

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

MARTHA CHAMBERS, TIMOTHY
CAREY, MICHAEL REECE,

Plaintiffs,

v.

WISCONSIN ELECTIONS
COMMISSION, WISCONSIN
ELECTIONS ADMINISTRATOR
MEGAN WOLFE,

Defendants.

No. 3:22-cv-00402

Judge Peterson

**PLAINTIFFS' REPLY IN SUPPORT OF PROPOSED STATEMENT OF
RECORD FACTS**

Statutory Background

1. For nearly 70 years, Wisconsin law permitted voters with disabilities to return absentee ballots with assistance from a third party, whether by assisting with placing the ballot in the mail, dropping it into a drop-box, or delivering it to a local precinct or polling place. *See Sommerfeld v. Bd. of Canvassers of St. Francis*, 69 N.W.2d 235, 237 (1955); Wis. Stat. § 6.87(4)(b)1.

RESPONSE: Defendants OBJECT to this proposed fact as a legal conclusion.

REPLY: This proposed statement is not a legal conclusion. It is a statement of historical fact. Beyond their objection, Defendants have neither disputed nor “cite[d] with precision to the evidentiary matter in the record or to the testimony to be presented at the hearing that respondent contends will refute this factual proposition.” *Procedure to be followed on Motions for Injunctive Relief*, III. A (b)¹. Consequently, this proposed fact remains undisputed. Defendants’ objection should be overruled, and the proposed fact should be deemed admitted and made part of the record.

2. Wisconsin’s absentee balloting program was initially limited to military personnel, but Wisconsin expanded it to cover those “who, because of sickness, *physical disability*, or religious reasons” could not appear in-person on election day to cast their ballots. *Sommerfeld*, 69 N.W.2d at 237; Wis. Stat. § 11.54 (1955) (emphasis added).

RESPONSE: Defendants OBJECT to this proposed fact as a legal conclusion.

REPLY: This proposed statement is not a legal conclusion. It is a statement of historical fact. Beyond their objection, Defendants have neither disputed nor “cite[d] with precision to the evidentiary matter in the record or to the testimony to be presented at the hearing that respondent contends will refute this factual proposition.” *Procedure to be followed on Motions for Injunctive Relief*, III. A (b). Consequently, this proposed fact remains

¹ Available at http://www.wiwd.uscourts.gov/sites/default/files/Injunctive_Relief.pdf (last accessed August 17, 2022).

undisputed. Defendants' objection should be overruled, and the proposed fact should be deemed admitted and made part of the record.

3. Today, Wisconsin provides no-excuse absentee balloting, allowing any qualified Wisconsin voter "who for any reason is unable or unwilling to appear at the polling place" to vote by absentee ballot. Wis. Stat. § 6.85(1).

RESPONSE: Defendants OBJECT to this proposed fact as a legal conclusion.

REPLY: This is not a legal conclusion. It is a direct quote from a Wisconsin Statute describing a facet of Wisconsin's absentee balloting scheme. Beyond their objection, Defendants have neither disputed nor "cite[d] with precision to the evidentiary matter in the record or to the testimony to be presented at the hearing that respondent contends will refute this factual proposition." *Procedure to be followed on Motions for Injunctive Relief*, III. A (b). Consequently, this proposed fact remains undisputed. Defendants' objection should be overruled, and the proposed fact should be deemed admitted and made part of the record.

4. To request or mark an absentee ballot, the existing statutory scheme authorizes voters with disabilities to receive assistance from a third party of their choice. These voters "may authorize an application to be made by another elector on his or her behalf," Wis. Stat. § 6.86(1)(ag), or be automatically sent an absentee ballot "for every election," *id.* § 6.86(2)(a). Once that ballot is received, they may "select any individual" of their choice, with limited exceptions, "to assist in marking the ballot." *Id.* § 6.87(5).

RESPONSE: Defendants OBJECT to this proposed fact as a legal conclusion.

REPLY: This is not a legal conclusion. It is a direct quote from a Wisconsin Statute describing a facet of Wisconsin’s absentee balloting scheme. Beyond their objection, Defendants have neither disputed nor “cite[d] with precision to the evidentiary matter in the record or to the testimony to be presented at the hearing that respondent contends will refute this factual proposition.” *Procedure to be followed on Motions for Injunctive Relief*, III. A (b). Consequently, this proposed fact remains undisputed. Defendants’ objection should be overruled, and the proposed fact should be deemed admitted and made part of the record.

5. There is no similar authorization for voters with disabilities to receive third-party assistance to return their properly completed absentee ballots. *See Wis. Stat. Ch. 6.*

RESPONSE: Defendants OBJECT to this proposed fact as a legal conclusion.

REPLY: This is not a legal conclusion. It is a statement of fact regarding a facet of Wisconsin’s absentee balloting scheme. Beyond their objection, Defendants have neither disputed nor “cite[d] with precision to the evidentiary matter in the record or to the testimony to be presented at the hearing that respondent contends will refute this factual proposition.” *Procedure to be followed on Motions for Injunctive Relief*, III. A (b). Consequently, this proposed fact remains undisputed. Defendants’ objection should be overruled, and the proposed fact should be deemed admitted and made part of the record.

6. Wisconsin provides a general rule that controls how all absentee ballots must be returned: the envelopes containing those ballots “shall be mailed by the elector, or delivered in person, to the municipal clerk issuing the ballot or ballots.” *Id.* § 6.87(4)(b)(1).

RESPONSE: Defendants OBJECT to this proposed fact as a legal conclusion.

REPLY: This is not a legal conclusion. It is a direct quote from a Wisconsin Statute describing a facet of Wisconsin’s absentee balloting scheme. Beyond their objection, Defendants have neither disputed nor “cite[d] with precision to the evidentiary matter in the record or to the testimony to be presented at the hearing that respondent contends will refute this factual proposition.” *Procedure to be followed on Motions for Injunctive Relief*, III. A (b). Consequently, this proposed fact remains undisputed. Defendants’ objection should be overruled, and the proposed fact should be deemed admitted and made part of the record.

7. In 1955 the Supreme Court of Wisconsin resolved this inconsistency in *Sommerfeld v. Board of Canvassers of St. Francis*. There, the Court held that Wisconsin absentee voters were entitled to assistance in returning their absentee ballots:

If our statute is construed to mean that the voter shall himself mail the ballot or personally deliver it to the clerk, then the statute would defeat itself in the case of those who are sick or physically disabled. They would be unable to mail ballots except through an agent. *Having made provision that these unfortunate people can vote, we cannot believe that the legislature meant to disenfranchise them by providing a condition that they could not possibly perform.*

Sommerfeld, 69 N.W.2d at 238 (emphasis added).²

RESPONSE: Defendants OBJECT to this proposed fact as a legal conclusion. To the extent the second sentence contains a factual proposition, Defendants do not dispute.

REPLY: This proposed statement is not a legal conclusion. It is a statement of historical fact. Beyond their objection, Defendants have neither disputed nor “cite[d] with precision to the evidentiary matter in the record or to the testimony to be presented at the hearing that respondent contends will refute this factual proposition.” *Procedure to be followed on Motions for Injunctive Relief*, III. A (b). Consequently, this proposed fact remains undisputed. Defendants’ objection should be overruled, and the proposed fact should be deemed admitted and made part of the record.

8. For seven decades thereafter, Wisconsin’s protections for voters with disabilities aligned with, and at times exceeded, federal law. Ten years after *Sommerfeld*, the VRA prohibited state and local governments from imposing any rule that could deny or abridge any citizen’s right to vote based on race or color, Pub. L. No. 89-110, § 2, 79 Stat. 437, 437 (1965) (“No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed ... on account of race or color.”). In 1982, similar protections were extended to voters with disabilities. Pub. L. No. 97-205, § 208, 96 Stat 131, 135 (1982). In the interim, Americans with disabilities found protection in the Rehabilitation Act of 1973 that prohibited any federally funded program or service from discrimination based on disability. Pub. L. No. 93-112, § 504, 87 Stat 355, 394 (1973).

RESPONSE: Defendants OBJECT to this proposed fact as a legal conclusion.

² The *Sommerfeld* Court interpreted a substantially similar version of Wisconsin’s absentee ballot laws that provided that the absentee ballot “envelope shall be mailed by such voter, postage prepaid, to the officer issuing the ballot, or if more convenient it may be delivered in person.” Wis. Stat. § 11.59 (1955), available at <https://docs.legis.wisconsin.gov/1955/statutes/statutes/11.pdf> (last accessed July 25, 2022); cf. Wis. Stat. § 6.87(4)(b)(1) (“shall be mailed by the elector, or delivered in person, to the municipal clerk issuing the ballot or ballots”).

REPLY: This proposed statement is not a legal conclusion. It is a statement of historical fact. Beyond their objection, Defendants have neither disputed nor “cite[d] with precision to the evidentiary matter in the record or to the testimony to be presented at the hearing that respondent contends will refute this factual proposition.” *Procedure to be followed on Motions for Injunctive Relief*, III. A (b). Consequently, this proposed fact remains undisputed. Defendants’ objection should be overruled, and the proposed fact should be deemed admitted and made part of the record.

9. Since its 1982 expansion, the VRA’s protections of voters with disabilities have been explicit. Consistent with *Sommerfeld*, voters with disabilities have a federal right to have a “person of the voter’s choice” assist with voting . 52 U.S.C. § 10508.

RESPONSE: Defendants OBJECT to this proposed fact as a legal conclusion. To the extent it contains a factual proposition, Defendants do not dispute that voters with disabilities have a federal right to have a “person of the voter’s choice” assist with voting under 52 U.S.C. § 10508.

REPLY: This proposed statement is not a legal conclusion. It is a statement of historical fact. Beyond their objection, Defendants have neither disputed nor “cite[d] with precision to the evidentiary matter in the record or to the testimony to be presented at the hearing that respondent contends will refute this factual proposition.” *Procedure to be followed on Motions for Injunctive Relief*, III. A (b). Consequently, this proposed fact remains undisputed. Defendants’ objection should be overruled, and the proposed fact should be deemed admitted and made part of the record.

10. The VRA’s legislative history confirms that this language addressed the concern that people requiring assistance “do in fact elect to forfeit their right to vote,” when they cannot choose who will assist them. S. Rep. 97-417, at 62 (1982), *as reprinted in* U.S.C.C.A.N. 177, 240–41. Congress sought to ensure that states did not “deny these voters the same opportunity to vote enjoyed by all citizens.” *Id.* at 62, 1982 U.S.C.C.A.N. at 241.

RESPONSE: Defendants OBJECT to this proposed fact as a legal conclusion.

REPLY: This proposed statement is not a legal conclusion. It is a statement of historical fact. Beyond their objection, Defendants have neither disputed nor “cite[d] with precision to the evidentiary matter in the record or to the testimony to be presented at the hearing that respondent contends will refute this factual proposition.” *Procedure to be followed on Motions for Injunctive Relief*, III. A (b). Consequently, this proposed fact remains undisputed. Defendants’ objection should be overruled, and the proposed fact should be deemed admitted and made part of the record.

11. Eight years later, Congress passed the ADA, which prohibits discrimination against persons with disabilities, and places affirmative obligations on states and municipalities to ensure that voters with disabilities can exercise their right to vote. Pub. L. No. 101-336, §§ 201–203, 104 Stat. 327, 337 (1990).

RESPONSE: Defendants OBJECT to this proposed fact as a legal conclusion.

REPLY: This proposed statement is not a legal conclusion. It is a statement of historical fact. Beyond their objection, Defendants have neither disputed nor “cite[d] with precision to the evidentiary matter in the record or to the testimony to be presented at the hearing that respondent contends will refute this factual proposition.” *Procedure to be followed on Motions for*

Injunctive Relief, III. A (b). Consequently, this proposed fact remains undisputed. Defendants' objection should be overruled, and the proposed fact should be deemed admitted and made part of the record.

12. The passage of the ADA Amendments Act of 2008 reaffirmed, broadened, and strengthened these protections and emphasized that the definition of a disability should be "construed in favor of broad coverage of individuals" to the maximum extent permitted. Pub. L. No. 110-325, § 3(4)(A), 122 Stat. 3553, 3555 (2008).

RESPONSE: Defendants OBJECT to this proposed fact as a legal conclusion.

REPLY: This proposed statement is not a legal conclusion. It is a statement of historical fact. Beyond their objection, Defendants have neither disputed nor "cite[d] with precision to the evidentiary matter in the record or to the testimony to be presented at the hearing that respondent contends will refute this factual proposition." *Procedure to be followed on Motions for Injunctive Relief*, III. A (b). Consequently, this proposed fact remains undisputed. Defendants' objection should be overruled, and the proposed fact should be deemed admitted and made part of the record.

13. In 2002, Congress again ensured that states could not limit disabled voters' access to the ballot box through the Help America Vote Act (HAVA). HAVA requires that a states' entire "voting system[s] shall ... be accessible for individuals with disabilities." 52 U.S.C. § 21081.

RESPONSE: Defendants OBJECT to this proposed fact as a legal conclusion.

REPLY: This proposed statement is not a legal conclusion. It is a statement of historical fact. Beyond their objection, Defendants have neither disputed

nor “cite[d] with precision to the evidentiary matter in the record or to the testimony to be presented at the hearing that respondent contends will refute this factual proposition.” *Procedure to be followed on Motions for Injunctive Relief*, III. A (b). Consequently, this proposed fact remains undisputed. Defendants’ objection should be overruled, and the proposed fact should be deemed admitted and made part of the record.

14. Historically, Wisconsin law has provided a range of options for absentee ballot return (by mail or in-person return to the clerk) to ensure absentee voters can timely cast their ballots. WEC previously recognized that the ability to return a ballot in-person to the municipal clerk has a unique advantage as election day nears, emphasizing that it “want[s] citizens to choose the option for voting that works best for them.”³ Unlike mail return, which WEC says can “take up to 7 days” to ensure the “voted ballot [is] received by [the] municipal clerk by mail,” in-person return provides voters the opportunity to gather as much information as possible and base their voting decisions on late-breaking news.⁴ For example, the City of Milwaukee offers in-person absentee voting through August 6, 2022, the Saturday before the August primary, and will likely offer a similar early voting schedule for the November general.⁵ Unlike those voters who return their absentee ballots in-person to the clerk, a voter who places their ballot in the mail on the Saturday before a Tuesday election is unlikely to have that ballot arrive in time to be counted under Wisconsin law. Wis. Stat. § 6.87(4)(b)5.(6) (to be counted, “[t]he ballot shall be returned so it is delivered to the polling place no later than 8 p.m. on election day”).

RESPONSE: Defendants OBJECT to the first sentence of this proposed fact because it is not supported by evidence. Defendants do not dispute the second and third sentences. Defendants OBJECT to the fourth sentence of this proposed fact because it is not supported by evidence as the link provided has expired (last visited Aug. 11, 2022). Defendants do not dispute the fifth

³ *Absentee Voting Deadlines Quickly Approaching for November 2020*, WISCONSIN ELECTIONS COMM’N (Oct. 27, 2020), <https://elections.wi.gov/news/absentee-voting-deadlines-quickly-approaching-november-2020>.

⁴ *USPS Recommended Deadline to Place Completed Ballot in the Mail*, WISCONSIN ELECTIONS COMM’N, <https://elections.wi.gov/event/usps-recommended-deadline-place-completed-ballot-mail> (last accessed July 26, 2022) (recommending that voters place their absentee ballots in the mail no later than November 1, 2022 for the general election, a whole week before election day).

⁵ *Early Voting Schedule for the 2022 Partisan Primary*, Milwaukee Election Comm’n, <https://city.milwaukee.gov/election/Voter-Info/Early-Voting> (last accessed July 15, 2022).

sentence. Defendants OBJECT to the last sentence in this proposed fact as a legal conclusion.

REPLY: The first sentence is a statement of historical fact confirmed by the sentences that follow.

The second and third sentences are undisputed and should be admitted in evidence and made part of the record.

The citation provided for the fourth sentence is still accessible through the internet archive. See <https://web.archive.org/web/20220709143709/https://city.milwaukee.gov/election/Voter-Info/Early-Voting>. It remains undisputed and should be deemed admitted and made part of the record.

The fifth sentence is undisputed and should be admitted in evidence and made part of the record.

The final sentence is not a legal conclusion. It describes a facet of Wisconsin's statutory absentee balloting scheme. Beyond their objection, Defendants have neither disputed nor "cite[d] with precision to the evidentiary matter in the record or to the testimony to be presented at the hearing that respondent contends will refute this factual proposition." *Procedure to be followed on Motions for Injunctive Relief*, III. A (b). Consequently, this proposed fact remains undisputed. Defendants' objection should be overruled, and the proposed fact should be deemed admitted and made part of the record.

15. Although Wisconsin law provides special voting deputies to collect and deliver ballots for persons residing in residential care facilities and retirement homes,

id. § 6.875(6)(d), these provisions do not apply to persons with disabilities who reside in their own homes.

RESPONSE: Defendants OBJECT to this proposed fact as a legal conclusion.

REPLY: This is not a legal conclusion. It describes a facet of Wisconsin's statutory absentee balloting scheme. Beyond their objection, Defendants have neither disputed nor "cite[d] with precision to the evidentiary matter in the record or to the testimony to be presented at the hearing that respondent contends will refute this factual proposition." *Procedure to be followed on Motions for Injunctive Relief*, III. A (b). Consequently, this proposed fact remains undisputed. Defendants' objection should be overruled, and the proposed fact should be deemed admitted and made part of the record.

16. To safeguard the absentee ballot process, Wisconsin has implemented substantial protections to the absentee ballot-return assistance process to support an alleged state interest in election integrity. *See Wis. Stat. § 6.84(1)*.

RESPONSE: Defendants OBJECT to this proposed fact as a legal conclusion.

REPLY: This is not a legal conclusion. It describes a facet of Wisconsin's statutory absentee balloting scheme. Beyond their objection, Defendants have neither disputed nor "cite[d] with precision to the evidentiary matter in the record or to the testimony to be presented at the hearing that respondent contends will refute this factual proposition." *Procedure to be followed on Motions for Injunctive Relief*, III. A (b). Consequently, this

proposed fact remains undisputed. Defendants’ objection should be overruled, and the proposed fact should be deemed admitted and made part of the record.

17. These safeguards include affirmative representations on behalf of the voter affixed to requests for absentee ballots as well as limitations upon who may serve to mark a ballot on behalf of a disabled voter. *Id.* §§ 6.86(1)(ag), 6.87(5),(9).

RESPONSE: Defendants OBJECT to this proposed fact as a legal conclusion.

REPLY: This is not a legal conclusion. It describes a facet of Wisconsin’s statutory absentee balloting scheme. Beyond their objection, Defendants have neither disputed nor “cite[d] with precision to the evidentiary matter in the record or to the testimony to be presented at the hearing that respondent contends will refute this factual proposition.” *Procedure to be followed on Motions for Injunctive Relief*, III. A (b). Consequently, this proposed fact remains undisputed. Defendants’ objection should be overruled, and the proposed fact should be deemed admitted and made part of the record.

18. The legislature enacted these safeguards to ensure that there is no “potential for fraud or abuse, ... overzealous solicitation of absent electors ... undue influence ... or other similar abuses” in using assistance. Wis. Stat. § 6.84.⁶

⁶ Voter fraud—and in particular, so-called “ballot harvesting” (referring to the practice where one person gathers completed absentee ballots from multiple voters for submission at by mail or drop-box)—is extremely rare. Despite the clamor of opponents to expansive absentee and vote-by-mail regimes, including in Wisconsin, the myth of widespread absentee voter fraud has been continually debunked. Each year, millions of Americans vote by absentee by mail—yet, between 2000 and 2012, an exhaustive nationwide investigation identified that less than 1/10,000 of 1%, i.e., 0.0001%, of the billions of votes cast were fraudulent. *See* Corbin Carson, *Election Fraud in America*, NEWS21 (Aug. 12, 2012), <https://votingrights.news21.com/interactive/election-fraud-database>; Wendy R. Weiser,

RESPONSE: Defendants OBJECT to this proposed fact as a legal conclusion. To the extent this Court considers the footnote, Defendants do not dispute.

REPLY: This is not a legal conclusion. It is a statement of historical fact, and describes a facet of Wisconsin’s statutory absentee balloting scheme. Beyond their objection, Defendants have neither disputed nor “cite[d] with precision to the evidentiary matter in the record or to the testimony to be presented at the hearing that respondent contends will refute this factual proposition.” *Procedure to be followed on Motions for Injunctive Relief*, III. A (b). Consequently, this proposed fact remains undisputed. Defendants’ objection should be overruled, and the proposed fact should be deemed admitted and made part of the record.

The footnote is not disputed and should be admitted in evidence and made part of the record.

19. In 1974, Wisconsin enacted additional safeguards to ensure that the ballots of voters with disabilities, once marked, maintain their integrity.⁷ Anyone “called upon to assist an elector who ... is unable to mark a ballot” is forbidden from “intentionally fail[ing] to cast a vote in accordance with the elector’s instructions.” Wis. Stat. § 12.13(3)(j). Making false statements for the purposes of “voting an absentee ballot” is also prohibited. *Id.* § 12.13(3)(i). As are forging and knowingly depositing a ballot in the wrong box, *id.* § 12.13(3)(k), and fraudulently “chang[ing] a

The False Narrative of Vote-by-Mail Fraud, BRENNAN CTR. FOR JUST. (Apr. 10, 2020), <https://www.brennancenter.org/our-work/analysis-opinion/false-narrative-vote-mail-fraud>; *see also* ELECTION ASSISTANCE COMM’N, EAVS Deep Dive: Early, Absentee and Mail Voting (Oct. 17, 2017), https://www.eac.gov/sites/default/files/document_library/files/eavsdeepdive_earlyvoting_101717.pdf. And a 2022 investigation by AP found that “[t]he expanded use of drop boxes for mailed ballots during the 2020 election did not lead to any widespread problems” and Defendants here stated they were “not aware of any cases in 2020 in which drop boxes were damaged, had submitted ballots stolen or destroyed, or were used for fraudulent ballots.” Anthony Izaguirre & Christina A. Cassidy, *No Major Problems With Ballot Drop Boxes in 2020, AP Finds*, AP (July 17, 2022), https://apnews.com/article/voting-rights-2022-midterm-elections-covid-health-wisconsin-c61fa93a12a1a51d6d9f4e0a21fa3b75?utm_source=newsletter&utm_medium=email&utm_campaign=newsletter_axiosam&stream=top.

⁷ See Act of July 6, 1974, ch. 334, § 12.13, 1973 Wis. Laws Apr. ’74 Spec. Sess., *available at* <https://docs.legis.wisconsin.gov/1973/related/acts/334> (last accessed July 26, 2022).

ballot of an elector so the elector is prevented from voting for whom the elector intended,” *id.* § 12.13(3)(m). Each of these violations are crimes in Wisconsin. *Id.* § 12.60(1)(a)-(b) (violations of sections 12.13(j), (k), and (m) are Class I felonies, and 12.13(i) results in an up to \$1,000 fine, 6 months imprisonment, or both). These protections ensure the integrity of the ballot when voters with disabilities have another person assist them in returning their absentee ballots. *See Sommerfeld*, 69 N.W.2d at 238.⁸

RESPONSE: Defendants OBJECT to this proposed fact as a legal conclusion. To the extent this Court considers the proposed fact’s footnote, Defendants do not dispute.

REPLY: This proposed statement is not a legal conclusion. It is a statement of historical fact. Beyond their objection, Defendants have neither disputed nor “cite[d] with precision to the evidentiary matter in the record or to the testimony to be presented at the hearing that respondent contends will refute this factual proposition.” *Procedure to be followed on Motions for Injunctive Relief*, III. A (b). Consequently, this proposed fact remains undisputed. Defendants’ objection should be overruled, and the proposed fact should be deemed admitted and made part of the record.

The footnote is not disputed and should be admitted in evidence and made part of the record.

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20. WEC is a bipartisan regulatory agency of the State of Wisconsin established to administer and enforce election laws. Wis. Stat. § 5.05.

⁸ Following the 2020 election, Defendants reported that there was “no evidence ... that supports allegations of systemic or widespread election issues.” WIS. ELECTIONS COMM’N, Correcting Misinformation About Wisconsin’s Election (Nov. 10, 2020), <https://elections.wi.gov/node/7241>. Then, in its 2021 report on the previous election period, spanning August 2020 to May 2021, WEC identified only 19 instances of suspected voting irregularities, and none related to assistance with the return of absentee ballots. WIS. ELECTIONS COMM’N, Report of Suspected Fraud, Irregularities or Violations (Oct. 7, 2021) https://elections.wi.gov/sites/elections/files/2021-10/Report%20of%20Suspected%20Election%20Fraud_2021.pdf.

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

21. WEC receives federal funding from the United States Election Assistance Commission.⁹

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

22. WEC is located at 201 West Washington Avenue in Madison, Wisconsin, 53703.

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

23. Before the 2020 election, during the early onslaught of the COVID-19 pandemic, WEC and its Administrator, Meagan Wolfe, issued a memorandum providing guidance for the upcoming election.¹⁰

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

24. The memorandum instructed voters how lawfully to return their absentee ballot. It explained: “A family member or another person may also return the ballot on behalf of the voter.” *Id.*

⁹ ELECTION ASSISTANCE COMM’N, Federal Financial Report, Wisconsin Elections Commission (Feb. 22, 2022), https://www.eac.gov/sites/default/files/paymentgrants/Election%20Security/FY21%20Annual%20FFR/WI_2021%20ES%20Annual%20Financial%20and%20Progress%20Report.pdf.

¹⁰ WIS. ELECTIONS COMM’N, Absentee Ballot Return Options—COVID-19 (March 31, 2020), [<https://web.archive.org/web/20200420011212/https://elections.wi.gov/node/6798>] (last accessed July 26, 2022).

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

25. Nearly sixteen months after the 2020 WEC Memo was issued, two individuals filed suit in Waukesha County to challenge the WEC Memo, arguing that it violated Wisconsin law. *Teigen v. Wis. Elections Comm'n*, Waukesha Cnty. No. 21CV958 (June 28, 2021).

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

26. *Teigen* considered Wis. Stat. § 6.87(4)(b)1., the statute governing absentee ballot return. The Circuit Court found that mailing and delivery of absentee ballots must be done personally by the elector voting the ballot, and by no one else. *Teigen v. Wis. Elections Comm'n*, Waukesha Cnty. Case No. 21CV958, Order at 2 (Jan. 20, 2022).

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

27. The Circuit Court's oral ruling conflated the "ritual for voting in person" with the "ritual for voting by absentee" and found that absentee voting "requires the elector to be principally involved" but "doesn't require other people to be involved." Tr. Mot. Hr'g at 86, *Teigen v. Wis. Elections Comm'n*, Waukesha Cnty. Case No. 21CV958, (Jan. 13, 2022).

RESPONSE: Defendants OBJECT to this proposed fact as a legal conclusion.

REPLY: This proposed statement is not a legal conclusion. It is a statement of historical fact. Beyond their objection, Defendants have neither disputed nor "cite[d] with precision to the evidentiary matter in the record or to the testimony to be presented at the hearing that respondent contends will

refute this factual proposition.” *Procedure to be followed on Motions for Injunctive Relief*, III. A (b). Consequently, this proposed fact remains undisputed. Defendants’ objection should be overruled, and the proposed fact should be deemed admitted and made part of the record.

28. The Circuit Court did not address the consequences its ruling would have on voters with disabilities, like Plaintiffs. *See generally id.*

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

29. Shortly after, the Supreme Court of Wisconsin granted judicial bypass and agreed to hear the appeal on an expedited basis. *Teigen v. Wis. Elections Comm’n*, No. 2022AP91, Order at 3, (Wis. Jan. 28, 2022).

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

30. In the interim, the Supreme Court stayed the Circuit Court’s ruling for the February primary elections, but permitted it to go into effect for the local April 2022 elections. *See Teigen v. Wis. Elections Comm’n*, No. 2022AP91, Order at 3, (Wis. Feb. 11, 2022).

RESPONSE: Defendants do not dispute

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

31. With the Circuit Court’s ruling in place, WEC rescinded the March 2020 guidance memorandum.¹¹

¹¹ See Frederica Freyberg & Marisa Wojcik, *Wisconsin Elections Commission Revokes Drop Box Directive*, PBS WIS. (Feb. 18, 2022), <https://pbswisconsin.org/news-item/wisconsin-elections-commission-revokes-drop-box-directive>.

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

32. This abrupt change confused municipal clerks and voters (Plaintiffs included) who encountered inconsistent implementation across the state. For example, in Brown County, absentee ballot voters received a sticker affixed to their envelope stating that their ballot could “ONLY be mailed or returned by the voter, NO ONE else may return your ballot.” Declaration of Scott Thompson, Ex. A.

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

33. The City of Madison in Dane County made a similar representation to its absentee voters, without exception for voters with disabilities: “no one but the absentee voter is able to return their completed ballot.”¹²

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

34. Meanwhile, voters in Racine County were told that an absentee ballot “can be returned by someone who is not the voter.”¹³

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

35. On July 8, 2022 the Supreme Court of Wisconsin issued its decision in *Teigen*. The Court decided that absentee voters, even those with disabilities, may not use ballot-return assistance to return their ballots to the clerk, but must instead

¹² *Recent Court Ruling Requires Absentee Voters to Return Their Own Absentee Ballot*, CITY OF MADISON (Mar. 15, 2022 12:48 PM), <https://www.cityofmadison.com/news/city-of-madison-absentee-ballots-in-the-mail>.

¹³ *Absentee Voting FAQs*, VOTE RACINE, <https://www.voteracine.org/vote-absentee> (last accessed July 26, 2022), [<https://web.archive.org/web/20220405183950/https://www.voteracine.org/vote-absentee>].

personally return the ballots themselves. *Teigen v. Wis. Elections Comm'n*, 2022 WI 64, ¶ 83. This restriction is referred throughout as the “In-Person Ballot Return Assistance Prohibition.”

RESPONSE: Defendants do not dispute the first sentence. Defendants OBJECT to the remainder of this proposed fact as a legal conclusion.

REPLY: The first sentence is undisputed and should be admitted in evidence and made part of the record.

The remainder of the proposed fact is not a legal conclusion. It is a statement of historical fact. Beyond their objection, Defendants have neither disputed nor “cite[d] with precision to the evidentiary matter in the record or to the testimony to be presented at the hearing that respondent contends will refute this factual proposition.” *Procedure to be followed on Motions for Injunctive Relief*, III. A (b). Consequently, this proposed fact remains undisputed. Defendants’ objection should be overruled, and the proposed fact should be deemed admitted and made part of the record.

36. According to the Supreme Court of Wisconsin: “An absentee ballot must be returned by mail or the voter must personally deliver it to the municipal clerk at the clerk’s office or a designated alternative site.” *Teigen*, ¶ 4.

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

37. The Court interpreted the statute to prohibit ballot-return assistance from voters who return their absentee ballot in-person to the municipal clerk. *See Teigen*, ¶ 75; *id.* ¶ 176 (Hagedorn, J. concurring).

RESPONSE: Defendants OBJECT to this proposed fact as a legal conclusion.

REPLY: This proposed statement is not a legal conclusion. It is a statement of historical fact. Beyond their objection, Defendants have neither disputed nor “cite[d] with precision to the evidentiary matter in the record or to the testimony to be presented at the hearing that respondent contends will refute this factual proposition.” *Procedure to be followed on Motions for Injunctive Relief*, III. A (b). Consequently, this proposed fact remains undisputed. Defendants’ objection should be overruled, and the proposed fact should be deemed admitted and made part of the record.

38. Many voters with disabilities, including plaintiffs, are unable to physically return their own absentee ballots to their municipal clerks without ballot-return assistance.

RESPONSE: Defendants OBJECT to this proposed fact as a legal conclusion.

REPLY: This proposed statement is not a legal conclusion. It is a statement of fact supported by undisputed facts in this case. Defendants have not objected to the fact that every plaintiff in this case is unable to return their own absentee ballot without ballot-return assistance. *See Proposed Facts 48, 49, 60, 62, 69, 71, 78.* Beyond their objection, Defendants have neither disputed nor “cite[d] with precision to the evidentiary matter in the record or to the testimony to be presented at the hearing that respondent contends will refute this factual proposition.” *Procedure to be followed on Motions for Injunctive Relief*, III. A (b). Consequently, this proposed fact remains

undisputed. Defendants' objection should be overruled, and the proposed fact should be deemed admitted and made part of the record.

39. Although the lead opinion in *Teigen* explicitly declined to decide whether voters may have an agent mail their ballots for them, *see Teigen*, ¶ 5, at least one Justice did. Justice Roggensack, writing for herself, went further and concluded that “no one but the elector may mail an absentee ballot.” *Teigen*, ¶ 114 (Roggensack, J., concurring). The *Teigen* decision caused widespread confusion about whether such assistance is allowed under Wisconsin law.

RESPONSE: Defendants OBJECT to the last sentence of this proposed fact because it is not supported by evidence. Defendants do not dispute the remainder.

REPLY: All but the last sentence of this proposed fact is undisputed and should be admitted in evidence and made part of the record.

The last sentence of this proposed fact is supported by evidence. Wisconsin law prohibits ballot-return assistance to the municipal clerk. *Teigen*, ¶ 75; *id.* ¶176 (Hagedorn, J. concurring). Defendants concede that Administrator Wolfe was quoted saying “as of right now the voter is the one required to mail their ballot.” Yet, Defendants do not dispute that Plaintiffs are unable to vote without ballot-return assistance. *See* Defendants' Response to Proposed Facts 48, 49, 60, 62, 69, 71, 78. And Defendants do not dispute that voters with disabilities have a federal right to ballot-return assistance. *See* Defendants Response to Proposed Fact 9. Moreover, media channels throughout Wisconsin and nationally reported Administrator Wolfe's remarks as telling Wisconsinites that “voters must place their own

absentee ballots in the mail and can't have someone do it for them.”¹⁴ It cannot be reasonably disputed that the conflict between 1) Plaintiffs' only method to vote absentee, and 2) the public pronouncements of Administrator Wolfe and the law governing absentee voting as described in *Teigen*, would trigger confusion among Wisconsin voters, and that the confusion would extend to voters throughout the state.

Beyond their objection, Defendants have neither disputed nor “cite[d] with precision to the evidentiary matter in the record or to the testimony to be presented at the hearing that respondent contends will refute this factual proposition.” *Procedure to be followed on Motions for Injunctive Relief*, III. A (b). Consequently, the last sentence of this proposed fact remains undisputed. Defendants' objection should be overruled, and the last sentence of this proposed fact should be deemed admitted and made part of the record.

40. On July 14, 2022, Defendant Wolfe declared that WEC was expanding the reach of *Teigen*'s holding to prohibit ballot-return assistance for those absentee

¹⁴ CBS News, *Administrator: Wisconsin voters must mail their own absentee ballots*, <https://www.cbsnews.com/minnesota/news/administrator-wisconsin-voters-must-mail-their-own-absentee-ballots/>; see U.S. News & World Report, *Administrator: Voters Must Mail Their Own Absentee Ballots* <https://www.usnews.com/news/best-states/wisconsin/articles/2022-07-14/administrator-voters-must-mail-their-own-absentee-ballots>; PBS Wisconsin, *Wisconsin Elections Commission Administrator: Voters must mail their own absentee ballots*, <https://pbswisconsin.org/news-item/wisconsin-elections-commission-administrator-voters-must-mail-their-own-absentee-ballots>; TMJ4/WTMJ-TV Milwaukee, *Administrator: Voters must mail their own absentee ballots*, <https://www.tmj4.com/news/political/elections-local/administrator-voters-must-mail-their-own-absentee-ballots>.

ballots sent in to the municipal clerk through the mail. This restriction is referred throughout as the “Mail-In Ballot Return Assistance Prohibition.”¹⁵



WEC administrator: Voters must place own ballots in the mail

ELECTIONS 3:50 p.m. CT July 14

RESPONSE: Defendants dispute. Plaintiff’s cited evidence does not support this proposed fact. The article quotes Wolfe as stating: “as of right now the voter is the one required to mail their ballot.” Corrinne Hess, *Wisconsin Voters Must Mail Their Own Ballots, Election Administrator Says*, Milwaukee J. Sentinel (July 15, 2022, 3:39 PM), <https://www.jsonline.com/story/news/politics/elections/2022/07/14/wisconsin-voters-must-place-their-own-ballots-mail/10060842002> (last visited Aug. 11, 2022). This statement aligns with the litigation position taken by the Commission in the *Teigen* litigation in state court. (Kilpatrick Decl. ¶ 4, Ex. B.) Also, this proposed fact is supported by the mere *headline* of a news article, which does not align with Wolfe’s statement within the article. Further, to clarify media reports, the Commission published a statement on its website: “Administrator Wolfe’s comments should not be interpreted as a policy statement or statutory interpretation, but rather a direct reference to state statutes on this topic.” (Kilpatrick Decl. ¶ 3, Ex. A.)

REPLY: Defendants dispute this proposed fact on the grounds that Administrator Wolfe’s reported comments conflict with the headline in the

¹⁵ Corrinne Hess, *Wisconsin Voters Must Mail Their Own Ballots, Election Administrator Says*, Milwaukee J. Sentinel (July 15, 2022, 3:39 PM), <https://www.jsonline.com/story/news/politics/elections/2022/07/14/wisconsin-voters-must-place-their-own-ballots-mail/10060842002>.

cited authority, or are otherwise consistent with WEC's "litigation position" on ballot-return assistance.. They are wrong.

First, a reasonable interpretation of Administrator Wolfe's comment that "the voter is the one required to mail their ballot" is that it means "voters must place their own ballots in the mail." In other words, the headline accurately reflects a reasonable reading of Administrator Wolfe's public pronouncement.

Second, her pronouncement did not align "with the litigation position taken by the Commission in. *Teigen*." There, WEC argued that "a ballot is mailed 'by the elector' if the elector gives it to an agent, directs the agent to place it in the mail, and the agent does so." Dkt. 27-2 at 18. Administrator Wolfe pronounced that now, the voter is "*the one* required to mail their ballot." (emphasis added). This is new. The direct reference to individual action ("the one") narrowed WEC's position from its previous acceptance (as a "litigation position") of agent return.

Third, Administrator Wolfe's comment would be an expansion of *Teigen*, which Defendants admit (*see* Defendants' Response to Proposed Fact 39, first sentence) refused to address whether voters may have an agent return their absentee ballot. Whether an agent could return someone else's ballot would be seemingly resolved in the eyes of the public and Wisconsin's municipal clerks as soon as Wisconsin's chief elections officer

(Administrator Wolfe) publicly represented that “the voter is the one required to mail their ballot.”

Moreover, the statement Defendants cite as a basis to dispute this proposed fact is of no consequence. It is nowhere to be found in the document referenced by their citation. *See* Dkt. 27-1. The cited document makes no mention of Administrator Wolfe’s comments. Thus, Defendants have not “cite[d] with precision to the evidentiary matter in the record or to the testimony to be presented at the hearing that respondent contends will refute this factual proposition.” *Procedure to be followed on Motions for Injunctive Relief*, III. A (b). Consequently, this proposed fact remains undisputed. Defendants’ objection should be overruled, and the last sentence of this proposed fact should be admitted in evidence and made part of the record.

One last point merits discussion. Defendants do not cite evidence to dispute that Administrator Wolfe’s pronouncement was accurately reported by the Milwaukee Journal Sentinel. Her pronouncement was an admission. Fed. R. Evid. 801. An admission she has failed to refute as inauthentic. This should suffice to accept as fact into the record that the newspaper accurately reported her pronouncement.

41. And on July 25, 2022, WEC clarified its view that the prohibition on ballot-return assistance for mail-in votes was “a direct reference to state statutes on

this topic” and advised all municipal clerks to “consider[] applicable law in administering the absentee by mail process in their communities.”¹⁶

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

42. Wisconsin voters with disabilities are now uncertain how they can vote, if at all.

RESPONSE: Defendants OBJECT to this proposed fact because it is not supported by evidence.

REPLY: This proposed fact is supported by evidence. Wisconsin law prohibits ballot-return assistance to the municipal clerk. *Teigen*, ¶ 75; *id.* ¶176 (Hagedorn, J. concurring). Defendants concede that Administrator Wolfe was quoted saying “as of right now the voter is the one required to mail their ballot.” Yet, Defendants do not dispute that Plaintiffs are unable to vote without ballot-return assistance. *See* Defendants’ Response to Proposed Facts 48, 49, 60, 62, 69, 71, 78. And Defendants do not dispute that voters with disabilities have a federal right to ballot-return assistance. *See* Defendants Response to Proposed Fact 9. It is reasonable to infer from these facts that the conflict between 1) Plaintiffs’ only method to vote absentee, and 2) the public pronouncements of Administrator Wolfe and the law governing absentee voting as described in *Teigen*, would trigger this confusion among Wisconsin voters, and that the confusion would extend to

¹⁶ WIS. ELECTIONS COMM’N, Clarification on Absentee Ballot Return Comments (July 25, 2022), <https://elections.wi.gov/news/clarification-absentee-ballot-return-comments>.

voters throughout the state. For individuals who cannot vote without an absentee ballot, such as Plaintiffs Carey and Reece, one can reasonably infer that they reasonably believe they may be denied the franchise altogether.

Beyond their objection, Defendants have neither disputed nor “cite[d] with precision to the evidentiary matter in the record or to the testimony to be presented at the hearing that respondent contends will refute this factual proposition.” *Procedure to be followed on Motions for Injunctive Relief*, III. A (b). Consequently, the last sentence of this proposed fact remains undisputed. Defendants’ objection should be overruled, and this proposed fact should be deemed admitted and made part of the record.

Defendants’ Impermissible Discrimination and Disenfranchisement

43. Plaintiffs Timothy Carey, Martha Chambers, Scott Luber, and Michael Reece are all registered Wisconsin voters. *See* Declaration of Timothy Carey (Carey Decl.) ¶ 2; Declaration of Martha Chambers (Chambers Decl.) ¶ 2; Declaration of Scott Luber (Luber Decl.) ¶ 2; Declaration of Michael Reece (Reece Decl.) ¶ 2.

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

44. During the 2020 election, Plaintiffs Carey, Chambers, Luber, and Reece each voted absentee and returned their ballots by selecting a person of their choice to return the ballot for them. Carey Decl. ¶ 14; Chambers Decl. ¶ 8; Luber Decl., ¶ 13; Reece Decl. ¶ 13.

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

45. **Timothy Carey.** Mr. Carey lives in Appleton, Wisconsin and has Duchenne muscular dystrophy. Carey Decl. ¶¶ 1, 3.

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

46. Mr. Carey cannot move any part of his body by himself and is attached to a ventilator to help him breathe 24 hours a day, seven days a week. *Id.* ¶¶ 4-5.

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

47. Mr. Carey, now 49, has voted in nearly every election since he was 18. *Id.* ¶¶ 1-2, 9.

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

48. Mr. Carey relies on assistance at every step of the absentee ballot process. *Id.* ¶¶ 10-13.

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

49. Because Mr. Carey cannot use his arms, he cannot personally mail or deliver his absentee ballot and needs assistance to do so. *Id.* ¶ 13.

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

50. Traveling to the polls would endanger Mr. Carey's life. *Id.* ¶¶ 6-8.

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

51. He requires significant life sustaining equipment to be brought with him on the rare occasion he leaves his home; any technical difficulty away from home is life threatening. *Id.* ¶¶ 6-7.

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

52. The only way that Mr. Carey can vote in Wisconsin is through the state's absentee ballot program . *Id.* ¶¶ 1-17.

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

53. During the April 2022 local Wisconsin election, uncertain of whether the Waukesha County Court's ruling in *Teigen* applied to him in Outagamie County, Mr. Carey had a person of his choice return his absentee ballot in order to cast his vote. *Id.* ¶ 15.

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

54. Mr. Carey intends to vote in Wisconsin's November General elections but cannot do so without ballot-return assistance. *Id.* ¶¶ 16-17.

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

55. **Martha Chambers.** Ms. Chambers lives in Milwaukee, Wisconsin and is paralyzed from the neck down. Chambers Decl. ¶¶ 1, 3.

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

56. As a result of a horseback-riding accident 27 years ago, Ms. Chambers cannot use her arms and legs without assistance and is constrained to a mechanical wheelchair she can control in a limited fashion. *Id.* ¶ 3.

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

57. Ms. Chambers votes in nearly every election. *Id.* ¶ 2.

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

58. Because of her lack of mobility and difficulty in accessing in-person polling places, Ms. Chambers has received and voted by absentee ballot in each election since 2014. *Id.* ¶¶ 4-5.

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

59. Because of her disability, Ms. Chambers automatically received her absentee ballot for each election. *Id.* ¶ 5.

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

60. While Ms. Chambers can fill out her absentee ballot using a pen that she can put in her mouth, she cannot pick up her ballot and place it in her mailbox, or hand it over to the municipal clerk in person. *Id.* ¶¶ 6-7.

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

61. During the April 2022 local Wisconsin election, uncertain of whether the Waukesha County Court's ruling in *Teigen* applied to her, Ms. Chambers had a person of her choice return her absentee ballot in order to cast her vote. *Id.* ¶ 9.

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

62. Ms. Chambers intends to vote absentee in Wisconsin's November General elections but cannot do so without ballot-return assistance. *Id.* ¶¶ 10-11.

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

63. **Scott Luber.** Mr. Luber resides in Mequon, Wisconsin. Luber Decl. ¶ 1.

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

64. Mr. Luber has muscular dystrophy, and as a result, is unable to control the muscles of his body. *Id.* ¶¶ 4-7.

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

65. Alone, Mr. Luber would not be able to get to his polling place. *Id.* ¶¶ 7-9.

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

66. Mr. Luber votes absentee in large part because of his muscular dystrophy. *Id.* ¶¶ 8-9.

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

67. Historically, Mr. Luber's polling location was treacherous for him because of his disability. The facility located its entry ramp with such proximity to its entry stairwell that he did not have enough room to safely turn as he entered or exited the building. *Id.*

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

68. Now, whenever Mr. Luber votes, he votes absentee. *Id.* ¶ 9.

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

69. Because of his muscular dystrophy, Mr. Luber cannot mark a ballot, hold a ballot in his hand, open his door to deliver a ballot to a mail carrier, place a ballot in a mailbox, or hand a ballot directly to the municipal clerk. *Id.* ¶¶ 10-13.

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

70. Mr. Luber requires constant (24/7) care from an attendant, and this attendant marks Mr. Luber's ballot and returns it on his behalf. *Id.* ¶¶ 7, 10-13.

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

71. Mr. Luber intends to vote absentee in Wisconsin's November General elections but cannot do so if he without ballot-return assistance. *Id.* ¶¶ 14-16.

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

72. **Michael Reece.** Michael Reece lives in Sun Prairie, Wisconsin and has Cerebral Palsy. Reece Decl. ¶¶ 1, 3.

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

73. Mr. Reece, 67, cannot move or use his limbs and requires care 24 hours a day, seven days a week after a 2003 car accident paralyzed him from the chest down. *Id.* ¶¶ 1, 4-5.

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

74. Despite these limitations, for years, Mr. Reece attempted to vote in person. *Id.* ¶¶ 5-7.

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

75. When Mr. Reece attempted to vote in person, his polling place was unable to provide the assistance he needed to vote. Specifically, it did not have the accessible voting machine he required to cast his vote. *Id.* ¶ 6.

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

76. In light of his progressing Cerebral Palsy and the disenfranchisement risk he faces by waiting until election day, the only way that Mr. Reece can vote in Wisconsin is through the state's absentee ballot program. *Id.* ¶¶ 1-12.

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

77. So, each time Mr. Reece votes absentee, his wife helps to fill out his ballot and then she returns his ballot to the clerk. *Id.* ¶¶ 8-12.

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

78. Mr. Reece intends to vote in Wisconsin's November General but cannot do so if he cannot use assistance to return his ballot. *Id.* ¶¶ 15-16.

RESPONSE: Defendants do not dispute.

REPLY: This fact is undisputed and should be admitted in evidence and made part of the record.

Dated: August 19, 2022.

Respectfully submitted

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