

RISE, INC.
820 Kodak Dr.,
Los Angeles, CA 90026

JASON RIVERA,
108 N. Bedford St.
Madison, WI 53703

Plaintiffs,

v.

WISCONSIN ELECTIONS COMMISSION,
201 W. Washington Ave., Second Floor,
Madison, WI 53707

MARIBETH WITZEL-BEHL,
in her official capacity as City Clerk for the
City of Madison, Wisconsin
210 Martin Luther King Jr. Blvd., Rm. 103,
Madison, WI 53703

TARA McMENAMIN,
In her official capacity as City Clerk for the
City of Racine, Wisconsin
730 Washington Ave., Rm. 103
Racine, WI 53403

CELESTINE JEFFREYS,
in her official capacity as City Clerk for the
City of Green Bay, Wisconsin
100 N. Jefferson St., Rm. 106
Green Bay, WI 54301

Defendants,

WISCONSIN STATE LEGISLATURE,

Defendant-Intervenor.

Declaratory Judgment
Case No. 2022CV2446
Case Code: 30701

Hon. Ryan D. Nilsestuen

SUMMONS AND FIRST AMENDED COMPLAINT

FIRST AMENDED SUMMONS

THE STATE OF WISCONSIN

To each person named above as a Defendant:

You are hereby notified that the Plaintiffs named above have filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within 45 days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The Answer must be sent or delivered to the Court, whose address is Clerk of Circuit Court, Dane County Circuit Court, 215 S. Hamilton Street, Madison, WI 53703; to Pines Bach LLP, 122 W. Washington Ave., Suite 900, Madison, WI, 53703; and to Elias Law Group LLP, 250 Massachusetts Ave. NW, Suite 400, Washington, DC 20001. You may have an attorney help or represent you.

If you do not provide a proper answer within 45 days, the Court may grant Judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A Judgment may be enforced as provided by law. A Judgment awarding money may become a lien against any real estate you own now or in the future and may also be enforced by garnishment or seizure of property.

Dated: March 24, 2023

Electronically signed by Diane M. Welsh
Diane M. Welsh, SBN 1030940
PINES BACH LLP

David R. Fox*
John M. Geise*
Makeba Rutahindurwa*
Spencer W. Klein*
Samuel T. Ward-Packard, SBN 1128890
ELIAS LAW GROUP LLP

Attorneys for Plaintiffs Rise, Inc. and Jason Rivera

* Admitted *pro hac vice*

Addresses:

PINES BACH LLP
122 W. Washington Ave., Suite 900
Madison, WI 53703
Email: dwelsh@pinesbach.com
(608) 310-3319

ELIAS LAW GROUP LLP
250 Massachusetts Ave. NW, Suite 400
Washington, District of Columbia 20001
Email: dfox@elias.law
jgeise@elias.law
sklein@elias.law
swardpackard@elias.law
(202) 968-4652

ELIAS LAW GROUP LLP
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Email: mrutahindurwa@elias.law
(202) 968-4599

FIRST AMENDED COMPLAINT

COME NOW Plaintiffs Rise, Inc. (“Rise”) and Jason Rivera, by and through their undersigned counsel, and hereby assert a complaint for declaratory relief pursuant to Wisconsin Statutes §§ 806.04 and 227.40 against Defendant Wisconsin Elections Commission (“WEC”), Defendant Maribeth Witzel-Behl in her official capacity as City Clerk for the City of Madison, Defendant Tara McMenammin in her official capacity as City Clerk for the City of Racine, and Defendant Celestine Jeffreys in her official capacity as City Clerk for the City of Green Bay (collectively, the “Clerk Defendants”), and allege and petition this Court as follows:

INTRODUCTION

1. Wisconsin law requires that an elector casting an absentee ballot complete a certificate attesting to eligibility to vote absentee. Wis. Stat. § 6.87(2). This certificate, which is printed on the envelope in which the elector returns the ballot, must be executed in the presence of a witness. Wis. Stat. § 6.87(2). The witness’s “address” must be included on the certificate (the “Witness Address Requirement”). Wis. Stat. §§ 6.87(2), 6.87(4)(b)(1). The statute does not define the term “address.”

2. For voters, the stakes of how officials interpret “address” are high: Wis. Stat. § 6.87(9) authorizes local officials to take corrective measures upon receiving an “improperly completed certificate,” chief among them returning the certificate and ballot to the voter for correction, and Wis. Stat. § 6.87(6d) provides that if a certificate is “missing the address of a witness” at the time it is canvassed then the ballot “may not be counted.” In other words, a voter whose absentee ballot certificate is deemed not to satisfy the Witness Address Requirement will, at a minimum, need to take corrective action to have the ballot accepted, and may be entirely disenfranchised.

3. This case concerns two issues: the proper definition of witness “address” for purposes of Wis. Stat. § 6.87; and, relatedly, the circumstances in which a clerk may return the ballot to the voter for correction due to a witness-address issue rendering the absentee ballot certificate “improperly completed” for purposes of Wis. Stat. § 6.87(9).¹

4. From 2016 through the August 2022 primary election, WEC guidance resolved both these issues. That guidance defined a “complete address” to mean “street number, street name, and municipality name.” But WEC guidance did not require that voters themselves provide a complete witness address. Instead, local officials were instructed that as long as they could discern the witness’s complete address from the information provided, the local officials should themselves add any missing components. Voters were therefore not required to cure their absentee ballot certificates as long as enough information was provided for local officials to determine the witness’s “complete address.”

5. Just six weeks before the 2022 general election, the Waukesha County Circuit Court enjoined WEC’s guidance instructing local officials to complete witness addresses where possible. The Waukesha court concluded that local officials lacked the authority or ability to add to or alter absentee ballot certificates in any way. It explicitly declined to construe the term “address” or to instruct local officials as to what standard should be used in deciding whether to accept and count absentee ballots.

6. One week after the Waukesha court’s injunction, on September 14, 2022, WEC issued guidance to clerks stating that the Waukesha court’s injunction had not overturned WEC’s existing definition of address as requiring a street number, street name, and the name of the

¹ This case does not squarely present the issue of what counts as a “missing” address for purposes of Wis. Stat. § 6.87(6d), though the proper definition of witness “address” underpins that question.

witness's municipality (the "September 14 clerk communication"). But WEC did not provide any statutory basis for that definition, and it did not explain whether or why local officials could require voters to cure a ballot certificate that contained sufficient information to locate the witness, even if it differed from those three components. For example, the September 14 clerk communication did not consider whether zip code is an adequate substitute for municipality (and if not, why not); what rule to apply to situations, such as university residence halls, where street name and number do not best communicate the witness's address; or whether and why local officials could demand a voter correct a ballot where a certificate was missing some witness-address information but that information was clear from the certificate itself, such as where a witness who lived with the voter wrote "same" or "see above."

7. Left to their own devices, municipalities around Wisconsin adopted a variety of different approaches to the Witness Address Requirement in the November 2022 general election. The City of Madison, for instance, decided to accept absentee ballots so long as the accompanying certificate bore the witness's street number, street name, and *either* the municipality name or the zip code. The City of Racine, in contrast, required street number, street name, and municipality name, concluding that a zip code was not an adequate substitute for the municipality name—though zip code necessarily communicates municipality name. And the City of Green Bay announced several different approaches in the weeks leading up to the election, but ultimately decided that a witness "address" must have four components, requiring street number, street name, municipality name, and either state or zip code.

8. None of these standards is consistent with the text of Wis. Stat. § 6.87. When a statutory term is not defined, its ordinary meaning controls. The ordinary meaning of the term "address" is a place where a person may be communicated with, not any specific list of components

that may or may not be necessary or sufficient to communicate that information. And statutory context makes clear that the Wisconsin lawmakers know how to adopt a stricter, more specific definition of “address” if they conclude that one is needed: many other statutes do so. Moreover, strict component-based definitions of “witness address,” like those adopted by WEC and the Clerk Defendants lead to absurd results in frequently occurring situations—requiring, for example, that a ballot be returned for correction when a student witness gives her residence hall name and room number rather than a street name and number, or when a family member witness who shares the voter’s address (which is provided in a field just above the witness information on the certificate) writes “see above.” And finally, Wisconsin law requires that the election laws be construed in favor of enfranchising voters. Applying these principles, Wis. Stat. § 6.87 requires clerks to treat an otherwise-valid absentee ballot certificate as properly completed so long as they are able to discern from the certificate where the witness may be communicated with.

9. WEC’s definition of “address” in the September 14 clerk communication, and the three different definitions adopted by Madison, Racine, and Green Bay, all violate Wis. Stat. § 6.87. Voters may not be made to jump through additional hoops, let alone disenfranchised entirely, on the basis of atextual, locally contrived standards for witness addresses that require more than the statute does, and that do nothing to further the statutory purpose.

10. This Court should issue declaratory relief to correct WEC’s and the Clerk Defendants’ unlawful constructions of the Witness Address Requirement. Specifically, the Court should (i) declare that “address” means “a place where the witness can be communicated with,” and that the Witness Address Requirement is satisfied when local election officials can discern that information; and (ii) declare that the September 14 clerk communication is an invalid guidance document because it adopts an unlawful construction of Wis. Stat. § 6.87.

PARTIES

11. Plaintiff Rise, Inc. is a student-led 501(c)(4) nonprofit organization that runs statewide advocacy and voter mobilization programs in Wisconsin and throughout the country. Rise has a national headquarters located at 820 Kodak Dr., Los Angeles, CA 90026. Rise's mission is to fight for free public higher education and to end homelessness, housing insecurity, and food insecurity among college students. Rise's efforts to empower and mobilize students as participants in the political process are critical to its mission because building political power within the student population is a necessary condition to achieving Rise's policy goals.

12. As part of its mission to empower and mobilize students, Rise employs both full-time staff and part-time organizing fellows. Rise currently has 3 full-time staff and 29 organizing fellows in Wisconsin. The fellows are based in Madison, Milwaukee, and Oshkosh, but travel throughout the state as part of their work. In particular, in the months leading up to each election, organizing fellows reach out to students to discuss making a concrete plan to vote. In these conversations, organizing fellows assist students in registering to vote, checking their voter registration status, finding their polling place, and deciding whether to vote absentee or in person. Rise also provides students with instructions on how to properly vote using the method they have chosen. In the final two weeks before election day, organizing fellows reach out to these same students to confirm that they will cast their ballots and that they understand how to do so properly under state law.

13. In past elections, Rise has encouraged many voters in Wisconsin to vote by mail. In 2020, Rise helped 12,000 Wisconsin voters make a plan to vote. Of these, 3,887 voted by mail.

14. Rise continued to mobilize Wisconsin voters in 2022. Specifically, over the course of that election cycle, Rise helped just under 8,000 voters make plans to vote in municipalities around the state, including Madison, Racine, and Green Bay.

15. The student voters Rise aims to mobilize are particularly likely to return absentee ballot certificates bearing witness addresses that do not satisfy Defendants' various inconsistent standards. In particular, student voters often rely on other students or on immediate family members to serve as absentee ballot witnesses, and such witnesses are especially likely to provide addresses that do not satisfy Defendants' unlawful standards. Student witnesses are likely to provide residence hall names and room numbers rather than street names and street numbers. And family member witnesses are likely to use shorthand indicating that they share an address with the voter—writing “same,” “ditto,” or “see above”—because the witness-address field is small and is just a few lines below the voter-address field on the ballot certificate. In either case, the witness address information provided may not satisfy Defendants' inflexible, contrived definitions of “address.”

16. As a direct consequence of Defendants' conduct and the risk of improper ballot rejection that conduct has created in Wisconsin, Rise now encourages its target voters to vote in-person wherever possible. Because standards for absentee ballot certificates vary from municipality to municipality, and because the Defendants require nonmaterial address components in contradiction of Wisconsin law, Rise's assessment is that vote-by-mail now carries too high a risk of improper ballot rejection. Such ballot rejection often leads to the voter's outright disenfranchisement if the voter lacks time to correct the error, corrects it improperly, or simply becomes demoralized. And Rise has limited GOTV resources that make running an extensive cure operation for potentially hundreds of rejected absentee ballots very difficult.

17. Many of Rise's student voters have good reasons to prefer to vote by mail. Some live on campus but prefer to vote in local elections in their hometowns, or face physical or logistical barriers to in-person voting. Rise would be better able to mobilize such voters if it could encourage each voter to make a plan to vote by mail or in person, as the individual voter's preferences and circumstances dictate. But Defendants' conduct and other recently imposed barriers to vote-by-mail in Wisconsin have effectively precluded that strategy. This harms Rise's capacity to best achieve its mission.

18. Plaintiff Jason Rivera is a fourth-year student at the University of Wisconsin-Madison. Mr. Rivera resides at 108 N. Bedford St. Madison, WI 53703. Mr. Rivera was born in the City of Milwaukee and grew up there. He is employed as Rise, Inc.'s Wisconsin Deputy Director, and previously worked as a Wisconsin Fellow. He works to further Rise's mission of empowering college students to advocate for policies that put higher education within reach for all.

19. Mr. Rivera is a registered Wisconsin voter. He voted in the November 8, 2022 general election by absentee ballot and may vote absentee in future elections. He most recently voted in Madison but has previously voted in Milwaukee.

20. Mr. Rivera believes that absentee voters should not be forced to jump through unlawful additional hoops because of trivial nonmaterial omissions from their witness certificates. He also believes that Wisconsin's elections should be administered under the proper construction of the state's election laws. Without a judicial declaration settling the meaning of the Witness Address Requirement and correcting Defendants' application of unlawful standards, these objectives will not be served, and Mr. Rivera will question whether the results of future elections properly reflect the voters' will.

21. Defendant WEC is a governmental agency responsible for “the administration of [Chapters] 5 to 10 and 12 [of the Wisconsin Statutes] and other laws relating to elections and election campaigns, other than laws relating to campaign financing.” Wis. Stat. § 5.05(1). WEC is tasked with providing local election officials with education, training, and support in administering Wisconsin’s elections. WEC is located at 201 West Washington Ave., Second Floor, Madison, Wisconsin 53707.

22. Defendant Maribeth Witzel-Behl is the City Clerk for the City of Madison, Wisconsin and is named in her official capacity. In her capacity as the City Clerk for the City of Madison, Ms. Witzel-Behl is responsible for the administration of elections in the City of Madison, where Mr. Rivera resides. *See* Wis. Stat. § 7.15(1). She is also specifically assigned responsibilities by Wis. Stat. § 6.87(9).

23. Defendant Tara McMenamini is the City Clerk for the city of Racine, Wisconsin, and is named in her official capacity. In her capacity as the City Clerk for the City of Racine, Ms. McMenamini is responsible for the administration of elections in the City of Racine. *See* Wis. Stat. § 7.15(1). She is also specifically assigned responsibilities by Wis. Stat. § 6.87(9).

24. Defendant Celestine Jeffreys is the City Clerk for the City of Green Bay, Wisconsin, and is named in her official capacity. In her capacity as the City Clerk for the City of Green Bay, Ms. Jeffreys is responsible for the administration of elections in the City of Green Bay. *See* Wis. Stat. § 7.15(1). She is also specifically assigned responsibilities by Wis. Stat. § 6.87(9).

JURISDICTION AND VENUE

25. This Court has jurisdiction over the subject matter of this dispute under Wis. Stat. §§ 753.03, 806.04, and 227.40.

26. Wis. Stat. § 753.03 creates circuit court subject matter jurisdiction over all civil matters in this state.

27. Wis. Stat. § 806.04, the Uniform Declaratory Judgments Act, specifically grants this Court jurisdiction to declare rights, status, and other legal relations between parties.

28. Wis. Stat. § 227.40 specifically grants this Court jurisdiction to declare the validity or invalidity of a rule or guidance document.

29. Venue is proper in this court under Wis. Stat. §§ 801.50(2)I and 227.40(1).

30. Venue is proper in Dane County under Wis. Stat. § 801.50(2)I because Defendant Witzel-Behl is the City Clerk for the city of Madison and because the proper construction of the Witness Address Requirement will impact voters in Dane County who Rise seeks to mobilize.

31. Venue is proper in Dane County under Wis. Stat. § 227.40(1) because Mr. Rivera resides in Madison, Dane County, and because Rise, which does not have its principal place of business in Wisconsin, challenges WEC guidance prepared and issued at WEC's office at 201 W. Washington Ave., Madison, Dane County.

BACKGROUND

32. Wis. Stat. § 6.87 sets out Wisconsin's procedure for voting by absentee ballot. It states that an absentee ballot must be provided to the voter along with an envelope with a printed certificate on one side. Wis. Stat. § 6.87(2). Among other things, the certificate must bear a witness attestation, followed by fields for the witness's printed name, "address," and signature. Wis. Stat.

§ 6.87(2). The voter must provide the witness's address in the given field when returning the ballot. Wis. Stat. § 6.87(2). The statute does not define the term "address."

33. Upon receiving an "absentee ballot with an improperly completed certificate," "the clerk may return the ballot to the elector . . . whenever time permits the elector to correct the defect and return the ballot within the period authorized [by statute]." Wis. Stat. § 6.87(9).

34. Wisconsin law assigns municipal clerks, including Clerk Defendants Witzel-Behl, McMenamin, and Jeffreys, the authority to apply Wis. Stat. § 6.87(9) to individual absentee ballot certificates. Specifically, municipal clerks are the officials tasked with determining upon receipt whether each absentee ballot certificate is "improperly completed" and, if so, whether to return a ballot and certificate to the elector for correction. Wis. Stat. § 6.87(9). The statute does not define the term "improperly completed."

35. In 2015, the Legislature amended Wis. Stat. § 6.87 to provide that "[i]f a certificate is missing the address of a witness, the ballot may not be counted." Wis. Stat. § 6.87(6d); *see* 2015 Wis. Act 261 § 78. The statute as amended does not define the term "missing," and continues to leave the term "address" undefined.

36. While it is the local election officials who process absentee ballots on election day that are ultimately responsible for applying Wis. Stat. § 6.87(6d)'s instruction that a certificate missing the witness's address "may not be counted," *see* Wis. Stat. §§ 6.88(3) (inspectors), 7.52 (boards of absentee ballot canvassers), clerks, including the Clerk Defendants, determine whether each absentee ballot certificate is "improperly completed" for purposes of Wis. Stat. § 6.87(9), including whether an address is missing. Clerks are thus the officials who determine whether an absentee ballot will be counted without further action by the voter.

37. After the Legislature amended Wis. Stat. § 6.87 in 2015, and before the 2016 general election, WEC received many questions from clerks about how to apply the Witness Address Requirement. *See* September 27, 2022 Affidavit of Diane M. Welsh (“Welsh Aff.”) Ex. 1. WEC reviewed the statute in consultation with the Wisconsin Department of Justice and determined that the statute does *not* require rejection of an absentee ballot just because the ballot certificate omits portions of a traditional mailing address. *Id.* Rather, the “Department of Justice advised that a reasonable, defensible interpretation of the law would be to allow [] local election officials to add the municipality name to a witness certificate if the information could be reasonably ascertained by the official.” *Id.* In guidance issued in October 2016, WEC unanimously adopted this position. *See* Welsh Aff. Ex. 2. The 2016 guidance was operative in every statewide election for the next six years—from October 2016 through the August 9, 2022 primary.

38. The 2016 guidance defined “a *complete* address” to mean “a street number, street name and name of municipality.” Welsh Aff. Ex. 2 at 1 (emphasis added). And that guidance directed local election officials to “take corrective actions in an attempt to remedy a witness address error.” *Id.* Under that approach, officials who were “reasonably able to discern any missing information from outside sources [were] not required to contact the voter before making that correction directly to the absentee certificate envelope.” *Id.* Only if local election officials could not ascertain the additional address components from the information provided were they instructed to contact the voter to remedy the issue. *Id.*

39. On September 7, 2022, the Republican Party of Waukesha County and three individual Republican voters obtained an order from the Waukesha County Circuit Court enjoining the 2016 WEC guidance. Welsh Aff. Ex. 3 ¶¶ 6–9. The Waukesha court focused specifically on the portion of the guidance that permitted local election officials to fill in missing address

information on a witness certificate, if the official could reasonably ascertain the information from what was provided. The Waukesha court concluded that local election officials lacked “the duty or ability to modify or add information to incomplete absentee ballot certifications.” *Id.* ¶ 8. But its order did not purport to reach the proper definition of “address” under Wis. Stat. § 6.87(2) or determine under which circumstances clerks needed to contact voters to cure ballots due to an inadequate witness address. *See* Welsh Aff. Ex. 3 ¶¶ 7–9.

40. Thus, the Waukesha court did not consider the issue of what constitutes an address for purposes of Wis. Stat. § 6.87(2) and took no position on whether the 2016 guidance properly articulated the components of an adequate address under the statute when it defined “complete address.” *See* Welsh Aff. Ex. 5 at 47:1-5 (“I have done nothing and I’m not asked to interpret what is a missing address or what is an incomplete address and I’ve not decided, no one has asked me to decide what happens to absentee ballots that have an incomplete witness address.”).

41. On September 14, 2022, WEC issued a clerk communication announcing that the Waukesha court had enjoined the 2016 guidance as invalid and contrary to law. WEC Sept. 14 guidance, *available at* <https://elections.wi.gov/memo/temporary-injunction-wec-guidance-re-missing-absentee-witness-address-white-v-wisconsin>. WEC also informed clerks that the Waukesha court “had not overturned the existing WEC definition of address contained in the now-invalidated memoranda—namely, street number, street name, and name of municipality.” *Id.* Yet WEC’s September 14 communication overlooked that the 2016 guidance had defined “complete address,” not “address,” and that it had done so in the context of allowing ballots to be counted without voter correction as long as those components could be discerned from the information provided, even if the voter had not written them on the face of the certificate. Nor did WEC address whether a zip code is an adequate substitute for a municipality name, and if not, why not.

42. The resulting confusion was widespread. For instance, according to contemporaneous press coverage, Green Bay first announced that it would require all five components, then changed course and indicated that it would accept ballot certificates with the first three components and *either* state or zip code. Molly Beck, *Green Bay and Racine Election Clerks Receive Cease and Desist Letters over the Returning of Absentee Ballots*, Milwaukee Journal Sentinel, <https://www.jsonline.com/story/news/politics/2022/10/20/green-bay-racine-wisconsin-election-clerks-receive-cease-desist-letters-over-absentee-ballots/10531082002/> (last updated 8:43 am CT Oct. 20, 2022).

43. Concerns over potential disenfranchisement from such confusion are not theoretical. In fall 2021, the Legislative Audit Bureau released Report 21-19 on Elections Administration. See State of Wis. Legis. Audit Bureau, *Elections Administration*, Rep. 21-19 (Oct. 2021), available at <https://legis.wisconsin.gov/iab/media/3288/21-19full.pdf>. The Bureau conducted a review of a random sample of 14,710 absentee ballot certificates cast from 29 municipalities in the November 2020 general election. *Id.* at 42. This review showed that 1,022 certificates (6.9 percent) in 28 municipalities had partial witness addresses, while only 15 certificates (0.1 percent) in 10 municipalities were missing a witness address in its entirety. *Id.* at 42–43. This sample suggests that the various unlawful definitions of “address” adopted by Defendants caused a substantial number of absentee ballot certificates to be classified by clerks as “improperly completed” in the November 2022 general election. And such confusion will continue to wreak havoc in future elections.

44. During the November 2022 general election, the City of Madison Clerk’s Office ultimately interpreted witness “address,” for purposes of Wis. Stat. § 6.87, to mean street number,

street name, and at least one of either municipality or zip code, and returned absentee ballots with certificates not satisfying that definition to voters for correction.

45. During the November 2022 general election, the City of Racine Clerk's Office ultimately interpreted witness "address," for purposes of Wis. Stat. § 6.87, to mean street number, street name, and municipality, and returned absentee ballots with certificates not satisfying that definition to voters for correction.

46. During the November 2022 general election, the City of Green Bay Clerk's Office ultimately interpreted witness "address," for purposes of Wis. Stat. § 6.87, to mean street number, street name, municipality, and at least one of either state or zip code, and returned absentee ballots with certificates not satisfying that definition to voters for correction.

LEGAL PRINCIPLES

47. This Court must resolve two related questions of statutory interpretation: (i) what constitutes a witness "address" for purposes of Wis. Stat. § 6.87(2); and (ii) in what circumstances is an absentee ballot certificate "improperly completed" on witness-address grounds for purposes of Wis. Stat. § 6.87(9), meaning that it can be returned to the voter for correction.

48. An "address" for purposes of Wis. Stat. § 6.87(2) is a place where the witness may be communicated with. And an otherwise-valid absentee ballot certificate is not "improperly completed" under Wis. Stat. § 6.87(9) if it includes address information sufficient to convey to the clerk where the witness may be communicated with.

49. Unless a statutory term is "specially-defined," it must be given its "common, ordinary, and accepted meaning." *State ex rel. Kalal v. Cir. Ct. for Dane Cnty.*, 2004 WI 58, ¶ 45, 271 Wis. 633, 681 N.W.2d 110. Neither Wis. Stat. § 6.87 nor any other provision in Wisconsin's election laws defines the standalone term "address," whether for purposes of the Witness Address

Requirement or otherwise. *See* Wis. Stat § 5.02 (election laws definitions provision); *Trump v. Biden*, 2020 WI 91, ¶ 49, 394 Wis. 2d 629, 951 N.W.2d 568 (Hagedorn, J., concurring) (“Although Wis. Stat. § 6.87(6d) requires an address, § 6.87(2) and (6d) are silent on precisely what makes an address sufficient.”).

50. Because “address,” in Wis. Stat. § 6.87, has several meanings in ordinary usage, “the applicable definition depends upon the context in which the word is used.” *Kalal*, 2004 WI 58, ¶ 49. As *Kalal* explains, “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 of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results.” *Id.* ¶ 46.

51. The immediate context of the Witness Address Requirement establishes that “address” means place where the witness may be communicated with. *See* “Address,” Merriam–Webster (defining “address” as “a place where a person or organization may be communicated with”) (last accessed Mar. 24, 2023).

52. “A statute’s purpose or scope may be readily apparent from its plain language or its relationship to surrounding or closely-related statutes—that is, from its context or the structure of the statute as a coherent whole.” *Kalal*, 2004 WI 58, ¶ 49.

53. Here, the “coherent whole” is Section 6.87, the Elections Code provision that sets out absentee voting procedures. The key procedure involving the witness is as follows: the voter (i) exhibits the ballot “unmarked to the witness,” then (ii) “mark[s] the ballot and enclose[s] and seal[s] the same” in the certificate envelope in the presence of the witness. Wis. Stat. § 6.87(2). Then the voter and witness both fill out certifications. *Id.* The space to add the witness’s name and address appears immediately after the witness certification.

54. The Witness Address Requirement exists to further the same purpose as the certification it immediately follows—namely, to ensure that the ballot was voted (i) by the voter, not another person, (ii) in a lawful manner, and (iii) without coercion or undue influence by the witness or anyone else. The witness’s address is useful to clerks because it gives them a way to contact the witness if any of those three requirements becomes the subject of a dispute.

55. The language of closely related statutes bolsters this reading.

56. “[W]here the legislature uses similar but different terms in a statute, particularly within the same section, we may presume it intended the terms to have different meanings.” *State ex rel. Zignego v. Wis. Elections Comm’n*, 2020 WI App 17, ¶ 64, 391 Wis. 2d 441, 941 N.W.2d 284 (quoting *State ex rel. DNR v. Wis. Ct. of Appeals*, 2018 WI 25, ¶ 28, 380 Wis. 2d 354, 909 N.W.2d 114), *aff’d as modified*, 2021 WI 32, 396 Wis. 2d 391, 957 N.W.2d 208.

57. Here, Wis. Stat. § 6.87(2) itself requires that absentee voters provide far more specific address components: “I am a resident of the [. . . ward of the] (town)(village) of . . . , or of the . . . aldermanic district in the city of . . . , residing at . . .* in said city, the county of . . . , state of Wisconsin.” Wis. Stat. § 6.87(2) (alterations in original).

58. The use of the term “address” elsewhere in the election code is also significantly more specific. *See, e.g.*, Wis. Stat. § 6.34(3)(b)(2) (voter identification must include “[a] current and complete residential address, including a numbered street address, if any, and the name of a municipality”); Wis. Stat. § 6.18 (former Wisconsin resident seeking presidential absentee ballot must specify “[p]resent address,” including “[c]ity” and “[s]tate”); Wis. Stat. § 8.15(5)(b) (candidate seeking ballot access “shall include his or her mailing address” on nomination papers).

59. Plaintiffs’ definition of “address” also avoids absurd results and administrability problems.

60. Any other definition of address—including any of the specific, component-based definitions adopted by WEC or the Clerk Defendants—may mean that when a voter completes their address on the certification and a witness who is the voter’s spouse, family member, or other cohabitant lists an address of “same,” “see above,” “ditto,” or an equivalent, clerks will have to treat that certificate as “improperly completed.”

61. Similarly, the component-based definitions adopted by WEC and the Clerk Defendants may lead to the absurd result of absentee ballot rejection when a witness provides an address that includes residence hall name and room number rather than street name and street number. All Wisconsin residential campuses that Plaintiffs are aware of require residence hall information for on-campus mail delivery. The University of Wisconsin-Madison, for instance, instructs students to include “Room number, residence house name, [and] residence hall name” on all mail. *See* University of Wisconsin-Madison, *University Housing: Hall Desks*, <https://www.housing.wisc.edu/residence-halls/services/desks/> (last accessed March 24, 2023). Student witnesses accustomed to such practices may assume that residence hall information is sufficient for purposes of an absentee ballot certificate. Compounding this risk, the space provided for witness addresses on the current absentee ballot certificate (EL-122) is quite small—just a single line. The UW’s sample student address, in contrast, runs three lines:

6206 Withey, Ogg Hall,
835 W. Dayton Street
Madison, WI 53706

Id. Many student witnesses may provide addresses that do not satisfy WEC or the Clerk Defendants’ inflexible definitions because they simply run out of room.

62. These absurd applications of the statute are of great concern to Rise, the young voters it exists to enfranchise, and Mr. Rivera, because student voters are particularly likely to rely

on witnesses with whom they reside, such as family members and college roommates, and on witnesses who reside in college residence halls.

63. Notably, any interpretation of Wis. Stat. §§ 6.87(2) and 6.87(9) must be judged under Wis. Stat. § 5.01, which requires that election laws be “construed to give effect to the will of the electors, if that can be ascertained from the proceedings, notwithstanding informality or failure to fully comply with some of their provisions.”

64. Finally, Plaintiffs’ definition of “address” comports with the Department of Justice and WEC’s understanding, beginning in 2016, that Wis. Stat. § 6.87(2) does not require further voter action so long as a certificate contains enough information to identify where the witness may be communicated with. That was the practical effect of the WEC guidance used from 2016 through September 2022. And the Waukesha court’s determination that local officials cannot alter or add to absentee ballot certifications does nothing to invalidate the broader principle that there is no reason to demand a voter correct a witness address if the information needed to contact the witness is already apparent from the face of the certificate.

65. Taken together, the only reasonable interpretation is that a witness “address” for purposes of Wis. Stat. § 6.87 is “a place where the witness may be communicated with,” and an otherwise-lawful absentee ballot certificate that includes witness-address information sufficient for the clerk to discern where the witness may be communicated with may not be considered “improperly completed” under Wis. Stat. § 6.87(9).

FIRST CLAIM FOR RELIEF
Declaratory Judgment under Wis. Stat. § 806.04
(Rise against the Clerk Defendants)

66. The preceding paragraphs are incorporated by reference herein.

67. Wis. Stat. § 806.04(2) provides that any person “whose rights, status or other legal relations are affected by a statute . . . may have determined any question of construction or validity arising under the . . . statute . . . and obtain a declaration of rights, status or other legal relations thereunder.”

68. Rise’s legal rights and privileges are impaired by the Clerk Defendants’ handling of absentee ballots under Wis. Stat. §§ 6.87(2) and (9).

69. Absent a declaratory judgment correcting the Clerk Defendants’ improper construction of Wis. Stat. §§ 6.87(2) and (9), some of Rise’s target voters in the Clerk Defendants’ municipalities will wrongfully have their absentee ballots returned for correction rather than having their ballots counted without further action. In particular, the student voters who Rise aims to mobilize are likely to be harmed because many students have their absentee ballots witnessed by students who reside in residence halls, or by cohabitant family members or roommates, creating an increased risk of witness-address problems. Some of those voters will lack time to correct their certificates, will fail to do so correctly, or will become demoralized by the additional barrier to voting. This, in turn, will lead to those voters being disenfranchised, and so will undermine Rise’s get-out-the-vote efforts.

70. Rise has accordingly chosen to encourage students to vote in person wherever possible. This undermines Rise’s capacity to efficiently mobilize as many students as possible and, by extension, its overall mission.

71. Under a proper interpretation of Wis. Stat. §§ 6.87(2) and (9), and consistent with Wisconsin statutory interpretation principles, if a clerk can reasonably discern where the witness may be communicated with from the ballot certificate, that certificate is not “improperly completed” and the voter may not be compelled to correct it for it to be counted.

72. The Court should therefore declare the following:

- a. A witness “address” for the purposes of Wis. Stat. § 6.87(2) is “a place where the witness may be communicated with”; and
- b. An otherwise-valid absentee ballot certificate from which a local clerk can reasonably discern where the witness may be communicated with is properly completed for purposes of Wis. Stat. § 6.87(9).

SECOND CLAIM FOR RELIEF
Declaratory Judgment under Wis. Stat. § 227.40
(Rise and Mr. Rivera against Defendant WEC)

73. The preceding paragraphs are incorporated by reference herein.

74. A “guidance document” means, among other things, any “communication issued by an agency” that “[e]xplains the agency’s implementation of a statute or rule enforced or administered by the agency,” or “[p]rovides guidance or advice with respect to how the agency is likely to apply a statute or rule enforced or administered by the agency, if that guidance or advice is likely to apply to a class of persons similarly affected.” Wis. Stat. § 227.01(3m).

75. WEC is the state agency responsible for “the administration of [Chapters] 5 to 10 and 12 [of the Wisconsin Statutes] and other laws relating to elections and election campaigns.” Wis. Stat. § 5.05(1).

76. Wis. Stat. § 6.87, which creates the Witness Address Requirement, is part of Chapter 7 and relates to elections and election campaigns.

77. WEC's September 14 clerk communication, which defines the term "address" for purposes of the Witness Address Requirement, is a guidance document, because it is a communication issued by WEC that (i) explains WEC's implementation of a statute it administers (Wis. Stat. § 6.87) and (ii) provides guidance as to how WEC is likely to apply that statute to a class of persons (absentee voters).

78. Courts have authority to declare the validity or invalidity of a guidance document "when it appears from the complaint and the supporting evidence that the . . . guidance document or its threatened application interferes with or impairs, or threatens to interfere with or impair, the legal rights and privileges of the plaintiff." Wis. Stat. § 227.40(1).

79. WEC's September 14 communication has impaired Rise's legal rights and privileges because it adopts an unlawful construction of the Witness Address Requirement and because it has caused Wisconsin municipalities to adopt inconsistent, confusing, and unlawful constructions of the Witness Address Requirement. This undermines Rise's capacity to efficiently mobilize as many students as possible and, by extension, its overall mission.

80. WEC's September 14 communication has impaired Mr. Rivera's legal rights and privileges because it adopts an unlawful construction of the Witness Address Requirement and has caused Wisconsin municipalities to adopt unlawful constructions of the Witness Address Requirement.

81. Declaratory relief is necessary and appropriate to prevent the September 14 communication from causing further harm to Rise's and Mr. Rivera's legal rights and privileges.

82. The Court should therefore declare that the September 14 clerk communication is an invalid guidance document because it construes the Witness Address Requirement in a manner inconsistent with Wis. Stat. § 6.87's proper construction.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

1. A declaratory judgment that:
 - a. A witness “address” for the purposes of Wis. Stat. § 6.87(2) is “a place where the witness may be communicated with”; and
 - b. An otherwise-valid absentee ballot certificate from which a local clerk can reasonably discern where the witness may be communicated with is properly completed for purposes of Wis. Stat. § 6.87(9).
2. A declaratory judgment that WEC’s September 14 clerk communication is invalid insofar as it does not define witness “address,” for purposes of Wis. Stat. § 6.87(2), to mean “a place where the witness may be communicated with”; and
3. Such other relief as the Court deems appropriate.

Dated: March 24, 2023

By: Electronically signed by Diane M. Welsh

Diane M. Welsh, SBN 1030940

PINES BACH LLP

122 W. Washington Ave., Suite 900

Madison, WI 53703

Telephone: (608) 310-3319

dwelsh@pinesbach.com

Respectfully submitted,

David R. Fox*

John M. Geise*

Spencer W. Klein*

Samuel T. Ward-Packard, SBN 1128890

ELIAS LAW GROUP LLP

250 Massachusetts Ave. NW, Suite 400

Washington, D.C. 20001

Telephone: (202) 968-4652

dfox@elias.law

jgeise@elias.law

sklein@elias.law

swardpackard@elias.law

Makeba Rutahindurwa*

ELIAS LAW GROUP LLP

1700 Seventh Avenue, Suite 2100

Seattle, Washington 98101

Telephone: (202) 968-4599

mrutahindurwa@elias.law

*Attorneys for Plaintiffs Rise, Inc. and
Jason Rivera*

*Admitted *pro hac vice*