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SUPREME COURT OF THE
STATE OF WISCONSIN
Appeal No. 22AP91

RICHARD TEIGEN and RICHARD THOM,
Plaintiffs-Respondents-Petitioners,

vs.

WISCONSIN ELECTIONS COMMISSION,
Defendant-Co-Appellant,
DEMOCRATIC SENATORIAL CAMPAIGN COMMITTEE,
Intervenor-Defendant-Co-Appellant, and
DISABILITY RIGHTS WISCONSIN,
WISCONSIN FAITH VOICES FOR JUSTICE and
LEAGUE OF WOMEN VOTERS OF WISCONSIN,
Intervenors-Defendants-Appellants.

On Appeal from the Circuit Court for Waukesha County
The Honorable Michael O. Bohren, Presiding
Circuit Court Case No. 2021CV958

BRIEF OF *AMICUS CURIAE*
TRUE THE VOTE, INC.
SUPPORTING APPEAL OF PLAINTIFFS-RESPONDENTS-PETITIONERS
RICHARD TEIGEN AND RICHARD THOM

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Dated: March 21, 2022

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STATEMENT OF THE CASE ¹

Plaintiffs allege that on March 31 and August 19, 2020, the Wisconsin Elections Commission (“WEC”) issued guidance to municipal clerks approving absentee ballot “collectors” and drop-boxes, that municipal clerks placed over 500 boxes across the state in reliance, and that following the WEC guidance violates the “in-person-delivery” and “location” requirements under §§ 6.87(4)(b)(1) and § 6.855.²

Intervenors-Defendants Disability Rights Wisconsin *et al* (“DRW”) argue the now-reflexive partisan talking point that Plaintiffs present no evidence. DRW complains:

Teigen has made no effort to substantiate anything similar as an actual practice in present-day elections; he rails against so-called “ballot harvesting” but provides rhetorical heat rather than clarifying light.

DRW Br. 48.

Intervenor-Defendant Democratic Senatorial Campaign Committee (“DCSS”) likewise argues that Plaintiffs lack “evidence of specific problems” and “have offered no evidence that municipal clerks are allowing people other than ‘election officials’ or ‘election inspectors’ to collect sealed ballots....” DSCC Br. 20, 34-35.

Amicus True the Vote (“TTV”) has developed evidence of massive ballot-harvesting in Milwaukee that DRW and DSCC complain is missing, and will present its Special Report (“Report”)³ and testimony on March 24 before the Assembly

¹ Links in this brief were last checked March 18, 2022.

² Pl.Br. 3, R.215, 218-19.

³ App. 1. TTV is also completing research in Green Bay and Racine and will publish that data as well.

Committee on Campaigns and Elections.⁴

Having complained that Plaintiffs do *not* provide evidence, Intervenors will no doubt argue that this Court should disregard TTV's Report which *does* provide evidence. But whether or not this Court considers the Report, it is nevertheless appropriate to consider the "effect of [Defendants'] interpretation on other situations" such as danger of systematic ballot harvesting that TTV investigated. *Lord v. Hubbell, Inc.*, 210 Wis. 2d 150, 168, 563 N.W.2d 913, 920 (Ct. App. 1997) (effect of construing statute of limitations in other circumstances).⁵

BACKGROUND

Milwaukee is one of "the Five" overwhelmingly Democratic cities that funded drop-boxes, voter registration, and turnout efforts using grants from the tax-exempt Center for Technology and Civil Life ("CTCL") funded by Mark Zuckerberg.⁶

Of over \$10.2 million CTCL distributed in Wisconsin, about \$9.2 million (90%) went to 15 reliably Democratic cities in only 11 of Wisconsin's 72 counties. \$8.8 million (85%) went to "the Five," \$4.79 million (46.5%) to Dane and Milwaukee Counties alone, which have less than 26% of the state's population.⁷

⁴ <https://docs.legis.wisconsin.gov/raw/cid/1667957>

⁵ See also, e.g., *State v. Johnson*, 2007 WI 107, ¶ 68, 304 Wis. 2d 318, 348, 735 N.W.2d 505, 519 (comparing construction of statutory phrase "under other facts and circumstances").

⁶ "The Five" were Milwaukee, Green Bay, Racine, Kenosha, and Madison. <https://empowerwisconsin.org/wp-content/uploads/2021/03/Green-Bay-email-WI-5.pdf>

⁷ <https://www.techandcivillife.org/key-funders-and-partners/990s/> (CTCL 2020 tax return); <https://www.washingtonexaminer.com/news/campaigns/zuckerberg-funded-elections-group-awarded-more-grants-to-gop-counties>; <https://amgreatness.com/2022/01/10/how-a-mark-zuckerberg-funded-nonprofit-turned-wisconsin-blue/>.

TTV conducted “geo-spatial” tracking analysis of cell phone data collected in Milwaukee during the two weeks prior to the 2020 election, finding overwhelming evidence of highly organized ballot trafficking coordinated among collectors and non-governmental organizations (“NGOs”) using CTCL-funded drop-boxes.⁸

TTV identified 53,291 individual phone devices that visited a drop-box three or more times during that period, but focused specifically on 107 devices that (1) made 20 or more separate visits to drop-boxes (averaging 26 visits each) *and* (2) visited NGOs involved in get-out-the-vote efforts (averaging 5 visits each).⁹ Several of those “20X” devices made as many as 10–15 visits in a single day, with a majority of visits occurring after 8:00 p.m., long past business hours of facilities where the boxes were located.¹⁰

Despite WEC’s direction that municipalities should collect video surveillance of drop-boxes and Milwaukee’s claim that it did so,¹¹ Milwaukee and 15 other area municipalities responded to TTV’s open records requests for video recordings that they had none.¹²

⁸ Report 5-6.

⁹ Report 6.

¹⁰ *Id.*

¹¹ <https://www.jsonline.com/story/news/politics/elections/2020/10/19/how-milwaukee-ensures-absentee-ballots-voting-machines-secured/5937160002/>

¹² Report, App. 2.

ARGUMENT

SUMMARY

Although CTCL's \$8.8 million tax-exempt expenditures were not reported under federal and state campaign finance law, their selective allocation supporting absentee ballot-harvesting in heavily Democratic cities was strategically designed for partisan effect in violation of federal law governing tax-exempt organizations.

Sec. 6.87(4)(b)1. and the statutory scheme in Ch. 6, Subch. IV, Stats. (§§ 6.84-.89) provide a defense perimeter against such abuse of absentee voting, which the legislature and courts have found to be uniquely susceptible to fraud and undue influence. But the collectors and drop-boxes and the WEC memos giving them cover created a massive breach.

To close that breach, Subch. IV should be construed consistent with the common-sense conclusions of the Commission on Federal Election Reform chaired by past-President Jimmy Carter and past-Secretary of State James Baker. Its *Report of the Commission on Federal Election Reform – Building Confidence in U.S. Elections* (Sept. 2005) (“Comm. Report”)¹³ was quoted with approval by the Supreme Court in *Brnovich v. Democratic Nat’l Comm.*, 141 S.Ct. 2321, 2347–48 (2021):

Absentee balloting is vulnerable to abuse in several ways: ... Citizens who vote at home, at nursing homes, at the workplace, or in church are more susceptible to pressure, overt and subtle, or to intimidation.

Id. at 2347–48 (quoting Comm. Report, 46).

¹³ <https://www.legislationline.org/download/id/1472/file/3b50795b2d0374cbef5c29766256.pdf>

The Court also adopted the Commission’s warning that “[v]ote buying schemes are far more difficult to detect when citizens vote by mail” and its recommendation that “States therefore should reduce the risks of fraud and abuse in absentee voting by prohibiting ‘third-party’ organizations, candidates, and political party activists from handling absentee ballots.” *Id.* (emphasis added).

Thus, this case is not about theoretical statutory construction of Subch. IV. Rather, it presents the real-world decision whether mega-wealthy interests may continue exploiting exempt organizations, collectors and drop-boxes to evade Wisconsin’s defenses against absentee ballot abuse with decisive partisan effect.

**I. WISCONSIN’S STATUTORY SCHEME SHOULD BE
CONSTRUED TO PRESERVE THE DEFENSE PERIMETER
AGAINST ABSENTEE BALLOT ABUSE.**

A statute plain on its face needs no construction. If ambiguity exists, courts resort to “extrinsic evidence of legislative intent - such as the statute’s scope, context, history, and purpose - to resolve the ambiguity.” *State v. Fisher*, 2005 WI App 175, ¶ 9, 285 Wis. 2d 433, 441–42, 702 N.W.2d 56, 60.

Sec. 6.84 governs construction of Subch. IV. In subsec. (1), the legislature finds conclusively that absentee ballots are “wholly outside the traditional safeguards of the polling place” and are therefore particularly susceptible to “fraud or abuse,” “overzealous solicitation of absent voters,” and “undue influence.” Accordingly, subsec. (2) provides that various provisions of Subch. IV are mandatory and that ballots cast in violation shall not be counted. *Accord, Griffin v. Roupas*, 385 F.3d 1128, 1130–31 (7th Cir. 2004) (“Voting fraud is a serious problem in U.S. elections”

and “absentee voting is to voting in person as a take-home exam is to a proctored one”).

Thus, Subch. IV’s governing purpose includes reducing risk of undue influence, overzealous solicitation, and systematic abuse endemic in unreported CTCL-style grants designed by super-wealthy interests to skew Wisconsin elections through partisan deployment of massive, unreported expenditures.

**II. SUBCH. IV SHOULD BE CONSTRUED TO PROHIBIT
GAMING WISCONSIN’S DEFENSES AGAINST ABSENTEE
BALLOT ABUSE WITH UNREPORTED TAX-EXEMPT
“SOFT” MONEY ALLOCATED ON A PARTISAN BASIS.**

Where CTCL directed over 85% of grant funds to the most heavily Democratic cities in the state, it requires singular naivete to believe CTCL had no partisan intent and that the drop-boxes it funded had no partisan effect.

26 U.S.C. § 501(c)(3) and accompanying regulations are explicit that expending tax-exempt funds with such partisan effect is illegal: “voter education or registration activities *conducted in a biased manner that favors (or opposes) one or more candidates* is [sic] prohibited.” Rev. Rul. 2007-41, 2007-1 C.B. 1421 (2007) (emphasis added).”¹⁴

Such activities “will constitute prohibited participation or intervention” if they are conducted “with evidence of bias that (a) would favor one candidate over another; (b) oppose a candidate in some manner; or (c) have the effect of favoring a

¹⁴ See generally <https://www.irs.gov/charities-non-profits/charitable-organizations/frequently-asked-questions-about-the-ban-on-political-campaign-intervention-by-501c3-organizations-get-out-the-vote-activities>

candidate or group of candidates.”¹⁵

Particularly *apropos* here, Alliance for Justice states that “501(c)(3) organizations may not ... [t]arget election-protection efforts to a precinct *based on the political party or candidate the precinct is likely to support.*” *Rules of the Game*, 63.¹⁶

Similarly, § 6.855 prohibits “alternative” sites that create partisan advantage *within* local jurisdictions - “no site may be designated that affords an advantage to any political party.”

But CTCL gamed the system, creating partisan advantage *among* local jurisdictions by selectively funding drop-boxes, voter registration, and other activities almost entirely in locations that ensured access and assistance to far more Democratic voters than to Republican.

Federal and state campaign finance laws¹⁷ require detailed disclosure of political expenditures to protect “important governmental interests by providing the public with information about ... the sources of funding for campaign-related ads.” *Wisconsin Right To Life, Inc. v. Barland*, 751 F.3d 804, 841 (7th Cir. 2014).

In contrast, CTCL’s partisan allocation of over \$10 million in unreported “soft” money dwarfs in influence the \$20,000 and \$2,900 contribution limits to candidates

¹⁵ <https://www.irs.gov/charities-non-profits/charitable-organizations/the-restriction-of-political-campaign-intervention-by-section-501c3-tax-exempt-organizations>

¹⁶ <https://www.bolderadvocacy.org/wp-content/uploads/2012/01/Rules-of-the-Game.pdf>

¹⁷ *E.g.*, § 11.0100 is construed “consistent with the right of the public to have a full, complete, and readily understandable accounting” of election activities.

for state and federal offices. Sec., § 11.11001, Stats.; 52 U.S.C. § 30116(a)(1)(A).

While TTV strongly supports the rights of legitimate § 501(c)(3) organizations to engage in non-partisan activities consistent with federal law, §§ 6.87(4)(b)1. and 6.855 must be construed to prevent mega-wealthy partisans from gaming the system using “exempt” money to breach the Subch. IV perimeter defending Wisconsin from absentee ballot abuse.

III. SUBCH. IV PROHIBITS UNCERTIFIED INTERMEDIARIES FROM COLLECTING ABSENTEE BALLOTS.

In *Brnovich*, the Supreme Court strongly endorsed statutory schemes like Wisconsin’s that prevent influence of mega-wealthy partisans. Approving the Commission’s Report, the Court noted that “[r]estrictions on ballot collection are also common in other States.” 141 S. Ct. at 2348 (citing Bybee, J., dissenting below, *Democratic Nat. Committee v. Hobbs*, 948 F.3d 989, 1068–1069, 1088–1143 (9th Cir., 2020)).

The personal delivery and location requirements in §§ 6.87(4)(b)1. and 6.855 should be construed exactly as the Commission recommended:

- 5.2.1 State and local jurisdictions should prohibit a person from handling absentee ballots *other than the voter, an acknowledged family member, the U.S. Postal Service or other legitimate shipper, or election officials*. The practice in some states of allowing candidates or party workers to pick up and deliver absentee ballots *should be eliminated*.

Comm. Report, 47 (emphases added).

DRW relies heavily on *Sommerfeld v. Bd. of Canvassers of City of St. Francis*, 269 Wis. 299, 69 N.W.2d 235 (1955), where a third party collected 18 absentee

ballots (apparently at the Sisters of St. Francis of Assisi convent¹⁸) and filed them with the clerk. Sec. 11.59 of the 1953 statute¹⁹ at issue provided that an absentee ballot “envelope shall be mailed by such voter, or if more convenient it may be delivered in person.”

Sommerfeld is inapt. First, the anti-fraud protections in the 1953 statute were extra-ordinarily strict.²⁰ They required absentee voters to execute notarized affidavits, required notaries to include non-solicitation representations in their recitals, and subjected both voters and notaries to severe criminal penalties for violation.

Thus, under the *Sommerfeld* statute, absentee voters had already marked secret ballots and both voters and notaries had already sworn non-solicitation *before* “collectors” ever picked up the ballots. It was illegal for the collectors to solicit or influence absentee voters or know how they voted, and the voters, notaries and collectors were all subject to severe penalties if collectors did so.

Further, while a non-solicitation oath and criminal penalties similar to the 1953 law remain in current § 6.87(2), § 6.87(5) adopted in response to the 1965 Voting Rights Act²¹ allows an “individual” or “assistant” to actually mark an absentee ballot for a disabled voter. Critically, the 1953 non-solicitation oath, notary requirements,

¹⁸ <https://www.lakeosfs.org/who-we-are/convent-grounds/>

¹⁹ App. 2.

²⁰ Notarial requirements are themselves exceptionally restrictive, including detailed identification and verification protocols. Ch. 140, Stats.

²¹ 52 U.S.C. § 10301 *et seq.*

and criminal penalties are *absent* from § 6.87(5), which does *not* prohibit an “individual” or “assistant” from soliciting a voter or impose criminal penalties for doing so.

Thus, in contrast to the strict anti-fraud protections under the *Sommerfeld* statute, the WEC memos, collectors and drop-boxes created a perfect partisan storm in 2020, giving “individuals” and “assistants” cover to *solicit* electors’ votes, *vote* those electors’ ballots, *collect* the ballots, then *deliver* the ballots to unmanned drop-boxes with no video or other surveillance – all *en masse* without certification or threat of prosecution.²²

Consequently, even if this Court were to accept Defendants’ invitation to write *Sommerfeld* “collector” language into §§ 6.87(4)(b)1., it would be duty bound to write *Sommerfeld*’s strict anti-fraud protections into § 6.87(5) as well.²³

Intervenors argue that where § 6.87(5) provides assistants for disabled persons unable to mark a ballot, § 6.87(4)(b)1. can not be read to prohibit collectors because those same disabled persons are also unable to mail or deliver the ballot in person. DRW Br. 44-45.

²² <https://elections.wi.gov/forms/EL-121-english>; <https://elections.wi.gov/forms/el-122>. Absentee ballot request and certification forms do *not* require “assistants” to certify or swear they have not solicited the elector’s vote and do *not* threaten criminal penalties for doing so.

²³ Conceivably, § 6.87(5) might be construed with § 6.87(4)(b)1. to imply the *assistant* has authority to mail or deliver the marked ballot. They can *not* be read to imply blanket authorization for tax-exempt organizations expending millions of unreported dollars to fund partisan-designed operations where complete strangers collect and deposit absentee ballots in drop-boxes *en masse* unregulated and un surveilled.

DRW misses the point for two reasons. First, in virtually all instances, disabled persons competent to vote request trusted caregivers to “assist” marking their ballots. The issue therefore is not whether caregivers commit incidental *de minimis* violations when they mail or deliver ballots to clerks for those disabled persons.²⁴ Rather, it is whether CTCL and other partisan interests who leveraged WEC’s COVID-guidance to create industrial-scale ballot harvesting operations will be allowed to continue them. (Overlooking Grandma exceeding the speed limit by 5 m.p.h. does not require ignoring an organized mass street-race exceeding it by 50 or 60 or 100 m.p.h.)

Second, if §§ 6.87(4)(b)1. does, in fact, impose isolated hardships, the remedy is not amending the statute by *post hoc* judicial construction. Despite ample notice prior to the 2020 election,²⁵ WEC and Intervenors did not pursue legislative amendment, commence administrative rule-making, seek an injunction, or even obtain a majority vote of the WEC commissioners whose authority the WEC memos purportedly invoke. WEC and Defendants have now had well over two years to remedy statutory defects through those proper channels, but still refuse to pursue them,²⁶ asking instead that this Court re-write the law.

²⁴ Ignoring incidental *de minimis* violations by trusted caregivers is a commendable exercise of common sense. *See e.g., Kittelson v. Dettinger*, 174 Wis. 71, 182 N.W. 340, 341 (1921) (construing notice requirements in school district vote: “we are not inclined to construe them so strictly that unimportant mistakes ... will defeat ... the purpose for which the statutes were enacted”) (citations omitted).

²⁵ The COVID virus was known as early as December, 2019. Gov. Evers issued his first Emergency Executive Order on March 12, 2020. <https://evers.wi.gov/Documents/EO/EO072-DeclaringHealthEmergencyCOVID-19.pdf>

²⁶ *E.g., Priorities USA v. Nessel*, 860 F. App’x 419, 422 (6th Cir. 2021) (“whatever amount of

This Court should not countenance such gamesmanship. It should construe the statutes as written and require WEC, Intervenors, and any other parties seeking relief to pursue it by proper means.

IV. SUBCH. IV PROHIBITS DROP-BOXES.

Secs. 6.84–.89 (Subch. IV) “must be construed together, because they all appear in the same statutory scheme.” *State v. Reyes Fuerte*, 2017 WI 104, ¶ 28, 378 Wis. 2d 504, 521, 904 N.W.2d 773, 781.

Sec. § 6.87(4)(b)1. requires that absentee ballots “shall be mailed by the elector, or delivered in person, to the municipal clerk issuing the ballot or ballots.” Legislative intent that “delivered in person to the municipal clerk” refers to the *elector* and not a third party is clearly indicated in § 6.86(6) (Methods for obtaining an absentee ballot): “if an *elector* mails or personally delivers an absentee ballot to the municipal clerk....” (Emphasis added.)

Further, polling places, clerks’ offices, and alternate walk-in sites provided in §§ 5.25, 6.87(4)(b)1. and 6.855 are the *only* locations expressly authorized to receive ballots, either in person or absentee, and *all three* require on-site, authorized personnel – one of the “traditional safeguards of the polling place.” Sec. 6.84(1).

DRW argues that “Wisconsin law ... does not prohibit municipal clerks from using secure drop-boxes.” DRW Br. 52. But DRW’s “nothing says we can’t” argument tellingly concedes that there is *no* language in *any* statute authorizing

surprise befell the advocacy groups in the 2020 elections, they now are keenly aware of the voter-transportation law and can organize their future activities in compliance with it”).

drop-boxes. Further, DRW calling them “secure” is pure fantasy – there was no video surveillance or other security protocols documenting who deposited ballots in the boxes, how many ballots they deposited, how many times they deposited ballots, who voted the ballots they deposited, how they solicited or “collected” them, or whether the electors voting the ballots authorized them to do so.

Even if this Court were to imply “collector” authority from the “assistant” language in § 6.87(5) as Defendants urge, that language implies *only* authority for the *assistant* to mail or deliver the ballot – it does *not* imply authority for hundreds of complete strangers to engage in massive ballot harvesting in conjunction with strategically allocated grants from non-profits funded by super-wealthy partisans.

CONCLUSION

In the 2020 election, mega-wealthy interests evaded Wisconsin’s defenses against absentee ballot abuse, allocating \$10.2 million in unreported soft money with patently partisan design and decisive effect, funding drop-boxes used thousands of times by partisan collectors without accountability or surveillance.

Those facts more than validate the Commission on Federal Election Reform’s *Brnovich* warning that “the practice ... of allowing candidates or party workers to pick up and deliver absentee ballots should be eliminated.”

Secs. 6.87(4)(b)1. and 6.855 and the circuit court order enjoining use of drop-boxes should be so construed and affirmed.

Respectfully submitted March 21, 2022.

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CERTIFICATION OF FORM AND LENGTH

I hereby certify that this brief conforms to the rules contained in Wis. Stats. § 809.19(8)(b), (bm) and (c) for a brief. The length of this brief is 2,972 words, calculated using the word count function of Microsoft Word 2016.

March 21, 2022

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**CERTIFICATION OF COMPLIANCE
WITH RULE 809.19 (12)**

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I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of s. 809.19 (12).

I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

March 21, 2022

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