

STATE OF WISCONSIN CIRCUIT COURT  
BRANCH 8

WAUKESHA COUNTY

Richard Braun,  
Plaintiff,

v.

Wisconsin Elections Commission,  
Defendant.

Case No. 2022CV001336  
Case Code: 30701  
Declaratory Judgment

**BRIEF OF *AMICUS CURIAE* VOTE.ORG  
IN SUPPORT OF DEFENDANT'S MOTION  
FOR SUMMARY JUDGMENT**

Amicus Vote.org files this brief in support of Defendant's Motion for Summary Judgment, pursuant to this Court's Order granting leave to do so.

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## INTRODUCTION

Plaintiff Richard Braun challenges Wisconsin's use of the National Mail Voter Registration Form (the "National Form"). He claims the Wisconsin Elections Commission's ("WEC") acceptance of the form violates (1) Wis. Stat. § 6.33(1), which prescribes requirements related to Wisconsin's voter registration form, and (2) Wis. Stat. § 227.10, which imposes requirements for administrative rulemaking. Braun and WEC have filed cross-motions for summary judgment.

Vote.org operates the largest nonpartisan, nonprofit voter registration platform in the country, and it has helped Wisconsin-based users register to vote using the National Form. WEC's brief explains in detail many reasons why the Court should grant summary judgment rejecting Braun's claims. Vote.org does not repeat the arguments made by WEC, but rather files this amicus brief to provide additional information pertinent to the issues in this case, informed by Vote.org's unique familiarity with using the National Form from the voters' perspective. Vote.org also expands on several additional legal points centrally relevant to the Court's consideration of the cross motions for summary judgment.

First, the fundamental premise underlying all of Braun's merits arguments is that the State-Specific Instructions are not part of the National Form, and that premise is false. In fact, the form's State-Specific Instructions for Wisconsin are an integral part of the National Form when it is used to register Wisconsin voters. Second, contrary to Braun's arguments, Wisconsin law does not require *all* voter registration forms to conform to the full set of requirements that Wis. Stat. § 6.33(1) imposes on the Wisconsin-specific form. That full set of requirements applies only to WEC's own form. And even if the National Form were subject to the full set of requirements in Wis. Stat. § 6.33(1), Braun's claim still fails because the National Form satisfies those criteria, too. Third, even assuming that WEC has approved the National Form, that approval did not require a rulemaking because the National Form is an optional form that does not require the provision of *any* information, much less the optional party and race information that underlies Braun's rulemaking

argument. Finally, Braun does not and could not allege a claim under Wis. Stat. § 227.40. For those reasons and the reasons given by WEC, the Court should enter summary judgment for Defendant.

### **INTEREST OF AMICUS**

Vote.org is the largest nonprofit, nonpartisan voter registration and get-out-the-vote technology platform in the country. Founded in 2016, Vote.org has helped register more than 7 million new voters across the country, including 4.2 million in the 2020 election cycle and over 100,000 in Wisconsin alone. *See* Aff. of Andrea Hailey, Dkt. 10 at ¶¶ 4, 20. To accomplish these objectives, Vote.org has built an online voter registration platform that assists voters in either registering to vote online or (for voters who cannot or prefer not to register online) in completing the National Form. Thousands of prospective Wisconsin voters have used Vote.org to facilitate their registration using the National Form in this manner. *Id.* ¶ 22. If WEC were barred from accepting the National Form, Vote.org would no longer be able to assist prospective Wisconsin voters in this way unless Vote.org first developed new software to reflect Wisconsin’s state-specific form, a change that would require staff time and new expenses. *See id.* ¶ 24. This would cause direct and significant organizational harm to Vote.org, which currently uses the National Form to help register voters in 47 states across the country. Vote.org serves voters not often reached by election officials or traditional means of voter registration, and the National Form offers a standardized way for Vote.org to fulfill its mission of expanding the electorate across the country. If Braun wins, Vote.org—and Wisconsin voters—lose.

### **STATEMENT OF THE CASE**

#### **I. Legal Background**

In 1993, Congress passed the National Voter Registration Act (“NVRA”) to “increase the number of eligible citizens who register to vote in elections for Federal office.” 52 U.S.C. § 20501(b)(1). The Act, among other reforms, mandated that the federal government, “in consultation with the chief election officers of the States

... develop a mail voter registration application form for elections for Federal office.” *Id.* § 20508(a)(2).

Congress initially assigned this responsibility to the Federal Election Commission (“FEC”), which promulgated regulations regarding the form that remain in effect today.<sup>1</sup> Those regulations state that the National Form “shall consist of three components: an application, which shall contain appropriate fields” (the “Application”), “general instructions for completing the application” (the “General Instructions”); and accompanying state-specific instructions” (the “State-Specific Instructions”). 11 C.F.R. § 9428.3(a). The State-Specific Instructions must include “the address where the application should be mailed and information regarding the state’s specific voter eligibility and registration requirements.” *Id.* § 9428.3(b). The regulations repeatedly mandate that the National Form “direct the applicant to consult the accompanying state-specific instructions” to determine whether or how to fill out particular fields. *Id.* § 9428.4(6)(i), (7)(i), (8). The regulations further ensure compliance with state law by requiring that every state’s designated “chief state election official” inform the federal government of “[a]ll voter registration eligibility requirements of that state” and “any change to the state’s voter eligibility requirements,” so that the agency can update the State-Specific Instructions of the National Form accordingly. *Id.* § 9428.6(a)(1), (c).

The final version of the National Form, first published in November 1994, reflects Congress’ and the agency’s intent to make the General Instructions and State-Specific Instructions part and parcel of the National Form. The National Form is 26 pages long. The first page is titled “General Instructions” and discusses the proper use of the National Form; how to verify one’s eligibility by checking the State-Specific Instructions; how to complete the application by, among other tasks, checking the State-Specific Instructions; when to register to vote as listed in the

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<sup>1</sup> In 2002, the Help America Vote Act reassigned responsibility over voter registration, including use of the National Form, to the U.S. Election Assistance Commission, which continued using a substantially identical form. Help America Vote Act, Pub. L. No. 107–252, § 802, 116 Stat. 1666, 1726 (2002).

State-Specific Instructions; and how to submit one’s application in accordance with the State-Specific Instructions. U.S. Election Assistance Comm’n, *National Mail Voter Registration Form* (attached as Exhibit G) at \*1. The next page is titled “Application Instructions,” and explains how to complete each of the Application’s components. *Id.* at \*2. That page identifies the items for which the registrant should refer to the State-Specific Instructions. The next page, titled “Voter Registration Application,” is comprised of sections for eligibility verification, legal name, residential address, mailing address, date of birth, telephone number, identification number, choice of party, race or ethnic group, and oath/affirmation. *Id.* at \*A1. The sections for eligibility verification, identification number, choice of party, race or ethnic group, and oath/affirmation explicitly direct the registrant to the State-Specific Instructions. *Id.* The Application finally instructs users to mail the Application to the address provided in the State-Specific Instructions. The next page of the Application contains a large text box labeled “FOR OFFICIAL USE ONLY,” which covers roughly half the page, as well as a space to fill out postal information. *Id.* at \*A2.

The remaining pages of the National Form are the State-Specific Instructions. The State-Specific Instructions for Wisconsin were last updated on September 20, 2022—five days after Braun filed his lawsuit. *Id.* at \*V. They provide a prospective registrant with information regarding the Application, and note that Wisconsin registrants do not need to provide political party or race or ethnic group in order to register. *Id.* The Wisconsin instructions also contain a list of eligibility requirements, which a registrant must review before signing the National Form, which say that “To register in Wisconsin you must:”

- be a citizen of the United States;
- be a resident of Wisconsin and have resided at the registration address for at least 28 days;
- be at least 18 years old;
- not have been convicted of treason, felony or bribery, or if you have, your civil rights have been restored after completion of your sentence or a pardon;



- not have been found by a court to be incapable of understanding the objective of the electoral process;
- not make or benefit from a bet or wage depending on the result of an election; and
- not have voted at any other location in the same election.

*Id.* Finally, the Wisconsin instructions provide information about the mailing address for submitting the National Form.

Once the National Form is submitted, the NVRA mandates that the vast majority of states “accept and use” it. However, like the rest of the NVRA, mandatory acceptance of the National Form “does not apply to” those states in which “all voters in the State may register to vote at the polling place at the time of voting.” 52 U.S.C. § 20503(b)(2). Currently, six states are exempt from the NVRA: North Dakota, Wyoming, Idaho, Minnesota, New Hampshire, and Wisconsin. Of these six, North Dakota does not have any voter registration at all, so does not accept any voter registration forms—be it the National Form, or any state forms. In Idaho, a statute mandates acceptance of the National Form. Idaho Code § 34-410. In Minnesota, the secretary of state, not the legislature, has issued regulations allowing use of the National Form. Minn. R. 8200.3900. Wisconsin’s elections officials, like Minnesota’s, began accepting the National Form in 1995 and have continued to do so ever since, despite significant changes to Wisconsin’s election laws. *See* Ex. G at \*1.<sup>2</sup> Only two states that require voter registration do not currently accept the National Form (and in one, the form is accepted, it just does not, in and of itself, consummate registration): Wyoming and New Hampshire. Wyoming state law requires voter registration to be completed in front of an “oath-taking officer,” which is incompatible with use of the National Form. New Hampshire accepts a

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<sup>2</sup> An FEC press release issued upon the initial publication of the National Form in 1994 suggests that Wisconsin first began accepting the National Form in 1995. The press release stated that, at that time, “[c]itizens in all but five states will be able to fill out this form anywhere in the country and use it to register in their home state, beginning in January 1995.” Federal Election Comm’n, National Mail Voter Registration Form Approved (Nov. 8, 1994) (attached as Exhibit K). Wisconsin is not listed among the five exceptions.

completed National Form as a request for New Hampshire's own mail voter registration form.

## **II. Procedural Background**

Plaintiff Richard Braun filed suit against WEC on September 15, 2022, seeking declaratory and injunctive relief. Complaint, Dkt. 2 at 10.

Braun first claims that WEC's acceptance of the National Form violates Wis. Stat. § 6.33(1), which he alleges imposes mandatory requirements applicable to all Wisconsin voter registration forms. Dkt. 2 ¶¶ 22, 23; Pl.'s Br., Dkt. 58 at 6–20. Braun contends that the National Form lacks eight supposedly mandatory components: (1) sufficient information to show the length of the registrant's residency in the same ward or election district; (2) information concerning whether the registrant has been convicted of a felony or pardoned; (3) a disclosure that reads "Falsification of information on this form is punishable under Wisconsin law as a Class I felony"; (4) a space for the reviewing election official to sign his or her name; (5) a space to identify the registrant's ward and aldermanic district; (6) a space for the reviewing clerk to indicate the method by which the form was received; (7) a space for the reviewing clerk to fill in information concerning the registrant's proof of residence; and (8) a space for the reviewing clerk to record the registrant's voter ID number. Braun does not indicate what statute authorizes this first claim.

Braun's second claim alleges that WEC's approval of the National Form violates Wis. Stat. § 227.10. Braun contends that the National Form asks the registrant for information concerning their political party and racial or ethnic group that is not required by any statute. Dkt. 2 ¶¶ 47, 48; Dkt. 58 at 20–21. He argues the National Form therefore constitutes a novel legal requirement that was not promulgated according to Wis. Stat. § 227.10's rulemaking procedures. Dkt. 58 at 20–22. Braun seeks both a declaratory judgment on this issue and a permanent injunction "requiring that WEC withdraw its approval of the form [and] cease and desist from failing to comply with Wis. Stat. § 6.33(1) and 227.10." Dkt. 2 at \*10.

Braun and WEC have submitted cross motions for summary judgment. Vote.org submits this brief in support of WEC’s motion for summary judgment and in opposition to Braun’s.

## LEGAL STANDARD

Summary judgment “shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Wis. Stat. § 802.08. Both Braun and WEC agree that this case presents a purely legal issue and is appropriate for resolution on summary judgment.

## ARGUMENT

### **I. The National Form complies with Wisconsin law because the State-Specific Instructions are an integral part of the Form.**

Braun’s argument that the National Form is inconsistent with Wisconsin law requires the Court to ignore the State-Specific Instructions, which address all of Braun’s alleged deficiencies. *Infra* Part II; *see also* Def.’s Br., Dkt. 82 at 31–32. There is no basis for the Court to do so, because the State-Specific Instructions are an integral part of the National Form. The federal regulations governing the National Form specify that it “shall consist of three components”: not only the Application itself, but also the General Instructions and the State-Specific Instructions. 11 C.F.R. § 9428.3(a); *see also* 11 C.F.R. § 9428.2(a) (“Definitions” section) (“[T]he national mail voter registration application form . . . includes the registration application, accompanying general instructions for completing the application, and state-specific instructions.”). The U.S. Supreme Court has reiterated that the National Form “contains a number of state-specific instructions, which tell residents of each State what additional information they must provide and where they must submit the form.” *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 5-6 (2013) (“ITCA”); *see id.* at 46 n.3 (Alito, J., dissenting) (stating that using the state instructions to comply with state law is “is exactly what Congress envisioned” given

that “[e]ighteen of the federal form's 23 pages are state-specific instructions”).<sup>3</sup> Indeed, both parties in *ITCA* agreed that placing a state law requirement in the State-Specific Instructions would constitute inclusion in the National Form; the only question was whether that state-law requirement could be so included. *Id.* at 19–20.

The content of the National Form itself confirms this reading. The National Form is replete with reminders to “[c]heck the information under your State in the State instructions” and “[u]se both the Application Instructions and State Instructions to guide you in filling out the application.” Ex. G at \*1. The subtitle of the Application page—centered, in bold text, at the top of the page—tells voters, “[b]efore completing this form, review the General, Application, and State specific instructions.” *Id.* at \*A1. The sections titled “ID number,” “Choice of Party,” and “Race or Ethnic Group”—the sections Braun claims the Form unnecessarily includes—each contain identical prompts: “[s]ee item [6–8] in the instructions for your state.” *Id.* An applicant then must review instructions that read “I have reviewed my state’s instructions and I swear/affirm that... I meet the eligibility requirements of my state and subscribe to any oath required [and] [t]he information I have provided is true to the best of my knowledge under penalty of perjury.” *Id.* Before they can submit their National Form, applicants must once more consult the state instructions for the mailing address of their state board of elections. In other words, the Form is designed so that a prospective applicant cannot know where to submit the application without consulting the state instructions.

In arguing that the National Form consists of only the Application, Braun appeals to dictionary definitions. Dkt. 58 at 18 (citing *Gallego v. Wal-Mart Stores, Inc.*, 2005 WI App 244, ¶ 13, 288 Wis. 2d 229, 238, 707 N.W.2d 539, 544). But the National Form is a federal document defined by federal law, so the federal law definition controls here. *See Howard v. Howard*, 130 Wis. 2d 206, 211, 387 N.W.2d 96, 98 (Ct. App. 1986) (using the Code of Federal Regulations to define a contested

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<sup>3</sup> *ITCA*'s conclusion that the State-Specific Instructions are part of the National Form is applicable here, even though the case addressed usage of the National Form in Arizona, a state that is required to accept it.

federal term). The Form itself and the administrative guidance underlying it say the National Form contains both the Application and the accompanying instructions. *See* 11 C.F.R. § 9428.3(a). Federal law therefore leaves no ambiguity that might require consultation of dictionaries. *Cf. Gallego*, 2005 WI App. 244, ¶ 13 (consulting dictionary where the contested term “is not statutorily defined”).

Braun also argues there is “no way to guarantee that” the General and State-Specific Instructions “will always be included . . . or if included that they are read and understood by the registrant.” Dkt. 58 at 16. But the Application itself repeatedly refers to the State-Specific Instructions, and applicants who use the National Form must swear under oath that they have “have reviewed [their] state’s instructions.” Ex. G at \*A1. A registrant who signs the form without reviewing the instructions therefore would be falsely swearing an oath. And Braun’s argument that the State-Specific Instructions are a separate document “available on the EAC website,” Dkt. 58 at 17, is simply false. The entire National Form—General Instructions, State-Specific Instructions, and Application—is provided by the EAC as a single document. *See* Ex. G.

Finally, Braun’s argument that defining the National Form as including the State-Specific and General Instructions would require each voter to mail the Form’s full 26 pages, Dkt. 58 at 17–18, is contradicted by the instructions themselves. The National Form instructs voters to “[m]ail this *application* to the address provided for your state.” Ex. G at \*A1 (emphasis added). It therefore requires mailing only the fillable Application section of the Form.

This Court must therefore analyze the National Form with reference to both the General Instructions and the State-Specific Instructions. When it does so, the National Form is fully compliant with Wisconsin law for the reasons given by WEC, Dkt. 82 at 27–32.

**II. Braun’s arguments conflate the requirements applicable to WEC’s own form with the requirements applicable to other voter registration forms.**

Braun’s argument that the National Form does not meet Wisconsin’s statutory requirements also fails for an additional reason: it incorrectly assumes that Wisconsin law requires all voter registration forms to comply with *all* of Wis. Stat. § 6.33(1)’s requirements. But the relevant parts of § 6.33(1) apply only to registration forms *designed by WEC*, and they impose two categories of requirements. First, the statute provides that WEC “shall *design the form to obtain* from each elector” certain information: name, date, residential address, citizenship, birthdate, and so on. Wis. Stat. § 6.33(1) (emphasis added). That information corresponds with the eligibility requirements to register to vote in Wisconsin. *See id.* §§ 6.02, 6.03. Second, the statute provides that WEC “shall *include on the form*” space for a signature, a statement about penalties for false statements, and space for election officials to add certain information. *Id.* § 6.33(1). Unlike the first, this second set of directives does *not* correspond with Wisconsin’s voter eligibility requirements. These requirements themselves speak only to what WEC must include when it designs its own registration form. *See id.* § 6.33(1). Aside from authorizing WEC to “prescribe the format, size, and shape of registration forms,” *id.*, the statute says nothing about whether and which other registration forms WEC may prescribe for use.

For forms like the National Form that are *not* designed by WEC, the distinction between § 6.33(1)’s two categories of requirements—the qualifying information that WEC “shall design the form to obtain,” on the one hand, and the various spaces and features that WEC “shall include on the form,” on the other—is critical. That is because the statute authorizing voter registration by mail requires *only* that forms used for mail voter registration be “prescribed by” WEC and “*designed to obtain the information* required in § 6.33(1).” Wis. Stat. § 6.30(4) (emphasis added). That language precisely parallels the first category in § 6.33(1)—

the voter eligibility information that WEC's own forms must be "designed to obtain." In contrast, the mail voter registration statute says nothing to require that all forms used for mail voter registration comply with the second category, by including the various spaces and other information that § 6.33(1) requires WEC to include on its own forms.

Other statutes confirm that only voter eligibility information is required for voter registration on a form not designed by WEC. In particular, § 6.32 provides that election officials *must* register a voter "[u]pon receipt of a registration form . . . [i]f the form is sufficient to accomplish registration and the commission or clerk has no reliable information to indicate that the proposed elector is not qualified." Wis. Stat. §§ 6.32(1), (4). Those provisions are consistent with a requirement that registration forms call for the eligibility information that § 6.33(1) requires WEC to "design [its own] form to obtain," but inconsistent with Braun's insistence that all registration forms accepted by Wisconsin clerks must comply with the other, unrelated requirements of § 6.33(1).

The fact that registration forms not designed by WEC need only comply with the first category of § 6.33(1)'s requirements is dispositive. The National Form indisputably is "designed to obtain" the relevant information. Wis. Stat. § 6.30(4); *see* Ex. G. Braun complains that the National Form does not ask whether the applicant "has resided within the ward or election district for the number of consecutive days specified in s. 6.02(1)," or whether the applicant has been convicted of a felony for which they have not been pardoned. Dkt. 58 at 9–10. But the National Form asks both things, by explaining in the State-Specific Instructions that a registrant is eligible only if they are "a resident of Wisconsin and have resided at the registration address for at least 28 days," and they have not been convicted of a felony for which they have not been pardoned. Ex. G at \*V. The National Form then requires registrants to swear under oath that they have "reviewed my state's instructions" and that they "meet the eligibility requirements of my state." *Id.* at \*A1. This sworn statement by the voter is sufficient information to verify

registrants' status. *See ITCA*, 570 U.S. at 19 (finding that the National Form's affirmation of eligibility satisfied Arizona law requiring verification of citizenship).

Regardless, as WEC explains, even if the National Form were subject to the full set of requirements in § 6.33(1), Braun's claim still fails because the National Form satisfies those criteria, too. Dkt. 82 at 30–32. Braun argues that the Form does not include spaces for election officials to enter certain pieces of information, Dkt. No. 58 at 8, 10–15, but as WEC explains, fully half of page two of the Form's Application section is boxed off and marked "For Official Use Only." Ex. G at \*A2. Braun also complains that the National Form does not contain a disclosure required by § 6.33(1), that reads "Falsification of information on this form is punishable under Wisconsin law as a Class I felony." Dkt. 58 at 10–11. But the National Form contains a substantially identical warning in its signature box: "The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States." Perjury is a felony at both the state and federal level; under Wisconsin law, perjury is "a Class H felony," which is more serious than a Class I felony. Wis. Stat. § 946.31. The Form's warning is thus materially indistinguishable from that required under § 6.33(1).<sup>4</sup>

### **III. Wisconsin's acceptance of the National Form does not constitute an administrative rulemaking.**

Braun's argument that WEC's acceptance of the National Form constitutes an administrative rulemaking that violated Wisconsin's procedural requirements for rulemaking also fails on the merits. Dkt. 58 at 20–22. Braun's rulemaking argument

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<sup>4</sup> Braun also argues that the State-Specific Instructions violate a provision of § 6.33(1) requiring that "each item of information . . . be of a uniform font size." Dkt. 58 at 19. But WEC's own voter registration form, which contains several different font sizes, confirms that this requirement requires equal font sizes only across the different items requested on the form; WEC cannot put the "Identification" prompt in bigger font than "Your Name." It patently does not require that a whole form be of a uniform size—both WEC's form and the National Form contain different font sizes for section labels, applicant instructions, and official-use instructions.



is a very limited one. It relies entirely on Wis. Stat. § 227.10(2m)'s mandate that “[n]o agency may implement or enforce any standard, requirement, or threshold” that is not “explicitly required or explicitly permitted by statute” without engaging in rulemaking. But WEC’s approval of the National Form does not impose any “standard, requirement, or threshold” because it is an *optional form*: no one is required to use it, and any voter who would prefer to use WEC’s own form (which Braun concedes was properly approved, Dkt. 58 at 21) is free to do so. Moreover, Wisconsin’s decision to approve of the National Form could not have been subject to § 227.10(2m) because the decision predates that statute by over 15 years. *See* 2011 Wis. Act 21 §1R (enacting Wis. Stat. § 227.10(2m) in 2011, well after Wisconsin began accepting the National Form in 1995, *see supra* n.2). Finally, as WEC explains, the political party and race questions that Braun complains about are even more optional still—the General Instructions for those questions direct registrants to the State-Specific Instructions, which for Wisconsin specify that the questions are “Not required.” Ex. G at \*V. WEC therefore imposes no new voter registration requirements in allowing use of the National Form. The questions Braun complains of are optional questions on an already optional form. They are not a “standard, requirement, or threshold,” so their presence on the National Form did not require WEC to engage in rulemaking.

**IV. Braun failed to plead an action under Wis. Stat. § 227.40 and failed to comply with that statute’s procedural requirements.**

As WEC points out, Braun’s complaint never identifies *any* statutory cause of action as the basis for Braun’s claims. Dkt. 82 at 14 n.5. Rather, Braun’s complaint seeks a “declaratory judgment” without citing *any* authorizing statute. *See* Dkt. 2 ¶¶ 21–51. Braun’s Brief in support of his motion for summary judgment never references § 227.40. *See* Dkt. 58. In a motion to transfer the venue of Vote.org’s appeal from the Court’s denial of its intervention motion, however,

Braun argues for the first time that he brings a claim under § 227.40, Wisconsin’s Administrative Procedure Act.<sup>5</sup> There are two problems with that argument.

*First*, as WEC argues, Braun did not comply with § 227.40(5)’s requirement that he timely serve any complaint under § 227.40 on the Wisconsin Legislature’s Joint Committee for the Review of Administrative Rules (“JCRAR”). Dkt. 82 at 17. Because that requirement was “not complied with, the circuit court c[an] not proceed” to hear any claim under § 227.40. Wis. Stat. § 227.40(5); *Richards v. Young*, 150 Wis. 2d 549, 555, 441 N.W.2d 742, 744 (1989) (“[S]ervice [on JCRAR] must be made within sixty days after filing the complaint.”)

*Second*, Braun’s existing allegations do not state a claim under § 227.40 in any event. That provision governs only “action[s] for declaratory judgment as to the validity of [a] rule or guidance document.” Wis. Stat. § 227.40(1). Braun does not challenge any “rule or guidance document.” The National Form that Braun challenges was prepared by the federal government; it is not a WEC document at all. And although Braun argues (in challenging the venue of Vote.org’s appeal) that § 227.40 also governs challenges to agency policies on the ground that they should have been promulgated as rules, Braun does not challenge any concrete WEC policy either—he does not even allege when or how he believes WEC approved the use of the National Form. Rather, Braun’s allegations are focused on *local elections officials’* acceptance of the National Form. Dkt. 2 ¶¶ 17–18; Dkt. 58 at 5. Braun would like WEC to *prohibit* such acceptance, but that is a demand for affirmative

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<sup>5</sup> The issue arose because it affects appellate venue for Vote.org’s appeal from the Court’s denial of Vote.org’s motion to intervene as a defendant in this case. As part of its appeal, Vote.org argues it is entitled to designate appellate venue under Wis. Stat. §§ 752.21(2) and 801.50(3)(a), because Braun’s action has a state commission as its sole defendant and does not relate to the validity of a rule or guidance document. Braun has moved to transfer venue alleging that his action is actually a challenge to the validity of WEC’s guidance under Wis. Stat. § 227.40 and therefore venue lies in the district that encompasses this Court. *See* Aff. of Lynn K. Lodahl, Dkt. 80. That motion remains pending in the Court of Appeals.

action from WEC, not a challenge to any existing “rule or guidance document” within Wis. Stat. § 227.40’s ambit.<sup>6</sup>

### CONCLUSION

For the foregoing reasons, and the reasons given in Defendant WEC’s motion for summary judgment, the Court should grant Defendant WEC’s motion for summary judgment and deny Plaintiff Richard Braun’s motion for summary judgment.

Dated: February 3, 2023

Respectfully submitted,

Electronically signed by Diane M. Welsh

Diane M. Welsh, SBN 1030940  
PINES BACH LLP  
122 W. Washington Ave, Suite 900  
Madison, WI 53703  
Telephone: (608) 251-0101  
Facsimile: (608) 251-2883  
dwelsh@pinesbach.com

David Fox\*  
Christina Ford\*  
Harleen K. Gambhir\*  
Samuel T. Ward-Packard, SBN  
1128890  
Ian Baize\*  
ELIAS LAW GROUP LLP  
250 Massachusetts Ave NW, Suite  
400  
Washington, D.C. 20001  
Telephone: (202) 968-4652  
dfox@elias.law  
cford@elias.law  
hgambhir@elias.law  
swardpackard@elias.law  
ibaize@elias.law

*Attorneys for Vote.org*

\*Admitted *pro hac vice*

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<sup>6</sup> It may be the case, as WEC argues, Dkt. 82 at 14–17, that Braun ought to have alleged his claim as a challenge to particular guidance documents or approvals under § 227.40. But as WEC agrees, that is not the claim that Braun has presently alleged, and any such claim would be barred by Braun’s failure to serve the Joint Committee for the Review of Administrative Rules. *See id.*

## CERTIFICATE OF SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed Brief of *Amicus Curiae* Vote.org in Support of Defendant's Motion for Summary Judgment with the clerk of court using the Wisconsin Circuit Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 3<sup>rd</sup> day of February 2023.

Electronically signed by Diane M. Welsh  
Diane M. Welsh, SBN 1030940

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