

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

Jill Swenson, Melody McCurtis, Maria Nelson, Black
Leaders Organizing for Communities, *and* Disability
Rights Wisconsin,

Plaintiffs,

v.

Marge Bostelmann, Julie M. Glancy, Ann S. Jacobs,
Dean Knudson, Robert F. Spindell, Jr., *and* Mark L.
Thomsen, Commissioners of the Wisconsin Elections
Commission; Meagan Wolfe, Administrator of the
Wisconsin Elections Commission,

Defendants,

and

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

Intervenor-Defendants.

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

**JOINT RESPONSE OF INTERVENOR-DEFENDANTS TO
SWENSON PLAINTIFFS' STATEMENT OF ADDITIONAL
PROPOSED FACTS IN SUPPORT OF PLAINTIFFS'
MOTION FOR A PRELIMINARY INJUNCTION**

Under this Court's "Procedures to Be Followed on Motions for Injunctive Relief" Intervenor-Defendants, the Wisconsin Legislature, the Republican National Committee ("RNC"), and the Republican Party of Wisconsin (collectively, "Intervenor-Defendants") submit the following joint response to the *Swenson* Plaintiffs' Statement of Facts in Support of Plaintiffs' Motion for Preliminary Injunction. *DNC* Dkt. 494.

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

paragraph expresses an opinion, Intervenor-Defendants take no position on that opinion.

2. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph. To the extent the paragraph expresses an opinion, Intervenor-Defendants take no position on that opinion.

3. Intervenor-Defendants dispute the characterization of in-person voting as “necessarily” bringing voters into close contact with another or otherwise implying in-person voting is unsafe. Intervenor-Defendants dispute the statements in this paragraph as unsupported by any non-conjectural evidence, and note that voting in person on Election Day can be accomplished safely with minimal effort. *See* Declaration of Misha Tseytlin (“Tseytlin Decl.”) Ex. 19; *see also* Tseytlin Decl. Ex. 18. Intervenor-Defendants further note that the April Election was not associated with an increase in COVID-19 Infection Rates. *See* Tseytlin Decl. Ex. 19 at 1–2, 9; *see also* Tseytlin Decl. Ex. 18 at 1–2. The Centers for Disease Control and Prevention (“CDC”) also confirmed in a July 31, 2020 report that “[n]o clear increase in cases, hospitalizations, or deaths was observed after the election.” Supplemental Declaration of Misha Tseytlin (“Tseytlin Supp. Decl.”) Ex. 1 at 1002.

4. Intervenor-Defendants dispute the statements in this paragraph as unsupported by any non-conjectural evidence, and note that the April Election was not associated with an increase in COVID-19 Infection Rates. *See supra* ¶ 3. By way of further answer, Dr. Remington’s report relies on this single study which is

methodologically flawed in numerous respects. *See* Dkt. 44, Report of Dr. Remington, at 11 & n.35 (citing Chad D. Cotti et al., *The Relationship Between In-Person Voting, Consolidated Polling Locations, and Absentee Voting on Covid-19: Evidence from the Wisconsin Primary*). Although this study purported to find a “statistically and economically significant association between in-person voting and the spread of COVID-19 two to three weeks after the election,” *id.*, the study’s dependent variable was the positive COVID-19 *test rate* in a county, not the COVID-19 *infection rate* in a county (*i.e.*, positive cases per capita). *See* Deposition of Dr. Megan Murray (hereinafter “Murray Dep.”) Ex. 2; Murray Dep. 59:6–9. Two counties with equal COVID-19 infection rates could show different positive COVID-19 test rates, simply because one county tested more individuals than the other. *See* Murray Dep. 61:3–7. This study also did not account for important county-level factors that could well lead to different COVID-19 rates. *See* Murray Dep. Ex. 2; Murray Dep. 67:1–22. In particular, the study does not control for what the CDC calls the “primary and more important mode of transmission” of COVID-19: “close contact from person-to-person.” *DNC Dkt. 370* ¶ 33; *see* Murray Dep 86:14–87:14. Finally, the authors included observations from the week *before* the April Election in their data, leading to unreliable results. *See* Murray Dep. 79:1–80:17.

5. Intervenor-Defendants do not dispute that Dr. Murray’s testimony includes these statements. To the extent these statements express an opinion, Intervenor-Defendants dispute the opinion as unsupported by non-conjectural evidence. By way of further answer, Intervenor-Defendants note that, while there

have been “71 confirmed cases of Covid-19 among people who may have been infected during the election,” *DNC Dkt.* 370 ¶ 60; *DNC Dkt.* 420 at 11; *Dkt.* 44 at 10 n.34, “[i]t is possible that these people may have been infected elsewhere[,] although it is difficult to verify,” *DNC Dkt.* 370 ¶ 60. The Wisconsin Department of Health Services has also 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 Dkt.* 44 at 10 n.34.

6. Intervenor-Defendants dispute the opinion in this paragraph as unsupported by non-conjectural evidence. *See supra* ¶ 3.

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

8. Intervenor-Defendants do not dispute that Dr. Remington’s testimony includes these statements. To the extent these statements express an opinion, Intervenor-Defendants dispute the opinion as unsupported by non-conjectural evidence, and note that voting in person on Election Day can be accomplished safely with minimal effort and that the April Election was not associated with an increase in COVID-19 Infection Rates. *See supra* ¶ 3.

9. Intervenor-Defendants dispute the opinion in this paragraph as unsupported by non-conjectural evidence, and note that projections regarding the state of the COVID-19 pandemic in the Fall are unsupported by any non-conjectural evidence and that voting in person on Election Day can be accomplished safely with minimal effort. *See supra* ¶ 3. Intervenor-Defendants further 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, and 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* DNC Dkt. 227 at 2–14 (hereinafter "WEC Defendants' Status Report") (listing 15 detailed actions); DNC Dkt. 247, Deposition of Meagan Wolfe 103:17–111:14, 121:2–122:20 (hereinafter "Wolfe Dep."). For example, 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). Both Milwaukee and Green Bay have already taken efforts to avoid the long lines that occurred in April, after those municipalities inexplicably closed many polling places. Milwaukee has already begun to recruit more poll workers for November, utilizing the "more time" that it has until November, and "officials hope to be able to open all 180 polling sites in November's presidential election." Tseytlin Decl. Ex. 30. Milwaukee also has approved "16 in-person early voting locations for the August and November elections," which is "a sharp increase from prior years." Tseytlin Decl. Ex. 31. And Milwaukee will have help from volunteers recruited by the DNC Plaintiffs. *See* Tseytlin Decl. Ex. 32 (requesting that its supporters "[v]olunteer for the Voter

Protection team to make sure our elections are safe & fair this fall,” and specifically mentioning that “voting locations were closed in April”). Green Bay also has begun significant poll-worker recruitment efforts, and it will have at least 13 polling locations open for November—up from the two locations the city had in April. Tseytlin Decl. Ex. 33.

10. *See supra* ¶ 9.

11. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph. To the extent these statements express an opinion, Intervenor-Defendants dispute the opinion as unsupported by non-conjectural evidence, and note that projections regarding the state of the COVID-19 pandemic in the Fall are unsupported by any non-conjectural evidence. *See supra* ¶ 3.

12. 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 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”).

13. Intervenor-Defendants do not dispute that Dr. Remington and Dr. Murray’s testimony includes these statements. To the extent these statements express an opinion, Intervenor-Defendants dispute the opinion as unsupported by non-conjectural evidence, and note that projections regarding the state of the COVID-

19 pandemic in the Fall are unsupported by any non-conjectural evidence. *See supra* ¶ 3.

14. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph. To the extent these statements express an opinion, Intervenor-Defendants dispute the opinion as unsupported by non-conjectural evidence, and note that projections regarding the state of the COVID-19 pandemic in the Fall are unsupported by any non-conjectural evidence. *See supra* ¶ 3.

15. Intervenor-Defendants admit that the Commission has already taken numerous steps to enhance the State's readiness for the upcoming November 2020 Election. *See supra* ¶ 9.

16. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the statements in this paragraph. To the extent these statements express an opinion, Intervenor-Defendants dispute the opinion as unsupported by non-conjectural evidence, and note that projections regarding the state of the COVID-19 pandemic in the Fall are unsupported by any non-conjectural evidence. *See supra* ¶ 3. Intervenor-Defendants further 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, and that the Commission has already taken numerous steps to enhance the State's readiness for the upcoming November 2020 Election. *See supra* ¶ 9.

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

18. Intervenor-Defendants admit that, with months to go before Wisconsin's November Election, every registered voter in Wisconsin has either already applied to vote absentee or will receive an absentee-ballot application directly from the Commission. Tseytlin Decl. Ex. 28; Tseytlin Decl. Ex. 29. Intervenor-Defendants dispute the remaining statements in this paragraph as unsupported by any non-conjectural evidence, and add that the materials referenced in this paragraph speak for themselves.

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

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 referenced in this paragraph speak for themselves.

21. Intervenor-Defendants dispute the statements in this paragraph as unsupported by any non-conjectural evidence. By way of further answer, Intervenor-Defendants state that the April Election was a success, with exceptionally high turnout. The April Election saw 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). 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.*

22. 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 referenced 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 WEC or the Wisconsin Legislature. Dkt. 37 ¶ 3; *DNC* Dkt. 198-1 ¶ 36; *DNC* 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* 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 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 7–8; Tseytlin Decl. Ex. 22; Dkt. 37 ¶ 122.

23. Intervenor-Defendants dispute the characterization that the Commission “conceded” that “Wisconsin voters risked their lives to vote” in the April Election. By way of further answer, Intervenor-Defendants note that the April Election was not associated with an increase in COVID-19 Infection Rates. *See supra* ¶ 3.

24. Intervenor-Defendants dispute the statements in this paragraph as unsupported by any non-conjectural evidence, and note that the April Election was not associated with an increase in COVID-19 Infection Rates. *See supra* ¶ 3.

25. Intervenor-Defendants dispute the characterization of “disenfranchised” voters. Intervenor-Defendants dispute the remaining statements in this paragraph as unsupported by any non-conjectural evidence. By way of further answer, Intervenor-Defendants state that Wisconsin voters had multiple independent, safe paths to vote with reasonable effort. *See supra* ¶ 12. Intervenor-Defendants further state that all Wisconsin voters had the right to vote in person on Election Day, which could be accomplished safely with minimal effort, *see supra* ¶ 3, or could have safely complied with the absentee ballot requirements, including the witness-signature requirement, safely. Wolfe Dep. 36:5–9; *see* Wolfe Memo at 2 (noting Wisconsin voters that chose to fill out an absentee ballot had weeks to find a witness, whether in person, through a window, or over FaceTime or Skype). Intervenor-Defendants further state that the April Election was a success, with exceptionally high turnout. The April Election saw 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). 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.*

26. 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 referenced in this paragraph speak for themselves.

27. 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 referenced in this paragraph speak for themselves.

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 referenced in this paragraph speak for themselves.

29. Intervenor-Defendants dispute the statements in this paragraph as unsupported by any non-conjectural evidence, and note that voting in person on Election Day can be accomplished safely with minimal effort and that the April Election was not associated with an increase in COVID-19 Infection Rates. *See supra* ¶ 3.

30. 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 referenced in this paragraph speak for themselves. By way of further answer, Intervenor-Defendants note that voting in person on Election Day can be accomplished safely with minimal effort and that the April Election was not associated with an increase in COVID-19 Infection Rates. *See supra* ¶ 3.

31. Intervenor-Defendants dispute the characterization of “unsafe voting environments.” *See supra* ¶ 30.

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 referenced 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 referenced in this paragraph speak for themselves.

34. Intervenor-Defendants dispute the characterization of “a huge number of requests for absentee ballots.” Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining statements in this paragraph, and add that the materials referenced 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 referenced in this paragraph speak for themselves.

36. 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 referenced in this paragraph speak for themselves.

37. Intervenor-Defendants dispute the characterization of “copious evidence in the record.” Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining statements in this paragraph, and add that the materials referenced in this paragraph speak for themselves.

38. 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 referenced in this paragraph speak for themselves.

39. 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 referenced in this paragraph speak for themselves.

40. Intervenor-Defendants dispute the characterization that “it is essentially uncontested that the number and proportion of absentee ballots in the November election will be far higher” as unsupported by any non-conjectural evidence.

41. Intervenor-Defendants dispute the opinion in this paragraph as unsupported by non-conjectural evidence, and add that the materials referenced in this paragraph speak for themselves. By way of further answer, Wisconsin vests the legal duty and authority to administer elections in election officials at the county or municipal level. Wolfe Memo at 1; Wolfe Dep. 114:8–3; *see* Wis. Stat. §§ 7.10, 7.15; *see also* Tseytlin Supp. Decl. Ex. 2 at 11–12 (“Municipal clerks and boards of elections run polling places. The WEC does not have the authority to add additional voter qualifications.”) (citations omitted). As relevant to this case, these municipal and county election officials “provide ballots” for elections, Wis. Stat. § 7.10(1)(a); *see also* Tseytlin Supp. Decl. Ex. 2 at 5–6; “establish[]” the polling places for elections, Wis. Stat. § 5.25(2)–(3); staff “inspectors” to work at those polling places, who each must “be a qualified elector of a county in which the municipality where the official serves

is located,” Wis. Stat. § 7.30(2)(a); *see also* Tseytlin Supp. Decl. Ex. 2 at 12; “[r]eassign” these inspectors “to assure adequate staffing at all polling places,” Wis. Stat. § 7.15(1)(k); “[e]quip” polling places with “sufficient election supplies,” Wis. Stat. §§ 7.10(1)(b), 7.15(1)(a)–(b); and “[t]rain election officials” according to the Commission’s guidelines and standards, Wis. Stat. § 7.15(1)(e). The Commission, in turn, is a state agency with the “responsibility for the administration” of the State’s “laws relating to elections and election campaigns.” Wis. Stat. § 5.05(1); *see also* Wolfe Dep. 11:15–18. The Commission has no legal “authority to be able to mandate” local election officials’ exercise of these power and duties, *see, e.g.*, Wolfe Dep. 57:3–5, and instead, provides advice and funding to help local officials satisfy their statutory obligations. The Commission can provide guidance on how polling places should operate, but it cannot mandate the opening of polling locations, designate in-person-absentee voting locations, or prohibit the consolidation of polling locations. *E.g.*, Tseytlin Decl. Ex. 11 at 2–5; Wolfe Dep. II 176:8–15 (“We do not have a role in approving or reviewing any type of in-person absentee plan.”). It can secure funds for local officials to acquire sanitation supplies, but cannot require local officials to adopt particular sanitation procedures. WEC Defendants’ Status Report at 4–5; *see also* Tseytlin Supp. Decl. Ex. 2 at 10 (“WEC has the authority to fund the provision of PPE to local election officials, who may distribute it to poll workers. . . . [however,] [i]t is not in the administrative capacity or authority for the WEC to determine the PPE needs of all poll workers for the November elections, let alone guaranty the provision of PPE to all such poll workers.”).

42. Intervenor-Defendants dispute the characterization of “arbitrary and disparate treatment of voters” as unsupported by non-conjectural evidence. *See supra* ¶ 41.

43. Intervenor-Defendants dispute the characterization of “Defendants’ wide-ranging failures” and that minority communities, older voters, and voters with disabilities were “disproportionately and arbitrarily harmed” as unsupported by non-conjectural evidence. *See supra* ¶ 41.

44. Intervenor-Defendants dispute the statements in this paragraph as purely legal and conjectural conclusions.

45. Intervenor-Defendants dispute the characterization of “detailed the outsized and arbitrary impact of Defendants’ failures.” To the extent these statements express an opinion, Intervenor-Defendants dispute the opinion as unsupported by non-conjectural evidence. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining statements in this paragraph, and add that the materials referenced in this paragraph speak for themselves. Moreover, Intervenor-Defendants note that the *Swenson* Plaintiffs’ citation to their Brief in support of their Motion for Preliminary Injunction is not proper and does not constitute an appropriate source “such as pleadings, affidavits, exhibits, deposition transcripts or a detailed proffer of testimony that will be presented at an evidentiary hearing” in contravention of the “Procedures To Be Followed On Motions For Injunctive Relief” in the Western District of Wisconsin.

46. Intervenor-Defendants dispute the opinion in this paragraph as unsupported by non-conjectural evidence. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining statements in this paragraph, and add that the materials referenced in this paragraph speak for themselves.

47. Intervenor-Defendants dispute the opinion in this paragraph as unsupported by non-conjectural evidence. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining statements in this paragraph, and add that the materials referenced in this paragraph speak for themselves.

48. Intervenor-Defendants dispute the opinion in this paragraph as unsupported by non-conjectural evidence. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining statements in this paragraph, and add that the materials referenced in this paragraph speak for themselves. By way of further answer, Intervenor-Defendants note that the Milwaukee Election Commission has taken numerous steps to prepare for the upcoming November 2020 Election. *See DNC Dkt. 470*, 30(b)(6) Deposition of Neil Albrecht 86:4–87:5, 87:16–18, 89:10–14 (engaging in poll-worker recruitment efforts and “anticipat[ing] full staffing levels” for the November Election, including opening about 170 out of 180 in-person voting locations); *id.* at 80:1–7 (working with health department and vendors to implement measures to ensure the safety of voters and poll workers); *id.* at 90:8–17, 91:2–8, 92:6–9 (making masks available to voters

who do not have them, requiring polling locations to disinfect polling booths between voters, and providing Plexiglass shields and face shields to election workers); *id.* at 81:8–12 (establishing more drop box locations in Milwaukee so that voters can return their absentee ballots without sending them through the mail); *id.* at 83:8–84:13 (receiving approximately \$320,000 in grant money under the CARES Act, which can be used to pay for election safety measures). Similarly, Intervenor-Defendants note that the clerk’s office of the City of Green Bay also has taken numerous steps to prepare for the upcoming November 2020 Election. *See DNC Dkt. 480*, 30(b)(6) Deposition of Kris Teske 58:19–61:7, 73:8–20 (undertaking recruitment process for poll workers, including 210 poll workers enlisted to date, providing those poll workers training, and securing different additional polling locations, with about 17 in-person voting locations); *id.* at 59:7-61:7 (coordinating with the WEC to obtain the necessary volume of personal protective equipment, pens, and hand sanitizer); *id.* at 74:10-77:4 (providing Plexiglass shields at poll book tables, spacing everything 6 feet apart, placing hand sanitizer and disinfecting wipes and spray at entrances, exits, and other key areas of polling locations, and providing masks, gloves, and face shields for poll workers); *id.* at 61:9-65:19 (receiving approximately \$54,000 in grant money under the CARES Act and \$1.1 million in grant money from the Center for Tech and Civil Life under the Wisconsin Safe Voting Plan, which can be used to pay for election safety measures).

49. *See supra* ¶ 48.

50. *See supra* ¶ 48.

51. Intervenor-Defendants dispute the characterization that “Wisconsin’s in-person voting regime is not an independently adequate option.” To the extent these statements express an opinion, Intervenor-Defendants dispute the opinion as unsupported by non-conjectural evidence. By way of further answer, Intervenor-Defendants note that voting in person on Election Day can be accomplished safely with minimal effort and that the April Election was not associated with an increase in COVID-19 Infection Rates. *See supra* ¶ 3. Intervenor-Defendants further 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, and that the Commission has already taken numerous steps to enhance the State’s readiness for the upcoming November 2020 Election. *See supra* ¶ 9.

52. Intervenor-Defendants dispute the statements in this paragraph as unsupported by any non-conjectural evidence. *See supra* ¶ 51.

53. Intervenor-Defendants dispute the characterization that Commissioner Jacobs “admitted” anything with respect to safety procedures at the polls. To the extent these statements express an opinion, Intervenor-Defendants dispute the opinion as unsupported by non-conjectural evidence. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining statements in this paragraph, and add that the materials referenced in this paragraph speak for themselves.

54. Intervenor-Defendants dispute the characterization that Commissioner Jacobs “admitted” anything with respect to voter preferences. To the extent these statements express an opinion, Intervenor-Defendants dispute the opinion as unsupported by non-conjectural evidence. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining statements in this paragraph, and add that the materials referenced in this paragraph speak for themselves.

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 referenced in this paragraph speak for themselves.

56. Intervenor-Defendants dispute the statements in this paragraph as purely legal and conjectural conclusions, and add that the conference report on the Voting Rights Act of 1965 (“VRA”) speaks for itself. Specifically, Section 11(b) of the VRA provides that “[n]o person . . . shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote.” 52 U.S.C. § 10307(b). A plaintiff must show both that a “person”—the defendant—committed “an act of intimidation or attempt to intimidate,” and “that the act was done with the specific intent to intimidate or attempt to intimidate” another for voting. *See Parson v. Alcorn*, 157 F. Supp. 3d 479, 498–99 (E.D. Va. 2016) (discussing the need to show that the defendant “undertook any acts of intimidation”) (citing *Olagues v. Russoniello*, 770 F.2d 791, 804 (9th Cir. 1985), and *United States v. McLeod*, 385 F.2d 734, 740–41 (5th Cir. 1967)).

57. *See supra* ¶ 56.

58. Intervenor-Defendants dispute the characterization of “disenfranchised” voters. To the extent these statements express an opinion, Intervenor-Defendants dispute the opinion as unsupported by non-conjectural evidence. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining statements in this paragraph, and add that the materials referenced in this paragraph speak for themselves. By way of further answer, Intervenor-Defendants state that Wisconsin voters have multiple independent, safe paths to vote with reasonable effort, including the right to vote in person on Election Day, which could be accomplished safely with minimal effort. *See supra* ¶¶ 3, 12.

59. The materials cited in this paragraph speak for themselves.

60. The materials cited in this paragraph speak for themselves.

61. The materials cited in this paragraph speak for themselves.

62. Intervenor-Defendants dispute the characterization of Administrator Wolfe’s testimony as “predicting that it will take 14 days for an absentee ballot to make its way through the mail from a clerk’s office to a voter and back again for the November election,” when her testimony was that “[i]t may” take up to seven days under United States Postal Service (“USPS”) guidance over the years, Wolfe Dep. 51:19–52:2, and otherwise add that the material referenced in this paragraph speaks for itself. Intervenor-Defendants further dispute the opinion in this paragraph as unsupported by non-conjectural evidence. By way of further answer, the November

Election is months away, which means all voters have ample time to prepare, including by requesting absentee ballots immediately if they so choose. *See* Wis. Stat. § 7.15(1)(cm); Tseytlin Decl. Ex. 4 (indicating voters may request an absentee ballot for the November Election immediately, and municipal clerks will start delivering such ballots by mail once the ballots have been prepared, which will be well over a month in advance of the election). 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. *DNC Dkt. 475*, Deposition of Ann Jacobs 22:11–17 (hereinafter “Jacobs Dep.”); *DNC Dkt. 491*, Deposition of Ronald Stroman 49:10–13, 52:9–12 (testifying that voters can address any issues with the timely receipt of absentee ballots by requesting and mailing their ballots early).

63. Intervenor-Defendants dispute the opinion in this paragraph as unsupported by non-conjectural evidence. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining statements in this paragraph, and add that the materials referenced in this paragraph speak for themselves. By way of further answer, the November Election is months away, which means all voters have ample time to prepare, including by requesting absentee ballots immediately if they so choose. *See* Wis. Stat. § 7.15(1)(cm); Tseytlin Decl. Ex. 4 (indicating voters may request an absentee ballot for the November Election immediately, and municipal clerks will start delivering

such ballots by mail once the ballots have been prepared, which will be well over a month in advance of the election).

64. Intervenor-Defendants dispute the opinion in this paragraph as unsupported by non-conjectural evidence. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining statements in this paragraph, and add that the materials referenced in this paragraph speak for themselves. By way of further answer, Intervenor-Defendants note that the USPS measures to ensure timely delivery of ballots for the upcoming election, 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.” *See DNC Dkt. 433-1 at 5–6, 8.* Intervenor-Defendants also note that 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).

65. Intervenor-Defendants dispute the opinion in this paragraph as unsupported by non-conjectural evidence. Intervenor-Defendants are without

knowledge or information sufficient to form a belief as to the truth of the remaining statements in this paragraph, and add that the materials referenced in this paragraph speak for themselves. By way of further answer, Intervenor-Defendants further 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, and that the Commission has already taken numerous steps to enhance the State's readiness for the upcoming November 2020 Election. *See supra* ¶ 9.

66. Intervenor-Defendants dispute the characterization of “disenfranchised” voters. By way of further answer, Intervenor-Defendants state that Wisconsin voters have multiple independent, safe paths to vote with reasonable effort, including the right to vote in person on Election Day, which could be accomplished safely with minimal effort. *See supra* ¶¶ 3, 12. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining statements in this paragraph, and add that the materials referenced in this paragraph speak for themselves.

67. 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 referenced in this paragraph speak for themselves.

68. Intervenor-Defendants dispute the opinion in this paragraph as unsupported by non-conjectural evidence. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining

statements in this paragraph, and add that the materials referenced in this paragraph speak for themselves.

69. 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 referenced in this paragraph speak for themselves.

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 dispute the opinion in this paragraph as unsupported by non-conjectural evidence. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining statements in this paragraph, and add that the materials referenced in this paragraph speak for themselves. Intervenor-Defendants further dispute that DRW has established that any of its members wish to vote by mail in November and will be unable to safely vote in person. *See Disability Rights Wis., Inc. v. Walworth Cty. Bd. of Supervisors*, 522 F.3d 796, 802 (7th Cir. 2008).

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

73. 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. 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 Election. Wolfe Dep. 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.

74. 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.

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 dispute the characterization of what the Commission and RNC have “acknowledge[d]” regarding the evidence. 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, as the Seventh Circuit has acknowledged, “[v]oting fraud is a serious problem in U.S. elections . . . and it is facilitated by absentee voting.” *Griffin v. Roupas*, 385 F.3d 1128, 1130 (7th Cir. 2004); *Nader v. Keith*, 385 F.3d 729, 734 (7th Cir. 2004) (“[V]oting by mail makes vote fraud much easier to commit.”); *accord Tex. Democratic Party v. Abbott*, 961 F.3d 389, 413 (5th Cir. 2020) (Ho, J., concurring) (collecting cases); *Veasey v. Abbott*, 830 F.3d 216,

239 (5th Cir. 2016) (en banc); *Wrinn v. Dunleavy*, 440 A.2d 261, 270 (Conn. 1982) (“[T]here is considerable room for fraud in absentee voting . . .”).

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. By way of further answer, the USPS released a report from its Inspector General investigating the “Timeliness of Ballot Mail in the Milwaukee Processing & Distribution Center (P&DC) Service Area” relating to the April Election. *DNC Dkt.* 433-1. The report concluded that “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. *Id.* at 4.

78. Intervenor-Defendants dispute the statements in this paragraph as unsupported by any non-conjectural evidence. By way of further answer, Intervenor-Defendants state that Wisconsin’s April Election was not associated with an increase in COVID-19 Infection Rates. *See supra* ¶ 3.

79. Intervenor-Defendants do not dispute that Dr. Remington made the statements in this paragraph, but dispute the statements in this paragraph as unsupported by any non-conjectural evidence. Intervenor-Defendants further note that projections regarding the state of the COVID-19 pandemic in the Fall are unsupported by any non-conjectural evidence. *See supra* ¶ 3.

80. Intervenor-Defendants dispute the opinion in this paragraph as unsupported by non-conjectural evidence.

81. This paragraph references information from a website that speaks for itself. Intervenor-Defendants further note that projections regarding the state of the COVID-19 pandemic in the Fall are unsupported by any non-conjectural evidence. *See supra* ¶ 3. By way of further answer, Dr. Remington admitted that predictions about the state of COVID-19 change “within weeks and months.” *DNC Dkt.* 469, Deposition of Patrick L. Remington, MD, MPH 37:14–19, 38:3–6; 49:7–20; *accord id.* at 50:9–15 (“[N]obody could have predicted what transpired in the last six weeks in Wisconsin. Nobody could -- you know, you need a crystal ball to do that.”). Dr. Remington admitted that it was “very difficult to know whether th[e] number [of daily COVID-19 cases in November] will be 1,170, whether it will be 2,000, or whether it could come down to as low as 200.” *Id.* at 42:15–43:4.

82. This paragraph references information from a website that speaks for itself.

83. Intervenor-Defendants do not dispute that Dr. Remington made the statements in this paragraph, but dispute the statements in this paragraph as unsupported by any non-conjectural evidence.

84. 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.

85. 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.

86. 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.

87. 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 material cited in this paragraph speaks for itself.

88. 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 material cited in this paragraph speaks for itself.

89. Intervenor-Defendants dispute the statements set forth in this paragraph, and add that the material cited in this paragraph speaks for itself. By way of further answer, Intervenor-Defendants note that the Commission will provide up to \$4.1 million of a CARES Act sub-grant to local election officials to help pay for increased election costs due to the COVID-19 pandemic, which can be used to pay for election safety measures. *See supra* ¶ 9. Intervenor-Defendants further note that Administrator Wolfe testified that the Commission has issued, and continues to update, directives and guidance specifically identifying best practices for ensuring safe in-person voting. *See* Wolfe Dep. II 51:25–52:8.

90. Intervenor-Defendants dispute the implication that this is a full and complete list of the Commission’s “efforts” relating to election preparedness. 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.

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 material cited in this paragraph speaks for itself.

92. This paragraph references information from a website that speaks for itself.

93. 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 material cited in this paragraph speaks for itself.

94. 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 material cited in this paragraph speaks for itself.

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 material cited in this paragraph speaks for itself.

96. 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 material cited in this paragraph speaks for itself.

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.

98. 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 Commission does not know how many clerks will choose to do so. *See DNC Dkt. 483*, Deposition of Robert Kehoe 60:16-61:3 (hereinafter “Kehoe Dep.”).

99. Intervenor-Defendants do not agree with all of the *Swenson* Plaintiffs’ characterizations, but do not dispute that the intelligent barcode system is among measures that the USPS has agreed to implement to ensure timely delivery of ballots for the upcoming election. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining statements in this paragraph, and add that the material cited in this paragraph speaks for itself.

100. 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 material cited in this paragraph speaks for itself.

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 material cited in this paragraph speaks for itself.

102. 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.

103. 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.

104. The material cited in this paragraph speaks for itself.

105. Intervenor-Defendants dispute the statements set forth in this paragraph. The Commission has provided notice to the voting public consistent with Wis. Stat. § 6.869, which mandates that the Commission “prescribe uniform instructions for municipalities to provide to absentee electors,” including “the specific means of electronic communication that an absentee elector may use to file an application for an absentee ballot,” the means “to request a registration form or change his or her registration,” and “information concerning the procedure for correcting errors in marking a ballot and obtaining a replacement for a spoiled ballot.” Wis. Stat. § 6.869; *see* Tseytlin Decl. Ex. 8. The Commission has further developed voter outreach tools, including “videos and documentation for voters to understand the mechanics of the voting process including absentee.” Wolfe Dep. 109:13–19.

106. Intervenor-Defendants dispute the opinion in this paragraph as unsupported by non-conjectural evidence.

107. Intervenor-Defendants do not dispute that Mr. Jacobs made the statements in this paragraph, but dispute the statements in this paragraph as unsupported by any non-conjectural evidence.

108. Intervenor-Defendants dispute the opinion in this paragraph as unsupported by non-conjectural evidence.

109. *See supra* ¶ 41.

110. 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 material cited in this paragraph speaks for itself.

111. Intervenor-Defendants admit this paragraph, and add that the materials cited in this paragraph speak for themselves.

112. 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 material cited in this paragraph speaks for itself.

113. 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 material cited in this paragraph speaks for itself.

114. 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 note that the changes the Commission was required to implement before the April Election had negative effects on the ballot request process, especially in Milwaukee. Kehoe Dep. 87:15–89:3. The Commission has expressed concern that unanticipated or unintended consequences will again slip past it if it tries to make changes in the WisVote or MyVote changes just before the election. *See id.* at 89:4–22.

115. Intervenor-Defendants do not dispute that Mr. Albrecht's and Mr. Teske's testimony includes these statements. To the extent these statements express an opinion, Intervenor-Defendants dispute the opinion as unsupported by non-conjectural evidence.

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

117. 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.

118. 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.

119. This paragraph references a statutory provision and other materials that speak for themselves.

120. This paragraph references a statutory provision and other materials that speak for themselves.

121. 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 material cited in this paragraph speaks for itself.

122. 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.

123. 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.

124. This Court's order referenced in this paragraph speaks for itself. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining 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 material cited in this paragraph speaks for itself.

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 material cited in this paragraph speaks for itself.

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

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

130. 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 material cited in this paragraph speaks for itself.

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 material cited in this paragraph speaks for itself.

132. Intervenor-Defendants dispute the characterization that the deadline to request an absentee ballot has created a “high risk” of untimely delivery in the November election 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. Jacobs Dep. 22:11–17.

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

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 material cited in this paragraph speaks for itself.

135. Intervenor-Defendants dispute the characterization of “disenfranchised” voters. To the extent these statements express an opinion, Intervenor-Defendants dispute the opinion as unsupported by non-conjectural evidence. Intervenor-Defendants are without knowledge or information sufficient to

form a belief as to the truth of the remaining statements in this paragraph, and add that the materials referenced in this paragraph speak for themselves. By way of further answer, Intervenor-Defendants state that Wisconsin voters have multiple independent, safe paths to vote with reasonable effort, including the right to vote in person on Election Day, which could be accomplished safely with minimal effort. *See supra* ¶¶ 3, 12.

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 material cited in this paragraph speaks for itself.

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. 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 material cited in this paragraph speaks for itself.

Dated, August 4, 2020.

Respectfully submitted,

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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

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