

RISE, INC., *and* JASON RIVERA,

*Plaintiffs,*

*v.*

Case No. 2022CV2446

WISCONSIN ELECTIONS COMMISSION,  
MARIBETH WITZEL-BEHL, *in her official  
capacity as City Clerk for the City of Madison,  
Wisconsin,* TARA MCMENAMIN, *in her official  
capacity as City Clerk for the City of Racine,  
Wisconsin,* and CELESTINE JEFFREYS, *in her  
official capacity as City Clerk for the City of Green  
Bay, Wisconsin,*

*Defendants.*

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**INTERVENOR DEFENDANT THE WISCONSIN STATE LEGISLATURE'S  
BRIEF IN SUPPORT OF MOTION FOR STAY PENDING APPEAL**

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## TABLE OF CONTENTS

INTRODUCTION .....	1
STANDARD OF REVIEW .....	2
ARGUMENT .....	3
I. The Legislature Has A High Likelihood Of Success On Appeal .....	3
II. The Balance Of Equities Overwhelmingly Favors A Stay Pending Appeal.....	11
III. At The Very Minimum, This Court Should Grant A Limited, Administrative Stay Pending The Legislature's Filing Of A Motion For Stay Pending Appeal With The Court Of Appeals And The Court Of Appeals' Consideration Of That Motion.....	16
CONCLUSION.....	17

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## INTRODUCTION

In its January 2, 2024, summary judgment order and its January 30, 2024 injunction order, this Court held that an absentee-ballot witness’s “address” as used in Wis. Stat. § 6.87, means “a place where the witness can be communicated with,” Dkt.233 at 3, 6, such that a witness satisfies the absentee-ballot witness-address requirement if she “provide[s] sufficient information to allow a reasonable person in the community to identify a location where the witness may be communicated with,” Dkt.238 at 1. Then, the Court’s January 30 order ordered Defendant Wisconsin Elections Commission (“WEC”) to “rescind” its longstanding guidance on the definition of a witness “address” and “advise” the State’s elections officials of this Court’s new definition in its order. Dkt.238 at 2–3.

This Court should stay its January 2 and January 30 orders pending Intervenor Defendant the Wisconsin State Legislature’s (“Legislature”) appeal of those orders, as the Legislature satisfies the stay-pending-appeal standard set out by the Wisconsin Supreme Court in *Waity v. LeMahieu*, 2022 WI 6, 400 Wis. 2d 356, 969 N.W.2d 263. To begin, the Legislature has a strong likelihood of success on appeal as a matter of law under *Waity*, including because this Court’s orders address a novel question of law that is subject to de novo review on appeal. Further, the balance of the equities weighs decisively in favor of a stay pending appeal. The State and the Legislature suffer irreparable harm any time a state statute is enjoined from operating as intended, which is effectively what this Court’s orders do here. Indeed, this Court’s orders will cause confusion among clerks and the public alike, especially

from WEC having to rescind longstanding guidance and advise clerks of this Court's new definition of address. Additionally, Plaintiffs would suffer no harm here, given how straightforward it is to comply with the absentee-ballot witness requirement. Further, if this Court denies the Legislature's contemporaneously filed motion for a stay pending appeal in *League of Women Voters v. Wisconsin Elections Commission*, No.2022CV2472 (Dane Cnty. Cir. Ct.) ("*LWV*"), the Court's injunction there would appear to remedy the harms animating this Court's injunction here, making a stay here even more clearly justified.

Finally, and at a minimum, this Court should grant a limited administrative stay while the Legislature moves the Court of Appeals for a stay pending appeal and during the Court of Appeals' consideration of that motion, given the potential for needless confusion for municipal clerks and voters throughout the State, especially in light of the already underway February 20, 2024, Spring Primary Election.

### **STANDARD OF REVIEW**

Section 808.07 of the Wisconsin Statutes authorizes "a trial court [to] . . . [s]tay execution or enforcement of a judgment or order" during "the pendency of an appeal" of that order. Wis. Stat. § 808.07(2)(a); *see id.* § (Rule) 809.12. When deciding a motion to stay an order pending appeal, the Court must consider whether the moving party: (1) "makes a strong showing that it is likely to succeed on the merits of the appeal"; (2) "shows that, unless a stay is granted, it will suffer irreparable injury" during the pendency of the appeal; (3) "shows that no substantial harm will come to other interested parties" during the pendency of the appeal; and (4) "shows that a

stay will do no harm to the public interest.” *Waity*, 2022 WI 6, ¶ 49. These four factors “are not prerequisites but rather are interrelated considerations that must be balanced together.” *Id.* (citation omitted).

## ARGUMENT

### I. The Legislature Has A High Likelihood Of Success On Appeal

A. When assessing the likelihood of success on appeal factor, circuit courts must follow the analytical approach that the Supreme Court articulated in *Waity*, 2022 WI 6. The relevant consideration for the success-on-the-merits factor is “whether the movant made a strong showing of success *on appeal*.” *Id.* ¶ 52. This requires the circuit court to “consider the standard of review, along with the possibility that appellate courts may reasonably disagree with its legal analysis.” *Id.* ¶ 53. When the appellate courts will review the issues de novo—including for “questions of statutory interpretation”—“reasonable judges on appeal could easily . . . disagree[ ] with the circuit court’s holdings.” *Id.* That is especially true where the circuit court is addressing a novel question of statutory interpretation. *Id.* Indeed, these circumstances alone demonstrate a likelihood of success on appeal. *See id.* ¶¶ 51–53. Given this binding standard from *Waity*, a circuit court cannot analyze the likelihood-of-success-on-appeal factor by “simply input[ting] its own judgment on the merits of the case and conclude[ing] that a stay is not warranted.” *Id.* ¶ 52.

B. Here, the Legislature has made a “strong showing that it is likely to succeed on the merits of the appeal,” *id.* ¶ 49, because “reasonable judges on appeal could easily . . . disagree[ ],” *id.* ¶ 53, with this Court’s conclusion that an absentee-ballot

witness's "address" within Wis. Stat. § 6.87 means "a place where the witness can be communicated with," Dkt.233 at 3, 6, requiring the witness to provide only "sufficient information to allow a reasonable person in the community to identify a location where the witness may be communicated with," Dkt.238 at 1.

1. As the Legislature has explained, each of Plaintiffs' claims rests upon an incorrect definition of the term "address" in Section 6.87. *See* Dkt.224. Section 6.87's text, context, purpose, and history all demonstrate that a witness's "address" refers to a witness's street number, street name, and name of municipality. Dkt.224 at 11–18; Dkt.230 at 1–2. This three-part definition of "address" reflects that term's "common, ordinary, and accepted meaning," Dkt.224 at 12 (citing *State ex rel. Kalal v. Cir. Ct. for Dane Cnty.*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110), as these three elements make up "the particulars of the place where a person lives . . . , typically consisting of a number, street name, the name of a town or district," Dkt.224 at 12 (citing *Address*, Oxford English Dictionary Online<sup>1</sup>); Dkt.230 at 3–4. Further, Section 6.87(2)'s statutory purpose confirms this interpretation, as the witness-address requirement serves the State's goal of preventing "fraud" and "abuse" in the absentee-voting process. Dkt.224 at 13 (citing Wis. Stat. § 6.84(1)); Dkt.230 at 2. And Section 6.87's statutory context is also in accord, given Section 6.84's requirement that the absentee-voting laws be "strictly construed," Dkt.224 at 13 (citing Wis. Stat. § 6.84(2)); Dkt.230 at 2, and in light of the language of other "closely-related statutes,"

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<sup>1</sup> Accessed at [www.oed.com/view/Entry/2208](http://www.oed.com/view/Entry/2208) (subscription required) (all websites last visited Jan. 31, 2024).

Dkt.224 at 13–14 (citing Wis. Stat. §§ 6.15(2)(a), 6.34(3)(b)(2), 6.87(2), 8.10, 8.28); Dkt.230 at 6. The history of Wisconsin’s absentee-voting regime supports this same definition: for as long as absentee voting has existed in Wisconsin, the State has required absentee voters to have their ballots witnessed and required those witnesses to provide an address—traditionally understood to mean the witness’s street number, street name, and municipality name. Dkt.224 at 15–17; Dkt.230 at 2. This three-part definition of a witness’s “address” under Section 6.87 creates an easily administrable rule, given that any clerk can readily determine whether a witness address on a ballot satisfies that definition, meaning that every clerk will treat each absentee ballot with the “perfect equality” that Wisconsin law requires. Dkt.224 at 17 (citing *State v. Buer*, 174 Wis. 120, 126, 182 N.W. 855 (1921)); Dkt.230 at 7–8.

2. The Legislature appreciates that this Court reached a different interpretation of “address” for purposes of Section 6.87 in the Court’s January 2, 2024, summary judgment order and its January 30, 2024, injunction order; however, and with respect, reasonable jurists may disagree with this Court’s conclusions, demonstrating that the Legislature has a strong likelihood of success on appeal.

To begin, this Court’s January 2 and January 30 orders decided a novel question of statutory interpretation, which question the appellate courts will review de novo, and this alone establishes that “reasonable judges on appeal could easily [ ] disagree[ ] with the circuit court’s holdings.” *Waity*, 2022 WI 6, ¶ 53. As this Court recognized in its January 2, 2024 decision in *LWV*, No.2022CV2472, Section 6.87 does not explicitly define a witness’s “address” via an express statutory definition, *LWV*,

No.2022CV2472, Dkt.157 at 2 (citing *Trump v. Biden*, 2020 WI 91, 394 Wis. 2d 629, 642, 951 N.W.2d 568; *Trump*, 394 Wis. 2d at 653 (Hagedorn, J., concurring)), and neither the Supreme Court nor the Court of Appeals “ha[ve] previously interpreted” this statutory term either, *Waity*, 2022 WI 6, ¶ 53. Further, the parties have exhaustively litigated this novel question, presenting competing arguments regarding Section 6.87’s text, statutory context, purpose, history, and administrability. Compare, e.g., Dkt.224 at 11–28; Dkt.230 at 1–8, with Dkt.213 at 10–18; Dkt.228 at 2–8. Thus, the novelty of this question, coupled the de novo standard of review, alone demonstrate that “other reasonable jurists on appeal may [ ] interpret[ ] the relevant law and . . . come to a different conclusion” than this Court and “easily . . . disagree[ ] with the circuit court’s holdings.” *Waity*, 2022 WI 6, ¶ 53.

Even looking beyond the novelty of the question here and the de novo standard of review, the Legislature has a strong likelihood of success on appeal because this Court’s interpretation of a witness’s “address” is, with respect, legally erroneous. The Legislature briefly discusses some of these legal errors immediately below.

*First*, the Court’s discussion of the Legislature’s reliance on the Oxford English Dictionary’s definition of “address,” and its ultimate conclusion that this dictionary does not inform the statutory meaning of a witness’s “address” was wrong. Dkt.233 at 3. The Court stated that the Legislature was “argu[ing] that the items the Oxford English Dictionary says are ‘typically’ part of an address,”—*i.e.*, a number, street name, and the name of a town or district—“are universal components, but the items the dictionary says are ‘often’ part of an address”—*e.g.*, a postal code—“are not.”



Dkt.233 at 3. That was not the Legislature’s argument. Dkt.224 at 12–14; Dkt.230 at 3–5. Rather, the Legislature argued that the Oxford English Dictionary’s “typical[ ]” components of an “address,” *Address*, Oxford English Dictionary Online, *supra*, provide the “ordinary” and “common” meaning of this term in Section 6.87, *Kalal*, 2004 WI 58, ¶¶ 45–49 & n.8 (emphases added), while components that are merely “often” part of an address do not fall within the ordinary meaning of this term, as used in Section 6.87, Dkt.224 at 12–13; Dkt.230 at 3–5. That also follows from the ordinary meaning of the term “typical”—which refers to what is “[o]f the nature of” or “emblematic” of a thing, *Typical*, Oxford English Dictionary Online (July 2023)<sup>2</sup>—and the term “often,” which means only “[m]any times” or “on numerous occasions,” *Often*, Oxford English Dictionary Online (Dec 2023).<sup>3</sup>

Notably, the Court also criticized the Legislature’s proffered definition of “address” from the Oxford English Dictionary because this dictionary provides other definitions for the term. Dkt.233 at 3–4. But the ordinary-meaning inquiry often requires the Court to select the best meaning of a statutory term from among multiple potential meanings—including by relying on other considerations like statutory context and purpose, as well as history—thus these alternative definitions do not alone undermine the Legislature’s argument. *Kalal*, 2004 WI 58, ¶ 49 (“Many words have multiple dictionary definitions; the applicable definition depends upon the context in which the word is used.”). Further, and respectfully, the Court did not

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<sup>2</sup> Available at <https://doi.org/10.1093/OED/8072365958> (subscription required).

<sup>3</sup> Available at <https://doi.org/10.1093/OED/7210545543> (subscription required).

similarly discount Plaintiffs’ preferred dictionary definition from Merriam Webster, *see* Dkt.233 at 3–4, although that dictionary too provides alternative definitions that support the Legislature’s position, *see Address*, Merriam-Webster Online (“directions for delivery on the outside of an object (such as a letter or package’’)).<sup>4</sup>

*Second*, reasonable jurists could disagree with the Court’s discussion of context. Dkt.233 at 3–4. As the Court recognized, Dkt.233 at 3–4, Chapter 6 of the Wisconsin Statutes uses the term “address” in multiple provisions and in different iterations—including Wis. Stat. § 6.34(3)(b)(2)’s use of “complete residential address, including a numbered street address, if any, and the name of a municipality.” The statutory context of Subsection 6.34(3)(b)(2), among other sources of statutory context, powerfully supports the Legislature because it demonstrates that Chapter 6 defines the term address with reference to *particular* pieces of information—such as a street name, street number, and name of a municipality. Wis. Stat. § 6.34(3)(b)(2); Dkt.224 at 12–15; Dkt.230 at 6. Thus, Section 6.87’s reference to a witness’s “address” likewise refers to those particulars. Dkt.224 at 11; Dkt.230 at 1–2. And while this Court raised concerns of “surplusage,” Dkt.233 at 4, the surplusage canon does not help here, where the Court is asked to adopt an “unusual meaning” of the statutory term, Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation Of Legal Texts* 176 (1st ed. 2012)—Plaintiffs’ amorphous definition of “address”—rather than the term’s “ordinary meaning,” *id.*

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<sup>4</sup> Available at <https://www.merriam-webster.com/dictionary/address>.

*Third*, the Court’s criticism of the Legislature’s reliance on *State v. Buer*, 174 Wis. 120, Dkt.233 at 5–6—from which the Legislature invoked the principle that the State’s absentee-voting regime must treat each absentee voter’s ballot with “perfect equality,” *Buer*, 174 Wis. at 126; Dkt.224 at 17; Dkt.230 at 7–8—is, with respect, misplaced.

The Court stated that *Buer* does not stand for this principle because the portion of the opinion cited by the Legislature “is from a sentence which summarizes the argument made by the losing party in the case,” Dkt.233 at 5; however, that is not the best reading of *Buer*. In *Buer*, the Supreme Court introduced the relevant passage here by explaining that the Court was “consider[ing] . . . the constitutional rights enjoyed by plaintiff as well as the power of the Legislature to enact special legislation.” 174 Wis. at 125. Then, the Court stated that the plaintiff there enjoys “a right to vote in the same manner and under like conditions enjoyed by every other voter in the election district, so that, so far as the voters of the city or county of Milwaukee are concerned, *they are on a perfect equality with reference to all things pertaining to the exercise of the right of suffrage in the election of the city and county officers specified.*” *Id.* at 125–26 (emphasis added). Only *after* setting forth this principle did the Court then explain and reject the plaintiff’s argument that he should enjoy the right to vote “in the same manner that it is exercised by the voters in other counties of the state with reference to the same or similar officers.” *Id.* at 126.

Notably, this Court did not hold that Plaintiffs’ definition of an “address” would comply with *Buer*, *see generally* Dkt.233 at 5–6, nor did Plaintiffs make such an

argument, Dkt.228 at 9 n.5. And while this Court explained that the Legislature’s definition of a witness “address” would still require some unavoidable “subjectivity,” such as differing views of the legibility of the witness’s handwriting, the Court did not hold that Plaintiffs’ proffered definition created less subjectivity than the Legislature’s definition. *See* Dkt.233 at 5–6.

Relatedly, the Court criticized the Legislature’s reliance on *Buer* here on the grounds that it would make other parts of Chapter 6—namely, Wis. Stat. § 6.87(9)—unconstitutional, but this too is incorrect, with respect. Dkt.233 at 6. Section 6.87(9) explicitly sets forth in the statutory text a straightforward, easy to apply standard that municipal clerks can apply to voters equally when determining whether to return an improperly completed absentee ballot to an absentee voter: “the clerk may return the ballot . . . whenever time permits the elector to correct the defect and [timely] return the ballot.” Wis. Stat. § 6.87(9). Here, in contrast, Plaintiffs’ atextual, amorphous definition of “address”—“a place where the witness can be communicated with,” Dkt.233 at 6, requiring the witness to provide only “sufficient information to allow a reasonable person in the community to identify a location where the witness may be communicated with,” Dkt.238 at 1—cannot be applied equally to all voters, thus violating the standard set forth in *Buer*.

*Finally*, the Court held that Plaintiffs’ preferred definition of a witness’s “address” would not conflict with the Materiality Provision within the Civil Rights Act of 1964, while the Legislature’s definition would conflict with that provision. Dkt.233 at 6. Plaintiffs, however, did not make that independent argument, *see*

*generally* Dkt.213; Dkt.228 at 6, thus it was error for this Court to raise and decide it on its own initiative, *see Serv. Emps. Int'l Union, Loc. 1 v. Vos*, 2020 WI 67, ¶ 24 & n.9, 393 Wis. 2d 38, 946 N.W.2d 35. In any event, this argument too is incorrect, for the reasons the Legislature has provided in the *LWV* litigation.

## **II. The Balance Of Equities Overwhelmingly Favors A Stay Pending Appeal**

A. The remaining stay-pending-appeal factors—the risk of irreparable harm to the movant, the potential harm to the nonmovant, and the balance of the equities—require the Court to consider and balance the harms that could result from either granting or denying the stay pending appeal to the parties and to the public. *Waity*, 2022 WI 6, ¶¶ 57–60. The court must examine whether denying the stay will cause the movant to “suffer irreparable injury” that “can[not] be undone” if the moving party prevails on appeal and “the circuit court’s decision is reversed.” *Id.* ¶¶ 49, 57. Harm that cannot be “mitigated or remedied upon conclusion of the appeal . . . must weigh in favor of the movant.” *Id.* ¶ 57. Next, the court must assess whether “the non-movant will experience” “substantial harm” if the court grants the stay “but the non-movant is ultimately successful” on appeal. *Id.* ¶¶ 49, 58 (citation omitted). Only the harm that the non-movant might experience during “the period of time that the case is on appeal”—rather than “any harm that could occur in the future”—is relevant to this analysis. *Id.* ¶ 58. Finally, for the “harm to the public interest” element, the public interest is always served by the enforcement of duly enacted laws, including while a case is on appeal. *Id.* ¶¶ 49, 60.

B. Here, the balance of equities overwhelmingly supports a stay.

Denial of a stay pending appeal will cause irreparable harm to the State, whose interests the Legislature represents here, *Democratic Nat'l Comm. v. Bostelmann*, 2020 WI 80, ¶ 8, 394 Wis. 2d 33, 949 N.W.2d 423, and to the Legislature's own particular interests, *Waity*, 2022 WI 6, ¶¶ 49, 57. Here, this Court's orders, with respect, replaced Section 6.87's "simple, bright line" definition of a witness's "address" that had prevailed since this statute's enactment, Dkt.233 at 6—street name, street number, name of municipality—with an amorphous, inadministrable standard—"sufficient information to allow a reasonable person in the community to identify a location where the witness may be communicated with," Dkt.238 at 1. That is a fundamental shift in Section 6.87's witness address requirement. Thus, for this reason alone, this Court's orders inflict irreparable harm on the State and the Legislature, *Bostelmann*, 2020 WI 80, ¶ 8; *LWV, No.2022CV2472*, Dkt.22 at 98 (Order at 8, *Serv. Emps. Int'l Union, Loc. 1 v. Vos*, 2020 WI 67, 393 Wis. 2d 38, 946 N.W.2d 35 (No.2019AP622)), harm made poignant given the State's and the Legislature's interest in ensuring the integrity and "orderly administration" of elections, *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 196 (2008).

The inadministrability of this Court's definition of a witness's "address" and the Court's associated injunction especially inflicts further irreparable harm. Under this Court's injunction, clerks reviewing an absentee-ballot witness certificate must determine whether the witness provided "sufficient information to allow a reasonable person in the community to identify a location where the witness may be communicated with." Dkt.238 at 1. So, to determine whether witness addresses are

sufficient, each of the State's over 1,800 clerks, Dkt.40 at 15, must consider whether they possess more or less knowledge than "a reasonable person in the community," Dkt.238 at 1. Then, if they decide that they are more knowledgeable than "a reasonable person in the community," Dkt.238 at 1, they must somehow disregard their own personal knowledge to evaluate these witness-address certificates. But, if they determine that they are less knowledgeable than "a reasonable person in the community," Dkt.238 at 1, they must somehow acquire the requisite reasonable-person knowledge to evaluate these witness-address certificates.

Next, in the absence of a stay pending appeal, WEC must "rescind" its previous guidance regarding the definition of a witness's "address," "promptly advise . . . election officials of this Court's Order," and will surely "revise and reissue" new guidance to inform those election officials on how to comply with this order—by February 9, 2024. Dkt.238 at 2. But if the Legislature is successful in having the injunction reversed on appeal, the rescission of WEC's guidance and any new guidance that WEC surely will issue will no longer be applicable, and WEC may well have to scramble to reverse that guidance and issue new guidance all before the primary election on February 20, 2024—which is *less than three weeks away*. See *Deadlines for the February 20, 2024 Spring Primary Election, MyVote Wis.*<sup>5</sup> Specifically, before this Court's injunction, WEC and the Legislature always understood Section 6.87 to require the witness to write her street name, street number, and name of municipality on the absentee-ballot witness certificate, with the

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<sup>5</sup> Available at <https://myvote.wi.gov/en-us/Voter-Deadlines>.

failure to include one of these elements requiring rejection of that absentee ballot unless cured. Dkt.224 at 4–6 (citing WEC, Temporary Injunction on WEC Guidance re: Missing Absentee Witness Address (Sep. 14, 2022)<sup>6</sup>). Accordingly, WEC has issued guidance to that effect, instructing clerks to reject absentee ballots with an absentee-ballot witness certificate that is missing one of these requirements. Dkt.224 at 5–7 (citing WEC, Temporary Injunction on WEC Guidance, *supra*). Now, WEC must rescind that guidance and “advise” the State’s election officials of this Court’s order that a witness address is sufficient if it “contains sufficient information to allow a reasonable person in the community to identify a location where the witness may be communicated with”—while almost assuredly issuing additional guidance to further elucidate that standard, Dkt.238 at 1–2—even though the next election is less than three weeks away, *see* Wis. Elections Comm’n, *Calendar*.<sup>7</sup>

A stay pending appeal will also benefit the public interest. *Waity*, 2022 WI 6, ¶¶ 49, 60. Allowing the injunction to take effect now, on the eve of the primary election on February 20, will result in voter and clerk confusion, especially given the injunction’s requirement that WEC rescind its longstanding guidance on absentee-ballot-witness certificates, advise the elections officials of this Court’s new definition of a witness “address,” and the near-certainty that WEC will issue new guidance elucidating this Court’s order. *See, e.g., Republican Nat’l Comm. v. Democratic Nat’l*

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<sup>6</sup> Available at <https://elections.wi.gov/memo/temporary-injunction-wec-guidance-re-missing-absentee-witness-address-white-v-wisconsin>.

<sup>7</sup> Available at <https://elections.wi.gov/calendar> (listing 2024 Spring Primary as occurring on Tuesday, February 20, 2024).



*Comm.*, 140 S. Ct. 1205, 1207 (2020) (per curiam) (citing *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam)). As discussed above, *supra* pp.13–14, even if the Legislature prevails on appeal, changing the rules for absentee voting now and the resulting confusion to voters will result in harm that cannot be undone.

Plaintiffs, for their part, will suffer no harm from a stay. *Waity*, 2022 WI 6, ¶¶ 49, 58. It is easy to comply with Wisconsin’s absentee voting laws, including Section 6.87’s witness address requirement. Dkt.40 at 19–20. All that an absentee voter must do to comply with Section 6.87 is ensure that the witness completes the witness certificate, writing the witness’s street number, street name, and the name of the municipality where the witness resides. Wis. Stat. § 6.87(6d). Complying with this requirement is especially straightforward now, as WEC has clarified the required witness-address components on its updated Standard Absentee Ballot Certificate. Fourth LeRoy Affidavit, Ex.1 at 1 (Wis. Elections Comm’n, Standard Absentee Ballot Certificate, Form EL-122 (Aug. 2023)). And should a voter desire to avoid having to comply with that law, she can easily avoid the absentee-ballot witness requirement altogether by voting in person on Election Day. Because a stay will simply maintain the status quo, Plaintiffs will not suffer any harm if the status quo is maintained during the pendency of these appeals. *Waity*, 2022 WI 6, ¶¶ 49, 58.

Finally, and at a minimum, the equities support entering a stay pending appeal in this case if the Court declines to enter such a stay in *LWV*. In *LWV*, the Court held that the Materiality Provision of the federal Civil Rights Act of 1964 preempts Wisconsin’s absentee-ballot witness requirement as to four specific

categories of absentee ballots and issued a corresponding injunction. *LWV*, No.2022CV2472, Dkt.161. As the colloquies between the Court and the parties at the Court's January 30, 2024 hearing, Dkt.232, appeared to suggest, the injunction in *LWV* covered a substantial portion of the absentee ballots that Plaintiffs in *Rise* were concerned about, *compare, e.g.*, Dkt.233 at 6 (explaining that the Court's definition of "address" would prohibit rejection of an absentee ballot with a witness address listing "same address as voter"), *with LWV*, No.2022CV2472, Dkt.161 (providing that no absentee ballot may be rejected where the witness address lists "same as voter"). Thus, there is no reason to inject the new, confusing, unadministrable definition of "address" on the eve of an election, when the very practical concerns that prompted the injunction were resolved by another injunction.

**III. At The Very Minimum, This Court Should Grant A Limited, Administrative Stay Pending The Legislature's Filing Of A Motion For Stay Pending Appeal With The Court Of Appeals And The Court Of Appeals' Consideration Of That Motion**

Should the Court decline to grant the Legislature a stay pending appeal, it should, at a minimum, grant a limited administrative stay while the Legislature moves the Court of Appeals for a stay pending appeal and during the Court of Appeals' consideration of that motion. That is, an administrative stay is essential here in light of the potential for inconsistent guidance from WEC, which will cause needless confusion for municipal clerks and voters throughout the State, *see* Dkt.238 at 2; *see supra* pp.13–15, as well the very real need for clerks across the State to administer the State's election law in the middle of the ongoing 2024 Spring Primary.

## CONCLUSION

This Court should grant the Legislature's Motion For Stay Pending Appeal.

Dated: January 31, 2024

Respectfully submitted,

*Electronically signed by Misha Tseytlin*

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