FILED
08-19-2026
CIRCUIT COURT
DANE COUNTY, WI
2026CV002404

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY
BRANCH 16

LEAGUE OF WOMEN VOTERS OF WISCONSIN,
612 W. Main St., Ste. 200
Madison, WI 53703,

BARBARA FEENEY
460 Windmill Rd.
Brooklyn, WI 53521,

Case No. 26-CV-2404
Case Code: 30701
Declaratory Judgment

Plaintiffs,

v.

WISCONSIN ELECTIONS COMMISSION; DON M. MILLIS, ANN S. JACOBS, MARK L. THOMSEN, CARRIE RIEPL, ROBERT F. SPINDELL, JR., MARGE BOSTELMANN, in their official capacities as Commissioners; and MEAGAN WOLFE, in her official capacity as Administrator of the Wisconsin Elections Commission,
201 W. Washington Ave., Second Floor
Madison, WI 53703,

Defendants.

BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY INJUNCTION OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT

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INTRODUCTION

Hundreds of thousands of Wisconsinites return their absentee ballots through the mail in every major election. But timely delivery of the mail is imperiled more than ever before. In Wisconsin's spring election, absentee ballots that were placed in the mail ***weeks*** in advance of the deadline still arrived too late to be counted. Outcry from clerks and voters across Wisconsin prompted the Wisconsin Elections Commission ("WEC") to survey the issue statewide. The results of WEC's survey confirmed: mail delays are jeopardizing absentee ballots more than ever before.

WEC policy is transforming these delays into a democratic crisis. WEC expressly forbids Wisconsin voters—including Plaintiff Barbara Feeney and other members of Plaintiff League of Women Voters of Wisconsin ("LWVWI")—from voting on Election Day once they have placed their absentee ballots in the mail, regardless of whether those ballots have been received by election officials. Namely, WEC policy bars Wisconsin voters who have reason to believe that their mailed absentee ballots will not arrive in time to be counted ("Impacted Voters") from voting, even by casting a provisional ballot as a commonsense fail-safe. Because Impacted Voters have no way to vote on Election Day, WEC policy risks disenfranchising them. As the November general election approaches, WEC's policy must yield to Impacted Voters' fundamental right to vote—the right most preservative of all others. *Milwaukee Branch of NAACP v. Walker*, 2014 WI 98, ¶ 23, 357 Wis. 2d 469, 851 N.W.2d 262.

Plaintiffs are entitled to temporary injunctive relief—without which WEC's policy will continue to disenfranchise voters with late-arriving ballots. Plaintiffs will prevail on the merits because WEC misconstrues the statute underlying its policy

(Wis. Stat. § 6.86(6)), contrary to its text and in violation of the Wisconsin Constitution. Relief from this Court is the only way to ensure these voters may avoid irreparable harm; absent intervention now, Impacted Voters will never have another opportunity to vote in the upcoming election. For these reasons, Plaintiffs request that this Court: (1) declare that Wis. Stat. § 6.86(6) does not bar Impacted Voters from casting a ballot in person on Election Day in November, 2026; (2) declare that the Policy violates the right to vote under the Wisconsin Constitution; and (3) temporarily enjoin the Policy.

In the alternative, Plaintiffs are entitled to summary judgment on its sole claim for declaratory and permanent injunctive relief. There is no factual dispute about WEC's policy that prevents Impacted Voters from voting in person on Election Day, thereby causing Impacted Voters to be disenfranchised when their mailed absentee ballot fails to arrive on time. Under well-established Wisconsin law, such a policy violates the fundamental right to vote enshrined in the Wisconsin Constitution. Pursuant to Wis. Stat. § 802.08, Plaintiffs move this Court for: (1) summary judgment, and (2) an order (a) declaring that Wis. Stat. § 6.86(6) does not bar Impacted Voters from casting a ballot in person on Election Day; (b) declaring that the Policy violates the right to vote under the Wisconsin Constitution; and (c) permanently enjoining the Policy to the extent it denies a provisional ballot to Impacted Voters.

UNDISPUTED FACTUAL AND LEGAL BACKGROUND

I. Hundreds of thousands of Wisconsin voters return absentee ballots through the mail.

In general, Wisconsin voters may return their absentee ballots in person, at dropboxes, or through the mail. Wis. Stat. § 6.87(4)(b)1.; Wis. Elections Comm'n, *Election Law & Administration in Wisconsin Manual* ("Manual") at 7-117 (Sec. 7.9.2) (1st ed., June 2026); Wis. Elections Comm'n, *Form EL-128, Uniform Instructions for Wisconsin Absentee Voters* (rev. Aug. 2023).[1] Mail return is a popular choice for absentee voters. According to Defendants, hundreds of thousands of Wisconsinites return their absentee ballots through the mail in every major election.[2]

II. Defendants deny Impacted Voters a ballot on Election Day.

But a voter's act of placing their absentee ballot in the mail is not itself enough to ensure the voter gets to exercise their constitutionally guaranteed right to vote—

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[1] This Court can take judicial notice of the Manual and Form EL-128 pursuant to Wis. Stat. § 902.01(2)(b) because each is "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." The Manual and Form EL-128 are official documents published by Defendants. The Manual is available at https://elections.wi.gov/elaw; Form EL-128 is available at https://elections.wi.gov/sites/default/files/documents/EL-128%20Uniform%20Instructions%20Standard_1.pdf (both last visited Aug. 17, 2026).

[2] *See, e.g.*, Wis. Elections Comm'n, *2026 Spring Election Statistics Report* (July 1, 2026), available at https://elections.wi.gov/resources/statistics/2026-spring-election-voting-and-registration-statistics-report; Wis. Elections Comm'n, *2025 Spring Election Statistics Report* (Oct. 2, 2025), available at https://elections.wi.gov/resources/statistics/2025-spring-election-voting-and-registration-statistics-report; Wis. Elections Comm'n, *2024 General Election Statistics Report* (June 2, 2025), available at https://elections.wi.gov/resources/statistics/2024-general-election-voting-and-registration-statistics-report; Wis. Elections Comm'n, *2023 Spring Election Statistics Report* (Oct. 2, 2023), available at https://elections.wi.gov/resources/statistics/2023-spring-election-voting-and-registration-statistics-report; Wis. Elections Comm'n, *2022 General Election Statistics Report* (June 1, 2023), available at https://elections.wi.gov/resources/statistics/2022-general-election-voting-and-registration-statistics-report (all URLs last visited Aug. 17, 2026). This Court can take judicial notice of the above-referenced WEC election statistic reports pursuant to Wis. Stat. § 902.01(2).

the absentee ballot also must arrive at the clerk's office and be counted. *See* Wis. Stat. §§ 6.88(1)–(3); *Ollman v. Kowalewski*, 238 Wis. 574, 578, 300 N.W. 183 (1941) ("[N]ot to count [a voter's] vote for no fault of his own would deprive him of his constitutional right to vote.").[3] This case concerns the latency between a voter placing their absentee ballot in the mail to return it to the clerk and the ballot's actual delivery and counting. WEC's Manual recognizes this problem and advises clerks: "Because the [absentee ballot] process involves the postal system, there may be delays in both receiving and returning ballots." Manual at 7-114 (Sec. 7.8.1). In the Manual, Defendants instruct clerks:

> The Commission recommends that voters mail their absentee ballots back as soon as possible ***but no later than 10 business days before Election Day***. This ensures the greatest likelihood that the ballot will be returned to the municipal clerk by 8 p.m. on Election Day.

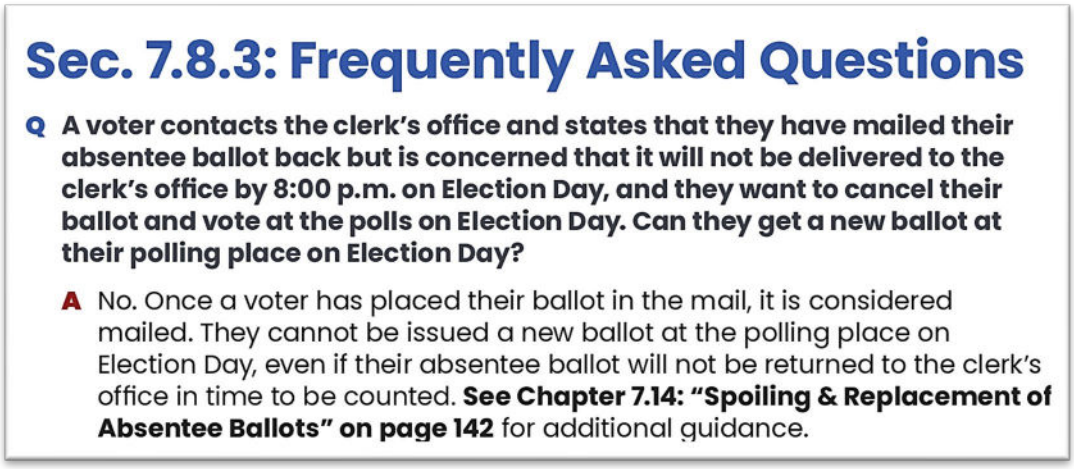
Id. at 7-117 (Sec. 7.9.3) (emphasis added). But when Defendants communicate with Wisconsin voters, they welcome a shorter (thus, riskier) window: in Form EL-128, the *Uniform Instructions for Wisconsin Absentee Voters*, Defendants advise voters to mail their ballots back "at least **one week**" in advance of Election Day. Wis. Elections Comm'n, *Uniform Instructions for Wisconsin Absentee Voters* at 1 (emphasis in original).[4] Although Defendants' contrary advice prejudices voters, Defendants

[3] The same is true under the U.S. Constitution. "Every voter's vote is entitled to be counted once. It must be correctly counted and reported." *Gray v. Sanders*, 372 U.S. 368, 380 (1963).

[4] *Supra* note 1 at 1. An administrative rule "requires all municipal clerks to use the Wisconsin Elections Commission's uniform instructions for absentee voting and prohibits any substantive edits or additions to those instructions." Mem. from WEC Staff to Wis. Mun. Clerks, Wis. Cnty. Clerks, Milwaukee Elections Comm'n, and Milwaukee Cnty. Election Comm'n 1 (Jan. 8, 2026) (citation modified), available at https://elections.wi.gov/sites/default/

nevertheless deny voters a fail-safe on Election Day if their ballot will not be received in time to be counted.

Defendants offer no recourse to Impacted Voters, denying them their fundamental right to vote. Defendants forbid Impacted Voters from receiving even a provisional ballot on Election Day. According to WEC guidance, "once the voter has placed the absentee ballot in the mail (or returned it by drop box or to the clerk's office), the option of voting in person at the polls is closed to them ***for that specific ballot***, even if the ballot has not yet been received by the clerk." Manual at 7-114 (Sec. 7.8.1) (emphasis added) (citing Wis. Stat. § 6.86(6)) ("the Policy" or "the WEC Policy"). To leave no doubt, WEC preemptively answers the following frequently asked question in the negative:



Sec. 7.8.3: Frequently Asked Questions

Q A voter contacts the clerk's office and states that they have mailed their absentee ballot back but is concerned that it will not be delivered to the clerk's office by 8:00 p.m. on Election Day, and they want to cancel their ballot and vote at the polls on Election Day. Can they get a new ballot at their polling place on Election Day?

A No. Once a voter has placed their ballot in the mail, it is considered mailed. They cannot be issued a new ballot at the polling place on Election Day, even if their absentee ballot will not be returned to the clerk's office in time to be counted. **See Chapter 7.14: "Spoiling & Replacement of Absentee Ballots" on page 142** for additional guidance.

files/documents/Admin%20Rule%20Clerk%20Communication%20Memo%20-%20EL%206.05.pdf (last visited Aug. 17, 2026).

Id. at 7-115 (Sec. 7.8.3).[5] But, importantly, this particular circumstance is not anticipated in, and the answer above is not compelled by, the statutory provision underlying the Policy. That provision reads, in relevant part:

> [I]f an elector mails or personally delivers an absentee ballot to the municipal clerk, the municipal clerk shall not return the ballot to the elector. An elector who mails or personally delivers an absentee ballot to the municipal clerk at an election is not permitted to vote in person at the same election on election day.

Wis. Stat. § 6.86(6).

III. The April 7, 2026 spring election revealed that mail delays are disenfranchising an increasing number of Wisconsin voters.

Wisconsin clerks and voters alike have sounded the alarm to WEC. In the weeks surrounding the April 7, 2026 spring election, both reported increased delivery delays of mailed absentee ballots. Memorandum and survey from WEC Staff to WEC Members (May 7, 2026) ("WEC Memo").[6] In response, WEC surveyed Wisconsin county and municipal clerks regarding the delivery of mailed absentee ballots during the spring election. *Id.* at 1. The survey generated responses from 906 Wisconsin county and municipal clerks, "an exceptionally high response rate compared to past WEC online surveys" which "suggest[ed] a high degree of clerk interest in the topic." *Id.*

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[5] The ***only*** remedy WEC permits is for voters to request that their original absentee ballot be spoiled and a replacement ballot be ***mailed*** to them or reissued at an in-person absentee voting ("IPAV") location. Manual at 7-114 (Sec. 7.8.1), 7-143 (Sec. 7.14.4). But not every voter has access to IPAV and, per WEC's own guidance, the mail option is ineffective because voters will have insufficient time to receive and return a replacement absentee ballot by mail.

[6] Available at https://perma.cc/Q6E4-394T (last visited Aug. 17, 2026). Plaintiffs respectfully request that this Court take judicial notice of this document under Wis. Stat. § 902.01(2).

As the WEC Memo details, mail delivery presented problems for clerks across Wisconsin. Approximately 67% of clerks reported "problems with mail travel times." *Id*. at 1–2. Nearly 40% described mail performance as worse, even "much worse," than in prior elections. *Id*. at 2. A "substantial number of respondents indicated the perception" that mailed ballots took seven or more days to arrive. *Id*. at 3. Approximately 25% of respondents "felt that the number of late-arriving ballots was greater than in past elections." *Id*. at 4.

Additionally, more than 300 clerks—from 69 of Wisconsin's 72 counties—submitted separate written comments with their survey responses. *Id*. at 4–5; *see also id*. at Appx. A. Two-thirds of the comments expressed "negative sentiments," *id*. at 5, including multiple reports of USPS delays and untimely delivered mailed ballots at rates never before seen by some of Wisconsin's most experienced clerks. *Id.*, Appx. A cmts. 5, 23, 41, 53, 58, 216, 227. At least two dozen municipal clerks specifically complained that mailed absentee ballots postmarked well in advance—sometimes weeks—before Election Day arrived too late to be counted. *See, e.g.*, *id.* cmts. 1, 13, 21, 22, 24, 30, 41, 53, 74, 76, 102, 161, 177, 186, 227, 233, 241, 250, 294, 296, 300, 306, 308, and 309; *see also id.* cmts. 18, 54, 58, 144, 157, 174, 200 (clerks complaining of mail delays when sending absentee ballots to voters); *see also id.* cmt. 210 ("We had 2 voters who said they mailed their ballots back a week prior to the election but we never received them."). In the City of Milwaukee alone, 336 absentee ballots arrived on April 8, 2026—the day after the spring election. Beck Decl., Ex. A, ¶3. All 336 absentee ballots were rejected, disenfranchising those voters.

WEC's Commissioners unanimously voted to send a letter to David Steiner, Postmaster General and Chief Executive Officer of the United States Postal Service, expressing concerns over mail-in ballot delivery delays during the spring election (the "WEC Letter").[7] In the letter, Defendants reported to the Postmaster General that "two-thirds of clerks [who responded to WEC's survey] reported problems with the mail. More than half of the clerks reported receiving complaints and concerns from their voters." WEC Letter at 1. WEC further communicated that "a concerning number [of clerks] reported election mail took 7–10 (or more) days to reach its destination" and "many of the clerks described infrequent mail deliveries when compared to past elections." *Id*. WEC explained "that any delay in election mail can potentially deprive citizens of their fundamental right to vote," and urged the Postmaster General to employ "extraordinary measures" to speed up the delivery of mail-in absentee ballots for all future elections in Wisconsin "to help ensure our citizens are heard." *Id*. at 2.

IV. Plaintiffs' interests are compromised by the WEC Policy.

A. LWVWI's organizational interests, and the interests of its members, are compromised by the WEC Policy.

Plaintiff LWVWI has grassroots support from 21 local Leagues and approximately 2,700 members statewide. Cronmiller Decl. ¶¶2–3. LWVWI is an affiliate of League of Women Voters of the United States, which has 800 state and

[7] The WEC Letter, dated May 27, 2026, is available at: https://perma.cc/X7UJ-NA7S (last visited Aug. 17, 2026). This Court can take judicial notice of this document under Wis. Stat. § 902.01(2).

local Leagues in all 50 states, the District of Columbia, and the Virgin Islands. *Id.* ¶4. LWVWI works to expand informed, active participation in state and local government, giving a voice to all Wisconsinites. *Id.*

LWVWI is dedicated to encouraging its members and the people of Wisconsin to exercise their fundamental right to vote. *Id.* ¶5. LWVWI's mission is to empower voters and defend democracy. *Id.* LWVWI does this by promoting political responsibility through informed and active participation in government and acting on selected governmental issues. *Id.* LWVWI seeks to maximize eligible voter participation through its voter registration, education, and outreach efforts and to encourage civic engagement through registration and voting. *Id.* To that end, LWVWI proactively encourages absentee voting, including returning absentee ballots through the mail. *Id.* LWVWI invests significant time, money, and effort in educating and assisting eligible Wisconsin voters who want to vote by mail-in absentee ballot. *Id.* ¶6. Any threat to the ability of Wisconsinites to cast a ballot is a threat to LWVWI's mission, longstanding work, and public statements encouraging absentee voters to return their ballots through the mail. *Id.* ¶7. Just this year, LWVWI has engaged in a wide range of activities to educate and assist absentee voters who return their ballots through the mail. *Id.* ¶8.

Defendants' disenfranchisement of Impacted Voters harms the LWVWI's reputation as a trusted resource and community partner, because voters who rely on and cast their absentee ballots in accordance with LWVWI's information and guidance may blame LWVWI for their disenfranchisement. *Id.* ¶7. For example,

LWVWI informs its members and the public that USPS recommends absentee voters mail back their ballot at least one week before Election Day to ensure timely delivery. *Id.* ¶9. LWVWI invests in a significant multimedia public education campaign (*i.e.*, via in-person and virtual programming, online via LWVWI's website and Vote411, and via social media) to teach voters about every step in the mail-in absentee voting process—namely, by preparing and publishing step-by-step guides on how to request an absentee ballot, cast an absentee ballot, and return an absentee ballot, including recommended timing for mailing an absentee ballot and checking the status of an absentee ballot.[8] *Id.* But LWVWI's public education work, and its reputation as a trusted resource for voters, is jeopardized if the mail does not actually deliver an absentee ballot consistent with these recommendations.

LWVWI's public education campaigns help mitigate the risk that an absentee voter's ballot will arrive too late to be counted. *Id.* ¶10. For example, in 2025, LWVWI created an Ambassador Toolkit for Election Education Resources that included information on proof of residence, voter registration, absentee and early voting, and Election Day voting.[9] *Id.* These materials—consistent with WEC's uniform

[8] *See, e.g.*, League of Women Voters of Wis., *Absentee and Early Voting*, https://my.lwv.org/wisconsin/voter-information/absentee-and-early-voting (last August 17, 2026); *see also, e.g.*, *Voting in My State – Wisconsin*, Vote411, https://www.vote411. org/wisconsin (last visited August 17, 2026); League of Women Voters of Wis., *8 Things Every Voter Should Know About Absentee and Early Voting in Wisconsin*, https://my.lwv.org/wisconsin/article/8-things-every-voter-should-know-about-absentee-and-early-voting-wisconsin (last visited August 17, 2026).

[9] League of Women Voters of Wis., *2025 Voter Education Ambassador Toolkit, Election Education Resources*, https://docs.google.com/document/d/1jDlXvA8G09IYL99WkAeGL2zrryH1b6Ugxpb NNlEUIvw/edit?tab=t.0 (last visited August 17, 2026).

instructions—encouraged voters to return their ballots at least one week before Election Day. *Id*. Unfortunately, growing evidence suggests that even if voters mail back their absentee ballots one week before Election Day, those ballots ***still*** might not arrive in time to be counted. *Id*. ¶11. Accordingly, in light of concerns regarding USPS delays, in 2026, LWVWI updated its Ambassador Toolkit to recommend that, if voters decide to cast an absentee ballot after the start of in-person absentee voting (two weeks before Election Day), they cast an in-person absentee ballot instead of relying on the mail.[10] *Id*.

Moreover, on every Election Day, hundreds of LWVWI members serve as poll workers or volunteer election observers. *Id*. ¶12. To be able to fulfill these duties, members often cast absentee ballots so that they can be sure they will be available to help throughout Election Day. *Id*. Following the election held on April 7, 2026, LWVWI conducted a survey to understand the voting patterns of their members. *Id*. ¶13. Of the 718 members who responded, 163 members returned their absentee ballots by mail. *Id*. Their votes were jeopardized because WEC forbids Impacted Voters from voting on Election Day once their absentee ballot is in the mail. *Id*. LWVWI members' voting rights are thus compromised because, even though they have done everything right, their ballots may arrive late, resulting in rejection. *Id*. At least one LWVWI member was an Impacted Voter during the April 7, 2026 spring

[10] League of Women Voters of Wis., *2026 Voter Education Ambassador Toolkit, Election Education Resources*, https://docs.google.com/document/d/1cj5ZYGMOYBdNTclwnJ15UaYYwqzI7dL4LUhZv3U55AY/edit?tab=t.0 (last visited August 17, 2026).

election and had no recourse to vote an in-person provisional ballot on Election Day. *Id*. ¶14.

B. Plaintiff Feeney's interests as a Wisconsin voter are compromised by the WEC Policy.

Plaintiff Barbara Feeney ("Feeney") is an adult resident of the State of Wisconsin. Feeney Decl. ¶1. Ms. Feeney is a resident of the Town of Rutland, Brooklyn, Wisconsin. *Id*. ¶2. Ms. Feeney is a qualified, registered Wisconsin voter, and is a regular voter. *Id*. ¶¶3–4. Ms. Feeney frequently votes by absentee ballot, and she intends to vote by absentee ballot in the future, including by returning her absentee ballot through the mail. *Id*. ¶¶4, 6. Ms. Feeney is also an active member of LWVWI, the current chair of LWVWI's voter services committee, the current chair of LWVWI's member services committee, and a current volunteer with the Vote411 help line. *Id*. ¶5. Ms. Feeney is very concerned that if she returns her absentee ballot through the mail, it will not arrive in time to be counted. *Id*. ¶6. There are no absentee ballot dropboxes in the Town of Rutland. *Id*. ¶9. Moreover, there are no regular hours for IPAV in the Town of Rutland. *Id*. ¶10. Rather, voters who desire to vote by absentee ballot in person must schedule an appointment with the Town of Rutland clerk. *Id*.

Given these hurdles, Ms. Feeney prefers to be able to reliably mail back her absentee ballot. *Id*. ¶11. However, Ms. Feeney is apprehensive about doing so because of USPS delays. *Id*. ¶12. She knows that if her absentee ballot does not arrive by close of the polls on Election Day, her ballot will be rejected and her vote will not count. *Id*. She also knows that, once she places her absentee ballotin the mail, "WEC forbids

[her] from voting in person on Election Day." *Id*. Further still, Ms. Feeney knows that if USPS delays delivery of her absentee ballot or loses her ballot, she will be disenfranchised because Defendants do not allow absentee voters impacted by mail delays to vote a provisional ballot on Election Day. *Id*. ¶13. If provisional balloting was available, Ms. Feeney would avail herself of that option in the event that she became an Impacted Voter in the future, and knowing that was a possibility would give her greater peace of mind as an absentee voter. *Id*. ¶13.

V. A simple remedy to the problem already exists.

Wisconsin already provides provisional ballots to some qualified voters on Election Day. *See* Wis. Stat. § 6.97; *see also* Wis. Admin. Code § EL 3.04. Under this statute, election officials offer provisional ballots to voters who cannot or will not produce valid photo identification at the polling site. *See* Wis. Elections Comm'n, *Provisional Voting Information Sheet* (rev. Oct. 2020) ("Form EL-123").[11] During that procedure, inspectors mark the ballot with an identifying serial number, seal it in an envelope, and place it in a separate carrier envelope rather than immediately tabulating it. Wis. Stat. § 6.97(1). Although Section 6.97 presently identifies other circumstances for provisional voting, any otherwise qualified Impacted Voter could be provided a provisional ballot on Election Day.

[11] Form EL-123 is available at https://myvote.wi.gov/Portals/0/Documents/EL-123_Provisional_Voting_Info_Sheet_English.pdf (last visited August 17, 2026).

LEGAL STANDARD

I. Temporary Injunctive Relief

Wisconsin law expressly authorizes Plaintiffs to seek temporary injunctive relief. Wis. Stat. § 813.02. To obtain such relief, a movant must show: "(1) the movant is likely to suffer irreparable harm if an injunction is not issued, (2) the movant has no other adequate remedy at law, (3) an injunction is necessary to preserve the status quo, and (4) the movant has a reasonable probability of success on the merits." *Gahl ex rel. Zingsheim v. Aurora Health Care, Inc.*, 2023 WI 35, ¶17, 413 Wis. 2d 418, 989 N.W.2d 561 (citing *Serv. Emps. Int'l Union, Loc. 1 v. Vos*, 2020 WI 67, ¶93, 393 Wis. 2d 38, 946 N.W.2d 35). Some courts also weigh the public interest as an equitable consideration in whether to grant an injunction. *See, e.g.*, *Forest Cnty. v. Goode*, 219 Wis. 2d 654, 684, 579 N.W.2d 715 (1998); *Village of Hobart v. Brown Cnty.*, 2007 WI App 250, ¶24, 306 Wis. 2d 263, 742 N.W.2d 907.

II. Summary Judgment

The "purpose of summary judgment procedure is to determine the existence of genuine factual disputes in order to avoid trials where there is nothing to try." *Yahnke v. Carson*, 2000 WI 74, ¶10, 236 Wis. 2d 257, 613 N.W.2d 102 (citation modified). "Summary judgment is appropriate when there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law." *Brey v. State Farm Mut. Auto. Ins. Co.*, 2022 WI 7, ¶8, 400 Wis. 2d 417, 970 N.W.2d 1 (quoted source omitted). A movant is entitled to summary judgment where "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(2).

ARGUMENT

Relying on the mail puts Wisconsin absentee voters in a more precarious position than ever before. Defendants recognize this, yet they compound this problem by imposing the unlawful WEC Policy upon Impacted Voters whose fundamental rights are imperiled. In so doing, Defendants misconstrue Wis. Stat. § 6.86(6), incorrectly interpreting this statute to forbid Wisconsinites from voting in person on Election Day if their ballots are lost or delayed in the mail. As discussed below, the statutory text does not require such an outcome; nor will the Wisconsin Constitution countenance such a result. This Court should confirm as much and issue injunctive relief to protect the right to vote. Alternatively, this Court should grant summary judgment in Plaintiffs' favor and permanently enjoin the WEC Policy.

I. Plaintiffs are entitled to temporary injunctive relief.

Plaintiffs satisfy the requirements for a temporary injunction. Plaintiffs are likely to succeed on the merits because the Policy hinges on Defendants' misinterpretation of Wis. Stat. § 6.86(6). Defendants' construction of § 6.86(6) contravenes statutory construction principles and cannot be reconciled with the Wisconsin Constitution. Each reason provides an independent basis for this Court to find in Plaintiffs' favor. Without temporary injunctive relief, Plaintiffs and Impacted Voters throughout Wisconsin face irreparable harm due to the WEC Policy because Impacted Voters will have no way to vote on Election Day. There is no other adequate remedy at law to ensure their votes are counted. Finally, Plaintiffs require a

temporary injunction to preserve the status quo, which is that absentee ballots provide, and long have provided, a valid, reliable option for Wisconsinites to exercise their constitutional right to vote. Without relief here, the right to vote may evaporate for thousands of Wisconsinites. For all these reasons, this Court should grant Plaintiffs' request for a temporary injunction.

A. Plaintiffs are likely to succeed on the merits.

As a threshold matter, the text of Wis. Stat. § 6.86(6) does not support Defendants' interpretation, which has been foisted upon Wisconsin voters through the WEC Policy. And, to the extent the WEC Policy accurately embodies the statute, it runs headlong into the constitutional right to vote. For either reason, the WEC Policy is a clear misapplication of law, and Plaintiffs are therefore likely to succeed on the merits.

1. Wisconsin Stat. § 6.86(6) does not prohibit in-person voting until the mailed ballot is delivered to the clerk.

The WEC Policy arises from Defendants' understanding of Wis. Stat. § 6.86(6), which reads, in relevant part:

> [I]f an elector mails or personally delivers an absentee ballot to the municipal clerk, the municipal clerk shall not return the ballot to the elector. An elector who mails or personally delivers an absentee ballot to the municipal clerk at an election is not permitted to vote in person at the same election on election day.

Under well-established Wisconsin law, "statutory interpretation begins with the language of the statute. If the meaning of the statute is plain, we ordinarily stop the inquiry." *State ex rel. Kalal v. Cir. Ct. for Dane Cnty.*, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110 (citation modified).

> Statutory language is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning." *Id.* "Context is important to meaning. So, too, is the structure of the statute in which the operative language appears. Therefore, statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results.

Id. ¶46; *see also Myers v. Wis. Dep't of Nat. Res.*, 2019 WI 5, ¶30, 385 Wis. 2d 176, 922 N.W.2d 47 (statutes are interpreted "reasonably, to avoid absurd or unreasonable results.").

Here, the statutory text and related phrases "mails" and "personally delivers" demonstrate that WEC has misinterpreted Wis. Stat. § 6.86(6). The "mail" is the "official system for ***delivering*** postal packets." *Mail*, *Black's Law Dictionary* (12th ed. 2024) (emphasis added). Delivery is an essential element of the term's "common and approved usage," Wis. Stat. § 990.01(1), because without "delivery" the act of mailing is meaningless. Nevertheless, here WEC narrowly interprets "mails" to solely refer to the placing of a ballot in the mail system, cutting off in-person voting opportunities without any regard to whether delivery occurs at all. This is plainly inconsistent with the "common and approved" understanding of "mails," which necessarily includes delivery.

Related phrases confirm this understanding of "mails." Statutory terms "should be understood in the same sense as the words immediately surrounding or coupled with it." *Benson v. City of Madison*, 2017 WI 65, ¶31, 376 Wis. 2d 35, 897 N.W.2d 16 (quoting *Wis. Citizens Concerned for Cranes & Doves v. Wis. Dep't of Nat. Res.*, 2004 WI 40, ¶40, 270 Wis. 2d 318, 677 N.W.2d 612). Here, the word "mails" is

coupled with the statutory phrase "personally delivers" and, therefore, should be construed in the same sense to mean "***delivers*** the ballot by mail." Clearly, the trigger the Wisconsin State Legislature intended was completed delivery of an absentee ballot to the clerk so that it could be counted, not the predicate step in the return process of merely placing a ballot in the mail.

Reading Wis. Stat. § 6.86(6)'s two sentences in tandem reinforces this conclusion. Each sentence establishes identical conditions precedent to consequences for the voter that only make sense once the mailed ballot is actually delivered to the clerk. Under the first sentence, "if an elector mails or personally delivers an absentee ballot to the municipal clerk," the consequence is "the municipal clerk shall not return the ballot to the elector." Wis. Stat. § 6.86(6). Necessarily, this consequence cannot be triggered unless the municipal clerk possesses the absentee ballot. The statutory text has meaning only if "mails" is understood as a means of delivery to the municipal clerk, in parallel to "personally delivers." Likewise, under the second sentence, "[a]n elector who mails or personally delivers an absentee ballot to the municipal clerk at an election is not permitted to vote in person at the same election on election day." *Id.* Logically, that prohibition exists because the absentee ballot has been delivered to the clerk to be counted and each voter is entitled to have their vote counted only once per election. But, as above, this consequence cannot be triggered unless the municipal clerk possesses the absentee ballot. Here, too, the statutory text has meaning only if "mails" is understood as a means of delivery, in parallel to "personally delivers."

If a court "can reasonably adopt a saving construction of a statute to avoid a constitutional conflict, [it should] do so." *In re Commitment of Hager*, 2018 WI 40, ¶31, 381 Wis. 2d 74, 911 N.W.2d 17 (citing *Milwaukee Branch of NAACP*, 2014 WI 98, ¶¶63–64). Nonetheless, given the impending November election and the possibility that the Wisconsin Court of Appeals or the Supreme Court of Wisconsin may not concur with Plaintiffs' interpretation of Wis. Stat. § 6.86(6), Plaintiffs respectfully request that this Court reach Plaintiffs' constitutional claim, even if this Court agrees with Plaintiffs' interpretation of § 6.86(6). *See, e.g.*, *Gabler v. Crime Victims Rts. Bd.*, 2017 WI 67, ¶52, 376 Wis. 2d 147, 897 N.W.2d 384 (crediting other courts' recognition "that the principle of constitutional avoidance gives way where the constitutional question is of great public importance") (citations omitted); *James v. Heinrich*, 2021 WI 58, ¶31 n.18, 397 Wis. 2d 517, 960 N.W.2d 350.

2. Defendants' interpretation of Wis. Stat. § 6.86(6) violates the Wisconsin Constitution as applied to Plaintiffs and other Impacted Voters.

The Wisconsin "constitution is the supreme law of the state." *Gibson Auto Co. v. Finnegan*, 217 Wis. 401, 406, 259 N.W. 420 (1935). Neither the Legislature nor an administrative agency may narrow the Constitution through statute or policy. "The constitution . . . prevails over . . . acts . . . to the contrary. Ordinary acts of the legislature . . . cannot be given effect if to do so would contravene a substantive provision in the constitution." *State v. Cole*, 2003 WI 112, ¶14, 264 Wis. 2d 520, 665 N.W.2d 328 (quoting *Schmeling v. Phelps*, 212 Wis. 2d 898, 908–09, 569 N.W.2d 784 (Ct. App. 1997)). The right to vote is one of those substantive provisions: "To prevent effective legislative encroachment upon the constitutional right of the elector, we

need but to firmly apply it." *State ex rel. Hunt v. Stafford*, 120 Wis. 203, 221, 97 N.W. 1043 (1904) (Marshall, J., concurring).

The protections guaranteed by the right to vote extend to Wisconsin's absentee voters. Wisconsin adopted the absentee ballot during the Civil War so that soldiers could participate in democracy while fighting for it.[12] Since then, our Supreme Court has repeatedly confirmed that absentee voters are protected by the right to vote. In *State ex rel. Symmonds v. Barnett*, the Court first invoked the right to vote to protect absentee voters from wrongful disenfranchisement. 182 Wis. 114, 127, 195 N.W. 707 (1923).[13] Over the following century, the Supreme Court repeatedly affirmed that absentee voters enjoy the broad security of the right to vote, as protected through the Wisconsin Constitution. *See, e.g.*, *In re Burke*, 229 Wis. 545, 282 N.W. 598, 602 (1938); *Anderson v. Budzien*, 12 Wis. 2d 530, 534, 107 N.W.2d 496 (1961); *Lanser v. Koconis,* 62 Wis. 2d 86, 93, 214 N.W.2d 425 (1974); *Trump v. Biden*, 2020 WI 91, ¶27, 394 Wis. 2d 629, 951 N.W.2d 568.

The Supreme Court of Wisconsin has long recognized the preeminence of the right to vote and resisted calls to disenfranchise voters. In *Dells v. Kennedy*, the

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[12] Wisconsin's first Supreme Court opinion to consider absentee ballots blessed their adoption:

> [H]istory has furnished no better example illustrating the capacity of the people for self government, than that furnished under this law, of the citizen soldiers pausing amid the horrors of war to discharge their duties as the primary legislators of the republic, and to guard by an intelligent use of their ballots, to be forwarded to their homes, the welfare of their country, and those principles of civil liberty for which they are ready at any moment to lay down their lives upon the field of battle.

State ex rel. Chandler v. Main, 16 Wis. 398, 423 (1863).

[13] Absentee voters were referred to as "absent voters" in this and other early cases.

plaintiffs filed suit after officials in Milwaukee refused their votes on election day for noncompliance with a registry statute. 49 Wis. 555, 6 N.W. 246 (1880).[14] The applicable statute[15] prohibited qualified voters from casting a ballot on election day without having previously registered, "unless [they] bec[a]me[] a qualified voter after the last day for completing the registry and before the election." *Id*. at 556. There was no option for otherwise qualified voters to register on election day: "[n]o vote shall be received at any general election unless the name of the person offering to vote be on the said register as completed by the board of registry." 1879 Wis. Gen. Laws, ch. 235, § 8. *Dells* explained that, for this reason, this statute unconstitutionally invaded the right to vote:

> the law disfranchises a constitutionally qualified elector, without his default or negligence, and makes no exception in his favor, and provides no method, chance or opportunity for him to make proof of his qualifications on the day of election, the only time, perchance, when he could possibly do so. This law undertakes to do what no law can do, and that is to deprive a person of an absolute right without his laches, default, negligence or consent; and, in order to exercise and enjoy it, to require him to accomplish an impossibility.

49 Wis. at 558. *Dells* teaches that, as a constitutional minimum, a fair opportunity to vote on election day must be preserved for all voters. All voters must have some "method, chance or opportunity" to vote on election day. *Id*. Through statute or otherwise, the government may not deny that opportunity.

This principle remains true to this day. Because the Policy denies Impacted Voters their fair opportunity to vote on Election Day, it is incompatible with the right

[14] Available at https://static.case.law/wis/49/case-pdfs/0555-01.pdf.

[15] 1879 Wis. Gen. Laws, ch. 235, available at https://perma.cc/4X43-67CQ.

to vote and must be stricken. If allowed to persist amid mounting USPS delivery delays, the Policy will disenfranchise Impacted Voters in November, who will be left with no recourse other than nervous hope that their delayed ballots will be delivered to the clerk before the deadline. But the Wisconsin Constitution guarantees more than hope. Indeed, it commands a different result: Impacted Voters must be afforded a meaningful opportunity to vote on election day.

* * *

The WEC Policy is founded upon faulty statutory construction. As used in Wis. Stat. § 6.86(6), "mails" must be understood to mean "delivers though the mail." This construction applies the "common and approved" usage of "mails" and harmonizes Wis. Stat. § 6.86(6)'s usage of "mails" with its parallel use of "personally delivers" while avoiding the constitutional deprivation that would result from a more exacting construction. Nevertheless, the more exacting construction currently underpins the WEC Policy. Because the WEC Policy relies upon a misapplication of Wis. Stat. § 6.86(6), Plaintiffs are likely to succeed on the merits of their claim.

B. An injunction is necessary to avoid irreparable harm.

"[A]t the temporary injunction stage the requirement of irreparable injury is met by showing that, without it to preserve the status quo pendente lite, the permanent injunction sought would be rendered futile." *Wis. Ass'n of Food Dealers v. City of Madison*, 97 Wis. 2d 426, 429, 293 N.W.2d 540, 542 (1980). Assuming it is not granted in advance of November, the permanent injunction Plaintiffs seek *would* be futile. Although voters may have been able to previously rely upon WEC's Uniform Instructions (guiding voters to place absentee ballots in the mail one week before

election day), new information about mail delays has revealed that this is simply no longer sufficient. And the Policy requires that *any* voter whose absentee ballot is delayed by the mail is prohibited from the polls on Election Day—creating a more acute threat of disenfranchisement than ever before. As a consequence, Impacted Voters risk denial of their right to vote on Election Day this November—a harm that cannot be undone through a permanent injunction after the election.

Disenfranchisement is an irreparable harm. "The right . . . to cast a ballot . . . is one of the most important . . . rights guaranteed . . . by the constitution." *State ex rel. Frederick v. Zimmerman*, 254 Wis. 600, 613, 37 N.W.2d 473 (1949). Invasion of that right is correspondingly significant. "If citizens are deprived of that right, which lies at the very basis of our Democracy, we will soon cease to be a Democracy." *Id.* Accordingly, "courts have held that infringement on the fundamental right to vote amounts to an irreparable injury." *Democratic Nat'l Comm. v. Bostelmann*, 451 F. Supp. 3d 952, 969 (W.D. Wis. 2020) (citations omitted); *see also League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) (collecting cases in support of proposition that "[c]ourts routinely deem restrictions on fundamental voting rights irreparable injury"); *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) ("A restriction on the fundamental right to vote therefore constitutes irreparable injury."); *Carey v. WEC*, 624 F. Supp. 3d 1020, 1034 (W.D. Wis. 2022) ("Without the requested injunctions, plaintiffs risk losing their right to vote, which qualifies as an irreparable harm.").

There is no way for the Impacted Voters to cast a ballot after Election Day. If the Policy is allowed to deny them the opportunity to vote on Election Day this November, there is no way for them to ever cast a ballot in that election. It follows that, without intervention from the Court here, irreparable harm will follow.

C. Plaintiffs have no other adequate remedy at law.

The analysis here is like the prior element. Absent relief, Plaintiffs and Impacted Voters have no adequate remedy at law because damages are an insufficient remedy. Once the election has passed, no subsequent order can require the tabulation of an unreceived or delayed mail-in absentee ballot. Those votes will be rejected, and the voters will be disenfranchised. This rejection cannot be undone.

D. The requested injunction is necessary to preserve the status quo.

In Wisconsin, courts require a showing that the temporary injunction is necessary to maintain the status quo. *E.g.*, *Gahl*, 2023 WI 35, ¶17. Here, the status quo that must be maintained is the fundamental right to vote, which Impacted Voters enjoy as of today. The Impacted Voters are "clothed with [that] constitutional right," *State ex rel. Wood v. Baker*, 38 Wis. 71, 89 (1875), on Election Day, but now it is in jeopardy. As WEC's survey confirmed, widespread problems are affecting mail delivery of absentee ballots across Wisconsin. WEC has acknowledged the risk that these delays have on the fundamental right to vote, though it has not changed its uniform instructions to give Wisconsin voters notice of this danger. Although voters may have been able to historically rely upon WEC's guidance to navigate the return of absentee ballots through the mail (*i.e.*, to return their ballots at least a week in

advance), this new risk of delay has upended the process. Ultimately, WEC is forbidding Impacted Voters from casting ballots (provisional or otherwise) on Election Day if their absentee ballots will not arrive in time to be counted. Rejecting the Policy, and WEC's improper construction of Wis. Stat. § 6.86(6), would not alter the status quo because doing so would vindicate the law as enacted by the Wisconsin Legislature. And most fundamentally, the requested relief would preserve the status quo by upholding Impacted Voters' right to vote and preventing Defendants' unlawful deprivation of that right.

In the alternatve, and to preserve this argument for any appellate proceedings, Plaintiffs submit that this equitable factor should not bar temporary injunctive relief when necessary to secure the fundamental right to vote. "Nothing can be clearer under our Constitution and laws than that the right of a citizen to vote is a fundamental, inherent right. It is a right which has been most jealously guarded . . . ." *State ex rel. Barber v. Cir. Ct. for Marathon Cnty.*, 178 Wis. 468, 473, 190 N.W. 563 (1922) (citing *State ex rel. McGrael v. Phelps*, 144 Wis. 1, 15, 128 N.W. 1041 (1910)); *League of Women Voters of Wis. Educ. Network, Inc. v. Walker*, 2014 WI 97, ¶73, 357 Wis. 2d 360, 851 N.W.2d 302 ("The right to vote is 'a fundamental political right, because [it is] preservative of all rights.'" (citations omitted)). Given the right to vote is indisputably among the most important rights Wisconsinites enjoy, when voters face imminent disenfranchisement and a temporary injunction would prevent that disenfranchisement, courts should not be commanded to deny a temporary injunction on the basis that such relief would alter the status quo ante.

Exigent changes that threaten the franchise—such as USPS delivery delays augmenting the WEC Policy to cause disenfranchisement—militate in favor of courts intervening to protect voters' rights, even if that necessitates a change in the status quo temporarily before final adjudication on the merits.

E. This Court should exercise its discretion to grant Plaintiffs' motion in service of the public interest.

While this Court is not required to assess the public interest in determining whether to grant injunctive relief, it may do so. *See Village of Hobart*, 2007 WI App 250, ¶24 (finding public interest is an equitable consideration in whether to grant an injunction); *Forest Cnty.*, 219 Wis. 2d at 684 (same). An injunction ensuring that Impacted Voters are not disenfranchised will serve the public interest, which "favors permitting as many qualified voters to vote as possible." *Obama for Am.*, 697 F.3d at 437.

Since "[e]nforcing a constitutional right is in the public interest," *Whole Woman's Health All. v. Hill*, 937 F.3d 864, 875 (7th Cir. 2019), courts have previously granted injunctions to help voters retain the franchise in the face of novel challenges that impede the right to vote. *See Democratic Nat'l Comm. v. Bostelmann*, 447 F. Supp. 3d 757, 770 (W.D. Wis. 2020) (granting injunction to extend voter registration deadline during COVID-19 pandemic and noting that administrative inconvenience is "outweighed by the vindication of constitutional rights"), *stay denied in this respect*, Nos. 20-1538, 20-1539, 20-1545 & 20-1546, 2020 WL 3619499 (7th Cir. Apr. 3, 2020), *and stay denied in this respect sub nom. Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423 (2020). In so doing, courts recognize that voters should not lose

their fundamental right to vote due to delays beyond their control and that preliminary injunctive relief is a permissible tool to protect the public interest. *See, e.g.*, Order Granting Emergent Relief, *Honig v. WEC*, No. 2026CV1463 (Dane Cnty. Cir. Ct. May 14, 2026), Beck Decl., Ex. B, ¶4.

Further, Wisconsin law favors resolution of this case in a way that best gives effect to the will of the voters. Wis. Stat. § 5.01(1); *see Rise, Inc. v. WEC*, 2024 WI App 48, ¶49, 413 Wis. 2d 366, 11 N.W.3d 241 (construing Wis. Stat. § 6.87(2) in favor of counting ballots by mail). Since granting Plaintiffs' motion will serve the public interest in the vindication of constitutional rights and state law, the Court should exercise its discretion and issue the requested temporary injunction.

II. In the alternative, Plaintiffs are entitled to summary judgment.

If this Court determines that temporary injunctive relief is inappropriate, this Court can and should instead grant summary judgment to Plaintiffs. Plaintiffs have stated a valid claim for relief, there are no disputes of material fact, and the record suffices to enter judgment in Plaintiffs' favor. *See Brenner v. Nat'l Cas. Co.*, 2015 WI App 85, ¶17, 365 Wis. 2d 476, 872 N.W.2d 124, *aff'd sub nom. Brenner v. Amerisure Mut. Ins. Co.*, 2017 WI 38, 374 Wis. 2d 578, 893 N.W.2d 193. If this Court awards summary judgment, it should enter a permanent injunction[16] to ensure that Impacted Voters are entitled to vote a provisional ballot on election day.

[16] To obtain a permanent injunction, a plaintiff must show: (1) a sufficient probability that future conduct of the defendant will violate a right of and will injure the plaintiff; (2) that the injury is irreparable, *i.e.,* not adequately compensable in damages; and (3) on balance equity favors issuing the injunction. *Pure Milk Prods. Co-op.*, 90 Wis. 2d at 800. For the reasons discussed *supra* at Argument, Section I, Plaintiffs are entitled to permanent injunctive relief.

A. Plaintiffs have stated a valid claim for relief.

Plaintiffs have sufficiently alleged their only claim for relief: declaratory and injunctive relief (Summons and Complaint, Dkt. 9, ¶¶88–101). Declaratory judgment claims are actionable so long as the dispute is justiciable. *Loy v. Bunderson*, 107 Wis. 2d 400, 410, 320 N.W.2d 175 (1982). Justiciability turns on four factors:

> (1) A controversy in which a claim of right is asserted against one who has an interest in contesting it.
>
> (2) The controversy must be between persons whose interests are adverse.
>
> (3) The party seeking declaratory relief must have a legal interest in the controversy—that is to say, a legally protectible interest.
>
> (4) The issue involved in the controversy must be ripe for judicial determination.

Putnam v. Time Warner Cable of Se. Wis., Ltd. P'ship, 2002 WI 108, ¶41, 255 Wis. 2d 447, 649 N.W.2d 626. All factors are present here.

Claim of right. Plaintiffs' claim of right against Defendants arises from the constitutional right to vote and organizational interests in maintaining a reputation as a trusted source of information related to elections and voting. Cronmiller Decl. ¶¶ 2–14; Feeney Decl. ¶¶2–13.

Adversity. For the reasons discussed in the foregoing sections, the parties are adverse because Plaintiffs dispute that the WEC Policy is lawful.

Interest in the controversy. Plaintiffs' interests, like their claim of right, is grounded in the right to vote, as protected by the Wisconsin Constitution.

Ripeness. The issue here is ripe for determination. "[T]he ripeness required for a declaratory judgment is different from the ripeness required in other actions."

Putnam, 2002 WI 108, ¶44. All that is required for those claims is "that the facts be sufficiently developed to allow a conclusive adjudication." *Id*. And here, those facts have been sufficiently developed; indeed, the material facts are all undisputed (as discussed in the next subsection).

B. There are no genuine issues of material fact in dispute.

The relevant material facts are established from Defendants' published materials and, thus, are not in dispute. The May 7, 2026 WEC Memo confirmed that widespread, exceptional delays are threatening absentee ballots that are returned through the mail in Wisconsin. *See* WEC Memo. Via letter dated May 27, 2026, WEC reported these problems to the Postmaster General, going so far as to explain that this "can potentially deprive citizens of their fundamental right to vote." *See* WEC Letter. Nevertheless, a month after sending the letter, WEC published the Policy in the Manual, forbidding Impacted Voters from voting on Election Day: "once the voter has placed the absentee ballot in the mail (or returned it by drop box or to the clerk's office), the option of voting in person at the polls is closed to them ***for that specific ballot***, even if the ballot has not yet been received by the clerk." Manual at 7-114 (Sec. 7.8.1) (bold emphasis added) (citing Wis. Stat. § 6.86(6)).

C. Plaintiffs are entitled to judgment as a matter of law.

As described fully in Argument Section I, above, the WEC Policy exists because Defendants misconstrue Wis. Stat. § 6.86(6), contrary to its plain language and governing canons of statutory interpretation. Even if the WEC Policy comports with the underlying statute, neither the statute nor the Policy can be reconciled with the fundamental right to vote enshrined in the Wisconsin Constitution. For any of these

reasons, Plaintiffs should be entitled to a declaration that the Policy violates Wisconsin law.

D. Providing a provisional ballot to Impacted Voters on Election Day operates as a fail-safe to prevent their disenfranchisement.

The permanent remedy Plaintiffs seek is simple: declare that the WEC Policy is unlawful, enjoin it, and order that Impacted Voters have the right to cast provisional ballots in person on Election Day. Provisional ballots are already available on Election Day, offered to voters who fail to produce a valid ID at the polling site. *See* Wis. Stat. § 6.97; *see also* Wis. Admin. Code § EL 3.04. When voters cast a provisional ballot, inspectors mark the ballot with an identifying serial number, seal it in an envelope, and place it in a separate carrier envelope rather than immediately tabulating it. Wis. Stat. § 6.97(1).

Nearly identical provisional balloting procedures would be followed here. Prior to casting an in-person provisional ballot on Election Day, the election official would first confirm that the Impacted Voter's mailed absentee ballot had not yet been received. Upon confirmation, the Impacted Voter would be allowed to cast a provisional ballot. The provisional ballot would be sealed in an envelope and segregated. Because provisional ballots are not tabulated immediately like a regular ballot, no Impacted Voter could ever have both a mailed ballot and a provisional ballot counted. In the event an Impacted Voter casts a provisional ballot on Election Day, and their original absentee ballot subsequently arrives through the mail in time to be counted, the municipal clerk would simply reject the Impacted Voter's provisional

ballot and only tabulate the votes from the original mailed absentee ballot. Only if the mailed absentee ballot does not arrive on time will the Impacted Voter's provisional ballot be counted, ensuring the voter is not unlawfully disenfranchised.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant temporary injunctive relief or, in the alternative, summary judgment in their favor, as follows.

Dated: August 19, 2026

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on August 19, 2026, in compliance with Wis. Stat. § 801.18(6), I electronically filed Plaintiffs' Notice of Motion and Motion for a Temporary Injunction Or, in the Alternative, for Summary Judgment; Brief in Support thereof; and the Declarations of Nina Beck, Debra Cronmiller, and Barbara Feeney in Support thereof, with the Clerk of Court using the Wisconsin Circuit Court Electronic Filing System, which will accomplish electronic notice for all participants who are registered users.

Nina G. Beck

Nina G. Beck