Tseytlin Decl. Ex. 29; WEC Defendants’ Status Report at 3–4; Wolfe Dep. 26:16–27:7. The Commission plans to implement “intelligent mail barcodes into the existing [absentee-ballot-envelope] design” for the November 2020 Election, which will facilitate more detailed absentee-ballot tracking. Tseytlin Decl. Ex. 28; WEC Defendants’ Status Report at 6; Wolfe Dep. 54:14–60:12 (noting that the Commission expects most clerks to use the intelligent barcodes for the November 2020 Election), 99:8–17, 105:11–15 (expressly stating that the Commission approved use of intelligent barcode system). The Commission will provide up to \$4.1 million of a “CARES Act sub-grant to local election officials,” Tseytlin Decl. Ex. 28, “to help pay for increased election costs due to the COVID-19 pandemic.” WEC Defendants’ Status Report at 5; Tseytlin Decl. Ex. 29; Wolfe Dep. 75:3–16; *accord* Wolfe Dep. 68:10–69:6 (explaining that the Commission has begun securing supplies for the November 2020 Election and has not encountered shortages). And the Commission has made, and will continue to make, numerous upgrades to the MyVote Website and WisVote system, including to “meet the needs of clerks experiencing a large increase in the demand for absentee ballots.” WEC Defendants’ Status Report at 8–9; Wolfe Dep. 70:9–73:14, 128:15–129:18; *see generally* WEC Defendants’ Status Report at 2–14 (discussing other efforts, like poll-worker-recruitment efforts); Wolfe Dep. 75:17–78:4 (similar).

87. Intervenor-Defendants dispute the statements in this paragraph as unsupported by non-conjectural evidence. Intervenor-Defendants note that the Commission has already taken numerous steps to enhance the State’s readiness for the upcoming November 2020 Election and plans to take still more steps in the coming months. *See generally* WEC Defendants’ Status Report (listing 15 detailed actions); Wolfe Dep. 104:1–111:14, 121:2–122:20. For example, the Commission has elected to mail absentee-ballot applications and informational material to “all voters without an active absentee request on file,” making it even easier for voters to vote via absentee ballot for the November 2020 Election. Tseytlin Decl. Ex. 28; Tseytlin Decl. Ex. 29; WEC Defendants’ Status Report at 3–4; Wolfe Dep. 26:16–27:7. The Commission plans to implement “intelligent mail barcodes into the existing [absentee-ballot-envelope] design” for the November 2020 Election, which will facilitate more detailed absentee-ballot tracking. Tseytlin Decl. Ex. 28; WEC Defendants’ Status Report at 6; Wolfe Dep. 54:14–60:12 (noting that the Commission expects most clerks to use the intelligent barcodes for the November 2020 Election), 99:8–17, 105:11–15 (expressly stating that the Commission approved use of intelligent barcode system). The Commission will provide up to \$4.1 million of a “CARES Act sub-grant to local election officials,” Tseytlin Decl. Ex. 28, “to help pay for increased election costs due to the COVID-19 pandemic.” WEC Defendants’ Status Report at 5; Tseytlin Decl. Ex. 29; Wolfe Dep. 75:3–16; *accord* Wolfe Dep. 68:10–69:6 (explaining that the Commission has begun securing supplies for the November 2020 Election and has not encountered shortages). And the Commission

has made, and will continue to make, numerous upgrades to the MyVote Website and WisVote system, including to “meet the needs of clerks experiencing a large increase in the demand for absentee ballots.” WEC Defendants’ Status Report at 8–9; Wolfe Dep. 70:9–73:14, 128:15–129:18; *see generally* WEC Defendants’ Status Report at 2–14 (discussing other efforts, like poll-worker-recruitment efforts); Wolfe Dep. 75:17–78:4 (similar). Intervenor-Defendants also note that the Inspector General for the USPS has issued a report examining reports of untimely ballots and agreeing to implement numerous recommendations for the upcoming election, which postal officials agreed to follow, including “communicate with the Wisconsin Election Commission and associated election offices” about deadlines for timely delivery, the use of barcodes, and proper address labels; “ensure” relevant USPS staff and facilities are using the “political mail log to record ballot mail”; and “coordinate” with local “election offices” on “proper ballot mailing processes.” Dkt. 433-1 at 5–6, 8.

88. This paragraph references information from a website that speaks for itself. By way of further answer, Intervenor-Defendants point to the deposition testimony of Administrator Meagan Wolfe indicating how the Commission is using the April Election as a guide to accurately forecast the number of absentee ballots needed. *See* Wolfe Dep. 27:8–17.

89. Intervenor-Defendants do not dispute that Commissioner Spindell’s testimony includes these statements. Intervenor-Defendants otherwise dispute the statements in this paragraph as unsupported by sufficient non-conjectural evidence.

90. Intervenor-Defendants do not dispute this testimony from Commissioner Spindell.

91. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves.

92. Intervenor-Defendants dispute the statements in this paragraph as unsupported by non-conjectural evidence. Intervenor-Defendants note that the Inspector General for the USPS has issued a report examining reports of untimely ballots and agreeing to implement numerous recommendations for the upcoming election, which postal officials agreed to follow. Dkt. 433-1 at 5–6, 8. Intervenor-Defendants also note that the circumstances surrounding Wisconsin’s November Election will be materially different than the April Election, when the COVID-19 pandemic was still very new and unexpected.

93. Intervenor-Defendants dispute the statements in this paragraph as unsupported by non-conjectural evidence. Intervenor-Defendants also note that the Inspector General for the USPS has issued a report examining reports of untimely ballots and agreeing to implement numerous recommendations for the upcoming election, which postal officials agreed to follow, including “communicate with the Wisconsin Election Commission and associated election offices” about deadlines for timely delivery, the use of barcodes, and proper address labels; “ensure” relevant USPS staff and facilities are using the “political mail log to record ballot mail”; and

“coordinate” with local “election offices” on “proper ballot mailing processes.” Dkt. 433-1 at 5–6, 8.

94. Intervenor-Defendants do not dispute that absentee ballots that failed to comply with the applicable statutory requirements will not be counted. By way of further answer, Intervenor-Defendants note that “the final election data conclusively indicate[d] that the election did not produce an unusual number [of] unreturned or rejected [absentee] ballots.” WEC Absentee Voting Report at 24.

95. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves. By way of further answer, Intervenor-Defendants state that ballots that did not comply with the witness-signature requirement were properly not counted under Wisconsin law.

96. Intervenor-Defendants do not dispute that the discovery responses include this statement. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statement regarding the number of rejected absentee ballots, but note that “the final election data conclusively indicate[d] that the election did not produce an unusual number [of] unreturned or rejected [absentee] ballots.” WEC Absentee Voting Report at 24.

97. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves. By way of further answer, Intervenor-Defendants state that ballots that did not comply with the witness-

signature requirement or other requirements were properly not counted under Wisconsin law.

98. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph.

99. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph.

100. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph.

101. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves.

102. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph.

103. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph.

104. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph.

105. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph.

106. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph.

107. Intervenor-Defendants dispute the characterization that “many” absentee voters required “repeated follow-up efforts and persistence” to request, receive and submit their ballots as unsupported by non-conjectural evidence.

108. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph.

109. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph.

110. Intervenor-Defendants dispute the statements in this paragraph as unsupported by non-conjectural evidence.

111. Intervenor-Defendants dispute the statements in this paragraph, noting that turnout was exceptionally high, with 1,555,263 representing 34.3% of eligible voters. In comparison, the turnout for previous Spring Elections was 27.2% (2019), 22.3% (2018), 15.9% (2017), 47.4% (2016), 26.1% (2012), and 34.9% (2008). *See supra* ¶ 11. Moreover, “the final election data conclusively indicate[d] that the election did not produce an unusual number [of] unreturned or rejected [absentee] ballots.” WEC Absentee Voting Report at 24.

112. Intervenor-Defendants dispute the statement that “absentee voting is not sufficient for all individuals to participate.” *See supra* ¶¶ 11, 94. With regard to the statement that “counties with a higher COVID-19 prevalence saw total voter turnout drop by an estimated 3.8 percentage points,” Intervenor-Defendants dispute any suggestion that an increase in COVID-19 prevalence was caused by the April 7 election. *See supra* ¶ 5; *see also* Deposition of Dr. Megan Murray 109:18–119:3.

113. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph. By way of further answer, Intervenor-Defendants state that difficulties experienced in Milwaukee were attributable to the ill-advised decisions from high-ranking local officials, including the decision to drastically cut and consolidate its polling locations on Election Day for no sufficient reason. Dkt. 198-1 ¶ 36; *Swenson* Dkt. 37 ¶ 3; Spindell Dep. 138:17–140:10; Wolfe Memo at 7–8; Tseytlin Decl. Ex. 21 (noting “[d]iscussion of Milwaukee . . . Polling Place Consolidation” on agenda); *see also* Wolfe Dep. II 176:8-15 (noting municipalities are responsible for their own consolidation decisions about polling places, including for April 7 election). In contrast, other major municipalities in Wisconsin, like Madison, did not unreasonably close polling locations and so did not experience these Election Day difficulties. *See* Wolfe Memo at 8; Tseytlin Decl. Ex. 22; *Swenson* Dkt. 37 ¶ 122.

114. This paragraph references information from a website that speaks for itself. By way of further answer, Intervenor-Defendants state that difficulties experienced in Milwaukee were attributable to the ill-advised decisions from high-ranking local officials, including the decision to drastically cut and consolidate its polling locations on Election Day for no sufficient reason. Dkt. 198-1 ¶ 36; *Swenson* Dkt. 37 ¶ 3; Spindell Dep. 138:17–140:10; Wolfe Memo at 7–8; Tseytlin Decl. Ex. 21 (noting “[d]iscussion of Milwaukee . . . Polling Place Consolidation” on agenda); *see also* Wolfe Dep. II 176:8-15 (noting municipalities are responsible for their own consolidation decisions about polling places, including for April 7 election). In

contrast, other major municipalities in Wisconsin, like Madison, did not unreasonably close polling locations and so did not experience these Election Day difficulties. *See Wolfe Memo* at 8; *Tseytlin Decl. Ex. 22* at 7; *Swenson Dkt. 37* ¶ 122.

115. Intervenor-Defendants do not agree with all of the *DNC Plaintiffs'* characterizations but do not dispute that COVID-19 infections present health issues worldwide. Intervenor-Defendants dispute the statement that the April 7 election was associated with an increase in COVID-19 Infection Rates. *See supra* ¶ 5. By way of further answer, Intervenor-Defendants note that—“[i]t is possible that these people may have been infected elsewhere[,] although it is difficult to verify,” *Dkt. 370* at 33 (Dr. Murray). Indeed, the Department of Health Services itself explained that it is “not clear how many of the infections may have been caused by the spring election because many of the people had other exposures.” *See supra* ¶ 6.

116. Intervenor-Defendants dispute that Wisconsin’s regulation of election imposed impermissible burdens and risks on Wisconsin voters, including African-American, Latino, and Hmong voters. *See supra* ¶¶ 11, 94.

117. Intervenor-Defendants dispute the opinion that “Wisconsin’s regulatory scheme is hostile to voting rights as applied in the context of the COVID-19 pandemic” as a purely legal conclusion, unsupported by any non-conjectural evidence. *See Luft, 2020 WL 3496860*, at *3 (holding that “Wisconsin has lots of rules that make voting easier” than the process “in many other states”).

118. Intervenor-Defendants dispute the statements in this paragraph as unsupported by any non-conjectural evidence. Wisconsin voters have multiple

independent, safe paths to vote with reasonable effort. *See id.* at *3. And, of course, all voters have the opportunity to vote in person on election day, which can be accomplished safely with minimal effort. *See supra* ¶ 5.

119. Intervenor-Defendants dispute the statements in this paragraph as unsupported by any non-conjectural evidence. Wisconsin voters have multiple independent, safe paths to vote with reasonable effort. *See Luft*, 2020 WL 3496860; at *3; *supra* ¶ 5.

120. Intervenor-Defendants dispute the statements in this paragraph as unsupported by any non-conjectural evidence. Wisconsin voters have multiple independent, safe paths to vote with reasonable effort. *See Luft*, 2020 WL 3496860; at *3; *supra* ¶ 5.

121. Intervenor-Defendants dispute the statements in this paragraph as unsupported by any non-conjectural evidence.

122. Intervenor-Defendants dispute the statements in this paragraph as unsupported by any non-conjectural evidence. With months to go before Wisconsin's November Election, every registered voter in Wisconsin will receive an absentee-ballot application directly from the Commission. Second Deposition of Meagan Wolfe 129:8-9 (hereinafter "Wolfe Dep. II"); Tseytlin Decl. Ex. 28; Tseytlin Decl. Ex. 29. Indeed, *all* Wisconsin voters can easily apply right now to vote absentee in November, for no reason, four months in advance of election day. *See* Wis. Stat. § 7.15(1)(cm); Tseytlin Decl. Ex. 4; Dkt. 259 (Milton Bartelme Decl.) ¶ 5; Dkt. 396 (Blair Braun Decl.) ¶ 10; Dkt. 393 (Cheryl Riley Decl.) ¶ 10. Moreover, since January 1, 2020,

voters could request absentee ballots for all elections this year. *See* Wis. Stat. § 7.15(1)(cm). And the *DNC* Plaintiffs will receive these absentee ballots well over a month in advance of the election, Wis. Stat. § 7.15(1)(cm); Tseytlin Decl. Ex. 4, with improved “intelligent mail barcodes” to facilitate ballot tracking and avoid any mail problems that occurred in the past, Tseytlin Decl. Ex. 28; WEC Defendants’ Status Report at 6; Wolfe Dep. 54:14–60:12. And, upon receiving their absentee ballot, the *DNC* Plaintiffs will have weeks to find a witness, whether in-person, through a window, or over FaceTime or Skype. Wolfe Dep. 36:5–9; *see* Wolfe Memo at 2. And the League of Women Voters is actively assisting isolated voters with completing their witness-signature requirements for absentee ballots. Cronmiller Decl. ¶ 6.

123. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph.

124. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph.

125. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves.

126. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves.

127. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves.

128. Intervenor-Defendants are without knowledge or information sufficient to form a belief regarding the number of voters who received their ballots “just days before the election,” and dispute the statement that they had “insufficient time for them to return their ballots through the mail by election day” as unsupported by any non-conjectural evidence.

129. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves.

130. Intervenor-Defendants dispute the statements in this paragraph as unsupported by any non-conjectural evidence. The *DNC* Plaintiffs’ reliance on the number of absentee ballots returned during the one-week extension does not somehow justify an identical extension in November. Dkt. 420 at 27–34. Furthermore, some voters may have willingly delayed returning their ballots precisely because of this Court’s extension. Wolfe Dep. 48:17–49:21.

131. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves. Intervenor-Defendants further state that having mailed an absentee ballot on or after April 7, 2020 did not

make it timely under either Wisconsin law or the injunction as modified by the U.S. Supreme Court.

132. Intervenor-Defendants dispute the statements in this paragraph as unsupported by any non-conjectural evidence. Intervenor-Defendants also note that the Inspector General for the USPS has issued a report examining reports of untimely ballots and agreeing to implement numerous recommendations for the upcoming election, which postal officials agreed to follow, including “communicate with the Wisconsin Election Commission and associated election offices” about deadlines for timely deliver, the use of barcodes, and proper address labels; “ensure” relevant USPS staff and facilities are using the “political mail log to record ballot mail”; and “coordinate” with local “election offices” on “proper ballot mailing processes.” Dkt. 433-1 at 5–6, 8. With months to go before Wisconsin’s November Election, every registered voter in Wisconsin has either already applied to vote absentee or received an absentee-ballot application directly from the Commission. Tseytlin Decl. Ex. 28; Tseytlin Decl. Ex. 29.

133. This paragraph references information from websites and an order that speak for themselves.

134. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves.

135. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves.

136. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves.

137. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves.

138. This paragraph references information from websites and court rulings that speak for themselves.

139. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves. Intervenor-Defendants also note that the Inspector General for the USPS has issued a report examining reports of untimely ballots and agreeing to implement numerous recommendations for the upcoming election, which postal officials agreed to follow, including “communicate with the Wisconsin Election Commission and associated election offices” about deadlines for timely deliver, the use of barcodes, and proper address labels; “ensure” relevant USPS staff and facilities are using the “political mail log to record ballot mail”; and “coordinate” with local “election offices” on “proper ballot mailing processes.” Dkt. 433-1 at 5–6, 8.

140. Intervenor-Defendants do not dispute that Administrator Wolfe's testimony includes these statements. To the extent these statements express an opinion, Intervenor-Defendants dispute the opinion as unsupported by non-conjectural evidence.

141. Intervenor-Defendants do not dispute that Commissioner Spindell's testimony includes these statements. To the extent these statements express an opinion, Intervenor-Defendants dispute the opinion as unsupported by non-conjectural evidence.

142. Intervenor-Defendants do not dispute that Administrator Wolfe's testimony includes these statements. To the extent these statements express an opinion, Intervenor-Defendants dispute the opinion as unsupported by non-conjectural evidence.

143. Intervenor-Defendants do not dispute that Administrator Wolfe's testimony includes these statements. Intervenor-Defendants agree that the WEC does not have the ability to adopt policies for the USPS.

144. Intervenor-Defendants do not dispute that Commissioner Spindell's and Administrator Wolfe's testimony includes these statements. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of these statements. Intervenor-Defendants dispute the characterization that there were "many problems that occurred in April." *See supra* ¶¶ 11, 94.

145. Intervenor-Defendants dispute the statements in this paragraph as unsupported by any non-conjectural evidence. Intervenor-Defendants are without

knowledge or information sufficient to form a belief as to the meaning of “timely requested absentee ballots,” and note that every eligible Wisconsin citizen can request an absentee ballot, and many, including some of the *DNC* Plaintiffs’ own declarants, have already.

146. Intervenor-Defendants dispute the statements in this paragraph as unsupported by any non-conjectural evidence.

147. Intervenor-Defendants dispute the statements in this paragraph as unsupported by any non-conjectural evidence.

148. Intervenor-Defendants dispute the statements in this paragraph as unsupported by any non-conjectural evidence.

149. Intervenor-Defendants dispute that the 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.” *See supra* ¶ 11. Intervenor-Defendants dispute that this requirement “unconstitutionally burdens their right to vote,” as this proposed fact is a purely legal conclusion.

150. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves.

151. Intervenor-Defendants dispute the statements in this paragraph as unsupported by any non-conjectural evidence. Intervenor-Defendants further state that there is no order that prohibits anyone from complying with the witness-signature requirement, and if such an order were ever to be implemented, it would

be unlawful. Every voter can comply with the witness-signature requirement safely. Indeed, the *DNC* Plaintiffs will have months to find a witness, whether in-person, through a window, or over FaceTime or Skype. Wolfe Dep. 36:5–9; *see* Wolfe Memo at 2.

152. Intervenor-Defendants do not dispute that, to cast an absentee ballot, a voter is required to obtain the signature of a witness on the absentee-ballot envelope. Intervenor-Defendants further state that the witness may observe the absentee voter through a window or over FaceTime or Skype, and so need not be face-to-face with the voter. Wolfe Dep. 36:5–9; *see* Wolfe Memo at 2. Furthermore, the *DNC* Plaintiffs present no evidence that any person cannot do this. All voters also have in-person absentee and in-person voting options, both of which are safe. *See supra* ¶ 5.

153. Intervenor-Defendants dispute the statements in this paragraph as unsupported by any non-conjectural evidence. Every voter can comply with the witness-signature requirement safely. Indeed, the *DNC* Plaintiffs will have months to find a witness, whether in-person, through a window, or over FaceTime or Skype. Wolfe Dep. 36:5–9; *see* Wolfe Memo at 2.

154. Intervenor-Defendants do not dispute that Commissioner Spindell's testimony includes these statements. Because these statements constitute a purely legal conclusion, Intervenor-Defendants take no position on these statements.

155. This paragraph references a court ruling that speaks for itself.

156. Intervenor-Defendants dispute that “WEC’s proposed alternatives to fulfilling the witness requirement proved insufficient during the April 7, 2020

election.” *See supra* ¶ 11. The *DNC* Plaintiffs have not presented even one witness to support this claim. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining statements in this paragraph.

157. Intervenor-Defendants dispute the statements in this paragraph as unsupported by any non-conjectural evidence.

158. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph. Intervenor-Defendants note that there are numerous, safe alternatives that do not rely on a household member, and there is ample time to locate a witness prior to Wisconsin’s November Election. Dkt. 324 ¶ 6; *see supra* ¶ 67.

159. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph. Intervenor-Defendants note there are numerous, safe alternatives that do not rely on a household member, and there is ample time to locate a witness prior to Wisconsin’s November Election. Dkt. 324 ¶ 6; *see supra* ¶ 67.

160. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph. Intervenor-Defendants note there are numerous, safe alternatives that do not rely on a household member, and there is ample time to locate a witness prior to Wisconsin’s November Election. Dkt. 324 ¶ 6; *see supra* ¶ 67.

161. This paragraph references a court ruling and public source that speak for themselves.

162. This paragraph references statutory provisions that speak for themselves. Intervenor-Defendants dispute the remaining statement in this paragraph as unsupported by any non-conjectural evidence.

163. Intervenor-Defendants dispute the statements in this paragraph as unsupported by non-conjectural evidence, and note that the *DNC* Plaintiffs have not shown evidence that this happened to even one voter.

164. Intervenor-Defendants dispute the statements in this paragraph as unsupported by any non-conjectural evidence.

165. This paragraph references statutory provisions that speak for themselves.

166. This paragraph references a court ruling that speaks for itself.

167. The WEC's Status Report and proposed Informational Mailer speak for themselves.

168. The WEC's Status Report and proposed Informational Mailer speak for themselves.

169. The WEC's Status Report and proposed Informational Mailer speak for themselves.

170. Intervenor-Defendants dispute the statements in this paragraph as unsupported by any non-conjectural evidence. The law presumes that citizens know and apprise themselves of applicable legal rules, *see Cochran v. Ill. State Toll*

Highway Auth., 828 F.3d 597, 600 (7th Cir. 2016), and the Commission has published clear guidance on this point, *see generally* Wolfe Memo.

171. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves.

172. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves.

173. Intervenor-Defendants do not dispute that Commissioner Spindell's and Administrator Wolfe's testimony includes these statements. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of these statements.

174. This paragraph references a statutory provision that speaks for itself.

175. Intervenor-Defendants dispute the statements in this paragraph as unsupported by non-conjectural evidence, and note that the *DNC* Plaintiffs have not produced even one witness saying that this requirement burdened them.

176. Intervenor-Defendants dispute the statements in this paragraph as unsupported by non-conjectural evidence.

177. Intervenor-Defendants dispute the statements in this paragraph as unsupported by any non-conjectural evidence.

178. Intervenor-Defendants dispute the statements in this paragraph and note that this paragraph references statutory provisions that speak for themselves.

179. To the extent this paragraph offers an opinion, Intervenor-Defendants dispute that opinion.

180. Intervenor-Defendants do not dispute that Commissioner Spindell's and WEC's 30(b)(6) deponent's testimony include these statements. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of these statements.

181. Intervenor-Defendants do not dispute that Commissioner Spindell's and Administrator Wolfe's testimony includes these statements. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of these statements.

182. This paragraph references a statutory provision that speaks for itself.

183. This paragraph references a statutory provision that speaks for itself.

184. This paragraph references a statutory provision that speaks for itself.

185. Intervenor-Defendants do not dispute that a presidential debate is currently scheduled for October 22, 2020.

186. To the extent that this paragraph offers an opinion, Intervenor-Defendants dispute the opinion that Wisconsin voters rely "heavily on same-day registration during in-person absentee voting or on election day."

187. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph.

188. Intervenor-Defendants dispute the statements in this paragraph, noting that turnout was exceptionally high, with 1,555,263 votes cast, representing 34.3% of

eligible voters. In comparison, the turnout for previous Spring Elections was 27.2% (2019), 22.3% (2018), 15.9% (2017), 47.4% (2016), 26.1% (2012), and 34.9% (2008). *See supra* ¶ 11. Moreover “the final election data conclusively indicate[d] that the election did not produce an unusual number [of] unreturned or rejected [absentee] ballots.” WEC Absentee Voting Report at 24. Intervenor-Defendants note that the election was not associated with an increase in COVID-19 Infection Rates. *See supra* ¶ 5.

189. Intervenor-Defendants dispute the characterization that there are not “viable in-person registration options.” The remaining statement in this paragraph references a statutory provision that speaks for itself. Intervenor-Defendants further note that in-person voting was an option and was not associated with an increase in COVID-19 Infection Rates. *See supra* ¶ 5.

190. Intervenor-Defendants dispute that “[n]o valid, reasonable state interests are served by the disparity and discrimination against by-mail and electronic registration in comparison to in-person registration options,” as this proposed fact is a purely legal conclusion.

191. Intervenor-Defendants dispute the proposed facts in this paragraph, as they are purely legal conclusions.

192. This paragraph references a court ruling that speaks for itself.

193. This paragraph references a court ruling that speaks for itself.

194. Intervenor-Defendants dispute the statements in this paragraph as unsupported by any non-conjectural evidence.

195. Intervenor-Defendants do not dispute that Administrator Wolfe's testimony includes these statements. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of these statements.

196. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph.

197. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph.

198. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph. Intervenor-Defendants further state that, notwithstanding this figure, those same votes could have been safely cast in person. *See supra* ¶ 5.

199. Intervenor-Defendants dispute the statements in this paragraph as unsupported by any non-conjectural evidence. Intervenor-Defendants note that these concerns are not applicable to future elections, which will not be conducted in the midst of a late-breaking pandemic that leads many voters to prefer voting absentee by mail. Voters who prefer that option now have months to make that election.

200. Intervenor-Defendants dispute the statements in this paragraph as unsupported by any non-conjectural evidence. Intervenor-Defendants note that these concerns are not applicable to future elections, which will not be conducted in the midst of a late-breaking pandemic that leads many voters to prefer voting absentee by mail. Voters who prefer that option now have months to make that election.

201. Intervenor-Defendants dispute the statements in this paragraph as purely legal conclusions unsupported by any non-conjectural evidence.

202. Intervenor-Defendants dispute the proposed facts in this paragraph, as they are purely legal conclusions.

203. Intervenor-Defendants do not dispute that the WEC submitted a Status Report on June 25, 2020 in response to this Court's June 10, 2020 Order. The WEC's Status Report is a written document that speaks for itself.

204. The WEC's Status Report speaks for itself.

205. The WEC's Status Report speaks for itself.

206. The WEC's Status Report and proposed Informational Mailer speak for themselves.

207. The WEC's Status Report and proposed Informational Mailer speak for themselves.

208. The WEC's Status Report and proposed Informational Mailer speak for themselves.

209. Intervenor-Defendants do not dispute that WEC's 30(b)(6) representative's testimony includes these statements. To the extent these statements express an opinion, Intervenor-Defendants dispute the opinion as unsupported by any non-conjectural evidence. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of these statements.

210. The WEC's Status Report and Informational Mailer speak for themselves.

211. This paragraph references a public source that speaks for itself.

212. This paragraph references a public source that speaks for itself.

213. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph.

214. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves.

215. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph, and add that the materials cited in this paragraph speak for themselves.

Dated, July 20, 2020

Respectfully submitted,

/s/ Patrick Strawbridge

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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of July, 2020, a true and accurate copy of the foregoing was served via the Court's CM/ECF system upon all counsel of record.

/s/ Misha Tseytlin

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