

**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' SUPPLEMENTAL STATEMENT OF PROPOSED FACTS**

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. 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.

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

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.

3. 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.

4. 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.

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

6. 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.

7. 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.

8. 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.

9. 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.

10. Intervenor-Defendants dispute the statements in this paragraph as unsupported by any non-conjectural evidence. By way of further answer, Intervenor-Defendants note that Wisconsin voters have multiple independent, safe paths to vote with reasonable effort. *See Luft v. Evers*, No. 16-3003, 2020 WL 3496860, at *3 (7th Cir. June 29, 2020). Moreover, as Mr. Stroman has testified, any issues with the timely receipt of absentee ballots can be addressed by requesting and mailing their ballots early. *See* Dkt. 491, Deposition of Ronald Stroman (hereinafter “Stroman Dep.”) 49:10–13, 52:9–12; *see also id.* 58:17-59:6 (acknowledging that, as of June 2020, “the Postal Service is fully prepared to deliver election and political mail in a timely manner.”).

11. Intervenor-Defendants dispute the opinion that it is “nearly impossible” for a voter who lawfully requests an absentee ballot within one week of an election to receive the ballot, complete it, and have the ballot delivered to an election office by Election Day as unsupported by any non-conjectural evidence. *Accord* Stroman Dep. 49:14–22 (testifying that a voter can decrease the risk of untimely delivery of a ballot by dropping the ballot off at a drop box).

12. 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.

13. Intervenor-Defendants dispute the statements in this paragraph as unsupported by any non-conjectural evidence. Intervenor-Defendants note that this paragraph is based upon the assumption that people who do not want to vote in

person will wait until the last minute to request and mail in their absentee ballots. Those wishing to vote by absentee ballot will have months to request and mail in their ballots. Dkt. 475, Deposition of Ann Jacobs 22:11-17. Moreover, the United States Postal Service has timely delivered Election mail in states where voting is conducted exclusively by mail for years. Stroman Dep. 34:2-35:2

14. 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.

15. 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.

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

17. The materials cited in this paragraph speak for themselves. By way of further answer, Clerks in municipalities and counties will have the option of using intelligent mail bar codes but, as of the date of this filing, the Wisconsin Election Commission (“WEC” or “Commission”) does not know how many clerks will choose to do so. See Dkt. 483, Deposition of Robert Kehoe 60:16-61:3 (hereinafter “Kehoe Dep.”).

18. Intervenor-Defendants do not dispute that Commissioner Jacobs’ testimony includes these statements. To the extent these statements express an opinion, Intervenor-Defendants dispute the opinion as unsupported by non-

conjectural evidence. Further, Administrator Wolfe explained that local officials experienced “an extremely tight turnaround,” requiring “incredible efforts . . . on the part of local election officials,” to meet certification deadlines after this Court extended the absentee-ballot-receipt deadline for the April 7 Election. Dkt. 247, Deposition of Meagan Wolfe 48:12–16. While the cost of missing certification or reporting deadlines for the April Election may have been bearable—were this “extremely tight turnaround to prove” too restrictive—missing such deadlines for the Presidential election in November would be intolerable.

19. 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.

20. 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.

21. 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.

22. Intervenor-Defendants dispute the statements in this paragraph as unsupported by any non-conjectural evidence. Intervenor-Defendants note that, unlike the states referenced in this paragraph, Wisconsin is a swing-state. The delay of Wisconsin’s election results would leave the Nation in needless limbo.

23. 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. Moreover, absentee voters almost always cast their votes without “information . . . that surfaces in the late stages of the election campaign.” *Griffin v. Roupas*, 385 F.3d 1128,1131 (7th Cir. 2004).

24. Intervenor-Defendants do not dispute that Commissioner Jacobs’ testimony includes these statements. To the extent these statements express an opinion, Intervenor-Defendants dispute the opinion as unsupported by non-conjectural evidence. Intervenor-Defendants further note that the *DNC* Plaintiffs have not attempted to explain, much less provided any evidence for, why any qualified elector needs more than the months already available to register via existing methods.

25. *See supra* ¶ 24.

26. Intervenor-Defendants dispute that the proposed alternatives for fulfilling the witness requirement were “woefully insufficient,” and note that the turnout for Wisconsin’s April Election was exceptionally high, with 1,555,263 votes cast, *see* Declaration of Misha Tseytlin (“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). 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 further state 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. Plaintiffs have not presented any evidence that the number of rejected absentee ballots in the April Election was more than usual when measured against the number of total absentee ballots submitted.

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

28. 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.

29. 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.

30. This paragraph references a court order that speaks for itself.

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.

Dated, August 4, 2020

/s/ Patrick Strawbridge
PATRICK STRAWBRIDGE
CONSOVOY MCCARTHY PLLC
Ten Post Office Square
8th Floor South PMB #706
Boston, MA 02109
(703) 243-9423
patrick@consovoymccarthy.com

Respectfully submitted,
/s/ Misha Tseytlin
MISHA TSEYTLIN
Counsel of Record
(State Bar No. 1102199)
ROBERT E. BROWNE, JR.
(State Bar No. 1029662)
KEVIN M. LEROY
(State Bar No. 1105053)

JEFFREY M. HARRIS
CAMERON T. NORRIS
ALEXA R. BALTES
CONSOVOY MCCARTHY PLLC
1600 Wilson Blvd., Ste. 700
Arlington, VA 22209

*Counsel for Intervenor-Defendants
Republican National Committee and
Republican Party of Wisconsin*

SEAN T.H. DUTTON
TROUTMAN PEPPER HAMILTON
SANDERS LLP
227 W. Monroe Street, Suite 3900
Chicago, IL 60606
(608) 999-1240
(312) 759-1939 (fax)
misha.tseytlin@troutman.com
robert.browne@troutman.com
kevin.leroy@troutman.com
sean.dutton@troutman.com

KASIA HEBDA
TROUTMAN PEPPER HAMILTON
SANDERS LLP
600 Peachtree Street NE,
Suite 3000
Atlanta, GA 30308
(404) 885-3665
kasia.hebda@troutman.com

*Counsel for Legislature in DNC, Gear,
and Swenson and for Legislative
Defendants in Edwards*

/s/ Eric M. McLeod
ERIC M. MCLEOD
LANE E. RUHLAND
HUSCH BLACKWELL LLP
P.O. Box 1379
33 East Main Street, Suite 300
Madison, WI 53701-1379
(608) 255-4440
(608) 258-7138 (fax)
eric.mcleod@huschblackwell.com
lane.ruhland@huschblackwell.com

LISA M. LAWLESS
HUSCH BLACKWELL LLP
555 East Wells Street, Suite 1900
Milwaukee, WI 53202-3819
(414) 273-2100
(414) 223-5000 (fax)
lisa.lawless@huschblackwell.com

Counsel for Legislature in DNC

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of August, 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

MISHA TSEYTLIN
TROUTMAN PEPPER HAMILTON
SANDERS LLP
227 W. Monroe Street
Suite 3900
Chicago, IL 60606
(608) 999-1240
(312) 759-1939 (fax)
misha.tseytlin@troutman.com