

No.

IN THE SUPREME COURT OF THE UNITED STATES

In Re:

WILLIAM FEEHAN,

Petitioner,

v.

WISCONSIN ELECTIONS COMMISSION, COMMISSIONER ANN S. JACOBS,
MARC L. THOMSEN, COMMISSIONER MARGE BOSTELMAN, JULIE M.
GLANCEY, COMMISSIONER DEAN KNUDSON, ROBERT F. SPINDELL, JR.
and GOVERNOR TONY EVERS,

Respondents.

On Petition For Extraordinary Writ of Mandamus From The United
States District Court For The Eastern District of Wisconsin

**EMERGENCY PETITION UNDER RULE 20 FOR
EXTRAORDINARY WRIT OF MANDAMUS**

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QUESTIONS PRESENTED

A. Whether presidential electors have standing to challenge the outcome of a presidential election for fraud and illegality that cause the defeat of their candidate?

B. Whether federal courts have and should exercise jurisdiction under 42 U.S.C. § 1983 over claims by presidential electors that the presidential election was stolen from them by fraud and illegality under color law in violation of their constitutional rights under the Elections and Electors, Equal Protection and Due Process Clauses of the U.S. Constitution?

C. Whether a claim by presidential electors to de-certify the results of a presidential election and enjoin voting in the electoral college by the rival slate of electors is barred by laches when it is brought within the state law statute of limitations for post-certification election contests, and before the post recount re-certification?

D. Whether the remedial powers of a federal court under 42 U.S.C. §§ 1983 and 1988 include invalidation of an unconstitutionally conducted election, and an injunction against presidential electors appointed in such an election from voting in the electoral college?

PARTIES TO THE PROCEEDINGS

All parties appear in the caption of the case on the cover page.

Petitioner William Feehan is a resident of La Crosse County Wisconsin, and a registered Wisconsin voter who voted President Donald J. Trump in the 2020 General Election. ECF No. 72-1. Mr. Feehan is also a nominee of the Republican Party to be a Presidential Elector on behalf of the State of Wisconsin.

Respondent Tony Evers (Governor of Wisconsin) is named herein in his official capacity as Governor of the State of Wisconsin.

Respondent Wisconsin Elections Commission (“WEC”) was created in 2015 by the Wisconsin Legislature as an independent agency under the Executive Branch to administer Wisconsin’s election laws, Wis. Stat. § 15.61, and to adopt administrative rules pursuant Chapter 227 of the Wisconsin Statutes.

Respondents Ann S. Jacobs, Mark L. Thomsen, Marge Bostelman, Julie M. Glancey, Dean Knudson, and Robert F. Spindell, Jr. are members of WEC and each is named in his or her official capacity as a member of WEC.

Respondent Governor Evers and Respondent WEC and its Respondent members, personally and through the conduct of the WEC’s employees, officers, agents, and servants, acted under color of state law at all times relevant to this action and are sued for emergency declaratory and injunctive relief in their official capacities.

CORPORATE DISCLOSURE STATEMENT

The Plaintiff is an individual and all defendants are government officials sued in their official capacities. There are no corporate interests to disclose.

LIST OF DIRECTLY RELATED PROCEEDINGS

Feehan v. Wisconsin Election Commission, et al., United States District Court For The Eastern District of Wisconsin Case No. 2:20-cv-01771 -PP, The Honorable Pamela Pepper, Presiding. Final Judgment entered December 9, 2020.

Feehan v. Wisconsin Election Commission, et al., United States Circuit Court of Appeals for the Seventh Circuit, Case No. 20-3396. This appeal was dismissed without prejudice in favor of the next listed proceeding, an appeal from the judgment in the District Court in this case.

Feehan v. Wisconsin Election Commission, et al., United States Circuit Court of Appeals for the Seventh Circuit, Case No. 20-3448. This case remains pending at the time of this filing.

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**EMERGENCY PETITION UNDER RULE 20 FOR
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OPINION BELOW

The Order appealed from is found at p. 2112 of the Appendix.

INTRODUCTION

Petitioner respectfully requests that this Court grant (1) a writ of mandamus to Honorable Pamela Pepper of the United States District Court, Eastern District of Wisconsin (“District Court”) to vacate the District Court’s December 9, 2020 Order Granting Defendant’s Motion to Dismiss, Denying as Moot Plaintiff’s Amended Motion for Injunctive Relief and Dismissing Case” in Docket No. 1:20-cv-1771-pp (“December 9 Order”) dismissing Petitioner’s December 3, 2020 amended complaint (“Amended Complaint”) in that proceeding, ECF No. 9; and (2) directing the District Court to grant Petitioner’s December 6, 2020 “Emergency Motion for Declaratory, Emergency, and Permanent Injunctive Relief,” ECF No. 42 (“TRO Motion”). The District Court issued a detailed, yet nevertheless erroneous, order dismissing Petitioner’s complaint supported by a dozen of fact and expert witnesses.

Time is short, and Petitioner will get straight to the point: the extraordinary circumstances present in this and related cases require this Court to issue an extraordinary writ granting the relief requested herein and in the Amended Complaint and TRO Motion. Petitioner’s Amended Complaint to the District Court is part of a larger effort to expose and thwart an unprecedented multi-state conspiracy to steal the 2020 General Election, at a minimum in the States of Arizona, Georgia, Michigan, Pennsylvania, and Wisconsin, and potentially others.

Petitioner and others like him seek to expose the massive, coordinated inter-state election fraud that occurred in the 2020 General Election have been almost uniformly dismissed as “conspiracy theorists” or worse by Democrat politicians and activists, and attacked or censored by their allies in the mainstream media and

social media platforms. But nearly every day new evidence comes to light, new eyewitnesses and whistleblowers come forward, and expert statisticians confirm Petitioner's core allegation: **the 2020 General Election was tainted by constitutional election fraud on a scale that has never been seen before, where hundreds of thousands if not millions of illegal, fraudulent, ineligible or purely fictitious ballots were cast for Biden (along with hundreds of thousands of Trump votes that were intentionally destroyed, lost or switched to Biden) and this massive fraud changed the outcome from a Biden loss to Biden "win."**

Time is not on the fraudster's side, as there is a dawning awareness among the American people and their representatives that they have been cheated.

Petitioner's Complaint – supported by over a dozen fact and expert witnesses – described how Wisconsin election officials, including Respondents, knowingly enabled, permitted, facilitated or even collaborated with third parties in practices resulting in hundreds of thousands of illegal, ineligible or fictitious votes being cast in the State of Wisconsin. The rampant lawlessness witnessed in Wisconsin was part of a larger pattern of illegal conduct seen in several other states in addition to Wisconsin, in particular, Arizona, Georgia, Michigan and Pennsylvania. Wisconsin State officials – administrative, executive and judicial – adopted new rules or "guidance" that circumvented, contravened or nullified the election laws enacted by the Wisconsin Legislature to protect election integrity and prevent voter fraud in advance of the 2020 General Election, using COVID-19 and public safety as a pretext.

Petitioner's Complaint describes how Wisconsin and other states have emerged at the forefront of 21st Century election fraud, combining old-fashioned 19th Century "ballot-stuffing," which has been amplified and rendered virtually invisible by computer software created and run by domestic and foreign actors for that very purpose.

Respondents' complicity in constitutional election fraud is compounded by their abuse of their offices to prevent any investigation or judicial inquiry into their misconduct and run out the clock in the hope that they can prevent the public from ever discovering the fraud perpetrated upon them by Respondents and their counterparts in the other Defendant States.

In the District Court, Respondents and the District Court dismissed Petitioner's requested relief as unprecedented and hinted that granting it could undermine faith in our election system. But, to use a phrase favored by the District Court in a similar complaint in Michigan, that "ship has sailed." King v. Whitmer, No. 20-cv-13134 at *13 (E.D. Mich. Dec. 7, 2020).

The brazen fraud committed in the 2020 General Election **has already undermined** faith in our democratic and republican form of government: according to a Rasmussen poll, 75% of Republicans and **30% of Democrats** believe that "fraud was likely" in the 2020 General Election.¹

The entire nation was watching Election Night when Trump led by hundreds of thousands of votes in five key swing states – Wisconsin, as well as Arizona, Georgia, Michigan, and Pennsylvania – then, nearly simultaneously, counting shut down in key Democrat-run cities in these five States for hours. (R. 706 ¶ 80). When counting resumed, Biden made up the difference and had taken a narrow lead in Wisconsin and Michigan (and dramatically closed the gap in the others). Voters who went to bed with Trump having a nearly certain victory, awoke to see Biden somehow having overcome what should have been an insurmountable lead. Experts for Petitioner have shown this to be a statistical impossibility, and others can show that an algorithm embedded in the voting machines was used to determine a winner – an algorithm which geographically changed its parameters to include blue votes and ostracize red ones from the tally. (R.702 ¶ 67).

¹ https://pjmedia.com/news-and-politics/matt-margolis/2020/11/19/whoa-nearly-a-third-of-democrats-believe-the-election-was-stolen-from-trump-n1160882/amp?_twitter_impression=true Last visited December 10, 2020.

Now tens of millions have seen how this extremely improbable turnaround was achieved in one of these five States, namely, Georgia where election observers were evacuated from the State Farm Center in Fulton County on a pretext – what has now been shown to be a false claim that a water pipe had burst – followed by election workers returning to the counting room, then pulling out several pre-positioned suitcases full of fresh ballots from under tables to stuff into ballot machines when no one (except security cameras) were watching. While perhaps not as dramatic and viral as the Georgia video, in Wisconsin there are dozens of eyewitnesses and whistleblowers who have testified to illegal conduct by election workers, postal workers, Democratic party officials, Dominion employees or contractors, as well as other conduct indicative fraud (destroyed ballots, dumped/destroyed voting machines, USB sticks discovered with thousands of missing votes, vote switching uncovered only after manual recounts, etc., etc.). This is 2020, and what is dismissed as a “conspiracy theory” turns out to be a conspiracy in fact.

The multifaceted schemes and artifices implemented by Respondents and their collaborators to defraud resulted in the unlawful counting, or manufacturing, of hundreds of thousands of illegal, ineligible, duplicate or purely fictitious ballots in the State of Wisconsin. The same pattern of election fraud and voter fraud writ large occurred in all the swing states with only minor variations in Michigan, Pennsylvania, Arizona and Georgia. William M. Briggs, Ph.D. “An Analysis Regarding Absentee Ballots Across Several States” (Nov. 23, 2020) (R. 488-489). (“Dr. Briggs Report”). In particular, Petitioner presented un rebutted evidence that the fraud began with Dominion Voting Systems (“Dominion”) and was implemented with knowledge and connivance of Respondents and other Wisconsin state and local officials that enabled, facilitated and permitted election fraud and counting of illegal and fictitious ballots.

Petitioner presented an enormous amount of evidence in the forms of sworn statements and expert reports that was dismissed in its entirety, without examination or consideration, by the district court, which accepted at face value

Respondents' denials. One affiant heard Dominion's own senior executive and inventor, Dr. Eric Coomer declare, in an admission against interest, "Don't worry about the election. Trump is not going to win. I made ... sure of that." (R. 676 ¶ 16)).

The trial court failed to even examine let alone comment on the Petitioner's expert witnesses, who have presented *unrebutted* testimony and analyses and have separately shown that illegal ballots must be disregarded well in excess of Biden's 20,565 vote margin in Wisconsin. The multiple analysis of statisticians and data experts provide the following conclusions for the reports cited above, respectively:

- returned ballots that were deemed unreturned by the state: 15,374 (R.488 ¶2)
- votes by persons that moved out of state or subsequently registered to vote in another state for the 2020 election: 6,848 (R. 513 ¶4)
- 96,437 persons that claimed indefinitely confined status when they were not, avoiding the use of voter identification. (R. 518)
- excess votes arising from the statistically significant outperformance of Dominion machines on behalf of Joe Biden: 181,440. (R. 524 ¶2)

In conclusion, the reports cited above show a combined amount of illegal or lost votes that amount to 300,099 or nearly 15 times the 20,608 vote margin by which candidate Biden allegedly defeated President Trump in the state of Wisconsin. At least 181,440 of these votes were recorded expressly in favor of Vice President Biden. (R. 524 ¶2). A number of separate mechanisms were employed, each of which is sufficient to change the outcome of the election and declare President Trump the rightful winner of Wisconsin. Each of these experts' testimony provides evidence that by itself is grounds to set aside the 2020 General Election and grant the declaratory and injunctive relief Petitioner seeks.

In addition to the Dominion computer fraud, Petitioner identified several additional categories of "traditional" voting fraud and Wisconsin Election Code violations, supplemented by healthy doses of harassment, intimidation,

discrimination, abuse and even physical removal of Republican poll challengers to eliminate any semblance of transparency, objectivity or fairness from the vote counting process.

Petitioner acknowledges that **there is no decision that this Court can render that will persuade a country divided 50/50**. Only a full, fair and open inquiry that allows the truth to be discovered can do so. Conversely, using the authority of this Court to shut down any inquiry into the unconstitutional and illegal conduct that occurred in the 2020 General Election would be a slap in the face of the personal experience and video evidence seen by tens or even hundreds of millions of Americans.

This Court does not have the luxury of avoiding this conflict. Instead, this Court should seek to be seen as a fair and neutral arbiter. That interest is best served by permitting further discovery – not for the sake of this Court’s decision – but for the sake of the American people to know the truth and use that information to persuade their state legislatures and their appointed electors, who the U.S. Constitution has designated as the ultimate decision makers.

JURISDICTION

The district court had subject matter jurisdiction under 28 U.S.C. § 1331 which provides, “The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” The district court also has subject matter jurisdiction under 28 U.S.C. § 1343 because this action involves a federal election for President of the United States. “A significant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question.” Bush v. Gore, 531 U.S. 98, 113 (2000) (Rehnquist, C.J., concurring); Smiley v. Holm, 285 U.S. 355, 365(1932).

The jurisdiction of the district court to grant declaratory relief is conferred by 28 U.S.C. §§ 2201 and 2202 and by Rule 57, Fed. R. Civ. P. The district court has jurisdiction over the related Arizona state-law claims under 28 U.S.C. § 1367.

This Court has jurisdiction under 28 USC § 1254(1) because the case has been appealed to the Court of Appeals for the Seventh Circuit. This Court should

grant certiorari before judgment in the Court of Appeals pursuant to Supreme Court Rule 11 because “the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court.” The United States Constitution reserves for state legislatures the power to set the time, place, and manner of holding elections for Congress and the President, state executive officers have no authority to unilaterally exercise that power, much less flout existing legislation. Moreover, the Petitioner is a candidate for the office of Presidential Electors who has a direct and personal stake in the outcome of the election and is therefore entitled to challenge the manner in which the election was conducted and the votes tabulated under the authority of this Court’s decision in Bush v. Gore, 531 U.S. 98 (2000).

Additionally, this Court has jurisdiction pursuant to the All Writs Act, 28 U.S.C. § 1651(a) and United States Supreme Court Rule 20, Procedure on a Petition for an Extraordinary Writ. Petitioners will suffer irreparable harm if he does not obtain immediate relief. The Electors voted on December 14, 2020, but a contingent slate of electors was appointed for Wisconsin and cast their votes for President Trump. The Congress will decide on January 6, 2021 which slate of Wisconsin electors to count under the Electoral Count Act, 3 U.S.C § 15. The issues raised are weighty as they call into question who is the legitimate winner. These exceptional circumstances warrant the exercise of the Court’s discretionary powers to issue the writ of mandamus to the District Court directing it to grant the injunctive relief sought by the Petitioner.

A submission directly to this Court seeking an extraordinary writ of mandamus is unusual, but it has its foundation. While such relief is rare, this Court will grant it “where a question of public importance is involved, or where the question is of such a nature that it is peculiarly appropriate that such action by this Court should be taken.” Ex Parte Peru, 318 U.S. 578, 585 (1943). *See also* Cheney v. U.S. Dist. Court, 542 U.S. 367, 380–81 (2004).

Here, Petitioners and the public will suffer irreparable harm if this Court does not act without delay. Once the electoral votes are counted on January 6, 2021,

subsequent relief would be pointless. In *Federal Trade Commission v. Dean Foods Co.*, 384 U.S. 597 (1966), the Court affirmed the Seventh Circuit, finding authority under 28 U.S.C. § 1651(a) to enjoin merger violating Clayton Act, where the statute itself was silent on whether injunctive relief was available regarding an application by the FTC. “These decisions furnish ample precedent to support jurisdiction of the Court of Appeals to issue a preliminary injunction preventing the consummation of this agreement upon a showing that an effective remedial order, once the merger was implemented, would otherwise be virtually impossible, thus rendering the enforcement of any final decree of divestiture futile.” *Id.* at 1743. This Court rendered a similar decision in *Roche v. Evaporated Milk Assn*, 319 U.S. 21 (1943), granting a writ of mandamus, even though there was no appealable order and no appeal had been perfected because “[o]therwise the appellate jurisdiction could be defeated and the purpose of the statute authorizing the writ thwarted by unauthorized action of the district court obstructing the appeal.”

CONSTITUTIONAL AND STATUTORY PROVISIONS

This case is brought under the Elections Clause, U.S. Const. Art. I, § 4, clause 1; the Electors Clause, U.S. Const. Art. II, § 1, clause 2; and the Equal Protection and Due Process Clauses of U.S. Constitution Amendment XIV, § 1; 42 U.S.C. § 1983 and § 1988; 52 U.S.C. § 20701, and Wis. Stat. §§ 6.84, 6.855, 6.86, 6.87.

STATEMENT OF THE CASE

Petitioner brings these actions under 42 U.S.C. §§ 1983 and 1988, to remedy deprivations of rights, privileges, or immunities secured by the Constitution and laws of the United States, including the Elections and Electors Clauses, and the Equal Protection and Due Process Clauses of the Fourteenth Amendment of the U.S. Constitution.

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators. U.S. CONST. art. I, § 4 (“Elections Clause”).

With respect to the appointment of presidential electors, the Constitution provides:

“Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.” U.S. CONST. art. II, § 1 (“Electors Clause”).

Under the Wisconsin Election Code, the Electors of the President and Vice President for the State of Wisconsin are elected by each political party at their state convention in each Presidential election year, see Wis. Stat. § 8.18, and “[a] vote for the president and vice-president nominations of any party is a vote for the electors of the nominees.” Wis. Stat. § 8.25.

None of respondents is a “Legislature” under the Elections Clause or Electors Clause. The Legislature is “the representative body which ma[kes] the laws of the people.” Smiley, 285 U.S. 365. Regulations of congressional and presidential elections, thus, “must be in accordance with the method which the state has prescribed for legislative enactments.” Id. at 367; see also Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n, 576 U.S. 787 (2015).

While the Elections Clause “was not adopted to diminish a State’s authority to determine its own lawmaking processes,” Ariz. State Legis., 135 S. Ct. at 2677, states are accountable to their chosen processes when it comes to regulating federal elections. Id. at 2688. “A significant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question.” Bush, 531 U.S. at 113 (Rehnquist, C.J., concurring); Smiley, 285 U.S. at 365.

Petitioner also brings this action under multiple provisions of the Wisconsin Election Code that address absentee voting the safeguards against absentee voter fraud, Wis. Stat. §§ 6.84, 6.855, 6.86, 6.87, that Respondents violated, refused to enforce, or issued rules or guidance that effectively nullified these provisions to enable, facilitate, or permit Democratic Party operatives, Dominion Voting Systems (“Dominion”), and other third parties to commit absentee voter fraud.

Petitioner submitted testimony from a dozen fact and expert witnesses, which is described in more detail below. Based upon all the allegations of fraud, statutory violations, and other misconduct, as stated herein and in the affidavits in the accompanying appendix, it is necessary for this Court to exercise its authority to issue the writ of mandamus to decertify the election of the Biden slate of electors from Wisconsin; or at a minimum to declare the certified result unconstitutional.

**REASONS IN SUPPORT OF GRANTING EMERGENCY
APPLICATION FOR EXTRAORDINARY WRIT OF MANDAMUS
ARGUMENT**

In Section I, Petitioner demonstrates that the District Court erred in dismissing Petitioner’s Complaint and Preliminary Injunction Motion, and that this Court has jurisdiction to grant this Application and the extraordinary writ of mandamus requested herein.

In Section II, Petitioner sets forth the evidence presented in the court below, as well as additional evidence that has come to light since the filing of the Complaint, that justify the relief requested.

I. THE DISTRICT COURT ERRED WHEN IT DISMISSED THE COMPLAINT AND TRO MOTION.

In the United States, voting is a sacrament without which democracy cannot succeed. If we the people lose faith in our voting system, democracy will surely fail.

In the Amended Complaint, Petitioner submitted to the District Court overwhelming evidence of widespread voter irregularities not only in the state of Wisconsin, but also in four other States – Arizona, Michigan, Pennsylvania, and Georgia – that use Dominion voting machines, or others like it, show a common pattern of non-legislative State officials unilaterally weakening voter fraud safeguards, and strong evidence of voter actual fraud from eyewitnesses and statistical analyses. Petitioner also submitted evidence that the 2020 General Election may have been subject to interference by hostile foreign governments including China and Iran. The District Court did not consider the evidence submitted by Petitioner.

A. The District Court Erred In Finding That Petitioner Lacks Standing.

The District Court asserts that Petitioner, as a voter representative of similarly-situated Wisconsin voters for Republican candidates, and as a Presidential Elector, lacks standing because, among other things, “plaintiff has not alleged that, as a voter, he has suffered particularized, concrete injury sufficient to confer standing.” (R. 2137). The District Court also rejects Petitioner’s argument for standing as a Presidential Elector. Id. (R. 2135-2139).

The District Court erred both with respect to Petitioner’s standing as a voter and a Presidential Elector. Petitioner is not simply a voter seeking to vindicate their rights to an equal and undiluted vote, as guaranteed by Wisconsin law and the Equal Protection Clause of the U.S. Constitution, as construed by this Court in Reynolds v. Sims, 377 U.S. 533 (1964) and its progeny.

Petitioner has standing to bring this action as a registered Wisconsin voter and as a candidate for office Presidential Elector. Wis. Stat. § 8.18 (nomination for office of presidential elector). Under Wisconsin law, “[a] vote for the president and vice-president nominations of any party is a vote for the electors of the nominees.” Wis. Stat. § 8.25, § 8.25. Presidential Electors “have a cognizable interest in ensuring that the final vote tally reflects the legally valid votes cast,” as “[a]n inaccurate vote tally is a concrete and particularized injury to candidates such as the Electors.” Carson v. Simon, 978 F.3d 1051, 1057 (8th Cir. 2020) (affirming that Presidential Electors have Article III and prudential standing to challenge actions of Secretary of State in implementing or modifying State election laws); see also McPherson v. Blacker, 146 U.S. 1, 27 (1892); Bush v. Palm Beach Cty. Canvassing Bd., 531 U.S. 70, 76 (2000) (per curiam).

As a nominee Presidential Elector, Petitioner was selected by the Republican Party of Wisconsin, and his name was certified as such to the Wisconsin Secretary of State. He was appointed to the office of Presidential Electors in the November 2020 election pursuant to Wis. Stat. § 8.18. Wis. Stat. § 8.25 further provides that “[a] vote for the president and vice president nominations of any party is a vote for

the electors of the nominees.” This office carries specific responsibilities defined by law, namely voting in the Electoral College for President and Vice-President. While their names do not appear on the ballot, Wisconsin Law makes it clear that the votes cast by voters in the presidential election are actually votes for the presidential electors nominated by the party of the presidential candidate listed on the ballot.

The standing of presidential electors to challenge fraud, illegality and disenfranchisement in a presidential election rests on a constitutional and statutory foundation—as if they are candidates—not voters. Theirs is not a generalized grievance, one shared by all other voters; they are particularly aggrieved by being wrongly denied the responsibility, emoluments and honor of serving as members of the Electoral College, as provided by Wisconsin law.

Petitioner has the requisite legal standing, and the District Court must be reversed on this point because this case is the same as the Eighth Circuit’s case of Carson v. Simon, 978 F.3d 1051 (8th Cir. 2020), (holding that Minnesota presidential electors, who are treated as candidates under state law, have standing to sue) Id. at 1057. And this Court’s opinion in Bush v. Gore, 531 U.S. 98 (2000) (failure to set state-wide standards for recount of votes for presidential electors violated federal Equal Protection), leaves no doubt that presidential candidates have standing to raise post-election challenges to the manner in which votes are tabulated and counted. Nominees for the office of Presidential Elector stand in the shoes of the candidate for President, and suffer the same injury from any illegal conduct affecting the manner in which votes for President and Vice-President are tabulated or counted.

The District Court also failed to acknowledge that the case cited by Respondents for Petitioner’s lack of standing, the Eleventh Circuit’s decision in Wood v. Raffensperger, No. 20-14418 (11th Cir. Dec. 5, 2020), ECF No. 55-4, actually supports Plaintiff’s standing argument, and refutes theirs. There, the court dismissed Plaintiff Wood’s claim because he was not a candidate. “[I]f Wood were a political candidate,” like the Plaintiff here, “he would satisfy this requirement

because he could assert a personal, distinct injury.” ECF No. 55-4 at *4 (citations omitted). The same is true for Petitioner here.

Petitioner has therefore met the requirements for standing. He has alleged (1) injuries to his rights under the Equal Protection and Due Process clauses that are concrete and particularized; (2) that are actual or imminent and (3) are causally connected to Respondents’ because they are a direct and intended result of the conducts of the Respondents and the public employee election workers they supervise. See generally Lujan v. Defenders of Wildlife, 504 U.S. 555 560-561 (1992).

B. The District Court Erred in Dismissing the Amended Complaint As Moot.

Petitioner’s counsel has filed complaints in multiple States to challenge the multi-state fraud described in the introduction, and given the very compressed timeframes for gathering evidence and drafting the Complaints and other pleadings, inadvertently put in quotation marks a statement that was meant to paraphrase the holding in Swaffer v. Deininger, No. 08-CV-028, 2008 WL 5246167 (E.D. Wis. Dec. 17, 2008). The District Court appears to have read as an attempt to mislead the Court. ECF No. 83 at 32. While this is a regrettable misunderstanding, it does not affect the substance of Petitioner’s argument or render the relief sought in the Amended Complaint moot.

It is well-settled that the mere occurrence of an election does not moot an election-related challenge, nor does certification necessarily moot a post-election challenge. Further, election-related challenges may fall within the ‘capable of repetition yet evading review’ exception to the mootness doctrine.” Tobin for Governor v. Illinois State Bd. of Elections, 268 F.3d 517, 528 (7th Cir. 2001) (citations omitted). This exception applies where: “(1) the challenged action is too short in duration to be fully litigated prior to its cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subjected to the same action again.” *Id.* at 529 (citations omitted).

Petitioner’s claims regarding Respondents’ arbitrary and disparate implementation, modification, and even nullification of the Wisconsin Election Code provisions governing absentee voting through non-legislative means—in particular their guidance relating to “indefinitely confined” (*see* Wis. Stat. § 6.86 & Amended Complaint, Section I.A) voters and witness address verification requirements (*see* Wis. Stat. § 6.87 & Amended Complaint Section I.B)— are not moot, and are “capable of repetition yet evading review.” The fact that officials are willing to violate the Wisconsin Legislature’s election laws, and then assert with a straight face that their direct contravention or nullification of the election laws they administer is in fact proper, demonstrates that Respondents, or others in their position, will certainly do so again in future elections. In fact, in the absence of any sanction for their unlawful conduct, the scope of their unlawful conduct is likely to expand unless and until they are enjoined from doing so by this Court or another federal court willing to enforce the U.S. Constitution’s express limits on non-legislative changes to state laws governing federal elections.

The Eleventh Circuit addressed this precise issue in Siegel, which involved a post-certification challenge in connection with the 2000 General Election recount. The Siegel court first noted that neither of the requirements for mootness had been met post-certification because “[i]n view of the complex and ever-shifting circumstances of the case, we cannot say with any confidence that no live controversy is before us.” Siegel, 234 F.3d at 1172-73. The Eleventh Circuit’s recent Wood decision also would not support the District Court’s position because the plaintiff there requested only a delay in certification from the district court, Wood, 2020 WL 7094866 at *6, rather than de-certification and other prospective relief that Petitioner requested from, but rejected by, the District Court.

C. The District Court Erred in Finding Petitioner’s Claims Are Barred By the Eleventh Amendment.

Petitioner respectfully submits that the claims in the Amended Complaint and the instant application for an Extraordinary Writ are not barred by the Eleventh Amendment because the requested relief falls under the Ex Parte Young,

209 U.S. 123, 159-160 (1908), exemption for a suit against state officials seeking only prospective equitable relief. ECF No. 72 at 26-27.

The District Court disagreed, based on the erroneous assumptions or findings that (1) ballot fraud is and can only be a state law claim, ECF No. 83 at 37, disregarding the Seventh Circuit's decision in Kasper v. Bd. of Election Com'rs of the City of Chicago, 814 F.2d 332, 342-44 (7th Cir. 1987) laying out the requirements to for a garden variety state ballot fraud claim to become a constitutional election fraud under 42 U.S.C. § 1983 and (2) that the violations detailed in the Amended Complaint do not, or cannot, constitute an "ongoing violation" of federal law "and saying that the election was a completed event. (R. 2137 - 2146).

Respondents' violations of federal law are ongoing and will continue into the future unless they are enjoined from doing so. Yes, the constitutional violations (not to mention the violations of other federal statutes such as the Voting Rights Act, 52 U.S.C. § 20701) arising from the 2020 General Election that was tainted by election fraud, which has further infected the process of certifying fraudulent election results, will continue by unlawfully permitting select electors to be sent to the Electoral College on December 14, 2020 and those votes counted on January 6, 2021. Unless this Court acts to grant the relief requested herein, Petitioner will be irreparably harmed. Respondents also commit ongoing constitutional violations insofar as they continue to cover up their misconduct and coordinate with their co-conspirators to do the same.

D. The District Court Erred In Dismissing The Complaint Based on Federal Abstention, Administrative Exhaustion, or Wisconsin State Law Exclusive Jurisdiction over Election Challenges.

The District Court addresses arguments of Respondents, and Respondent-Intervenors (various national Democratic organizations), that the Amended Complaint should be dismissed based on a mix of claims regarding federal abstention, failure to exhaust administrative remedies and exclusive state jurisdiction over election challenges. The District Court ultimately declined to rely

on these arguments in dismissing the Amended Complaint based on its finding that Petitioner lacked standing but indicated that it likely found these arguments had merit. (R. 2144). While these arguments may not have been dispositive, these arguments must be addressed as these will inevitably be raised again by Respondents.

First, Respondents' actions in unilaterally and materially modifying, or violating, the Wisconsin Legislature's election laws—for example, changing requirements for absentee voting by persons indefinitely confined —amounts to “[a] significant departure from the legislative scheme for appointing Presidential electors,” which “presents a federal constitutional question.” Bush v. Gore, 531 U.S. 98, 112, 121 S.Ct. 525, 533-534 (2000) (Rehnquist, Scalia and Thomas concurring).

Second, federal courts have long held that “voting rights cases are particularly inappropriate for abstention.” Siegel v. LePore, 234 F.3d 1163, 1174 (11th Cir. 2000). See also Harman v. Forssenius, 380 U.S. 528, 534 (1965) (same).

Third, Respondent Governor Evers claims that the “state law issues underlying Plaintiff's claims are sufficiently uncertain to warrant abstention,” and points to the order of the Supreme Court of Wisconsin addressing a petition alleging misconduct by WEC during the 2020 General Election that “raises time-sensitive questions of state-wide concern.” ECF No. 59 at 12 (*citing* Wisconsin Voters Alliance v. Wisconsin Elections Commission, No. 2020AP1930-OA, at *1 (Wis. Dec. 4, 2020) (“Wisconsin Voters Alliance”). What he neglects to mention is that the Wisconsin Supreme Court *denied* the petition, “the third time that a majority of [the Wisconsin Supreme Court] has turned its back on pleas from the public to address a matter of state-wide concern,” involving alleged wrongdoing by Defendant WEC during the 2020 General Election, “that requires a declaration of what the statutes require for absentee voting.” Wisconsin Voters Alliance at *5 (Roggensack, C.J., dissenting). Abstention requires more than uncertainty about state law – and notably, the majority asserted only that the petition required resolution of “disputed factual claims,” *id.* at 3, not any uncertainty regarding the interpretation of the statutes – it requires the likelihood that a state court will resolve that uncertainty.

Here, the relevant state court has repeatedly refused to address these issues; by accepting jurisdiction this Court is not “injecting itself into the middle of [a] dispute,” ECF No. 59 at 12, as there is no current state court proceeding addressing these issues (or at least not any identified by Defendant).

E. The District Court Erred in Finding Petitioner’s Claims Are Barred By Laches.

The District Court also found it unnecessary to address Respondents’ assertion of laches as an affirmative defense, ECF No. 83 at 43, but Petitioner addresses this claim to allay any concerns this Court may have that Petitioner sat on his rights.

Here there is no unreasonable delay in asserting Plaintiffs’ rights and no resulting prejudice to the defending party. Petitioner could not file a lawsuit claiming the election was stolen by fraud and illegality, fraudulent ballots, non-resident voting, unrequested absentee ballots, absentee ballots returned but not counted, politically discriminatory counting, illegal tabulation, scanning the same ballots multiple times, and apparent fraudulent electronic manipulation of votes until the election actually was stolen through those means. Had Petitioner filed before the election, as the Respondents urge, it would have been dismissed as speculative—because the injuries asserted had not occurred—and on ripeness grounds.

Any “delay” in filing after Election Day is almost entirely due to Respondents’ failure to promptly complete counting until weeks after November 3, 2020. Wisconsin did not complete counting at the same time it certified results, which was not until November 30, 2020, and Plaintiff filed the initial complaint (which is materially the same as the Amended Complaint filed December 3, 2020), and TRO motion the very next day on December 1, 2020. Respondents cannot now assert the equitable affirmative defense of laches, when there is no unreasonable delay nor is there any genuine prejudice to the Respondents.

The claims of prejudice to the Respondents and to lawful voters who cast their legal votes in the election presume the point in controversy – whether the

election was lawful or fraudulent. No Defendant, no candidate, no intervenor, no political party and no citizen can claim a legally protectable interest in a fraudulent election result. In legal contemplation, there can be no prejudice to anyone from invalidating such an election. Defendant Intervenors would have us believe there is no cognizable legal, equitable or constitutional remedy for an election that has been won through fraudulent means. This notion is obnoxious to history, law, equity, the Constitution and common sense. Elections are regularly invalidated for fraud and illegality. There is no reason this one cannot also be invalidated if the evidence is sufficient to support that remedy.

II. RESPONDENTS VIOLATED THE U.S. CONSTITUTION AND WISCONSIN STATE LAW.

A. Respondents Violated Electors Clause by Modifying, Nullifying or Contravening the Wisconsin Legislature's Election Laws Through Non-Legislative Action.

The Amended Complaint sets forth three specific measures taken by Respondents whereby they modified, nullified or contravened the express safeguards against absentee voter fraud in the Wisconsin Election Code enacted by the Wisconsin Legislature to prevent the exact type of absentee voter fraud that occurred in the 2020 General Election, and to create a paper trail that would allow detection and prosecution of fraud if it occurred. Respondents willfully nullified both the fraud prevention and detection measures to facilitate fraud during the election and ensure that it would be undetectable afterwards by eliminating the requirement to create and maintain the evidence required to prove that fraud had occurred.

1. WEC directed county clerks and other subordinate state, county and local officials to violate Wisconsin Election Code requirements for absentee voting by individuals claiming to be “indefinitely confined,” which exempted them from requirements such as voter ID. The WEC Administrator, Megan Wolfe issued a written directive on May 13, 2020 to the clerks across the State of Wisconsin stating that the clerks cannot remove an allegedly “indefinitely confined” absentee voter

from the absentee voter register if the clerk had “reliable information” that an allegedly “indefinitely confined” absentee voter is no longer “indefinitely confined,” in violation of Wis. Stat. § 6.86. The Wisconsin Supreme Court has recently held that such action by WEC was erroneous. Jefferson v. Dane Cty, 2020 Wisc. LEXIS 194 (Dec. 14, 2020).

2. WEC directed clerks to violate Wisconsin Election Code requirements preventing counting of absentee ballots certificates missing witness addresses in violation of Wis. Stat. § 6.87.

3. Wisconsin law requires absentee voters to complete a certification including their address, and have the envelope witnessed by an adult who also must sign and indicate his address on the envelope. See Wis. Stat. § 6.87. “If a certificate is missing the address of a witness, the ballot *may not be counted.*” Id. § 6.87(d). WEC and other city and county election officials unilaterally eliminated this requirement through informal guidance, and further directed that clerks could fill in this information on their own. They directed clerks to illegally cure absentee ballots by filling in missing information on absentee ballot certificates and envelopes in violation of provisions Wis. Stat. §§ 6.84 – 6.89.

B. Respondents Knowingly Enabled, Facilitated, and Permitted Election Fraud by Election Workers, Dominion, Democratic Operatives, Unknown Third Parties, and Potentially by Hostile Foreign Actors.

1. Dominion’s Security Director Eric Coomer, who invented critical Dominion software, is a vehement, virulent and frequent opponent of President Trump who, besides intemperate and obscene attacks on the President, has posted videos explaining how Dominion systems may be compromised and boasted publicly he was “f**ing sure” the President was “not going to win.” (R. 568-569).

2. The State of Wisconsin, in many locations, used Dominion Systems, Democracy Suite 4.14-D first, and then included Dominion Systems Democracy Suite 5.0-S on or about January 27, 2017, which added a fundamental modification: “dial-up and wireless results transmission capabilities to the Image Cast Precinct

and results transmission using the Democracy Suite EMS Results Transfer Manager module.” (R. 529)

3. In the state of Wisconsin, there was a considerable block vote allocation by the algorithm at the same time it happened across the nation. All systems shut down at around the same time. (R. 706 ¶ 80)

5. Dominion software has been compromised by actors in both China and Iran. Dominion’s systems are further vulnerable because hardware is manufactured by foreign companies with interests contrary to those of the United States. Further, as set forth in the record below, a Dominion: “. . . algorithm looks to have been set to give Joe Biden a 52% win even with an initial 50K+ vote block allocation that was provided to him initially as tallying began (as in case of Arizona too). In the early morning hours of November 4, 2020 the algorithm stopped working, therefore requiring another ‘block allocation’ to remedy the failure of the algorithm. This was done manually as ALL the SYSTEMS shut down NATIONWIDE to avoid detection.” (R. 705 ¶ 76-77).

6. Dominion’s data feeds revealed “raw vote data coming directly that includes decimal places establishes selection by an algorithm, and not individual voter’s choice. Otherwise, votes would be solely represented as whole numbers (votes cannot possibly be added up and have decimal places reported).” Statistical anomalies and impossibilities compel the conclusion that at least 119,430 must be disregarded. (R. 747).

7. The House bill passed by the Democrats in 2019 attempted to prevent this type of election fraud and it addressed election security through grant programs and requirements for voting systems and paper ballots. The bill establishes requirements for voting systems, including that systems (1) use individual, durable, voter-verified paper ballots; (2) make a voter’s marked ballot available for inspection and verification by the voter before the vote is cast; (3) ensure that individuals with disabilities are given an equivalent opportunity to

vote, including with privacy and independence, in a manner that produces a voter-verified paper ballot; (4) be manufactured in the United States; and (5) meet specified cybersecurity requirements, including the prohibition of the connection of a voting system to the internet. See H.R. 2722. (R. 461 ¶89).

8. Dominion systems allow operators to “accept” or “discard” batches of votes fed through tabulation machines, including through arbitrarily designating batches of ballots as “problem” batches. *Id.* ¶¶ 83 – 85 & Ex. 9, 15.

9. Problems with Dominion systems have been widely reported and documented by individual citizens and expert academics. *Id.*, ¶¶ 86 - 89.

10. In particular, Democratic Senators Warren, Klobuchar, Wyden and Congressman Mark Pocan wrote to the hedge fund owners of voting systems about their concerns that trouble plagued companies owning voting systems were compromising on security and concentrating ownership in only three large companies - Election Systems & Software, Dominion Voting Systems, & Hart InterCivic – which collectively serve over 90% of all eligible voters in the U.S. *Id.* ¶88 & Ex. 17.

C. Petitioner Submitted Unrebutted Expert Witness Testimony Establishing Wide-Spread Voting Fraud That Changed the Outcome of the Election.

Petitioner submitted the following evidence from fact and expert witnesses demonstrating that wide-spread voting fraud occurred in Wisconsin in the 2020 General Election.

Former Vice-President Biden’s margin in Wisconsin is only 20,565 votes.

Petitioner presented several estimates of illegal or ineligible Biden ballots (or lost Trump votes) that *each individually exceeds this margin, and if even one were correct, would swing the vote from Biden to Trump:*

1. In-depth statistical analysis of publicly available data on the 2020 U.S. Presidential Election of the entire population identified a statistically significant advantage to Vice President Biden with votes cast through Dominion voting

machines. (R. 522). The results reflect that in the vast majority of counties using the Dominion machines, Vice President Biden outperformed expectations of non-Dominion voting machines by 3% to 5.6%. The results are statistically significant, with a p-value of < 0.00004. (R. 521 ¶5).

2. The results of the analysis and the pattern indicate that a systemic, system-wide algorithm was enacted by an outside agent, causing the results of Wisconsin's vote tallies to be inflated by somewhere between 3% and 5.6% percentage points. Statistical estimating yields that in Wisconsin the number of impacted votes is 181,440. (R. 524 ¶2).

3. Additional tabulation errors included voters receiving ballots who didn't request them and returned ballots that went missing. Petitioner's expert, Dr. Briggs, concluded that those errors affected almost 97,000 ballots in the state of Wisconsin, with tens of thousands of ballots being wrongfully sent to individuals who did not request them, returned ballots not being counted, and others lost or destroyed. R. 441- 443, Amended Complaint, ¶¶ 46 – 51.

D. Respondents' Actions Satisfy the Requirements for a Constitutional Election Fraud Claim under 42 U.S.C. § 1983 That Can Be Remedied by This Court.

The pleading requirements for stating a constitutional election fraud claim under Section 1983 are set forth in Kasper v. Bd. of Election Com'rs of the City of Chicago, 814 F.2d 332 (7th Cir. 1987). In Kasper, Republican plaintiffs alleged some of the same conduct that occurred in Wisconsin and other states in the 2020 General Election (albeit on a much smaller scale, perhaps 100,000-200,000 votes total). In particular, maintenance of voter lists with ineligible voters, fictitious or fraudulent votes, and failure to enforce safeguards against voting fraud. Their complaint did not allege active state participation in vote dilution or other illegal conduct, but rather that state defendants were aware that a substantial number of registrations are bogus and [had] not alleviated the situation." *Id.* The *Kasper* court held that "casting (or approval) of fictitious votes can violate the Constitution and

other federal laws,” and that for the purposes of Section 1983, it is sufficient to allege that this conduct was permitted pursuant to a state “policy” of diluting votes” that “may be established by a demonstration” that state officials who “despite knowing of the practice, [have] done nothing to make it difficult.” *Id.* at 344. This “policy” may also lie in the “design and administration” of the voting system that is “incapable of producing an honest vote,” in which case “[t]he resulting fraud may be attributable” to state officials “because the whole system is in [their] care and therefore is state action.” *Id.* The state action requirement is thus clearly met for the Respondents’ conduct described above.

While the U.S. Constitution itself accords no right to vote for presidential electors, “[w]hen the state legislature vests the right to vote for President in its people, the right to vote as the legislature has prescribed is fundamental; and one source of its fundamental nature lies in the equal weight accorded to each vote and the equal dignity owed to each voter.” *Bush v. Gore*, 531 U.S. 98, 104 (2000) (emphasis added). The evidence shows not only that Respondents failed to administer the November 3, 2020 election in compliance with the manner prescribed by the Wisconsin Legislature in the Wisconsin Election Code, but that Respondents supported a scheme and artifice to fraudulently and illegally manipulate the vote count to make certain the election of Joe Biden as President of the United States. This conduct violated the rights to equal protection and due process of Petitioner, and similarly situated voters for Republican elector candidates in Wisconsin, as well their rights under the Wisconsin Election Code.

Respondents’ actions also disenfranchised Republican voters in violation of the U.S. Constitution’s “one person, one vote” requirement by:

Republican Ballot Destruction: “1 Person, 0 Votes.” Fact and witness expert testimony alleges and provides strong evidence that tens or even hundreds of thousands of Republican votes were destroyed, thus completely disenfranchising that voter.

Republican Vote Switching: “1 Person, -1 Votes.” Petitioner’s fact and expert witnesses further alleged and provided supporting evidence that in many cases, Trump/Republican votes were switched or **counted** as Biden/Democrat votes. Here, the Republican voter was

not only disenfranchised by not having his vote counted for his chosen candidates, but the constitutional injury is compounded by adding his or her vote to the candidates he or she opposes.

Dominion Algorithmic Manipulation: For Republicans, “1 Person, 0.5 Votes,” while for Democrats “1 Person, 1.5 Votes.

Petitioner presented evidence regarding Dominion’s algorithmic manipulation of ballot tabulation such that Republican voters in a given geographic region, received less weight per person, than Democratic voters in the same or other geographic regions. This unequal treatment is the 21st century of the evil that the Supreme Court sought to remedy in the apportionment cases beginning with Baker v. Carr, 369 U.S. 186 (1962), and Reynolds v. Sims, 377 U.S. 533 (1964). Further, Dominion has done so in collusion with State actors, including Respondents, so this form of discrimination is under color of law.

This Court, in considering Petitioner’s constitutional and voting rights claims under a “totality of the circumstances” must consider the cumulative effect of the specific instances or categories of Petitioner’s voter dilution and disenfranchisement claims. Taken together, these various forms of unlawful and unconstitutional conduct destroyed or shifted tens or hundreds of thousands of Trump votes, and illegally added tens or hundreds of thousands of Biden votes, changing the result of the election, and **effectively disenfranchising the majority of Wisconsin voters.**

Petitioner also alleges new forms of voting dilution and disenfranchisement made possible by new technology. The potential for voter fraud inherent in electronic voting was increased as a direct result of Respondents’ efforts to transform traditional in-person paper voting – for which there are significant protections from fraud in place – to near universal absentee voting with electronic tabulation – while at the same time eliminating through legislation or litigation – and when that failed by refusing to enforce – traditional protections against voting fraud (voter ID, signature matching, witness and address requirements, etc.).

Thus, while Petitioner’s claims include novel elements due to changes in technology and voting practices, that does not nullify the Constitution or Petitioner’s rights thereunder. “It is a fundamental idea in all republican forms of

government that no one can be declared elected * * *, unless he * * * receives a majority or a plurality of the legal votes cast in the election. Accordingly, the general rule is that the fact that a plurality or a majority of the votes are cast for an ineligible candidate at a popular election does not entitle the candidate receiving the next highest number of votes to be declared elected.” Davies v. Stiff, 284 S.W.2d 799, 800 (1955).

Respondents have implemented policies that allowed the most wide-ranging and comprehensive scheme of voting fraud yet devised, integrating new technology with old fashioned urban machine corruption and skullduggery. The fact that this scheme is novel does not make it legal nor prevent the District Court from fashioning appropriate injunctive relief to protect Petitioner’s rights and prevent Respondents from enjoying the benefits of their illegal conduct.

CONCLUSION

WHEREFORE, the Petitioner respectfully requests this Honorable Court grant this Emergency Application for Writ of Mandamus to vacate the December 9 Judgment of the United States District Court for the Eastern District of Wisconsin and grant the injunctive relief Petitioner seeks.

Petitioner seeks an emergency order instructing Respondents to de-certify the results of the General Election for the Office of President. Alternatively, Petitioner seeks an order instructing the Respondents to certify the results of the General Election for Office of the President in favor of President Donald Trump. Alternatively, Petitioner seeks an order declaring that Respondents’ certified elections results declaring Joe Biden the winner of the Presidential election are unconstitutional.

Petitioner also seeks an emergency order prohibiting Respondents from including in any certified results from the General Election the tabulation of absentee and mailing ballots which do not comply with the Wisconsin Election Code.

Petitioner further requests that this Court direct the District Court to order production of all registration data, ballots, envelopes, etc. required to be maintained

by Wisconsin state and federal law, and that Respondents be ordered not to tamper with or destroy any such data or alter any of the data on voting machines until further order of the Court.

Respectfully submitted,

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