

LEAGUE OF WOMEN
VOTERS OF WISCONSIN,

Plaintiff,

v.

Case No. 22-CV-2472

WISCONSIN ELECTIONS
COMMISSION, et al.

Defendants,

and

WISCONSIN STATE
LEGISLATURE,

Intervenor.

**DEFENDANTS' RESPONSE TO PLAINTIFF'S PROPOSED
UNDISPUTED FACTS IN SUPPORT OF ITS MOTION FOR
SUMMARY JUDGMENT**

Defendants Wisconsin Elections Commission (the "Commission"), and its Administrator and the individual members of the Commission in their official capacities, (collectively, "Defendants"), by their undersigned counsel, respond to Plaintiff's Proposed Undisputed Facts in Support of Its Motion for Summary Judgment, Doc. 113, as follows:

PLAINTIFFS' PROPOSED FINDINGS OF FACT

1. Plaintiff LWVWI was founded in 1920 and currently has 20 local leagues and approximately 2,800 members, the vast majority of whom are registered to vote in Wisconsin. (Dkt. 18, Affidavit of Debra Cronmiller (“Cronmiller Aff.”) ¶¶3-4.)

RESPONSE: Disputed in part. The cited evidence does not support the proposition that the vast majority of Plaintiff’s members are registered to vote in Wisconsin. Ms. Cronmiller’s affidavit states only her “belie[f]” that the vast majority of Plaintiff’s members are registered to vote in Wisconsin, without corroboration. (Cronmiller Aff. ¶ 3.) No dispute as to the other propositions.

2. LWVWI is a nonpartisan, nonprofit, non-stock corporation organized under the laws of the State of Wisconsin with its principal office located at 612 West Main St., Suite 200, in the City of Madison, Dane County, Wisconsin. (Cronmiller Aff. ¶2.)

RESPONSE: No dispute.

3. LWVWI is an affiliate of The League of Women Voters of the United States, which has 700 state and local Leagues in all 50 states, the District of Columbia, Puerto Rico, the Virgin Islands, and Hong Kong. The League works to expand informed, active participation in state and local government, giving a voice to all Wisconsinites. (Cronmiller Aff. ¶2.)

RESPONSE: No dispute.

4. LWVWI is dedicated to encouraging its members and the people of Wisconsin to exercise their right to vote as protected by the U.S. Constitution, the Voting Rights Act, and the Civil Rights Act of 1964. (Cronmiller Aff. ¶3.)

RESPONSE: No dispute.

5. LWVWI's mission is to empower voters and defend democracy; it does this by promoting political responsibility through informed and active participation in government, acting on selected governmental issues, and seeking to maximize eligible voter participation through its voter registration, education, and outreach efforts and to encourage civic engagement through registration and voting. (Cronmiller Aff. ¶3.)

RESPONSE: No dispute.

6. Currently, LWVWI has 20 local leagues and approximately 2,800 members in Wisconsin. (Cronmiller Aff., ¶4.) LWVWI has engaged in a wide range of activities to educate and assist mail-in absentee voters. (Cronmiller Aff. ¶¶5–13.)

RESPONSE: No dispute.

7. LWVWI has been directly involved in the issue of witness addresses on absentee ballot certificates since 2016, when it provided public testimony at WEC's October 14, 2016 hearing, regarding the requirements of federal law and its implications for WEC's guidance, and advocated for the

adoption of the previous, now-enjoined policy on curing technical, immaterial omissions or defects in the witness certification. (Cronmiller Aff. ¶13.)

RESPONSE: No dispute.

8. In the nearly six years since, LWVWI has continued to advocate for Wisconsin Elections Commission (“WEC”) guidance and policies that avoid the disenfranchisement of voters for immaterial omissions or defects and has repeatedly defended the absentee ballot certificate envelope cure guidance that it successfully persuaded WEC to adopt in 2016. (Cronmiller Aff. ¶15.)

RESPONSE: No dispute.

9. Defendant WEC is an administrative body created under the laws of Wisconsin that administers and enforces Wisconsin election law and is comprised of six appointed members. Wis. Stat. § 5.05; (Dkt. 105, Def. Ans. to Sec. Am. Compl., ¶¶26, 27; Dkt. 109, Leg. Ans. to Sec. Am. Compl., ¶¶26, 28.)

RESPONSE: No dispute.

10. Defendants Don Millis, Joseph J. Czarnezki, Mark L. Thomsen, Ann S. Jacobs, Marge Bostelmann, and Robert F. Spindell, Jr. are members of the Wisconsin Elections Commission. (Dkt. 105, Def. Ans. to Sec. Am. Compl., ¶29; Dkt. 109, Leg. Ans. to Sec. Am. Compl., ¶29.)

RESPONSE: No dispute.

11. Defendant Meagan Wolfe is the current Administrator of the Wisconsin Elections Commission. (Dkt. 105, Def. Ans. to Sec. Am. Compl., ¶30; Dkt. 109, Leg. Ans. to Sec. Am. Compl., ¶30.)

RESPONSE: No dispute.

12. Wisconsin law provides a “comprehensive” system by which any elector may request, receive, vote, and return an absentee ballot. *See generally* Wis. Stat. ch. 6, subch. IV; *Teigen v. Wis. Elec. Comm’n*, 2022 WI 64, ¶178, 403 Wis. 2d 207, 976 N.W.2d 519 (Hagedorn, J. concurring) (referring to Wisconsin’s 1915 “comprehensive absentee voting law”).

RESPONSE: No dispute.

13. Registered voters in Wisconsin have several ways to apply for and obtain absentee ballots. *See* Wis. Stat. §§ 6.855, 6.86, 6.22, 6.24, 6.25, 6.875.

RESPONSE: No dispute.

14. The absentee ballot certificate contains both a voter certification and a witness certification, which the voter and witness must sign under penalty of perjury. WEC, Form EL-122, Standard Absentee Ballot Certificate, available at <https://elections.wi.gov/media/11405/download>.

RESPONSE: No dispute.

15. All absentee ballots must be witnessed by an adult U.S. citizen. Wis. Stat. § 6.87(4)(b)1; WEC, Form EL-122.

RESPONSE: No dispute.

16. When signing the certification, the witness affirms the following statement: *I, the undersigned witness, subject to the penalties of s. 12.60(1)(b), Wis. Stats., for false statements, certify that I am an adult U.S. citizen** and that the above statements are true and the voting procedure was executed as there 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 elector to vote for or against any candidate or measure.* Wis. Stat. § 6.87(2); WEC, Form EL-122.

RESPONSE: No dispute.

17. The statute also provides that, “If a certificate is missing the address of a witness, the ballot may not be counted.” Wis. Stat. § 6.87(6d).

RESPONSE: No dispute.

18. The witness address field is labeled with the following: “Address of Witness(s) – street number or fire number and street, or rural route and box number, municipality, state and zip code.” WEC, Form EL-122.

RESPONSE: No dispute.

19. The Inspectors’ Statement, contains a code for each potential reason for rejecting an absentee ballot. WEC, Form EL-104, Inspectors’ Statement, available at <https://elections.wi.gov/media/12465/download>.

RESPONSE: Object as to vagueness and dispute in part. It is unclear whether the proposition’s reference to “each” potential reason for rejecting an

absentee ballot is intended by Plaintiff to mean “every” potential reason for rejecting an absentee ballot. To the extent “each” means “every,” Defendants dispute. No dispute, however, that the Inspectors’ Statement contains codes for potential reasons for rejecting an absentee ballot.

20. That list contains the code “RWA” to describe the basis for rejection (“There is *no address* of a witness”), but there is no code for missing or partial *voter* addresses. WEC, Form EL-104.

RESPONSE: No dispute.

21. The voter’s address is usually affixed by means of a printed label. (Affidavit of Maribeth Witzel-Behl (“Witzel-Behl Aff.”), ¶2.)

RESPONSE: Disputed. Ms. Witzel-Behl’s affidavit says only that “[m]ost absentee ballots *in the City of Madison* are accompanied by an Absentee Ballot Application/Certification with the voter’s address . . . affixed by means of a printed label,” and that it is “[her] understanding that most other clerks follow the same procedure.” Witzel-Behl Aff. ¶ 2 (emphasis added). To the extent that Plaintiff’s proposition is with respect to *all* absentee ballots issued throughout the state, the cited evidence does not support the proposition.

22. The Election Day Manual states that an absentee ballot certificate envelope must contain the witness’s address for the ballot

to be counted. WEC, Election Day Manual, p. 91, *available at* <https://elections.wi.gov/resources/manuals/election-day-manual>.

RESPONSE: No dispute.

23. The Election Day Manual does not instruct clerks, election inspectors, or canvassers to verify or do anything else with the witness's address. *Id.*

RESPONSE: No dispute.

24. In 2016, 2015 Wisconsin Act 261 ("Act 261") became law. 2015 Wis. Act 261.

RESPONSE: No dispute.

25. Act 261 included a provision requiring an absentee voter's witness to fill in their address on the ballot's certificate envelope: "If a certificate is missing the address of a witness, the ballot may not be counted." 2015 Wis. Act 261, § 78; Wis. Stat. § 6.87(6d).

RESPONSE: No dispute.

26. At its October 14, 2016 meeting, WEC unanimously passed a motion that (a) reaffirmed WEC's three-component definition of "address" as street number, street name, and municipality name; (b) modified previous guidance to permit "adding a municipality to the witness certificate if the address is reasonably ascertainable from other information on the absentee ballot envelope, or other reliable extrinsic sources that are available" without

first obtaining voter consent; and (c) required that any additions to the witness address field should be initialed by the clerk. WEC, “Open Session Minutes,” (Oct. 14, 2016), *available at* <https://elections.wi.gov/media/11815/download>.

RESPONSE: No dispute.

27. On October 18, 2016, WEC issued updated guidance reflecting these instructions, directing clerks to try to cure problems with the witness address, either by correcting the ballot themselves or contacting the voter. (Dkt. 95, Ex. 1, WEC, “AMENDED: Missing or Insufficient Witness Address on Absentee Ballot Certificate Envelopes,” (Oct. 18, 2016); Dkt. 105, Def. Ans. to Sec. Am. Compl., ¶42; Dkt. 109, Leg. Ans. to Sec. Am. Compl., ¶42.)

RESPONSE: No dispute.

28. The October 18, 2016 Memorandum remained the most current WEC guidance available on this issue through the 2016, 2017, 2018, and 2019 elections. *See Trump v. Biden*, 2020 WI 91, ¶18, 394 Wis. 2d 629, 951 N.W.2d 568.

RESPONSE: No dispute.

29. WEC issued related guidance in the run-up to the November 2020 general election: “Please note that the clerk should attempt to resolve any missing witness address information prior to Election Day if possible, and this can be done through reliable information (personal knowledge, voter registration information, through a phone call with the voter or witness). The

witness does not need to appear to add a missing address.” (Dkt. 96, Ex. 2, WEC, “Spoiling Absentee Ballot Guidance,” (Oct. 19, 2020); Dkt. 105, Def. Ans. to Sec. Am. Compl., ¶45; Dkt. 109, Leg. Ans. to Sec. Am. Compl., ¶45.)

RESPONSE: No dispute.

30. Following the 2020 election, WEC’s guidance on witness addresses came under scrutiny, including in unsuccessful post-2020 election challenges. *See Trump v. Biden*, 2020 WI 91, ¶18.

RESPONSE: No dispute.

31. In July 2022, within months of the November 2022 general election, several individuals and the Republican Party of Waukesha County filed suit under Wis. Stat. § 227.40(1) with the Wisconsin Legislature intervening as to join as an additional plaintiff. The Waukesha County Circuit Court granted Plaintiffs and the Legislature a temporary injunction. *White v. Wis. Elec. Comm’n* (*see* 22-CV-1008, Dkt. 167, Sept. 7, 2022).

RESPONSE: No dispute.

32. WEC subsequently withdrew its October 2016 memoranda on September 13. WEC, Temporary Injunction on WEC Guidance re Missing Absentee Witness Address (*White v. Wis. Elec. Comm’n*, 22-CV-1008), (Sept. 13, 2022), *available at* <https://elections.wi.gov/media/16801/download>.

RESPONSE: No dispute.

33. On October 3, 2022, the Waukesha County Circuit Court granted final judgment to the plaintiffs in *White* and made permanent the injunction preventing WEC from issuing guidance or otherwise instructing clerks to cure defects in witness addresses on absentee ballot certificates. *White v. Wis. Elec. Comm'n*, 22-CV-1008, Dkt. 188, (Waukesha Cnty. Cir. Ct., Oct. 3, 2022).

RESPONSE: No dispute.

34. The Waukesha County Circuit Court confined its rulings to the question of whether clerks, under Wisconsin law, may fill in witness address information on an absentee ballot certificate envelope and expressly declined to address the federal law arguments raised by the League and other parties regarding whether a ballot omitting certain witness address information must nevertheless be counted under the 1964 Civil Rights Act. *White v. Wis. Elec. Comm'n*, 22-CV-1008, Dec. Tr. at 20:21–21:13 (Waukesha Cnty. Cir. Ct., Sep. 7, 2022); (Dkt. 19, Affidavit of Daniel S. Lenz, ¶3, Ex. 2.)

RESPONSE: No dispute.

35. At the September 13 hearing on the stay motion, the Waukesha County Circuit Court stated in no uncertain terms that it did not intend for the temporary injunction to have any effect on existing WEC guidance as to the definition of an “address.” *White v. Wis. Elec. Comm'n*, 22-CV-1008, Dec. Tr. At 46:24–47:6 (Waukesha Cnty. Cir. Ct., Sep. 13, 2022); (Dkt. 19, Affidavit of Daniel S. Lenz, ¶4, Ex. 3.)

RESPONSE: No dispute.

36. Since WEC withdrew its October 2016 memorandum, the Green Bay City Clerk's office has required witness addresses to include the state and zip code, even though WEC's definition excluded those components: "To respond to this change in the law, the Clerk's office will mail back certificates that lack a voter signature, witness signature and/or a complete witness address including house number, street name, city, state and zip code." City of Green Bay Clerk, Press Release: "A Change in the Absentee Ballot Curing Process" (Sept. 26, 2022), *available at* <https://greenbaywi.gov/CivicAlerts.aspx?AID=465>.

RESPONSE: No dispute.

37. Similarly, the stated policy of the Racine City Clerk's office was to return ballots to voters if the witness address lacked a state name or zip code: "For any omission in the witness address field on an absentee ballot certificate envelope, even if it is just the state name or the zip code, a member of my staff returns the ballot . . . to the voter." (Affidavit of Tara McMenammin ("McMenamin Aff.") ¶2.)

RESPONSE: No dispute.

38. The City of Oshkosh planned to require zip codes. (Affidavit of Daniel Lenz ("Lenz Aff.") ¶6, Ex. 2, p. 6, Oshkosh Policy.)

RESPONSE: Dispute. The Oshkosh Policy states that “[i]f the address contains the street number, street name and either the city or the zip code and the address appears to be a valid city of Oshkosh address, the ballot will be accepted.” (Lenz Aff. ¶ 6 Ex. 2 p. 3.) The Oshkosh Policy further states that “[i]f the street number, street name, or both the city and zip code are not completed, the address will be considered incomplete and the procedures outlined below should be followed.” (Lenz Aff. ¶ 6 Ex. 2 p. 3.) As such, the City of Oshkosh appears to not necessarily require a zip code in the witness address.

39. In contrast, Janesville’s city clerk a) instructed that witness addresses should be “sufficient in a manner that without doing any other research, we could reasonably locate the address of the witness using just the information they provide on the envelope,” (Lenz Aff. ¶7, Ex. 3, p. 5., Lorena Stottler Sept. 29, 2022 email), b) further stated that, so long as “the street is the same as the voter address,” the witness address is complete and not “missing” under Section 6.87(6d), even if it lacks “the city, state and/or zip,” (*Id.*, pp. 5–6), and c) thus held that canvassers were required to count these types of ballots. (*Id.*)

RESPONSE: No dispute.

40. During this litigation, WEC has expressed a substantially similar position (if not the same position), as Janesville’s city clerk, on how to approach ballots with partial witness addresses, yet WEC has not conveyed followup

guidance to municipal clerks since the withdrawal of the October 2016 Memorandum. (*See, e.g.*, Lenz Aff. ¶29, Ex. 25, Defendants' Responses to Plaintiff's First Set of Requests for Admission and Interrogatories to Defendants ("Defendants' RFA Responses"), at 9 (Response to RFA No. 13) ("A witness's omission of the name of their municipality from the witness certification on an Absentee Ballot Certificate Envelope does not cause the witness's address to be 'missing' under Wis. Stat. § 6.87(6d), if it is possible to determine the name of a municipality for the witness from other information contained on the face of the absentee ballot certificate."); *id.* at 7, (Response to RFA No. 10), explaining that a witness's address is complete "if the witness address field includes information from which it is possible to determine a street number, street name, and name of municipality for the witness.")

RESPONSE: No dispute that Defendants have expressed a substantially similar position as Janesville's city clerk.

41. WEC has defined "address" under Wis. Stat. § 6.87(6d) to include a street number, street name, and municipality. According to Defendants themselves, "WEC has set a policy advising local election officials that a complete address contains three elements: a street number, street name, and name of municipality." (Lenz Aff. ¶29, Ex. 25, Defendants' RFA Responses, at 2 (Response to RFA No. 1); *see also* Defendants' RFA Responses, at 8 (Response to RFA No. 12) ("WEC has defined 'address' to include street number, street

name, and name of municipality, according to the September 14, 2022 WEC Communication.”.)

RESPONSE: No dispute.

42. WEC has admitted (with irrelevant qualifications) that “a witness’s omission of any information other than street number, street name, and name of municipality from the witness certification on an Absentee Ballot Certificate Envelope, is not Material in determining whether the absentee voter is Qualified Under Wisconsin Law to vote in such election.” (Lenz Aff. ¶29, Ex. 25, Defendants’ RFA Responses, at 6 (Response to RFA No. 9).)

RESPONSE: Disputed in part. Defendants do not dispute that it made the specified admission with qualifications. Defendants dispute the allegation that its qualifications were irrelevant.

The first of Defendants’ qualifications noted that the presence or omission of witness address information on an absentee voter’s Absentee Ballot Certificate Envelope is not material in determining whether the absentee voter is “Qualified Under Wisconsin Law” to vote, as that phrase is defined in Definition No. 6 of Plaintiff’s First Set of Requests for Admission, because the factors governing whether an absentee voter is qualified under that definition do not include the presence or omission of witness address information on the voter’s Absentee Ballot Certificate Envelope. That qualification is relevant because it makes clear that (a) the scope of Defendants’ admission is limited

by the scope of Plaintiff's admission request and by the scope of Plaintiff's definition of "Qualified Under Wisconsin Law"; and (b) Defendants' admission does not justify any inferences broader than that limited scope.

The second of Defendants' qualifications noted that even if an absentee voter is "Qualified Under Wisconsin Law" to vote, as that phrase was defined by Plaintiff, that voter's ballot still may not be counted under Wis. Stat. § 6.87(6)(d) if the certificate is missing the address of a witness; and that whether a particular certificate is "missing the address of a witness" is determined, in the first instance, by local election officials, not by the Commission. That qualification is relevant because it makes clear that the limited scope of Defendants' admission, as described above, does not justify any inference that the presence or omission of witness address information on a voter's Absentee Ballot Certificate Envelope is not material to whether the voter's ballot may be counted by local election officials.

43. WEC's purported reason for not providing guidance to clerks is that WEC is not responsible for reviewing absentee ballots. (Lenz Aff. ¶29, Ex. 25, Defendants' RFA Responses, at 6–13 (Responses to RFA Nos. 9–21) ("Whether a particular absentee ballot certificate is 'missing the address of a witness,' within the meaning of Wis. Stat. § 6.87(6d), is determined, in the first instance, by local election officials, not by WEC."))

RESPONSE: Disputed. The proposed finding references one of Defendants' qualifications to its responses to Plaintiff's Requests for Admission Nos. 9–21 and characterizes that qualification as “a purported reason for not providing guidance to clerks.” However, none of the referenced admission responses indicated that that qualification was a reason for not providing guidance to clerks. The evidence cited in thus does not support the proposed finding.

44. According to information municipal clerks provided to WEC, in the November 2022 General Election, 2,239 absentee ballots were rejected and coded on the inspector's statement as “certification insufficient.” (Lenz. Aff. ¶9, Ex. 5, Attachment A to Defendants' Responses to Plaintiff's First Set of Requests for Production of Documents and Interrogatories (excerpted).)

RESPONSE: No dispute.

45. Additionally, the number of ballots rejected for insufficient certification may be greater than reported as the data WEC produced is based on information manually entered into the WisVote system by local election officials and therefore, as noted by WEC, may be under-inclusive or contain errors. (Lenz. Aff. ¶8, Ex. 4, Defendants' Responses to Plaintiff's First Set of Requests for Production of Documents and Interrogatories, pp. 3–5.)

RESPONSE: No dispute.

46. In the November 2022 General Election, Wisconsin voters in various municipalities had their ballots rejected, because the witness certifications had the witness's street name, street number, and municipality but lacked other address information such as state name or zip code, including:

- a. At least three ballots in the City of Green Bay: Ryan Grusnick, Jelaine Martin, and Sandra Spencer. (Lenz Aff. ¶10, Ex. 6, pp. 4, 6, 8; ¶12, Ex. 8, pp. 2-4.)
- b. At least three ballots in the City of Appleton: Emily Bierman, Mary Jill Marshall, George Kloes. (Lenz Aff. ¶13, Ex. 9, p. 3; ¶15, Ex. 11, pp. 2-4.)
- c. At least one ballot in the City of Racine: Jo Knudsen. (Lenz Aff. ¶16, Ex. 12, p. 8; ¶18, Ex. 14, p. 2.)

RESPONSE: No dispute.

47. In the November 2022 General Election, Wisconsin voters in various municipalities had their ballots rejected, because a household member acted as a witness and recorded the same street number and street name as the voter but omitted other address information like municipality names, including:

- a. At least five ballots in the City of Appleton: Bradley Shiazoo Lor, Daniel J. Laux, Michael C. Schmidt, Joseph E. Marx, Lloyd E. Learman. (Lenz Aff. ¶13, Ex. 9, p. 3; ¶15, Ex. 11, pp. 5-9.)
- b. At least one ballot in the City of Eau Claire: Ashley Ann Loney. (Lenz Aff. ¶19, Ex. 15, p. 3; ¶21, Ex. 17.)

- c. At least two ballots in the City of Waukesha: Tracy Ann Reed, Madoona Tawabuddin. (Lenz Aff. ¶22, Ex. 18, p. 3; ¶24, Ex. 20, pp. 2–3.)
- d. At least eighteen ballots in the City of Oshkosh: William R. Salm, Brielle Elizabeth Meisel, Khempet Thao, Richard Malchow, Marlene M. Malchow, Joanne M. Fenrich, Timothy L. Fahley, Paul J. Fennel, Haley M. Fullerton, Arlene C. Schmuhl, Shirley A. Gafner, Emily S. Boettcher, Betty J. Grenfell, Jade M. Baker, Soloman S. Brooks, Elizabeth J. Spanbauer, Stacy L. Fox, Joan G. Nimke. (Lenz Aff. ¶25, Ex. 21, p. 2; ¶26, Ex. 22; ¶28, Ex. 24, pp. 2–19.)
- e. At least seventeen ballots in the City of Racine: Jovani Yata, Josephine Garcia, Christine M. Gradymiller, Alesandra Selena Leal, Andrew J. Miller, Tammy A. Porasik, Joanne M. Finn, Natasha Marie Robles, Vincente H. Compos, Roberto S. Aquino, Rosa L. Aquino, Gloria Coronado, Mary K. Overstreet, Cathy A. Middleton, Kathylon L. Parker, Nicholas Allen Lawson, and Dana Michelle Kjell. (Lenz Aff. ¶16, Ex. 12, pp. 5–8; ¶18, Ex. 14, p. 3–19.)

RESPONSE: No dispute. Note the witness of Betty J. Grenfell’s ballot (from sub. D.) and) the witness of Selena Leal’s ballot (from sub. E.) omitted the apartment number in addition to omitting the municipality, state, and zip code.

48. Claire Woodall-Vogg, the Executive Director of the City of Milwaukee Elections Commission, estimated that the city receives “hundreds” of witness certifications, where a household member witness records the same street number and street name as the voter but omits other components like municipality name, during each election. (Dkt. 35, Affidavit of Claire Woodall-Vogg (“Woodall-Vogg Aff.”) ¶4.)

RESPONSE: No dispute.

49. In the November 2022 General Election, Wisconsin voters were subject to having their ballot rejected, because a witness used notations like “SAME,” ditto marks, and/or arrows to convey that their address was identical to that of the voter omitting street number, street name, and municipality. At least one ballot in the City of Oshkosh was rejected for this reason: Snighda Trafder’s—in which the witness wrote “Same as voter’s address” in the space designated for their address. (Lenz Aff. ¶25, Ex. 21, p. 3; ¶26, Ex. 22, p. 10; ¶28, Ex. 24, p. 20.)

RESPONSE: No dispute.

50. The City of Milwaukee Election Commission’s Executive Director has also affirmed that it receives absentee ballots with these types of notations recorded in the witness certification. (Dkt. 35, Woodall-Vogg Aff. ¶4.)

RESPONSE: No dispute, but clarifying that the proposition is supported by paragraph three, not four. (Doc. 35, Woodall-Vogg Aff. ¶ 3.)

51. In the November 2022 General Election, Wisconsin voters were subject to having their ballot rejected, because a witness recorded their street number, street name, and zip code, but omitted their municipality names. Eight absentee voters in Racine (Cindi Lou Brown, Carolyn Bonds, Debra Newman, Wilbert K. Bell, Katrina Bell, Sandra Trott, Peg Rousar-Thompson, and Stephen Jackson) had their ballots rejected in the November 2022 general

election, despite their witnesses including a street number, street name, and zip code. (Lenz Aff. ¶16, Ex. 12, pp. 5–8; ¶18, Ex. 14, pp. 20–27.)

RESPONSE: No dispute.

52. These types of absentee ballots, which were rejected in November 2022 for having insufficient witness certification, would have been cured and counted prior to *White v. WEC*. (Dkt. 95, Ex. 1, WEC, “AMENDED: Missing or Insufficient Witness Address on Absentee Ballot Certificate Envelopes,” (Oct. 18, 2016); Dkt. 96, Ex. 2, WEC, “Spoiling Absentee Ballot Guidance,” (Oct. 19, 2020).)

RESPONSE: No dispute.

53. These types of ballots are now being rejected, which leaves the voters who cast them disenfranchised; as, it may be too late for the voter to vote in person, Wis. Stat. § 6.86(6), or to spoil the rejected ballot and obtain a new one. *Id.* § 6.86(5).

RESPONSE: Disputed. Whether voters are being disenfranchised as a result of “[t]hese types” of ballots being rejected is a legal conclusion and not a factual matter to which a response is required.

54. These disqualified votes are not included in the statewide election results WEC certifies. Wis. Stat. § 7.70.

RESPONSE: No dispute.

55. WEC has admitted that rejecting these types of absentee ballots would violate the Materiality Provision. (Lenz Aff. ¶29, Ex. 25, Defendants' RFA Responses, at 8 (Response for RFA 9-21).)

RESPONSE: Disputed. Plaintiff's Memorandum of Law in Support of Plaintiff's Motion for Summary Judgment has defined the term "Materiality Provision" to mean "the 1964 Civil Rights Act's Materiality Provision, 52 U.S.C. § 10101(a)(2)(B)." (Dkt. 114:8.) Defendants assume that Plaintiff's use of that term here is relying on that definition.

Plaintiff's Requests for Admission did not use or define the term "Materiality Provision," nor did they otherwise request any admissions about whether rejecting any particular categories of absentee ballots would violate any provision of federal law, including the Materiality Provision. Therefore, contrary to Plaintiff's assertion, none of Defendants' responses to Plaintiff's admission requests made any admission that rejecting any particular categories of absentee ballots would violate the Materiality Provision or any other provision of federal law.

56. In response to Plaintiff's First Set of Requests for Admission and Interrogatories, Defendants wrote, "[t]he factors governing whether an absentee voter is 'Qualified Under Wisconsin Law' to vote in an election, as defined in Definition No. 6 of Plaintiff's First Set of Requests for Admission, do not include the presence or omission of witness address information on the

absentee voter's Absentee Ballot Certificate Envelope." (*See, e.g.,* Lenz Aff. ¶29, Ex. 25, Defendants' RFA Responses, at 6–7 (Response to RFA No. 9).)

RESPONSE: No dispute, but Defendants note the remainder of its Response to RFA No. 9 for full context: "However, even if an absentee voter is "Qualified Under Wisconsin Law" to vote in an election, Wis. Stat. § 6.87(6d) provides that the voter's ballot may not be counted if the certificate is missing the address of a witness. Whether any particular absentee ballot certificate is "missing the address of a witness," within the meaning of Wis. Stat. § 6.87(6d), is determined, in the first instance, by local election officials, not by WEC."

57. Maribeth Witzel-Behl, the clerk for the City of Madison, stated that voters turn in, "numerous absentee ballots accompanied by witness certifications in which the witness has written their street name, street number, and municipality but has not included a state or zip code." (Witzel-Behl Aff., ¶3.)

RESPONSE: No dispute.

58. Clerk Witzel-Behl also stated, "[F]or each election, Madison receives numerous ballots accompanied by witness certifications in which household member witnesses record the same street number and street name as the voter, but omit all other address components." (Witzel-Behl Aff. ¶4.)

RESPONSE: No dispute.

59. In response to Plaintiff's First Set of Requests for Admission and Interrogatories, Defendants stated that notations including "SAME," ditto marks, and/or arrows pointing up to the voter's address, do not cause the witness address to be missing, "because it is possible to determine a street number, street name, and name of municipality for the witness from the voter address information contained in Box 2, considered together with the mark on the witness address line indicating that the witness has the same address as the voter." (Lenz Aff. ¶29, Ex. 25, Defendants' RFA Responses, at 10–12 (Responses for RFA Nos. 18–21).)

RESPONSE: No dispute.

60. In response to Plaintiff's First Set of Requests for Admission and Interrogatories, Defendants admitted (with qualifications) that clear notations that the witness's address is the same as the voter's address are "not Material in determining whether the absentee voter is Qualified Under Wisconsin Law to vote in such election." (Lenz Aff. ¶29, Ex. 25, Defendants' RFA Responses, at 9–10 (Responses for RFA Nos. 14–17).)

RESPONSE: Disputed in part. Defendants do not dispute that it made the specified admission with qualifications. However, in Proposed Finding No. 42 above, Plaintiff characterized as irrelevant Defendants' qualifications to its response to Plaintiff's Request for Admission No. 9, and Defendants have disputed that characterization. The present Proposed Finding No. 60

references Defendants' responses to Plaintiff's Requests for Admission Nos. 14–17. In those responses, Defendants incorporated the same qualifications it had made to Request for Admission No. 9. To the extent, if any, that Plaintiff intends its characterization of Defendants' qualifications to its Response to Request for Admission No. 9 to also apply to Defendants' qualifications to its Response to Requests for Admission Nos. 14–17, Defendants dispute that characterization for the same reasons stated above in response to Proposed Finding No. 42.

Dated this 21st day of September 2023.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this *Defendants' Response to Plaintiff's Proposed Undisputed Facts In Support of Its Motion for Summary Judgment* with the clerk of court using the Wisconsin Circuit Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 21st day of September 2023.

Electronically signed by:

Thomas C. Bellavia

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