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Waukesha County
2022CV001008

STATE OF WISCONSIN CIRCUIT COURT WAUKESHA COUNTY

MICHAEL WHITE, EVA WHITE,
EDWARD WINIECKE, and
REPUBLICAN PARTY OF
WAUKESHA COUNTY,

Case No.: 22-CV-1008

Plaintiffs,

Case Code No.: 30701

v.

WISCONSIN ELECTIONS COMMISSION,

Defendant.

**PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

The above-named Plaintiffs, by their attorneys, the Law Firm of Conway, Olejniczak & Jerry, S.C., submit this Brief in Support of their Motion for Temporary Restraining Order and Preliminary Injunction. For the reasons stated below, WEC's 2016 Published Guidance and 2020 Published Guidance relating to missing or adding information to absentee ballot witness certifications must be immediately enjoined.

FACTS

The above-identified Plaintiffs, registered voters in Waukesha County and qualified absentee ballot voters, filed this action relating to the proper construction and enforcement of the certain Wisconsin Statutes that set forth the legal methods for correcting the witness certification of an absentee ballot. (Doc. No. 2, p. 4, ¶¶ 1-5; *see* Aff. of Michael White ¶¶ 1-3 and Aff. of Eva White ¶¶ 1-3). Specifically, this action focuses on Defendant, Wisconsin Election Commission's ("WEC") unlawful guidance related to modifying missing or incomplete information in the witness

certification portion of the absentee ballot envelope, as it is contrary to Wis. Stats. §§ 6.84, 6.87(2), 6.87(4)(b)1, 6.87(6d), and 6.87(9). (*Id.*).

Voting by absentee ballot has grown exponentially in Wisconsin. Following the November 2020 election, WEC noted “clerks in nearly every town, village, and city in Wisconsin processed more absentee ballot requests than ever before—nearly 2 million statewide.” (Goehre Aff. ¶ 4, Ex. A; Press Release, Wisconsin Elections Commission, *WEC Releases Analysis of November 2020 Election Data* (Jan. 29, 2021)). WEC itself acknowledged the massive increase in absentee voters “revealed public confusion about the process and differing opinions about previously obscure statutory provisions and administrative procedures.” *Id.*

One of the practices that has come to light with the massive increase in absentee balloting is municipal clerks and local election officials altering or inserting, on their own initiative, information in the witness certification portion of the absentee ballot envelope. (Goehre Aff. ¶ 5, Ex. B; see Scott Bauer, *Wisconsin Elections Commission Deadlocks on Absentee Ballot Rule*, Mar. 9, 2022, available at <https://apnews.com/article/2022-midterm-elections-biden-elections-wisconsin-donald-trump-71c10b6f51016169b2b3981e060a574f>. (Noting that, despite errors or omissions in the absentee ballot certifications during the last Presidential election, “[i]n many cases, clerks fixed the errors and approved the ballots.”)).

This newly identified practice is contrary to law. Under Wisconsin law, absentee ballots submitted must be signed by the voter in the presence of “one witness who is an adult U.S. citizen.” Wis. Stat. § 6.87(4)(b)1. That is why Wisconsin provides voters with an absentee ballot envelope, which includes the required witness certification section that must be completed before returning the absentee ballot. See Wis. Stat. § 6.87(2). The statute expressly requires that “[t]he witness shall execute” the witness certification, which includes specific representations regarding the individual

absentee voter's ballot that was witnessed. The absentee ballot certification provides a space for, among other things, an elector to certify eligibility to vote by listing his or her address, and for the absentee ballot witness to certify that he or she, in fact, witnessed the lawful marking of the ballot. Wis. Stat. § 6.87(2). In addition to signing and printing his or her name, the witness must provide his or her address. *Id.* A copy of the certification appears, in pertinent part, below:

| | | | |
|--|--------|--------------------------|--|
| Official use only: | Ward # | District (if applicable) | Voted in clerk's office <input type="checkbox"/> |
| 3 Sign and date this section. | | | |
| CERTIFICATION OF VOTER (Required) | | | |
| I certify, subject to the penalties for false statements of Wis. Stat. § 12.60(1)(b), that I am a resident of the ward of the municipality in the county of the state of Wisconsin indicated hereon, and am entitled to vote in the ward at the election indicated hereon; that I am not voting at any other location in this election; that I am unable or unwilling to appear at the polling place in the ward on election day, or I have changed my residence within the state from one ward to another later than 28 days before the election. I certify that I exhibited the enclosed ballot, unmarked, to the witness, that I then in the presence of the witness and in the presence of no other person marked the ballot and enclosed and sealed the ballot in this envelope in a manner that no one but myself and any person providing assistance under Wis. Stat. § 6.87(5), if I requested assistance, could know how I voted. I further certify that I requested this ballot. | | | |
| X _____ / / | | | |
| ▲ Signature of Voter ▲ (All voters must sign.) | | Today's Date | |
| REQUIRED OF MILITARY AND OVERSEAS VOTER ONLY: I further certify my birth date is: _____/_____/_____ | | | |
| 4 Have your witness sign and write their address below. | | | |
| CERTIFICATION OF WITNESS (signature and address of witness are required) | | | |
| I, the undersigned witness, subject to the penalties for false statements of Wis. Stat. § 12.60(1)(b), certify that I am an adult U.S. Citizen and that the above statements are true and the voting procedure was executed as stated. I am not a candidate for any office on the enclosed ballot (except in the case of an incumbent municipal clerk). I did not solicit or advise the voter to vote for or against any candidate or measure. I further certify that the name and address of the voter is correct as shown. | | | |
| 1. _____ | | | |
| ▲ Signature of ONE adult U.S. citizen witness ▲ | | | |
| 2. _____ | | | |
| ▲ If witnesses are Special Voting Deputies, both must sign. ▲ | | | |
| ▼ Address of witness or addresses of both SVDs ▼ | | | |
| 1. _____ | | | |
| 2. _____ | | | |
| Provide house number and street name or fire number and street name, city, state and zip code. OR If your rural address does not include a house number/fire number and street name, provide rural route number and box number, city, state and zip code. | | | |
| CERTIFICATION OF ASSISTANT (if applicable) - assistant may also be witness | | | |
| I certify that the voter named on this certificate is unable to sign his/her name or make his/her mark due to a physical disability and that I signed the voter's name at the direction and request of the voter. | | | |
| X _____ | | | |
| ▲ Signature of Assistant ▲ | | | |
| 5 Mail back your ballot. Allow 4-5 days for delivery to ensure your ballot is received by Election Day. Ballots received after Election Day will NOT be counted. | | | |

EL-122 Absentee Certificate Envelope | (rev. 2020-08)

(Goehre Aff. ¶ 6, Ex. C).

Importantly, the statute explicitly states that if a ballot is “missing the address of a witness, the ballot may not be counted.” Wis. Stat. § 6.87(6d). Furthermore, as provided by statute, there is only one way for local election officials to facilitate the correction of missing witness addresses. Specifically:

If a municipal clerk receives an absentee ballot with an improperly completed certificate or with no certificate, the clerk may return the ballot to the elector, inside the sealed envelope when an envelope is received, together with a new envelope if necessary, whenever time permits the elector to correct the defect and return the ballot [by the applicable deadline].

Wis. Stat. § 6.87(9) (emphasis added).

Despite these clear and mandatory provisions of Wisconsin law, WEC has issued guidance and information that directly contradicts the express requirements of the statutes.¹ (Goehre Aff. ¶¶ 7-8, 11-12, Exs. D, E, H & I). WEC has instructed, and continues to instruct through publications on its website, municipal clerks and local election officials on non-statutory means to “rehabilitat[e] an absentee certificate that does not contain the street number and street name (or P.O. Box) and the municipality of the witness address.” (*Id.*, ¶ 7, Ex. D). For example, WEC instructs local election officials not to involve the voter or witness at all to fix the ballots and further states that the clerk can fill in omitted information that the clerk can “reasonably discern.”

¹ WEC frequently provides guidance to municipal clerks and election officials. Wis. Stats. § 5.05(5t) and (16). A guidance document does not have the force of law and is viewed as “nothing but the written manifestations of the executive branch’s thought processes.” Wis. Stat. § 227.112(3); *Service Employees International Union, Local 1 v. Vos (SEIU)*, 2020 WI 67, ¶ 122, 393 Wis. 2d 38, 946 N.W.2d 35 (Kelly, J., majority op.). Notwithstanding, municipal clerks and election officials follow the guidance that WEC provides concerning the administration of elections, even when the guidance is erroneous. *Teigen v. Wisconsin Elections Comm’n*, 2022 WI 64, ¶ 166, 976 N.W.2d 519, 566 (Hagedorn, J., concurring) (“many local election officials . . . are likely to rely on and implement [WEC’s] erroneous advice”). *See* Off. of the Special Couns., *Second Interim Investigative Report on the Apparatus & Procedures of the Wisconsin Elections System* 116 (Mar. 1, 2022), available at: <https://legis.wisconsin.gov/assembly/22/brandtjen/media/1552/osc-second-interim-report.pdf> (“Surprisingly, many clerks have expressed to the OSC that they are under the impression that WEC guidance is binding, even when they believe such guidance (say, on drop boxes) is unlawful.”).

(*Id.* ¶ 7). Contrary to Wisconsin law, WEC explains that local election officials need not involve the voter in correcting or adding witness address information in several circumstances, including when:

- The voter has provided his or her complete address and the clerk has personal knowledge that the witness resides at the same address as the voter.
- The clerk has personal knowledge of the witness and knows his/or her address.
- The voter's complete address appears on the address label, and the witness indicates the same street address as the voter.
- The clerk is able to utilize lists or databases at his or her disposal to determine the witness's address.
- The clerk can "remedy the address insufficiency from extrinsic sources."

This Guidance remains published and accessible on WEC's website. (*Id.*)

As recently as 2020, WEC instructed local election officials in a substantially similar manner in a publication to municipal clerks and local election officials titled "Spoiling Absentee Ballot Guidance" ("2020 Published Guidance"). (Goehre Aff. ¶ 8, Ex. E). The 2020 Published Guidance remains published and accessible on WEC's website and, among other things, instructs local election officials to alter absentee ballot certifications by adding missing addresses for witnesses "through reliable information (personal knowledge, voter registration information, through a phone call with the voter or witness)." (*Id.*).

In addition to maintaining the foregoing instructions on its website, WEC has sent the referenced guidance documents to 1,850 municipal clerks in the State of Wisconsin. These activities have led to the incorrect application of Wisconsin law by some municipal clerks in the past, and they create a clear and present risk that municipal clerks and local election officials will

continue to incorrectly apply Wisconsin law in the upcoming 2022 general election. (Goehre Aff. ¶¶ 11-12, Exs. H & I).

In fact, just last month, on July 13, 2022, WEC proposed an emergency rule – EmR2209 – (“Emergency Rule 2209”), which attempted to codify the 2016 Published Guidance and the 2020 Published Guidance. (Goehre Aff. ¶ 9, Ex. F). The Wisconsin Legislature’s Joint Committee for Review of Administrative Rules (“JCRAR”) rejected WEC’s attempt to codify its prior incorrect guidance and suspended the proposed emergency rule on July 20, 2022. (Goehre Aff. ¶ 10, Ex. G). In doing so, JCRAR made its rationale clear: Emergency Rule 2209 is contrary to Wisconsin law; Wisconsin law simply does not authorize the municipal clerk to add or change any information on the witness certification portion of the absentee ballot envelope under any circumstances. (Goehre Aff. ¶ 10, Ex. G).

Undaunted by the legislative joint committee’s rejection of WEC’s proposed rule and prior guidance, and with complete disregard to legislative intent and the separation of powers, WEC immediately released statements reaffirming its view of the validity of its past guidance. The very day JCRAR rejected its attempted emergency rule, WEC Commissioner Ann Jacobs tweeted that “[c]lerks CAN still fill in missing witness address info per [the 2016 guidance].” (Goehre Aff. ¶ 11, Ex. H). Shortly thereafter, WEC’s spokesman, Riley Vetterkind, echoed Ms. Jacobs’ comments, stating that WEC’s “2016 guidance regarding absentee certificate envelopes remains in place at this time.” (Goehre Aff. ¶ 12, Ex. I).

ARGUMENT

The requirements of Wis. Stats. §§ 6.87(2), 6.87(4)(b)(1), 6.87(6d), and 6.87(9) are the established law and policy of the State of Wisconsin, as mandated and enacted by the State Legislature. WEC does not have the power to set aside the laws and policy decisions of the

Wisconsin Legislature. WEC does not have the authority to create guidance or rules that are contrary to law, and it certainly does not have the authority to create new laws. But that is exactly what it has attempted to do here, cavalierly providing, promoting, and insisting upon guidance to municipal clerks and election officials that is directly contrary to Wisconsin law.

WEC's incorrect interpretation of the election statutes harms Plaintiffs in several ways. Plaintiffs, as individual voters, are harmed because WEC has created uncertainty as to the lawful means to cast absentee ballots in the future. They also are harmed by the unequal administration of Wisconsin's election system, as some municipal clerks may comply with WEC's incorrect guidance, while others may follow the law as set forth in Wisconsin's statutes. Plaintiffs are further harmed by the counting of votes cast in violation of Wisconsin law, as such votes dilute or otherwise diminish the value of their votes and/or other lawful votes (including the votes of members of the Republican Party of Waukesha County). Finally, voters are entitled to participate in elections that are administered properly and in accordance with the law. If WEC is allowed to continue its administration of the 2022 election and future elections in a manner contrary to law, it will cast doubt on the administration of elections and harm voters' confidence in the electoral process. For these reasons, WEC's 2016 Published Guidance, 2020 Published Guidance relating to missing or adding information to absentee ballot witness certifications, and any other such information published by WEC must be immediately enjoined.

I. PLAINTIFFS ARE ENTITLED TO A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

A. Standard.

Wis. Stat. § 813.02 makes injunctive relief available to a litigant facing the threat of irreparable injury. The purpose of injunctive relief is to protect a person's legal rights. *Wisconsin Bankers Ass'n (Inc.) v. Mut. Sav. & Loan Ass'n of Wisconsin*, 103 Wis. 2d 184, 187 (1981). The

standard for issuance of injunctive relief is well known. As summarized in the seminal Wisconsin Supreme Court case, the standard is as follows:

Injunctions, whether temporary or permanent, are not to be issued lightly. The cause must be substantial. A temporary injunction is not to be issued unless the movant has shown a reasonable probability of ultimate success on the merits. Temporary injunctions are to be issued only when necessary to preserve the status quo. Injunctions are not to be issued without a showing of a lack of adequate remedy at law and irreparable harm, but at 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.

Werner v. A.L. Grootemat & Sons, Inc., 80 Wis. 2d 513, 520, 259 N.W.2d 310, 313-314 (1977).

As such, a moving party is entitled to such injunctive relief if it demonstrates the following:

1. A reasonable probability of success on the merits of their claims;
2. Risk of irreparable harm with no adequate remedy at law available; and
3. Injunctive relief is necessary to preserve the status quo.

Id.

Although the grant or denial of injunctive relief is a matter of discretion for the circuit court, *Milwaukee Deputy Sheriffs' Ass'n v. Milwaukee Cnty.*, 2016 WI App 56, ¶ 20, 370 Wis. 2d 644, it may become mandatory once a reasonable probability of success is shown and the threat of irreparable injury exists. As the Wisconsin Supreme Court has explained:

[W]here the complaint states cause of action, and the motion papers disclose a reasonable probability of plaintiff's ultimate success, it is well-nigh imperative duty of the court to preserve *status quo* by temporary injunction, if its disturbance *pendente lite* will render futile in considerable degree the judgment sought, or cause serious and irreparable injury to one party; especially if injury to the other is slight, or of character easily compensable in money; and that the discretion vested in the court is largely over the question of terms of the restraint and the protection of rights by bonds from one party to the other.

Shearer v. Congdon, 25 Wis. 2d 663, 668 (1964) (emphasis added) (internal citation omitted). Notably, with regard to the third factor, “at 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.” *Id.* at 371, 563 N.W.2d at 588.

Furthermore, the enforcement of a statute to protect a person’s statutory right is regularly recognized as a basis for injunctive relief. *State ex rel. Dep’t of Nat. Res. v. Wisconsin Ct. of Appeals, Dist. IV*, 2018 WI 25, ¶ 47, 380 Wis. 2d 354, 909 N.W.2d 114 (“It is nearly tautological to observe that losing a statutorily-granted right is a harm. Losing the right with no means to recover it makes the harm irreparable.”). Here, the clear and present danger of diluted votes and harm to Plaintiffs’ rights, as a result of WEC’s illegal policies and practices, satisfies that standard. *Teigen v. Wisconsin Elections Comm’n*, 2022 WI 64, ¶ 14, 976 N.W.2d 519, 527 (“WEC’s memos interfere[] with or impair, or at the very least, threaten[] to interfere with or impair, the Wisconsin voters’ legal rights and privileges—specifically, their rights and privileges as registered voters.” (citation and internal quotations omitted)).

B. Plaintiffs have a reasonable probability of success on the merits of their claim for declaratory relief.

To establish a “reasonable probability of success,” Plaintiffs need not actually prove their case. Rather, the “threshold is low” at this stage, and “it is enough that the plaintiff’s chances are better than negligible.” *Roland Mach. Co. v. Dresser Indus., Inc.*, 749 F.2d 380, 387 (7th Cir. 1984) (applying Wisconsin law).

The primary issue of Plaintiffs’ request for declaratory relief is one of statutory interpretation. When faced with such questions, courts must adhere to the plain, clear words of the statute. *Brown Cnty. v. Brown Cnty. Taxpayers Ass’n*, 2022 WI 13, ¶ 3, 400 Wis. 2d 781, 971 N.W.2d 491. In fact, courts are duty-bound to apply and enforce the plain language of statute

enacted by legislature. *Valadez v. Valadez*, 2022 WI App 2, ¶ 20, 400 Wis. 2d 523, 969 N.W.2d 770.

This case involved patent, ongoing violations of Wisconsin's election statutes by WEC and its policies and practices related to instructing clerks or local election officials to modify, on their own, defective—and therefore invalid—absentee ballots. In particular, WEC's continued instruction in 2016 and 2020 Published Guidance to municipal clerks and local election officials that they themselves can fill in missing witness address information and “rehabilitat[e] an absentee certificate that does not contain the street number and street name (or P.O. Box) and the municipality of the witness address,” is unlawful. (Goehre Aff. ¶¶ 7-8, Exs. D & E). Remarkably, WEC has persisted in asserting the validity of its unlawful guidance in the face of JCRAR's explicit rejection of WEC's attempt to enshrine it in regulation. (Goehre Aff. ¶¶ 11-12, Exs. H & I). As JCRAR explained, “[c]urrent state law makes clear that if an absentee ballot certification is missing elements, it can only be corrected by the voter or the voter's witness. The WEC emergency rule was an attempt to circumvent state law.” (Goehre Aff. ¶ 10, Ex. G).

Consistent with JCRAR's conclusion, Wisconsin's election statutes addressing absentee ballot procedures are clear and unambiguous. Wis. Stats. §§ 6.84(1), 6.84(2), 6.87(2), 6.87(6d), and 6.87(9). First, Wis. Stat. § 6.87(2) explicitly requires an absentee ballot to include a certificate of qualification of the absentee elector. The statute further requires that the absentee ballot's certificate shall include a witness's name, address, and signature attesting to a variety of facts, such as the witness is “an adult U.S. citizen,” the witness is not “a candidate for any office on the enclosed ballot (except in the case of an incumbent municipal clerk), the witness “did not solicit or advise” how the absentee elector should vote, and the absentee elector followed the lawful voting procedure. Second, Wis. Stat. § 6.87(6d) explicitly provides that “if an [absentee certificate]

is missing the address of a witness, the ballot may not be counted.” This command is unequivocal. Third, Wis. Stat. § 6.87(9) further provides that “if a municipal clerk receives an absentee ballot with an improperly completed certificate or with no certificate, the clerk may return the ballot to the elector, inside the sealed envelope when an envelope is received, together with a new envelope if necessary, whenever time permits the elector to correct the defect and return the ballot within the period authorized under [Wis. Stat. § 6.87(6)].” Wisconsin law does not provide any other options for correcting the witness certificate. As a result, if a witness certification on an absentee ballot envelope is missing the witness’s address information or is incomplete, the only option the clerk has is to return the ballot to the elector so that the witness information may be corrected.

These statutes in relation to absentee ballot voting, and the requirements set forth therein, cannot be disregarded—by WEC or any other individual administering Wisconsin’s elections. They are not advisory directives subject to administrative discretion. They are, as the law clearly establishes, explicitly mandatory and subject to strict compliance. Wis. Stat. § 6.84(2) (“With respect to matters relating to the absentee ballot process, ss. 6.86, 6.87 (3) to (7) and 9.01 (1) (b) 2. and 4. shall be construed as mandatory. Ballots cast in contravention of the procedures specified in those provisions may not be counted.”) (emphasis added); *Jefferson v. Dane Cnty.*, 2020 WI 90, ¶ 16, 394 Wis. 2d 602, 951 N.W.2d 556; *Teigen v. Wisconsin Elections Comm'n*, 2022 WI 64, ¶ 54, 976 N.W.2d 519.

There are particularly strong justifications supporting the strict application of the laws governing absentee balloting. In particular, the Wisconsin Legislature has noted an increased risk of voter fraud and abuse with respect to absentee balloting:

voting is a constitutional right, the vigorous exercise of which should be strongly encouraged. In contrast, voting by absentee ballot is a privilege exercised wholly outside the traditional safeguards of the polling place. The legislature finds that the privilege of voting

by absentee ballot must be carefully regulated to prevent the potential for fraud or abuse; to prevent overzealous solicitation of absent electors who may prefer not to participate in an election; to prevent undue influence on an absent elector to vote for or against a candidate or to cast a particular vote in a referendum; or other similar abuses.

Wis. Stat. § 6.84(1) (emphasis added).

WEC's policies and practices related to modification of absentee ballot errors run afoul of the foregoing statutes. From 2016 through the present, WEC has published information and instructed clerks and local election in direct violation of the plain, clear statutory text and case law. (Goehre Aff. ¶¶ 7-8, Exs. D & E). WEC's 2016 Published Guidance and 2020 Published Guidance related to absentee ballot witness certifications clearly violates Wisconsin's absentee ballot statutes and case law requiring strict application of such statutes. Contrary to WEC's guidance, the addition of missing address information on absentee ballot certificates by a clerk or local election official directly contravenes Wis. Stat. §§ 6.87(6d) and 6.87(9). WEC's continued instruction authorizing clerks to add information to an otherwise defective or incomplete witness certification violates those same statutes, for the same reasons. As such, Plaintiffs have a reasonable probability of success on the merits of their claim.

C. Without injunctive relief, Plaintiffs will suffer irreparable injury and have no adequate remedy at law other than restoration of the *status quo*.

The irreparable harm to which WEC has exposed Plaintiffs could hardly be more self-evident. If WEC's policies and practices related to unilaterally modifying defective absentee ballot certificates persist, Plaintiffs' votes will be diluted or polluted by votes that the Wisconsin State Legislature has explicitly said should not be counted. *See, e.g.*, Wis. Stat. § 6.84(2). Once defective absentee ballots are illegally counted and vote dilution occurs, there are no means to provide any sort of retroactive remedy to Plaintiffs. There can be no re-vote or an election do-over. The only

available remedy is injunctive relief before the local officials put WEC's unlawful guidance into practice.

The restoration of absentee voting policies and practices consistent with the clear commands of the Wisconsin State Legislature and Wisconsin statutes is worthy of injunctive relief. Voters, including Plaintiffs, are entitled to elections conducted in accordance with the law. Injunctive relief will ensure that they do not suffer significant and irreparable harm to their fundamental right to vote during the 2022 election. Moreover, such relief will return us to the proper *status quo*—the *status quo* that existed before WEC launched its flagrantly illegal guidance. *Westinghouse Elec. Corp. v. Free Sewing Mach. Co.*, 256 F.2d 806, 808 (7th Cir. 1958) (“The status quo is the last uncontested status which preceded the pending controversy.”); *LTD Commodities, Inc. v. Perederij*, 699 F.2d 404, 406 (7th Cir. 1983) (“[I]t is the last uncontested status preceding the controversy which is to be maintained by the court, rather than a status wrongfully altered by unilateral action after a dispute has arisen.”).

D. Consideration of the public interest favors granting injunctive relief.

In addition to Plaintiffs' looming risk of irreparable harm caused by WEC's unlawful policies and practices, the need for injunctive relief in order to protect Wisconsin voters, in general, cannot be understated. Without it, the entire voting populace is exposed to the risk of elections conducted outside of the law as well as irreparable harm to their right to an undiluted or unpolluted vote. WEC has clearly demonstrated, through its actions and statements, that unless it is enjoined, it will continue to advise, and municipal clerks will continue to follow, unlawful guidance that will harm Wisconsin voters and seriously impair the integrity of our elections.

Because of WEC's intransigence, Wisconsin voters now face the very real prospect of election laws being administered inconsistently throughout different parts of the state. As

discussed, WEC provided erroneous advice in its 2016 Published Guidance and 2020 Published Guidance to 1,850 municipal clerks. Now these 1,850 municipalities are left to make 1,850 different absentee ballot decisions. It is reasonably foreseeable that some clerks, relying upon WEC's unlawful guidance, may engage in unilateral modification of absentee ballots, which is inconsistent with the law, while others comply with the mandatory language of Wis. Stat. § 6.87. Preventing non-uniform, disparate election policies and practice by municipal clerks and local election officials is of paramount importance to the public's interest in having elections that are administered properly and in accordance with the law. This weighty public interest can be achieved through the requested injunctive relief.

Accordingly, as the November 8, 2022 election nears, Plaintiffs request that this Court order immediate injunctive relief, prior to the start of absentee ballot voting.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court issue a temporary restraining order and permanent injunction against WEC's use, dissemination, publication, or application of the 2016 Published Guidance and the 2020 Published Guidance relating to missing or adding information to absentee ballot witness certifications.

Dated this 2nd day of August, 2022.

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