

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

DEMOCRATIC NATIONAL COMMITTEE
and DEMOCRATIC PARTY OF WISCONSIN,

Plaintiffs,

v.

Case No. 20-cv-249-wmc

MARGE BOSTELMANN, JULIE M. GLANCEY, ANN S.
JACOBS, DEAN KNUDSON, ROBERT F. SPINDELL, JR.
and MARK L. THOMSEN,

Defendants,

and

REPUBLICAN NATIONAL COMMITTEE
and REPUBLICAN PARTY OF WISCONSIN,

Intervening Defendants.

SYLVIA GEAR, CLAIRE WHELAN, WISCONSIN
ALLIANCE FOR RETIRED AMERICANS, LEAGUE
OF WOMEN VOTERS OF WISCONSIN, KATHERINE
KOHLBECK, DIANE FERGOT, GARY FERGOT,
BONIBET BAHR OLSAN, SHEILA JOZWIK, and
GREGG JOZWIK,

Plaintiffs,

v.

Case No. 20-cv-278-wmc

MARGE BOSTELMANN, JULIE M. GLANCEY, ANN S.
JACOBS, DEAN KNUDSON, ROBERT F. SPINDELL, JR.,
MARK L. THOMSEN, and MEAGAN WOLFE,

Defendants.

CHRYSTAL EDWARDS, TERRON EDWARDS, JOHN
JACOBSON, CATHERINE COOPER, KILEIGH HANNAH,

KRISTOPHER ROWE, KATIE ROWE, CHARLES DENNERT,
JEAN ACKERMAN, WILLIAM LASKE, JAN GRAVELINE,
TODD GRAVELINE, ANGELA WEST, DOUGLAS WEST,
and all others similarly situated,

Plaintiffs,

v.

Case No. 20-cv-340-wmc

ROBIN VOS, SCOTT FITZGERALD, WISCONSIN STATE
ASSEMBLY, WISCONSIN STATE SENATE, WISCONSIN
ELECTIONS COMMISSION, MARGE BOSTELMANN,
JULIE M. GLANCEY, ANN S. JACOBS, DEAN KNUDSON,
ROBERT F. SPINDELL, JR., MARK L. THOMSEN, and
MEAGAN WOLFE,

Defendants.

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

Plaintiffs,

v.

Case No. 20-cv-459-wmc

MARGE BOSTELMANN, JULIE M. GLANCEY, ANN S.
JACOBS, DEAN KNUDSON, ROBERT F. SPINDELL, JR.,
MARK L. THOMSEN, and MEAGAN WOLFE,

Defendants.

**WEC DEFENDANTS' RESPONSE TO THE GEAR PLAINTIFFS'
STATEMENT OF ADDITIONAL PROPOSED FACTS**

The WEC Defendants respond to the Gear Plaintiffs' Statement of Additional Proposed
Facts as follows:

The Covid-19 Pandemic

1. There are three separate routes of SARS- CoV-2/Covid-19 transmission: (1) respiratory droplet; (2) aerosols or microdroplets; and (3) fomite transmission from contaminated surfaces. *See* dkt. 440, Murray Tr. at 120:22-125:8.

RESPONSE: Not disputed.

2. Respiratory droplet transmission happens “when a person speaks or coughs or sneezes or sings” and “they put into the environment droplets that consist of a mixture of mucous, saliva, and then that’s what viral particles are -- and there’s viral particles on those droplets.” *Id.* at 121:7-121:22.

RESPONSE: Not disputed.

3. If the droplets are “large they fall out of the environment because of gravity, and that happens at a one to two meter distance.” *Id.* at 121:22-122:2.

RESPONSE: Not disputed.

4. If the droplets are smaller, however, then they function as aerosols, or desiccated “droplet nuclei” that can stay suspended in the air and “move[] with the turbulence and the air flow within a room.” *Id.* at 122:15-123:11.

RESPONSE: Not disputed.

5. Aerosolized transmission poses “a somewhat more dangerous issue because it can go further than the two meters” and “can move throughout the room in ways that are not necessarily expected because it has to do with where furniture is and where air turbulence moves around in rooms.” *Id.* at 123:11-17.

RESPONSE: Not disputed.

6. Because these aerosolized droplets are so tiny, neither cloth masks nor even surgical masks can prevent transmission of SARS-CoV-2. *Id.* at 124:2-6, 133:1-6.

RESPONSE: Disputed. Dr. Murray testified that the smaller, aerosolized droplets “may” play a role in transmission, as opposed to larger droplets which “do” play a role. Dkt. 440, p. 123:20-25, 124:1-6. Dr. Murray also testified that while she believed the masks widely used now do not block aerosolized particles, she was not sure that there had been a study showing that. Dkt. 440, p. 133:1-10. The conclusion that the masks do not prevent transmission of the virus is not supported by the testimony, and the testimony was based on an opinion that admitted it was not based upon research or studies.

7. For this reason, aerosolized transmission is the hardest to control via interventions like sanitization or social distancing. *Id.* at 125:9-126:3.

RESPONSE: Not disputed.

8. Effective countermeasures are much more limited, such as “improving ventilation in a very rigorous way by having either negative pressure rooms or something like UV germicidal radiation,” *id.* at 126:3-7.

RESPONSE: Not disputed.

9. There is a gathering consensus in the epidemiological community that aerosolized transmission of Covid-19 is occurring, making the pandemic that much harder to control. Dkt. 490, Murray Reply Decl. ¶ 2.

RESPONSE: Disputed. While Dr. Murray states there is a gathering consensus, she also says that aerosolized transmission is only a “possibility.” Dkt. 490, par. 2.

10. There are currently more than 4.5 million confirmed cases of Covid-19 in the United States, and there have been 152,431 deaths nationwide. Dkt. 503, Sherman Reply Decl., Ex. 1,

Mitch Smith et al, *Coronavirus in the U.S.: Latest Map and Case Count*, N.Y. TIMES

<https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html> (last accessed July 31, 2020).

RESPONSE: Not disputed.

11. In response to the climbing cases and deaths, on July 30, 2020, Governor Tony Evers declared a Public Health Emergency and issued an Emergency Order requiring individuals to wear face coverings when indoors and not in a private residence, effective at 12:01 a.m. on Saturday, August 1, 2020, through September 28, 2020. Dkt. 503, Sherman Reply Decl., Ex. 3, Executive Order #82; *id.*, Ex. 4, Emergency Order #1.

RESPONSE: Not disputed.

12. According to the U.S. Centers for Disease Control and Prevention, (“CDC”), individuals are at higher risk of severe complications and death from Covid-19 if they are 65 years old or older or have underlying health conditions and diseases, including but not limited to cancer, chronic kidney disease, COPD (chronic obstructive pulmonary disease), immunocompromised state (weakened immune system) from solid organ transplant, obesity (body mass index [BMI] of 30 or higher), serious heart conditions, such as heart failure, coronary artery disease, or cardiomyopathies, sickle cell disease, and Type 2 diabetes mellitus. Dkt. 503, Sherman Reply Decl., Ex. 5, CDC, Coronavirus Disease 2019 (COVID-19), *People with Certain Medical Conditions*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (last updated July 30, 2020).

RESPONSE: Not disputed.

13. A number of these are fairly common diseases and/or conditions in Wisconsin: 32 percent of residents are obese, and 8 percent have diabetes mellitus. Dkt. 370, Murray Decl. ¶ 79.

RESPONSE: Not disputed.

14. It is not safe for vulnerable people of a certain age and/or who have certain underlying comorbidities to venture to polling places to vote. Dkt. 370, Murray Decl. ¶ 47.

RESPONSE: Disputed. Dr. Murray does not state that it is not safe even for vulnerable people with comorbidities to vote in person; Dr. Murray says that the efficacy of protections depends on how they are implemented, and does not provide any opinion on how likely it is that any given person will contract an illness at any given location. Dkt. 370, par. 47.

15. The efficacy of intervention measures such as sanitizing surfaces, the use of masks and hand sanitizer, and maintaining a 6-foot distance from others is wildly variable and, even in the best of circumstances with maximum compliance, cannot eliminate the risk of Covid-19 transmission in polling places. *Id.* ¶¶ 48-56.

RESPONSE: Disputed. Dr. Murray cites one expert as saying that social distancing alone will prevent the majority of virus transmissions, Dkt. 370 at par. 54.

16. These measures are not effective against aerosolized transmission: “[A]irborne (or aerosol) transmission is less amenable to easily-implemented infection control measures than is transmission through large respiratory droplets, and this therefore makes polling booths and other closed spaces more dangerous than they might be otherwise.” *Id.* ¶ 36.

RESPONSE: Not disputed.

17. Many public buildings where polling places are located are generally insufficiently ventilated to prevent aerosolized transmission, Murray Tr. at 140:5-141:10

RESPONSE: Disputed. Dr. Murray never testified to those facts, and specifically disclaimed any specific knowledge about public buildings. Dkt. 440 at p. 140:5-141:10.

18. N95 masks that can block aerosols are “in short supply” and not broadly accessible to and worn by the general population. *Id.* at 129:9-130:6.

RESPONSE: Disputed. Dr. Murray in fact testified that N95 masks are available on the market and should not be purchased because they are in short supply. Dkt. 370 at p. 130:1-5.

19. The prevalence of Covid-19, vaccine development and administration, herd immunity, and pharmaceutical development are not likely to change sufficiently over the next 90 days to minimize or significantly alter the persistent risk to voters from voting in person. Dkt. 440, Murray Tr. at 163:11-173:16; dkt. 370, Murray Decl. ¶¶ 82-86.

RESPONSE: Not disputed.

Absentee ballot preparation and delivery failures

20. Madison City Clerk Ms. Witzel-Behl’s office “has not been given the resources and money necessary to meet the anticipated demand for mail-in absentee ballots in November” and that “with other departments going back to work, [her] staff now only has a few dozen League of Women Voters volunteers available to help.” *See* dkt. 382, Declaration of Maribeth Witzehl-Behl Decl. (“Witzel-Behl Decl.”) ¶ 6.

RESPONSE: Not disputed.

21. With respect to IMBs, “better tracking of ballots with anticipated delivery dates listed on myvote.wi.gov can only do so much to alleviate the burden on [her] staff. Although we anticipate that the intelligent bar codes may reduce the number of telephone inquiries we receive, this will not make it easier to process a massive volume of absentee ballot requests—

according to the WEC, an estimated 1.8 million statewide.” *Id.*; dkt. 384, Declaration of Debra Salas (“Salas Decl.”) ¶ 8 (same).

RESPONSE: Not disputed.

22. Clerks must somehow manage “the unprecedented demand for absentee ballots, in addition to their other duties including administering in-person absentee voting, preparing polling places and recruiting and training new election inspectors.” *See* dkt. 446, Wolfe Decl. ¶ 28.

RESPONSE: Not disputed.

23. For instance, in Kenosha, “[d]ue to the volume of absentee ballot requests and the Covid-19 precautions we were taking, in-person absentee voting was limited to the two weeks before the election by appointment only during a limited number of hours from 7:00 a.m. to 9:00 a.m. Monday through Friday.” *See* dkt. 384, Salas Decl. ¶ 4.

RESPONSE: Not disputed.

24. Notwithstanding all of the Madison City Clerk’s office’s and their volunteers’ efforts, Madison still “received thousands of calls and emails from voters in Madison informing us that they had never received their requested absentee ballot in the mail” and still “sent thousands of replacement ballots to such voters in the weeks before the election.” Dkt. 382, Witzel-Behl Decl. ¶ 4.

RESPONSE: Not disputed.

25. Hundreds of voters contacted Racine city clerk’s office complaining that their ballots had not arrived. Dkt. 383, Coolidge Decl. ¶ 4.

RESPONSE: Not disputed.

26. A spike in Covid-19 transmission could suddenly deter more voters from voting in person, triggering a spike in mail-in absentee ballot requests. *See* 20-cv-459, dkt. 44, Declaration of Dr. Patrick Remington (“Remington Decl.”) at 12-13.

RESPONSE: Not disputed.

27. Statewide, the volume of absentee requests received remained high in the week prior to April 7. Clerks received over 60,000 requests on the Friday before Election Day alone. Even if all these requests were mailed on Saturday, it is unknown how long those ballots took to reach voters. *See* dkt. 423, Sherman Decl., Ex. 1, Wisconsin Elections Commission, April 7, 2020 Absentee Voting Report (“Post-Election Absentee Voting Report”), at 17 (May 15, 2020), <https://elections.wi.gov/sites/elections.wi.gov/files/2020-05/April%202020%20Absentee%20Voting%20Report.pdf>.

RESPONSE: Not disputed.

28. 80,593 requests were submitted on March 31, 2020, 66,482 on April 1, 79,921 on April 2, and 62,172 on April 3, *id.*, which, by this Court’s order, was the last day to request a *mail-in* absentee ballot. *See Democratic Nat’l Comm. v. Bostelmann*, No. 20-cv-249, 2020 WL 1638374, at *22 (W.D. Wis. Apr. 2, 2020).

RESPONSE: Not disputed.

29. On June 25, 2020, the WEC Defendants submitted a status report outlining the various measures and projects aimed at improving these systems in advance of the August and November elections. *See* dkt. 227.

RESPONSE: Not disputed.

30. Data entry will be somewhat reduced for clerks as WEC staff and contractors take on some of that burden. *See* Dkt. 227, at 3-4.

RESPONSE: Not disputed.

31. The WEC's efforts to modify the state's voter information database, WisVote, "to identify which method of processing absentee ballot requests, ballot records, and absentee address labels is best in managing high volumes of requests, and [to] train exclusively on this method," *dk. 227* at 9, are ongoing.

RESPONSE: Not disputed.

32. The proposed WisVote modification "to implement additional tracing procedures and audit tools in WisVote to enable early detection of issues that could occur during the high volume of absentee ballot request processing," is designed to prevent a reprise of the disastrous computer glitch observed in Milwaukee. *Dkt. 227* at 9-10; *dk. 423*, Sherman Decl., Ex. 1, Post-Election Absentee Voting Report, at 18-20.

RESPONSE: Not disputed.

33. Defendants expressly note that intelligent mail barcodes ("IMBs") will *not* have a meaningful impact on the burden of processing and mailing so many ballots: "Use of IMBs will not change the preparation of absentee ballots in any significant way, but they will allow for more precise population of tracking information in WisVote/MyVoteWI." *Dkt. 227* at 6.

RESPONSE: Not disputed.

34. "Wisconsin's Spring Election is a predictor of what may occur in Wisconsin's November General Election, absent necessary changes . . ." *See* *dk. 484*, Stroman Decl. ¶ 8.

RESPONSE: Disputed in part. While Stroman did state that conclusion in his declaration, the ultimate conclusion of whether the necessary changes have been made, as well as whether the November elections will not be as difficult given that officials have much more time to prepare for this election, is a matter for determination for this Court.

35. The USPS has an Election Mail target of 96 percent on-time delivery. While this is a high target for some types of mail, even if this target is achieved, 4 percent of mailed ballots—which could represent at least tens of thousands of ballots in the November election—will be at high risk of untimely delivery. Stroman Decl. ¶ 12.

RESPONSE: Not disputed.

36. Wisconsin law, which permits a voter to request a ballot as late as five days before an election but requires it be returned by 8:00 p.m. on Election Day, induces voters to rely to their detriment on the false assurance that they can receive and cast a ballot by mail in such a short time-frame Stroman Decl. ¶¶ 13-15

RESPONSE: Disputed. Mr. Stroman lacks foundation for this statement. Fed. R. Evid. 702.

37. “[I]n various cities during the COVID-19 pandemic, the USPS has had significant challenges with employee availability.” Stroman Decl. ¶¶ 16-17

RESPONSE: Not disputed.

38. “As employees tested positive for COVID-19, in some locations, large numbers of employees were out on leave.” Stroman Decl. ¶¶ 16-17

RESPONSE: Not disputed.

39. “This led to a slowing of mail delivery because with limited staffing, the Postal Service began prioritizing the delivery of packages to ensure the timely delivery of life-saving pharmaceuticals and personal protective equipment Stroman Decl. ¶¶ 16-17

RESPONSE: Not disputed.

40. “With health-care experts predicting a possible second wave of COVID-19 in the fall, along with the seasonal flu, employee availability could be a significant issue.” Stroman Decl. ¶¶ 16-17.

RESPONSE: Disputed in part. Mr. Stroman's declaration makes that statement, but this opinion testimony is not based on any scientific, technical or other specialized knowledge. Fed. R. Evid. 702.

41. "[S]ince the middle of March of this year, the Postal Service has seen about a 25 percent decline in mail volume over the same period as last year, as a result of the COVID-19 pandemic. Stroman Decl. ¶¶ 16-17.

RESPONSE: Not disputed.

42. "In responding to this decline, it appears the USPS has chosen to cut costs by ending employee overtime, and requiring all trucks to leave plants on time, regardless of whether all mail is loaded onto the trucks." Stroman Decl. ¶¶ 16-17; dkt. 503, Sherman Reply Decl., Ex. 6, U.S. Postal Service Mandatory Stand-up Talk (July 10, 2020).

RESPONSE: Not disputed.

43. "This new policy will likely delay mail delivery. If the policy is still in effect in October and November, it could delay the delivery of mail-in ballots." Stroman Decl. ¶¶ 16-17; Dkt. 503, Sherman Reply Decl., Ex. 6, U.S. Postal Service Mandatory Stand-up Talk (July 10, 2020).

RESPONSE: Disputed in part. Mr. Stroman's declaration makes that statement, but this opinion testimony is not based on any scientific, technical or other specialized knowledge. Fed. R. Evid. 702.

44. "The Postal Service generally followed its procedures for processing and delivering ballots for the Wisconsin spring election and presidential preference primary of April 7, 2020." *See* dkt. 503, Sherman Reply Decl., Ex. 1 [OIG Report].

RESPONSE: Not disputed.

45. F ballots processed in the Milwaukee area, [OIG] found issues related to the timeliness of ballots being mailed to voters, correcting misdelivery of ballots, an inability to track ballots, and inconsistent postmarking of ballots. OIG Report at 3-4.

RESPONSE: Not disputed.

46. Nationally, [OIG] noted potential concerns with the deadlines set by the states to request absentee ballots, ballots postmarks, ballots mailed without mail tracking technology, and the ratio of Political and Election Mail coordinators to election offices in certain locations. OIG Report at 3-4

RESPONSE: Not disputed.

47. “Following the April 7 Election, WEC staff sent a letter to local, state, regional and national USPS representatives regarding ballots not received and outgoing ballots returned to municipalities, to which there has not been a response.” *See* dkt. 446, Wolfe Decl. ¶ 28.

RESPONSE: Not disputed.

48. The seven lowest-performing mail processing centers examined in the wake of the 2018 election cycle, including facilities in Florida, Ohio and Wisconsin, delivered an average of 84.2% of election mail on time. *See* Dkt. 503, Sherman Reply Decl., Ex. 8, U.S. Postal Service Office of the Inspector General, *Service Performance of Election and Political Mail During the 2018 Midterm and Special Elections*, Report Number 19XG010NO000-R20 (November 4, 2019), <https://www.uspsoidg.gov/sites/default/files/document-library-files/2019/19XG010NO000.pdf>.

RESPONSE: Not disputed.

49. Last year, the USPS delivered only 80.88 percent of its three-to-five-day single-piece first-class mailings on time, missing its goal by 14.37 percentage points. Dkt. 503, Sherman Reply

Decl., Ex. 9, Postal Regulatory Comm'n, *Analysis of the Postal Service's FY 2019 Annual Performance Report and FY 2020 Performance Plan* (Jun. 1, 2020), <https://www.prc.gov/docs/113/113321/FY%202019%20Report%20FY%202020%20Plan.pdf>.

RESPONSE: Not disputed.

50. The Postal Service cannot guarantee a specific delivery date or alter standards to comport with individual state election laws. Dkt. 503, Sherman Reply Decl., Ex. 10, *U.S. Postal Service Provides Recommendations for Successful 2020 Election Mail Season*, United States Postal Service (May 29, 2020), <https://about.usps.com/newsroom/national-releases/2020/0529-usps-provides-recommendations-for-successful-2020-election-mail-season.htm>.

RESPONSE: Not disputed.

51. In Pennsylvania, the day before the June 2 primary election, Delaware County announced that, “As of June 1, the County has sent out approximately 80,000 absentee or mail-in ballots. The County has made arrangements with the United State Postal Service to send 6,000 ballots today. Those applications will be delivered to homes by tomorrow. There are approximately 400 ballots that will not be mailed due to the timing and staffing constraints. Residents who do not receive their mail in ballot can vote provisionally at their polling location.” Dkt. 503, Sherman Reply Decl., Ex. 11, June 1 Update on the Primary Election in Delaware County, Delaware County, Pa. (June 1, 2020), https://www.delcopa.gov/publicrelations/releases/2020/primaryupdate_june1.html.

RESPONSE: Not disputed.

52. In Indiana, the Marion County Clerk informed the Secretary of State that they had “experienced significant delays with the U.S. Postal Service in mailing ballots” and there had “been instances

in which a ballot [was] received by the voter two weeks after” it was mailed. Dkt. 503, Sherman Reply Decl., Ex. 12, Letter from Marion County Clerk Myla Eldridge to Indiana Secretary of State Connie Lawson, dated May 28, 2020, <https://fox59.com/wp-content/uploads/sites/21/2020/05/5.28.20.-Clerk-Eldridge-Second-Letter-to-Secretary-Lawson.pdf>.

RESPONSE: Not disputed.

53. “There was a delay in the post office delivery of many ballots to Frederick County voters from the Maryland State Board of Elections.” Dkt. 503, Sherman Reply Decl., Ex. 13, *Frederick County Ballots Mailed for June 2, 2020 Presidential Primary Election Ballot*, Frederick County Board of Elections (May 13, 2020), <https://www.frederickcountymd.gov/DocumentCenter/View/326089/Ballot-Mailing---Wrong-Date-on-Ballot---5-13-2020>.

RESPONSE: Not disputed.

54. “In Ohio, more than 37,000 absentee ballots were mailed out on the Saturday before the Tuesday primary, a time frame that the USPS reported a ‘high likelihood’ that ballots would not arrive on time.” Dkt. 503, Sherman Reply Decl., Ex. 14, Jennifer Friedmann, Mohit Mookim, Michelle Ly, Cristopher Maximos, and VinhHuy Le, “The 2020 Ohio Primary.” *Healthyelections.org* (June 16, 2020). [https://healthyelections.org/sites/default/files/2020-07/Ohio%20Primary%20Memo\(2\).pdf](https://healthyelections.org/sites/default/files/2020-07/Ohio%20Primary%20Memo(2).pdf).

RESPONSE: Not disputed.

55. “[M]ore than 29,000 residents of New York City who requested a ballot [had] yet to receive a ballot or envelope from the city’s Board of Elections with three days left before primary

elections on Tuesday.” Dkt. 503, Sherman Reply Decl., Ex. 15, Nick Corasaniti & Stephanie Saul, *Vote-by-Mail Ballot Requests Overwhelm New York City Elections Agency*, N.Y. Times (June 19, 2020), <https://www.nytimes.com/2020/06/19/us/politics/nyc-vote-by-mail.html>.

RESPONSE: Not disputed.

56. WEC enforces Wisconsin election laws that govern how municipal clerks process and deliver absentee ballots and creates the infrastructure in the MyVote database to do so; the latter take their direction, training, and supervision on Wisconsin laws and policies from the former. *See, e.g.*, dkt. 444 at 16 (“The WEC is required to conduct regular information and training meetings for county and municipal clerks, as well as other election officials. Wis. Stat. § 5.05 (7).”); *id.* at 8 (describing WEC’s directives to and communications with municipal clerks).

RESPONSE: Disputed in part. The WEC administers and enforces Wisconsin election law, except campaign finance law. Wis. Stat. § 5.05 (1). The WEC’s statutory duties include providing training to clerks. Wis. Stat. § 5.05 (7). The WEC does not have general authority to supervise or direct municipal clerks, who have “charge and supervision” of the elections and registration within each municipality. Wis. Stat. § 7.15 (1).

57. WEC manages, upgrades, and trains clerks on how to use WisVote and MyVote, the statewide voter information database and its public interface, respectively, *see, e.g., id.* at 6-7 (describing WEC’s upgrades to WisVote and MyVote), and if Plaintiffs’ requested relief were granted, it is those systems that would need to be modified.

RESPONSE: Not disputed.

58. WEC is issuing new guidance, developing new policies, and updating WisVote and MyVote continuously, trying to prepare for the August and November elections. *See* dkt. 446, Wolfe Decl. ¶ 23.

RESPONSE: Not disputed.

59. Additionally, in the run-up to the April 7 election, WEC made changes to WisVote and MyVote up to Election Day. *See* dkt. 446, Wolfe Decl. ¶ 23.

RESPONSE: Not disputed.

Feasibility of Requested Relief

60. Current and former clerks from Madison, Racine, and Kenosha have all endorsed extending online access and downloading through the MyVote portal to regular absentee voters. Dkt. 382, Declaration of Maribeth Witzel-Behl (“Witzel-Behl Decl.”) ¶ 15; Dkt. 383, Declaration of Tara Coolidge (“Coolidge Decl.”) ¶¶ 8-12; Dkt. 384, Declaration of Debra Salas (“Salas Decl.”) ¶¶ 11-13, 17-18.

RESPONSE: Not disputed.

61. As opposed to mail delivery—or even email delivery—of a replacement mail-in ballot, a back-up option (such as online access) would only require the municipal clerk’s staff to cancel the prior request for a mail-delivered ballot. Dkt. 423, Sherman Decl., Ex. 2, Wolfe Tr. at 143:22-144:17; *see also* Dkt. 382, Witzel-Behl Decl. ¶ 12; Dkt. 383, Coolidge Decl. ¶ 11; Dkt. 384, Salas Decl. ¶ 14; dkt. 423, Sherman Decl., Ex. 2, Wolfe Tr. at 137:5-12 (noting that municipal clerks “do nothing” and “it’s all a voter initiated process”); dkt. 489, Kehoe Tr. at 23:8-16 (same).

RESPONSE: Not disputed.

62. A voter’s photo ID would have been previously verified by the clerk’s office with the initial request for a ballot by mail delivery. dkt. 489, Kehoe Tr. at 7:18-9:6; *see also* dkt. 384, Salas Decl. ¶ 14.

RESPONSE: Not disputed.

63. The code or programming logic already exists for the full range of absentee ballot delivery methods that military and overseas voters enjoy, including the MyVote download option, dkt. 489, Kehoe Tr. at 20:7-21:1.

RESPONSE: Disputed in part; while the witness did make the statement, the proposed finding suggests that it would be simple. The witness also noted repeated difficulties or problems with such an action: see Dkt. 489 at p. 22 (voter cancellation code would “probably need updating”), at p. 53 (discussing need for additional technology to implement larger-scale procedures), at p. 60 (“I also wouldn’t want to minimize the work that would have to be done to make it happen.”)

64. The code or programming logic already exists for the functionality of the online access and downloading of mail-in absentee ballots through the MyVote portal, at least for military and overseas voters, dkt. 489, Kehoe Tr. at 23:17-22.

RESPONSE: Disputed in part; while the witness did make the statement, the proposed finding suggests that it would be simple. The witness also noted repeated difficulties or problems with such an action: see Dkt. 489 at p. 22 (voter cancellation code would “probably need updating”), at p. 53 (discussing need for additional technology to implement larger-scale procedures), at p. 60 (“I also wouldn’t want to minimize the work that would have to be done to make it happen.”)

65. The code or programming logic already exists for determining when photo ID is required or already on file for regular absentee voters, dkt. 489, Kehoe Tr. at 18:20-19:2.

RESPONSE: Disputed in part; while the witness did make the statement, the proposed finding suggests that it would be simple. The witness also noted repeated difficulties or problems with such an action: see Dkt. 489 at p. 22 (voter cancellation code would “probably

need updating”), at p. 53 (discussing need for additional technology to implement larger-scale procedures), at p. 60 (“I also wouldn’t want to minimize the work that would have to be done to make it happen.”)

66. The code or programming logic already exists for both voter-initiated and clerk-initiated cancellation of prior absentee ballot requests, so the voter can request a replacement with a different delivery method, dkt. 489, Kehoe Tr. at 43:1-4, 50:6-12.

RESPONSE: Disputed in part; while the witness did make the statement, the proposed finding suggests that it would be simple. The witness also noted repeated difficulties or problems with such an action: see Dkt. 489 at p. 22 (voter cancellation code would “probably need updating”), at p. 53 (discussing need for additional technology to implement larger-scale procedures), at p. 60 (“I also wouldn’t want to minimize the work that would have to be done to make it happen.”)

67. For this proposed upgrade extending the MyVote portal ballot download’s functionality, “the technical processes are not terribly elaborate” and “[f]rom a technical and development standpoint, [it] wouldn’t be terribly difficult.” Dkt. 489, Kehoe Tr. at 49:22-50:1; 53:4-6.

RESPONSE: Disputed in part; while the witness did make the statement, the proposed finding suggests that it would be simple. The witness also noted repeated difficulties or problems with such an action: see Dkt. 489 at p. 22 (voter cancellation code would “probably need updating”), at p. 53 (discussing need for additional technology to implement larger-scale procedures), at p. 60 (“I also wouldn’t want to minimize the work that would have to be done to make it happen.”)

68. In terms of WEC’s bandwidth, the IT staff has already completed complex upgrades to WisVote “over a matter of weeks.” See dkt. 489, Kehoe Tr. at 39:3-40:11; *id.* at 40:12-42:22;

id. at 44:14-18. Even subsequent “testing to include load testing,” *id.* at 68:13, which simulates user access and tests the traffic WisVote and MyVote can withstand, *id.* at 64:2-67:8, would only take “a week,” *id.* at 67:9-17. The WEC’s IT staff could accomplish this project in an estimated “couple hundred hours of work,” which would be divided amongst 3 to 4 staff members. *Id.* at 71:18-21.

RESPONSE: Disputed in part. While the witness agreed that the process took “a matter of weeks,” the witness also testified that to accomplish that single change, a Microsoft engineer had to be on call solely for WEC work for at least 2 days (Dkt. 489 at p. 98); the witness testified that while “load testing” only takes a week, that testing is the final part of the process, and that the whole process of such modifications is longer and more difficult, including having to repeatedly test the code, then write the code, then train “several thousand” people how to use the system. Dkt. 489 at 68-69. The witness also testified that typically no state computer systems are allowed to be changed after September to avoid accidental problems interfering with the election, so the work would have to be done immediately. The witness also said that the IT staff could accomplish the work in a “couple hundred” hours (which would be 3-5 weeks of worker time) only if they worked exclusively on that work. Dkt. 489 at 70-72.

69. Mr. Kehoe’s bottom-line conclusion on Plaintiffs’ proposed extension of the MyVote access and downloading function to regular voters seeking a replacement absentee ballot was: “But is it possible, absolutely, it is possible.” Dkt. 489, Kehoe Tr. at 72:7-8.

RESPONSE: Disputed in part. While the witness agreed that the process took “a matter of weeks,” the witness also testified that to accomplish that single change, a Microsoft engineer had to be on call solely for WEC work for at least 2 days (Dkt. 489 at p. 98); the witness

testified that while “load testing” only takes a week, that testing is the final part of the process, and that the whole process of such modifications is longer and more difficult, including having to repeatedly test the code, then write the code, then train “several thousand” people how to use the system. Dkt. 489 at 68-69. The witness also testified that typically no state computer systems are allowed to be changed after September to avoid accidental problems interfering with the election, so the work would have to be done immediately. The witness also said that the IT staff could accomplish the work in a “couple hundred” hours. Dkt. 489 at 70-72.

70. Municipal clerks from three of Wisconsin’s largest municipalities, Kenosha, Madison, and Racine, have all endorsed the proposed relief, citing the *reduction* in their and their staffs’ administrative burdens in processing *replacement* ballot requests in the final weeks of the election. Dkt. 382, Witzel-Behl Decl. ¶ 10; dkt. 383, Coolidge Decl. ¶ 8; dkt. 384, Salas Decl. ¶ 12. They acknowledge the increased burden of duplicating or re-making absentee ballots on the back end during canvassing, but each believes that this is far outweighed by the benefits to voters and the reduced administrative burden on the front end. Dkt. 382, Witzel-Behl Decl. ¶ 14; Dkt. 383, Coolidge Decl. ¶ 10, Dkt. 384, Salas Decl. ¶ 16.

RESPONSE: Not disputed.

71. Racine City Clerk Tara Coolidge urges a cut-off before Election Day, so that her office has “advance notice of how many downloaded absentee ballots have been requested and are to be expected for each polling location,” in which case she “do[es] not foresee any difficulties in staffing polling places to adequately process such ballots once they are cast.” Dkt. 383, Coolidge Decl. ¶ 9.

RESPONSE: Not disputed.

72. Fail-safe measures will alleviate the strain on early voting and Election Day polling sites, which benefits election administrators and voters alike. Dkt. 382, Witzel-Behl Decl. ¶ 14; dkt. 383, Coolidge Decl. ¶ 10; dkt. 384, Salas Decl. ¶ 17.

RESPONSE: Not disputed that the declarants made these statements.

73. WEC Training and Technology Director Mr. Kehoe has testified that to authenticate regular absentee voters, it is “certainly a possibility” that they could use a second round of photo ID verification. Dkt. 489, Kehoe Tr. at 34:20-35:8. He also noted that he did not have concerns “about the concept” of extending online access to mail-in ballots to regular voters. *Id.* at 74:1-2.

RESPONSE: Disputed. The witness’ testified that this answer - that it was “certainly a possibility” - was an answer he gave “off the top of [his] head” because WEC had never actually analyzed those processes, as they are not permitted by law. Dkt. 489 at p. 35:8-25. While the witness agreed he did not have a concern about the “concept” the proposed finding omits relevant testimony that the witness did express concern about the timing of the proposal. Dkt. 489 at p. 74:1-2.

74. Because the pool of voters who will be eligible to receive their ballots through MyVote will be limited, said pool of voters will have already had their identities verified by their clerk, the window of time in which voters can access MyVote to request a replacement ballot is short, because fraud is known to be practically non-existent, and because Wisconsin has significant defense-in-depth measures to prevent fraud and other attacks, extending the usage of the MyVote portal to domestic civilian voters who do not receive their mail-in ballot in time to cast it in the November election does not pose a risk to the integrity of that election. *See* dkt. 371, Bernhard Decl. ¶ 25.

RESPONSE: Disputed in part. Not disputed that the declarant made this statement. WEC staff has indicated that such a portal may raise security concerns. *See e.g.* Dkt. 489 at p. 54:11-55:11; Dkt. 247, Wolfe Tr. At 155:22-156:15; 157:10-158:10.

75. All absentee ballot certificate envelopes bear a unique identifying number and bar code, and clerks will cancel the previously-requested absentee ballot, so there is a safeguard that prevents the voter from casting more than one ballot. Dkt. 423, Sherman Decl., Ex. 2, Wolfe Tr. at 149:15-151:7; 169:20-170:6; dkt. 384, Salas Decl. ¶¶ 11, 13.

RESPONSE: Not disputed.

Challenges with previous ballot delivery

76. Plaintiffs cannot necessarily alleviate burdens by requesting their ballot immediately. *See* dkt. 454 at 29-30, 63.

RESPONSE: Disputed. The proposed finding cites to a brief submitted by a party rather than factual material and at the cited portion does not support this finding.

77. Requesting an absentee ballot by mail delivery weeks in advance of an election does not guarantee that the voter will receive it timely or ever. *See* dkt. 396, Braun Decl. ¶ 4 (requested mail-in ballot “well in advance” of the election); dkt. 387, Wood Decl. ¶ 4 (requested ballot on March 16); dkt. 389, Krejci Decl. ¶¶ 2,6 (requested ballot “within days of entering quarantine” in mid-March); dkt. 390, Harrell Decl. ¶ 5 (requested ballot in mid-March); dkt. 388, Ackerbauer Decl. ¶ 6 (same); dkt. 375, Bahr Olsan Decl. ¶ 6 (same); dkt. 391, Newby Decl. ¶ 6 (same); dkt. 376, Sheila Jozwik Decl. ¶ 4 (requested ballot on March 17); dkt. 377, Gregg Jozwik Decl. ¶ 4 (same); dkt. 374, Gary Fergot Decl. ¶ 5 (requested ballot on two weeks before election); dkt. 373, Diane Fergot Decl. ¶ 5 (same); dkt. 392,

Lohrenz Decl. ¶ 5 (requested ballot on March 22); dkt. 394, Thompson Decl. ¶ 7 (requested ballot “at least three days before” the deadline).

RESPONSE: Disputed in part. Some of the quoted declarations do not specifically state that the voter requested a ballot “weeks” in advance. See Dkt. 396 at par. 4, Dkt. 394, par. 7.

78. Some voters, despite their timely request, received their ballots too late to cast and deliver or postmark them by April 7th, dkt. 388, Ackerbauer Decl. ¶ 11, dkt. 394, Thompson Decl. ¶¶ 5, 7, while others never received them at all, even weeks or months later. Dkt. 372, Kohlbeck Decl. ¶ 9; dkt. 373, Diane Fergot Decl. ¶ 7; dkt. 374, Gary Fergot Decl. ¶ 7; dkt. 375, Bahr Olsan Decl. ¶ 6; dkt. 376, Sheila Jozwik Decl. ¶ 7; dkt. 377, Gregg Jozwik Decl. ¶ 7; dkt. 390, Harrell Decl. ¶ 5; dkt. 389, Krejci Decl. ¶ 7; dkt. 392, Lohrenz Decl. ¶ 5; dkt. 391, Newby Decl. ¶ 5; dkt. 387, Wood Decl. ¶ 6.

RESPONSE: Disputed in part. Some of the quoted declarations do not specifically state that the voter requested a ballot “weeks” in advance. See Dkt. 396 at par. 4, Dkt. 394, par. 7.

Impact on disabled voters

79. A disabled voter must expose themselves to a virus twelve times more deadly to those with underlying conditions in order to vote in person. Erin K. Stokes et al., *Coronavirus Disease 2019 Case Surveillance — United States, January 22–May 30, 2020*, Ctrs. for Disease Control and Prevention (June 19, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6924e2.htm>.

RESPONSE: Not disputed.

80. It is difficult to maintain safety during curbside and in-person voting. See Keresty Decl. ¶¶ 3, 7 (noting that poll workers were unable to maintain 6 feet of distance from voters and polling places were too crowded to allow for proper social distancing).

RESPONSE: Disputed in part. The declaration cited is specific to a single polling place. *See* Keresty Decl. ¶ 1.

81. In-person absentee voting requires voters to expose themselves to other potential carriers of Covid-19. *See* Keresty Decl. ¶¶ 3, 7.

RESPONSE: Disputed in part. The declaration cited is specific to a single polling place. *See* Keresty Decl. ¶ 1.

82. While the WEC has expanded the definition of “hospitalized” elector to include those quarantining due to Covid-19, guidance issued to clerks is limited to “people who were exposed to a contagious disease,” leaving out people who are isolating to avoid exposure in the first instance. Meagan Wolfe, *Hospitalized Electors and Public Health Guidance*, Wis. Elec. Comm’n (March 29, 2020), <https://elections.wi.gov/sites/elections.wi.gov/files/2020-03/Hospitalized%20Electors.pdf>.

RESPONSE: Disputed in part. At its March meeting, the WEC did vote “to expand the definition of hospitalized electors to include those quarantined in their home due to COVID-19.” Other guidance issued the same day is not specific to voters who have been exposed to a contagious disease. Meagan Wolfe, *Absentee Witness Signature Requirement Guidance*, Wis. Elec. Comm’n (March 29, 2020), https://elections.wi.gov/sites/elections.wi.gov/files/2020-03/Absentee%20Witness%20Guidance_0.pdf

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