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COURT OF APPEALS

No. 2024AP165

In the Wisconsin Court of Appeals

DISTRICT IV

RISE, INC., *and* JASON RIVERA,
PLAINTIFFS-RESPONDENTS,

v.

WISCONSIN ELECTIONS COMMISSION; MARIBETH WITZEL-
BEHL, CITY CLERK FOR THE CITY OF MADISON,
WISCONSIN; TARA McMENAMIN, CITY CLERK FOR CITY OF
RACINE, WISCONSIN; *and* CELESTINE JEFFREYS, CITY
CLERK FOR THE CITY OF GREEN BAY, WISCONSIN,
DEFENDANTS,

WISCONSIN STATE LEGISLATURE,
INTERVENOR-APPELLANT.

On Appeal From The Dane County Circuit Court,
The Honorable Ryan D. Nilsestuen, Presiding
Case No. 2022CV2446

**OPENING BRIEF OF INTERVENOR-APPELLANT
THE WISCONSIN STATE LEGISLATURE**

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ISSUE PRESENTED

Whether an absentee-ballot witness “address” for purposes of Wis. Stat. § 6.87’s absentee-ballot witness certificate means “a place where the witness may be communicated with,” defined as “the face of the certificate contain[ing] sufficient information to allow a reasonable person in the community to identify a location where the witness may be communicated with.” R.238 at 1.

The Circuit Court answered “yes.”

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INTRODUCTION

The Circuit Court concluded that “address” for purpose of absentee-ballot witness certifications under Wis. Stat. § 6.87(2) means “a place where the witness may be communicated with,” defined as “the face of the [absentee-ballot witness] certificate contain[ing] sufficient information to allow a reasonable person in the community to identify a location where the witness may be communicated with.” R.238 at 1. Prior to the Circuit Court’s orders below, clerks across the State had interpreted Section 6.87’s witness-address requirement in their own jurisdictions. Now, after the Circuit Court’s judgment, the three Clerk Defendants—and only those clerks—must apply the Circuit Court’s new, unadministrable definition of witness “address.” The Circuit Court also forced the Wisconsin Elections Commission (“WEC”) to rescind its previous non-binding guidance on the longstanding three-component definition of “address” as comprising a street name, street number, and name of a municipality.

To resolve this appeal, this Court need only reject the Circuit Court’s definition of a witness “address” under Section 6.87(2), thereby restoring the three Clerk Defendants to the prior status quo, which is the same status enjoyed by all other clerks across the State. Wisconsin has successfully administered its elections for “the past 56 years” without a “legally binding definition of the witness address,” as the Circuit Court itself reasoned when denying Plaintiffs’ second request for a temporary injunction. R.129 at 3. So, while the Wisconsin State Legislature (“Legislature”) respectfully submits that clerks should follow the

three-component definition of a witness “address” in WEC’s now foreseeably rescinded guidance—a street name, street number, and name of a municipality—this Court need not adopt that definition here to vacate the Circuit Court’s judgment below. Instead, this Court may simply declare that Plaintiffs have failed to put forward any textually sound, administrable definition of a witness “address,” meaning that the Circuit Court’s adoption of that definition below alone requires vacatur of the Circuit Court’s judgment. Simply put, the Circuit Court’s unprecedented definition of “address” finds no grounding in the statutory text and surrounding context, while requiring the three Clerk Defendants to engage in a “reasonable person in the community” inquiry that, to the Legislature’s knowledge, no clerks have ever had to conduct in Wisconsin, in any context.

This Court should reverse the judgment of the Circuit Court.

ORAL ARGUMENT AND PUBLICATION

Given the issues of public importance involved, the Legislature respectfully submits that this case is appropriate for publication. The Legislature does not request oral argument in this appeal, in order to facilitate this Court’s review before “the elections later this year.” Order at 5, *Rise v. WEC*, No.2024AP165 (Ct. App. Feb. 27, 2024) (hereinafter “February 27 Order”).

STATEMENT OF THE CASE

A. Legal Background

1. The Wisconsin Constitution guarantees the right to vote, Wis. Const. art. III, § 1, but specifies only that “[l]aws *may* be enacted . . . [p]roviding for absentee voting,” *id.* § 2 (emphasis

added). Accordingly, “voting by absentee ballot is a privilege” under Wisconsin law, not a right. Wis. Stat. § 6.84(1); *see also* *Teigen v. Wis. Elections Comm’n*, 2022 WI 64, ¶ 52 n.25, 403 Wis. 2d 607, 976 N.W.2d 519. And because this “privilege [is] exercised wholly outside the traditional safeguards of the polling place,” Wisconsin law stipulates that absentee-voting procedures “must be carefully regulated to prevent the potential for fraud or abuse.” Wis. Stat. § 6.84(1). So, under Wis. Stat. § 6.84(2), “matters relating to the absentee ballot process . . . shall be construed as mandatory,” and any “[b]allots cast in contravention” of Wisconsin’s absentee-voting provisions “may not be counted” or “included in the certified result of any election.” *Id.* § 6.84(2).

Since the State’s founding, the Legislature has enacted several absentee-voting laws, including those “[p]roviding for absentee voting.” Wis. Const. art. III, § 2. The Legislature first permitted absentee voting only for Civil War soldiers, *see* 1862 Wis. Act 11 (Spec. Sess.),¹ and then later enacted Wisconsin’s first comprehensive absentee-voting regime in 1915, *see* 1915 Wis. Act 461;² *Teigen*, 2022 WI 64, ¶ 174 (Hagedorn, J., concurring). This 1915 law expanded absentee-voting opportunities, while also requiring absent electors to swear an affidavit before “an officer authorized by law to administer oaths” and return the affidavit with the properly completed ballot to “the officer issuing the ballot,” with harsh penalties for any failure to comply. *See* 1915

¹ Available at <https://docs.legis.wisconsin.gov/1862/related/acts/62ssact011.pdf> (all websites last visited Apr.3, 2024).

² Available at <https://docs.legis.wisconsin.gov/1915/related/acts/461.pdf>.

Wis. Act 461, § 44m—1–2, 6. This scheme generally governed until 1966, when the Legislature replaced the 1915 law’s burdensome affidavit requirement with a witness requirement allowing absentee voters to “make and subscribe to the certification” on their absentee ballots “before 2 witnesses.” 1965 Wis. Act 666, § 1 (creating Wis. Stat. § 6.87).³ In 1986—the same year Wisconsinites ratified an amendment enshrining the Legislature’s authority to enact laws “[p]roviding for absentee voting,” Wis. Const. art. III, § 2—the Legislature again reformed the absentee-voting scheme to further simplify the absentee-voting process. *See* 1985 Wis. Act 304.⁴ As part of these 1986 reforms, the Legislature enacted Wis. Stat. § 6.84 to expound on the State’s policy goals and the proper interpretation of laws governing the “privilege” of absentee-voting. 1985 Wis. Act 304, § 68n.

Today, Wisconsin’s comprehensive absentee-voting regime is one of the most generous in the Nation, as it allows any qualified, registered voter that is “unable or unwilling to appear at the polling place in his or her ward or election district” to exercise the “privilege” of voting absentee “for any reason.” Wis. Stat. §§ 6.84(1), 6.85(1). Further, Wisconsin provides several different methods to request an absentee ballot, *id.* § 6.86(1)(a)1–6, to obtain a requested absentee ballot, *id.* § 6.86(ac), and to cast an absentee ballot, *id.* §§ 6.855, 6.87(4)(b)1, (b)5.

³ Available at <https://docs.legis.wisconsin.gov/1965/related/acts/666.pdf>.

⁴ Available at <https://docs.legis.wisconsin.gov/1985/related/acts/304.pdf>.

2. Section 6.87 details Wisconsin's requirements for the completion and counting of absentee ballots, including, as relevant here, the absentee-ballot witness requirement. Section 6.87 provides that the absentee voter must mark the absentee ballot in the presence of one adult witness, then fold the ballot, and then place it in an official absentee-ballot envelope. *Id.* § 6.87(4)(b)1; *see also id.* § 6.875(6)(c)1. The witness must then write the witness' "[a]ddress" on the witness certificate, which is printed on the absentee-ballot envelope. *Id.* § 6.87(2); *see infra* p.14 (picture of current absentee-ballot witness certificate). And in line with Wisconsin's generous absentee-voting regime, the absentee-ballot witness may be *any* "adult U.S. citizen." Wis. Stat. § 6.87(4)(b)1.


The absentee-ballot witness must provide the witness address for the absentee ballot to be counted. Thus, Section 6.87(6d) sets out that, "[i]f a certificate is missing the address of a witness, the [absentee] ballot may not be counted." *Id.* § 6.87(6d). However, if a municipal clerk "receives an absentee ballot with an improperly completed certificate or with no certificate," then the clerk "may return the ballot to the elector" so long as "time permits the elector to correct the defect and return the ballot [to the clerk] within the period authorized under sub. (6)." *Id.* § 6.87(9). Moreover, Wisconsin provides voters with the ability to monitor the status of their submitted ballots through the State's online "Track My Ballot" tool, which shows voters when the clerk "receive[s]" "returned ballot[s]" and notifies voters of any "problem[s]" with their ballots. R.227 at 5–6.

WEC issued guidance in October 2016 that provided WEC's understanding of a witness "address" for the purposes of Section 6.87's witness-address requirement. R.38 at 38–42, 50 (hereinafter "2016 Guidance"). This 2016 Guidance explained that, in WEC's view, a witness address contains "a street number, street name and municipality." R.38 at 50; *see also* R.38 at 42, 74. The 2016 Guidance also (wrongly) told clerks that they could "take corrective actions in an attempt to remedy a witness address error" and purported to authorize clerks to make corrections "directly to the absentee certificate envelope" without "contact[ing] the voter" if the clerk was "reasonably able to discern any missing information from outside sources." R.38 at 74.

Consistent with this guidance, WEC's revised absentee-ballot witness certificate, a picture of which is reproduced immediately below, provides clear instructions for the absentee-ballot witness to follow, including as to the "address" requirement in Section 6.87. Under this form, the witness must: provide his or her signature in a box titled "Witness Signature"; print his or her name in a box titled "Witness Printed Name"; and then write his or her address in the form of a street number, street name, and city in a box titled "Witness Address (Number, Street Name, City)":

STEP 3 **WITNESS must complete this part**

I the undersigned witness, subject to the penalties for false statements of Wis. Stat. § 12.60(1)(b), certify that:



**WITNESS
REQUIRED**

- I am an adult U.S. citizen
- The above statements are true and the voting procedure was executed as stated
- I am not a candidate for any office on the enclosed ballot (except in the case of an incumbent municipal clerk).
- I did not solicit or advise the elector to vote for or against any candidate or measure

X

Witness Signature

Witness Printed Name

Witness Address (Number, Street Name, City)

R.246 at 5.

On September 7, 2022, the Waukesha County Circuit Court enjoined this latter part of the 2016 Guidance, *see* R.38 at 6–35, holding that clerks had no “duty or ability to modify or add information to incomplete absentee ballot certifications,” R.38 at 31. The Waukesha County Circuit Court’s ruling did not, however, implicate the 2016 Guidance’s interpretation of a witness “address,” nor did the court provide further guidance as to when a ballot certificate is defective. *See* R.38 at 30–31.

Shortly after this ruling from the Waukesha County Circuit Court, WEC issued new guidance in September 2022 to comply with the court’s ruling. R.38 at 88–89 (hereinafter “September 2022 Guidance”). As relevant here, the September 2022 Guidance reasserted WEC’s interpretation of “address” as comprising three components—“namely, street number, street name, and name of

municipality”—while emphasizing that the Waukesha County Circuit Court “had not overturned the existing WEC definition of address contained in the now-invalidated memoranda.” R.38 at 88. Further, the September 2022 Guidance did not “discuss whether a zip code is an adequate substitute for a municipality name,” R.213 at 7, and while earlier iterations of the absentee-ballot witness certificate had included a space for a witness to input his or her zip code, R.227 at 9, WEC’s revised absentee-ballot form does not direct witnesses to provide their zip code, as shown above, R.227 at 11; *supra* p.14. Moreover, WEC’s Uniform Instructions for Wisconsin Absentee Voters reaffirms that no additional witness-address components, such as a zip code, are required, as those instructions state that an absentee ballot “will not be counted” only where the witness fails to provide one or more of the three required components of a witness “address”—“street number, street name, city.” R.227 at 14; *see* Wis. Stat. § 6.869.

WEC’s guidance is not binding on municipal clerks, *see* Wis. Stat. § 227.112(3)—thus, while many clerks followed WEC’s tripart understanding of the address requirement, others applied their own interpretation of the term to the ballots they received, *see* R.233 at 2; R.129 at 3. Notably, in the extensive litigation before the Circuit Court, Plaintiffs identified only 67 instances of ballots being rejected for witness-address issues that Plaintiffs found concerning. *See* R.213 at 8–9 (citing App.333–561). Many of those instances involved the actions of non-party clerks, including municipal clerks in Appleton, Eau Claire, Waukesha, Oshkosh, and Janesville. *See* R.213 at 8–9 (citing App.333–561).

B. Litigation Background

1. Plaintiffs File Their Initial Complaint And Then Lose Two Preliminary-Injunction Motions In The Circuit Court

On September 27, 2022, Plaintiffs Rise, Inc., and Jason Rivera filed their initial Complaint in this case, naming as Defendants only WEC and one municipal clerk—Clerk Maribeth Witzel-Behl, in her official capacity as City Clerk for the City of Madison. R.3. Plaintiffs alleged that the injunction issued by the Waukesha County Circuit Court in *White*, 2022CV1008 (Sept. 7, 2022), “thrust” Wisconsin’s absentee-voting system “into a state of disarray,” because municipal clerks were left without guidance as to what constituted a legally sufficient address for absentee ballot purposes. R.3 at 4. Plaintiffs requested that the Circuit Court issue an order defining a witness “address” as “a place where a witness may be communicated with,” while instructing clerks not to deem an address “improperly completed” under Section 6.87(6d) “if a local clerk can reasonably discern the location where a witness may be communicated with.” R.3 at 19–20.

The Legislature and the plaintiffs in *White v. WEC*, 2022CV1008, then moved to intervene in these proceedings. R.42. The Circuit Court—Judge Juan B. Colás presiding—granted the Legislature permissive intervention on October 6, 2022, R.71 at 1–2, but denied intervention to the *White* plaintiffs on October 20, 2022, R.100 at 1–2. The *White* plaintiffs appealed the denial of their intervention motion, and this Court affirmed the Circuit Court’s decision. *See generally Rise v. WEC*, No.22AP1838 (Ct. App. July 7, 2023) (unpublished disposition).

During the course of the Circuit Court proceedings, Plaintiffs twice moved for a temporary injunction, R.5 at 1–2; R.103 at 1–2, and twice the Circuit Court—with Judge Colás presiding—denied those motions, R.79; R.129 at 1–3. On October 7, 2022, the Circuit Court denied Plaintiffs’ first injunction motion, holding that temporary-injunctive relief was “unnecessary to preserve the status quo” because the “status quo” was “the definition of an absentee ballot witness ‘address’ contained in the October 18, 2016 [WEC] memorandum and the September 14, 2022 memorandum to clerks from [WEC] . . . that an address is sufficient if it contains a street number, street name and name of municipality.” R.79. The Circuit Court then denied Plaintiffs’ subsequently filed Motion For Summary Judgment and Motion For An Expedited Briefing Schedule. R.84, 86, 102. On October 25, 2022, Plaintiffs again moved for a temporary injunction, R.103 at 1–2, citing “new evidence” that some clerks, including various non-party clerks, were using different interpretations of a witness “address” than that provided in WEC’s 2016 Guidance and September 2022 Guidance, R.104 at 2–3. The Circuit Court denied this second temporary-injunction motion as well, reasoning that Plaintiffs’ purported “new evidence” did not “change” the fact that Wisconsin has administered its elections successfully without a “legally binding definition of the witness address” for “the past 56 years.” R.129 at 2–3.

The Legislature then moved to dismiss the Complaint, R.135, arguing that Plaintiffs failed to allege that their position was adverse to Defendant Clerk Witzel-Behl, and that the relief

Plaintiffs sought with respect to WEC was unavailable as a matter of law, *see* R.136. Before that motion was fully briefed, however, Plaintiffs filed their Amended Complaint, which was the operative pleading below, mooted the Legislature's motion. R.160.

Plaintiffs' Amended Complaint added two more county clerks as Defendants—Clerk Tara McMEnamin, in her official capacity as City Clerk for the City of Racine, and Clerk Celestine Jeffreys, in her official capacity as City Clerk for the City of Green Bay. R.160 at 1–2. The Amended Complaint asserted in substance the same claim that Plaintiffs had asserted in their initial Complaint, but now split into two separate claims: one claim against the Clerk Defendants and one claim against WEC. R.160 at 22–24. The Legislature moved to dismiss the Amended Complaint as well, but the Circuit Court—Judge Ryan D. Nilsestuen now presiding—denied the motion, concluding that the Circuit Court may not address the legal merits of Plaintiffs' claims at the motion-to-dismiss stage. R.202 at 2–3. The parties then proceeded to summary judgment. *See generally* R.209.

Meanwhile, the Circuit Court ordered the consolidation of this case for purposes of trial only with a related case also pending in the Dane County Circuit Court, *League of Women Voters of Wis. v. WEC*, No.2022CV2472 (Dane Cnty. Cir. Ct.) (hereinafter “LWV”), over which Judge Nia Trammell had presided. R.203. As relevant here, the LWV plaintiff's operative complaint alleged that WEC's failure to provide guidance instructing clerks to count certain categories of absentee ballots with “missing” witness addresses under Section 6.87(6d) violates Section 10101(a)(2)(B) of

the Civil Rights Act of 1964, 52 U.S.C. § 10101(a)(2)(B). App.177–82. That provision, known as the Materiality Provision, prohibits States from denying any otherwise qualified individual the right to vote based on an “error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election.” 52 U.S.C. § 10101(a)(2)(B).

2. The Circuit Court Adopts Plaintiffs’ Definition Of A Witness “Address,” Including By Imposing A “Reasonable Person In The Community” Standard To Determine An Address’s Sufficiency

On January 2, 2024, the Circuit Court granted Plaintiffs’ motion for summary judgment and denied WEC’s and the Legislature’s cross-motions for summary judgment. R.233. In this summary-judgment order, the Circuit Court held that the definition of “address” for purposes of Wis. Stat. § 6.87 is “a place where a person or organization may be communicated with,” R.233 at 3, 6, endorsing Plaintiffs’ definition based upon an entry in the Merriam-Webster Dictionary, R.233 at 3–4. The Circuit Court rejected the Legislature’s proffered definition of an “address” based on the Oxford English Dictionary. R.233 at 3. The Circuit Court also concluded that the relevant statutory context refuted the Legislature’s definition, R.233 at 3–4, that Plaintiffs’ definition was “not ‘unworkable,’” R.233 at 5–6, and that Plaintiffs’ definition “would comply with the materiality provision of the Civil Rights Act,” R.233 at 6. The Circuit Court set the case for further

proceedings on Plaintiffs' requested declaratory and injunctive relief. *See* R.233 at 7.

On January 30, 2024, the Circuit Court entered a separate order providing Plaintiffs with declaratory and permanent-injunctive relief, in light of its prior summary-judgment order, after holding a separate hearing. R.238. In this separate declaratory/injunctive-relief order, the Circuit Court reiterated its earlier holding that the term “address” in Wis. Stat. § 6.87(2) and (6d) means “a place where the witness may be communicated with.” R.238 at 1. The Circuit Court then declared that Section 6.87’s witness-address requirement “does not require” the witness to “include[]” “any particular components or information,” so long as “the face of the certificate contains sufficient information to allow a reasonable person in the community to identify a location where the witness may be communicated with.” R.238 at 1. The Circuit Court also ordered WEC to “rescind” *or* “revise and reissue” its previous guidance providing that the definition of a witness “address” is a witness’ street number, street name, and municipality, while also notifying municipal clerks of “their obligation not to reject, return for cure, or refuse to count any absentee ballot based on a witness’s address,” if that address complies with the Circuit Court’s “reasonable person in the community” standard.” R.238 at 2–3. The Circuit Court did not purport to—nor could it—bind these non-party clerks to its understanding of Section 6.87(6d), so even if WEC chose the option of “revis[ing] and reissu[ing]” its guidance on the meaning of

“address” in that provision, the non-party clerks would not be bound by it. *See* R.238 at 2–3.

Also on January 30, 2024, the Circuit Court issued a separate injunction in *LWV*, after having previously granted the *LWV* plaintiff summary judgment on its federal Materiality Provision claim and denying the Legislature’s and WEC’s cross-motions for summary judgment. *See* App.24–26. In this separate order, the Circuit Court held that application of Section 6.87(6d) to reject absentee ballots with certain categories of witness-address errors violated the Materiality Provision and thus it issued a corresponding statewide injunction. App.24–26.⁵ Specifically, the Circuit Court enjoined the rejection of absentee ballots under Section 6.87(6d) where the witness-address certificate “meet[s] any of the following four sets of criteria”: (1) “The witness’s street number, street name, and municipality are present, but there is neither a state name nor a ZIP code provided”;⁶ (2) “[t]he witness’s street number, street name, and ZIP code are present, but there is neither a municipality nor a state name provided”; (3) “[t]he witness’s street number and street name are present and match the street number and street name of the voter, but no other

⁵ The statewide scope of the Circuit Court’s *LWV* injunction is permissible because federal law permits a plaintiff to sue a statewide officer to block state law, on a statewide basis, on the grounds that the state law is preempted by federal law or violates the U.S. Constitution. *Ex Parte Young*, 209 U.S. 123, 159–60 (1908).

⁶ Under WEC’s and the Legislature’s longstanding interpretation of the witness-address requirement, an absentee ballot falling into this first category would not violate the witness-address requirement and thus would not be barred by Section 6.87(6d). *See supra* pp.10–12.

address information is provided”; or (4) “[t]he witness certification indicates that the witness address is the same as the voter’s address with any or any combination of the following words: ‘same,’ ‘same address,’ ‘same as voter,’ ‘same as above,’ ‘see above,’ ‘ditto,’ or by using quotation marks and/or an arrow or line pointing to or from the voter address.” App.25.

3. The Legislature Moves For A Stay Pending Appeal, Which The Circuit Court And Then This Court Deny

The Legislature appealed and moved the Circuit Court for an emergency stay pending appeal. See February 27, 2024 Order at 1–2, *Rise v. WEC*, No.2024AP165 (Ct. App. Feb. 27, 2024) (hereinafter “February 27 Order”). The Circuit Court denied the Legislature’s stay motion on February 2, 2024. See R.252.

The Legislature then moved for an emergency stay pending appeal before this Court on February 6, 2024, arguing that the Circuit Court misunderstood the stay standard from *Waity v. LeMahieu*, 2022 WI 6, 400 Wis. 2d 356, 969 N.W.2d 263, and that, under a proper understanding of the *Waity* standard, the Legislature was entitled to a stay pending appeal. Intervenor-Appellant’s Emergency Mot. For Stay Pending Appeal at 26–57, *Rise v. WEC*, No.2024AP165 (Ct. App. Feb. 6, 2024); see February 27 Order at 1–3. This Court then issued an Order directing Plaintiffs to answer four specific questions in their response to the Legislature’s stay-pending-appeal motion. Order, *Rise v. WEC*, No.2024AP165 (Ct. App. Feb. 9, 2024) (hereinafter “February 9 Order”). First, this Court asked whether Plaintiffs’ position is that the term “address” is “ambiguous with respect to

whether it requires particular components, or instead does not require any such components.” *Id.* at 2. Second, the Court asked Plaintiffs to identify “any case law or persuasive authority” that has interpreted the term “‘address’ in any Wisconsin statute in a manner similar to the circuit court’s definition.” *Id.* Third, the Court asked whether the Circuit Court’s “definition of ‘address’ [is] limited to residences of witnesses, as opposed to non-residential locations where the witnesses may be communicated with.” *Id.* at 3. And finally, this Court asked whether “the word ‘address’ and the phrase ‘information to allow a reasonable person in the community to identify a location where the witness may be communicated with’ have the same meaning.” *Id.*

This Court denied the Legislature’s stay motion on February 27, 2024. The Court explained that while “the Legislature . . . made a showing of at least some likelihood of success on the merits, it [did] not ma[k]e a strong showing” sufficient to satisfy *Waity*. February 27 Order at 3. That said, the Court explained that its “assessment of the merits is necessarily a preliminary one, without the benefit of complete briefing,” and so it “declin[ed] to provide a detailed discussion of the merits in a way that would serve as a guide to our views of the strengths and weaknesses of the parties’ positions.” *Id.* The Court then concluded that the Legislature did not satisfy the remaining three *Waity* factors either. *See id.* at 4–5. Finally, the Court *sua sponte* ordered expedited merits briefing on the Legislature’s appeal. *Id.* at 5–6.

STANDARD OF REVIEW

Whether a circuit court has properly granted or denied summary judgment is a question of law that this Court reviews *de novo*, *Waity*, 2022 WI 6, ¶ 17, “applying the well-established standards set forth in Wis. Stat. § 802.08,” *Benson v. City of Madison*, 2017 WI 65, ¶ 19, 376 Wis. 2d 35, 897 N.W.2d 16 (citation omitted). A court must grant summary judgment if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Wis. Stat. § 802.08(2). Summary judgment may be warranted based upon statutory, *see Waity*, 2022 WI 6, ¶ 18, or constitutional interpretation, *see Appling v. Walker*, 2014 WI 96, ¶ 16, 358 Wis. 2d 132, 853 N.W.2d 888, and this Court reviews issues of statutory and constitutional interpretation *de novo*, *In re Matthew D.*, 2016 WI 35, ¶ 15, 368 Wis. 2d 170, 880 N.W.2d 107; *Appling*, 2014 WI 96, ¶ 17.

ARGUMENT

I. The Circuit Court’s Definition Of An Absentee-Ballot Witness “Address” Under Section 6.87 Is Incorrect And Hopelessly Unadministrable

In its summary-judgment and declaratory/injunctive-relief orders below, the Circuit Court concluded that a witness “address” means “a place where the witness may be communicated with,” defined as “the face of the certificate contain[ing] sufficient information to allow a reasonable person in the community to identify a location where the witness may be communicated with.” R.238 at 1; *see* R.233 at 3, 6. The Circuit Court’s order only binds

the three clerks named as Defendants in this action, *Dalton v. Meister*, 84 Wis. 2d 303, 311, 267 N.W.2d 326 (1978); *In re Zur Ruhe Cemetery*, 193 Wis. 108, 213 N.W. 657, 658 (1927); *see also State ex rel. Zignego v. Wis. Elections Comm'n*, 2021 WI 32, ¶ 13, 396 Wis. 2d 391, 957 N.W.2d 208; Wis. Stat. § 227.112(3), a legal conclusion that this Court recognized in its Order denying the Legislature's motion for an emergency stay pending appeal, *see* February 27 Order at 2 ("The order similarly enjoins the defendant clerks in this case."). The Circuit Court's construction of "address" in Section 6.87 is both legally incorrect and impossible for Wisconsin's municipal clerks to administer fairly or uniformly. Accordingly, this Court should reject that definition and vacate the judgment below. Such a decision would reinstate the prior status quo in which each individual clerk decided how to implement Section 6.87's address requirement in his or her own jurisdiction.

A. When making a "determination of statutory meaning," Wisconsin courts have a "solemn obligation" to "faithfully give effect to the laws enacted by the legislature." *State ex rel. Kalal v. Cir. Ct. for Dane Cnty.*, 2004 WI 58, ¶ 44, 271 Wis. 2d 633, 681 N.W.2d 110. To interpret a statute, the court must "begin[] with the language of the statute," giving that language its "common, ordinary, and accepted meaning," unless a different technical or special meaning clearly applies. *Id.* ¶ 45. The "context" in which statutory language is used is relevant to this analysis, as is the relationship between the statutory language and "surrounding or closely-related statutes." *Id.* ¶ 46 (citation omitted); *accord State v. Dinkins*, 2010 WI App. 163, ¶ 12, 330 Wis. 2d 591, 794 N.W.2d

236 (citation omitted). Finally, the court must construe a statute in a manner that “avoid[s]” “unreasonable results,” *Kalal*, 2004 WI 58, ¶ 46, and they may also reference statutory history to inform its interpretation, *id.* ¶ 48 (citations omitted); *Richards v. Badger Mut. Ins. Co.*, 2008 WI 52, ¶ 22, 309 Wis. 2d 541, 749 N.W.2d 581; *State v. Cox*, 2018 WI 67, ¶ 10, 382 Wis. 2d 338, 913 N.W.2d 780.

B. The Circuit Court’s construction of “address” in Section 6.87 finds no support in the statutory text or context, creates unsolvable administrability concerns, and is not supported in any way by the federal Materiality Provision, contrary to each of the conclusions of the Circuit Court below.

1. *Text.* Section 6.87 requires that absentee voters mark their ballots in the presence of an adult witness, who must write his or her name and “[a]ddress” on the witness certificate printed on the absentee-ballot envelope. Wis. Stat. § 6.87(2). “If a certificate is missing the address of a witness, the ballot may not be counted.” *Id.* § 6.87(6d).

The Circuit Court’s interpretation of Section 6.87’s “address” component as requiring an absentee witness to provide “sufficient information to allow a reasonable person in the community to identify a location where the witness may be communicated with,” R.238 at 1; *see* R.233 at 3, 6, is wrong as a matter of statutory text. The Circuit Court relied on a single entry from the Merriam-Webster Dictionary defining “Address” as “a place where a person

or organization may be communicated with.” R.233 at 3 (quoting *Address*, Merriam-Webster Online (2024)⁷).

As a threshold matter, nothing in that definition supports the Circuit Court’s use of a “reasonable person in the community” standard to determine whether an address in fact reveals such a “place where” a witness “may be communicated with.” R.238 at 1–2; *see Address*, Merriam-Webster Online, *supra*. No dictionary cited by the Circuit Court below—and, more broadly, no dictionary or any other source of which the Legislature is aware—provides any support for the Circuit Court’s “reasonable person in the community” standard either. *Contra Kalal*, 2004 WI 58, ¶¶ 45, 49. Indeed, the Circuit Court adopted the “reasonable person in the community” standard in its declaratory/injunctive-relief order with no citations to any supporting source. R.238 at 1–2; *compare* February 9 Order at 2 (asking Plaintiffs to identify any authority adopting a similar definition of “address” as the Circuit Court here in any Wisconsin statute). This, with respect, is not how the ordinary-meaning inquiry is supposed to operate. *See Kalal*, 2004 WI 58, ¶¶ 45–52.

The Circuit Court’s reliance on Merriam-Webster also does not justify the “place where the witness may be communicated with” component of its definition of “address.” R.233 at 4. This definition from Merriam-Webster is not the most “common, ordinary, and accepted meaning of that term,” contrary to the Circuit Court’s view. R.233 at 4. Plaintiffs have been unable to

⁷ Available at <https://www.merriam-webster.com/dictionary/address>.

find any other source adopting this definition. R.224 at 19–22; *see* R.213 at 11–13. This Court, too, has appeared to express skepticism of the Merriam-Webster-based definition, asking in the February 9 Order whether “any case law or persuasive authority” has interpreted the term “‘address’ in any Wisconsin statute in a manner similar to the circuit court’s definition.” February 9 Order at 2. Plaintiffs were unable to provide such authority. And, more generally, the Circuit Court’s preference for the Merriam-Webster Dictionary, offered by Plaintiffs, over the Oxford English Dictionary, offered by the Legislature, *see infra* pp.39–41, is not well founded, as the Oxford English Dictionary is the better-regarded source for the ordinary-meaning inquiry here. Among the English-language dictionaries, “[t]he Oxford English Dictionary (OED) is widely accepted as the most complete record of the English language ever assembled.” *Oxford English Dictionary*, Harvard Library.⁸ Thus, “[t]he Oxford English Dictionary (OED) is widely regarded as the accepted authority on the English language.” *About the OED*, Oxford English Dictionary Online.⁹

b. *Context*. The statutory “context” of Section 6.87 does not support the Circuit Court’s definition. *Kalal*, 2004 WI 58, ¶ 46.

Chapter 6 of the Wisconsin Statutes uses the term “address” in multiple provisions and in different iterations, and these “closely-related” provisions must be interpreted “as a coherent

⁸ Available at <https://library.harvard.edu/services-tools/oxford-english-dictionary>

⁹ Available at <https://www.oed.com/information/about-the-oed/>.

whole.” *Id.* ¶¶ 46, 49. Other language in Section 6.87(2) itself demands that the absentee voter certify, on his ballot envelope, that “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) (all ellipses and brackets in original). Further, a voter who wishes to vote by absentee ballot must first successfully register to vote, *id.* § 6.20—a process that requires the voter to verify his identity by providing “proof of residence,” *id.* § 6.34(3)(b)2. “[T]o be considered proof of residence,” the voter must produce documents that contain an “complete residential address, including a numbered street address, if any, and the name of a municipality.” *Id.* Finally, Wis. Stat. § 6.87(2) requires a municipal clerk to mail an absentee ballot to an absentee voter with an unsealed envelope that must have “the name, official title and post-office address of the clerk upon its face,” *id.*

This statutory context provides no support for the Circuit Court’s definition of a witness “address” in Section 6.87 as “a place where the witness may be communicated with,” defined as “the face of the certificate contain[ing] sufficient information to allow a reasonable person in the community to identify a location where the witness may be communicated with.” R.238 at 1; *see* R.233 at 3, 6. Rather, these other provisions within Chapter 6 show that, whenever Chapter 6 refers to an “address,” it does so with reference to *particular* pieces of information, rather than anything like the open-ended, “reasonable person” standard adopted by the Circuit Court below. Section 6.87(2) delineates particular pieces

of information when discussing the address of the absentee voter. Wis. Stat. § 6.87(2). Subsection 6.34(3)(b)2 defines a “complete residential address” as “including a numbered street address, if any, and the name of a municipality.” *Id.* § 6.34(3)(b)2. And Section 6.87(2)’s reference to a “post-office address would include a number, street name, town name, and postal code,” as the Circuit Court explained below. R.233 at 4.¹⁰

Notably, Justice Hagedorn understood this statutory context in this same way in his concurrence in *Trump v. Biden*, 2020 WI 91, 394 Wis. 2d 629, 951 N.W.2d 568—which concurrence the Circuit Court invoked at its stay-pending-appeal hearing, R.255 at 39–40. In *Trump*, Justice Hagedorn noted that Section 6.87, unlike other provisions in Chapter 6, is “silent on precisely what makes a [] [witness] address sufficient.” *Trump*, 2020 WI 91, ¶ 49 (Hagedorn, J., concurring). Thus, Justice Hagedorn concluded that Section 6.87 does not explicitly define “the contours of what makes a [] [witness] address.” *Id.* For example, Justice Hagedorn was uncertain whether a witness address had to include a “municipality,” the “state,” or the “[z]ip code.” *Id.* So, while Justice Hagedorn recognized that Section 6.87 does not statutorily define

¹⁰ Sources outside of Chapter 6 are in accord. Wis. Stat. §§ 8.10 and 8.28 require candidates for political office to submit “nomination papers” that detail the candidate’s “address” to ensure compliance with the relevant “residency qualifications.” *Id.* §§ 8.10, 8.28. The current nomination paper forms for partisan office include “street, fire, or rural route number,” a “name of street or road,” and a “name of municipality,” see Wis. Elections Comm’n, EL-168 Nomination Paper for Partisan Office (Mar. 2016), available at <https://elections.wi.gov/media/14106/download>, and the individual responsible for circulating a candidate’s nomination papers must also certify his “address,” which must “[i]nclude number, street, and municipality,” *id.*

a witness “address,” he accepted as a fundamental premise that the definition comprises *particular components*, without ever suggesting that an amorphous standard like the Circuit Court’s definition would suffice. *Id.* In other words, to borrow this Court’s language in its February 9 Order, Justice Hagedorn’s opinion in *Trump* supports the conclusion that Section 6.87(2) “is ambiguous with respect to the issue of whether it requires *particular components*, such as street number, street, and municipality,” but rejects the conclusion that Section 6.87(2) “does not require any such components.” February 9 Order at 2 (emphasis added).

The Circuit Court’s explanation that Plaintiffs’ amorphous interpretation of “address” would “avoid[] surplusage by giving meaning to every word in” other provisions of Chapter 6 that, like Section 6.87, call for an “address,” R.233 at 4, is incorrect. At least some of the Chapter 6 provisions the Circuit Court discussed—including Wis. Stat. § 6.34, which calls for a “complete residential address,” and Wis. Stat. § 6.87(2), which calls for a “post-office address” that “include[s] . . . [a] postal code”—set forth express statutory requirements by which an address’s sufficiency is determined under those specific provisions. *See* Wis. Stat. §§ 6.34, 6.87(2). So, this Court rejecting the Circuit Court’s amorphous, “reasonable person” definition would not necessarily result in any surplusage. Regardless, even if rejection of the Circuit Court’s definition of a witness “address” in Section 6.87 did result in some surplusage, “the canon against surplusage is not absolute.” *Milwaukee Dist. Council 48 v. Milwaukee Cnty.*, 2019 WI 24, ¶ 17 n.10, 385 Wis. 2d 748, 924 N.W.2d 153 (citing Antonin Scalia &

Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 176–77 (2012)).

c. Unadministrability. The Circuit Court’s interpretation of Section 6.87’s witness-address requirement is hopelessly unadministrable. *Compare* R.233 at 5–6. The Circuit Court declared in its declaratory/injunctive-relief order that Section 6.87’s witness-address requirement “does not require” a witness to provide any “particular components” of his or her “address,” but only “sufficient information to allow a reasonable person in the community to identify a location where the witness may be communicated with.” R.238 at 1–2, *compare* February 9 Order at 2 (asking Plaintiffs whether their position is that an “address” “does not require any such components”). Yet, the Circuit Court made no attempt to explain how this standard could operate. To determine whether witness addresses are sufficient, the three Clerk Defendants and any other of the State’s over 1,800 clerks that decide to follow the Circuit Court’s new reading will need to consider whether they possess more or less knowledge than “a reasonable person in the community.” R.238 at 1. If a clerk decides that he or she is more knowledgeable than “a reasonable person in the community,” R.238 at 1, that clerk must somehow disregard his or her own personal knowledge to evaluate these witness-address certificates. And if the clerk instead determines that he or she is *less* knowledgeable than “a reasonable person in the community,” R.238 at 1, the clerk must somehow acquire the requisite reasonable-person knowledge to assess witness-address certificates. This impossible exercise is made even more confusing

for witness-address certificates completed by out-of-state witnesses, *see* Wis. Stat. § 6.87(2) (providing that any adult U.S. citizen may be a witness), as the clerk would somehow have to determine what “a reasonable person in the community” knows about any number of locations outside of Wisconsin.

A colloquy between the Circuit Court and Plaintiffs during the Circuit Court’s post-summary-judgment injunction hearing powerfully demonstrates the significant unadministrability of the Circuit Court’s “reasonable person in the community” standard. At this hearing, the Circuit Court questioned how the standard would apply to “[s]omebody [who] puts down one of the residential halls [in Madison],” such as “Anderson.” R.257 at 9. The Circuit Court then stated that, “despite living here for a long time,” the Court did not “know any of the dorms,” because he “didn’t go to undergrad here,” but that he thought “Anderson might be one.” R.257 at 9. In response, Plaintiffs’ counsel asserted that, “generally speaking, our position on named buildings is that it’s going to depend on what the building is,” and “in th[e] specific case of a university residence hall”—such as “Anderson Hall, Room 201”—“generally speaking,” that will “satisf[y] the statutory requirement to provide an address,” as it is “generally a large, public building” that “a reasonable person, familiar with the community . . . can be expected to be familiar with.” R.257 at 10; *see also* R.257 at 17 (“with named buildings . . . its going to depend, to some extent, on how significant the building is in the community”). So, even for buildings like residence halls, the “reasonable person in the community” standard apparently

requires clerks to consider whether the building is sufficiently large and sufficiently familiar to the community. And, notably, “Anderson” does not appear to be a residence hall in the University of Wisconsin-Madison. *See Residence Halls*, University of Wisconsin-Madison.¹¹

The unadministrability of the Circuit Court’s understanding of “address” is also apparent from Plaintiffs’ response to this Court’s third question in its February 9 Order. In that third question, this Court asked whether “the circuit court’s definition of ‘address’ limited to residences of witnesses, as opposed to non-residential locations where the witnesses may be communicated with.” February 9 Order at 3. In their response, Plaintiffs provided their view that Section 6.87 does not require “a residential address” and that any non-residential address of a witness, such as a business address, would suffice. *See Pls.-Resp’ts Resp. To Mot. For Stay Pending Appeal* at 23, No.2024AP165 (Ct. App. Feb. 13, 2024). Thus, taking Plaintiffs’ standardless rule to its logical conclusion, the address of any place where a witness may ever be communicated with, however briefly, would satisfy Section 6.87. That is impossible to administer, as clerks have no

¹¹ Available at <https://www.housing.wisc.edu/undergraduate/residence-halls/>. Although Anderson is not a residence hall at the University of Wisconsin-Madison, this Court may judicially notice that the Arthur Andersen Center is a center at the University’s business school, while there is an Anderson Auditorium at the nearby Edgewood College. *See Wis. Stat. § 902.01; Sisson v. Hansen Storage Co.*, 2008 WI App 111, ¶ 11, 313 Wis. 2d 411, 756 N.W.2d 667. The Circuit Court’s references to “Anderson” at the injunction hearing below further demonstrate the substantial perils with its “reasonable person in the community” standard.

way of knowing whether any particular non-residential location provided by a witness satisfies that standard.

d. Federal law considerations. The Circuit Court also concluded that its definition of a witness “address” under Section 6.87 avoided “problems” under the federal Materiality Provision, R.233 at 6, but the federal Materiality Provision does not somehow support adoption of the Circuit Court’s definition.

To begin, Plaintiffs did not adequately develop any federal Materiality Provisions arguments below, as they presented them solely in a footnote to the Circuit Court. R.213 at 17 n.4; *see Serv. Emps. Int’l Union, Loc. 1 v. Vos (“SEIU”)*, 2020 WI 67, ¶ 24 & n.9, 393 Wis. 2d 38, 946 N.W.2d 35; *accord State v. Santana-Lopez*, 2000 WI App 122, ¶ 6 n.4, 237 Wis. 2d 332, 613 N.W.2d 918. Accordingly, the Circuit Court should not have opined on the federal Materiality Provision in this case. *SEIU*, 2020 WI 67, ¶ 24 & n.9; *accord Santana-Lopez*, 2000 WI App 122, ¶ 6 n.4

Regardless, the federal Materiality Provision does not support the Circuit Court’s interpretation of a witness “address” in Section 6.87. That Provision, 52 U.S.C. § 10101(a)(2)(B), prohibits any State from denying an individual the right to vote based on an “error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election,” *id.* Here, the Materiality Provision does not apply for the same three reasons that the Legislature presented to the Circuit Court in *LWV*, the companion to this case below.

First, the Materiality Provision does not apply here because the absentee-ballot witness requirement does not affect “whether [an] individual is qualified under State law to vote” and accordingly falls outside Section 10101(a)(2)(B)’s scope. That the Provision reaches *only* those laws that affect an individual’s “qualif[ications],” *id.* § 10101(e), and ability to *register* to vote is in accord with a decision issued by the U.S. Court of Appeals for the Third Circuit just last week, *see Pa. State Conf. of NAACP Branches v. Sec’y Commw. of Pa.*, No.23-3166, 2024 WL 1298903 (3d Cir. Mar. 27, 2024). Judge Ambro, writing for the majority, rejected a challenge to a Pennsylvania law requiring absentee voters to date the return envelopes for the absentee ballots on the basis that the Materiality Provision, by its plain terms, does not apply outside of the voter registration context. *Id.* at *5–10; *see also Ritter v. Migliori*, 142 S. Ct. 1824, 1824–26 (2022) (Alito, J., dissenting from the denial of a stay); *see also Schwier v. Cox*, 340 F.3d 1284, 1294 (11th Cir. 2003). Section 6.87 similarly does not implicate the Materiality Provision because it does not bear on whether a voter is “qualified . . . to vote” under Wisconsin law. Wis. Stat. §§ 6.02(1), 6.03(1); Wis. Const. art. III, § 1. Indeed, to even obtain an absentee ballot, a voter must *already* be registered to vote, Wis. Stat. §§ 6.86(1), 6.87(2), (4)(b)(1), such that the absentee-ballot witness requirement relates only “to the counting of ballots by individuals *already deemed qualified to vote*,” *Friedman v. Snipes*, 345 F. Supp. 2d 1356, 1371 (S.D. Fla. 2004).

Second, the Materiality Provision also does not apply for the independently sufficient reason that Section 6.87 does not “deny

[absentee voters] the right . . . to vote.” 52 U.S.C. § 10101(a)(2)(B); see *Vote.Org v. Callanen*, 39 F.4th 297, 306 (5th Cir. 2022). The constitutional right to vote does *not* extend to absentee voting, see *McDonald v. Bd. of Election Comm’rs of Chi.*, 394 U.S. 802, 807–08 (1969); *Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621, 626 n.6 (1969); see also *Hill v. Stone*, 421 U.S. 289, 300 n.9 (1975); *Goosby v. Osser*, 409 U.S. 512, 521–22 (1973); *Bullock v. Carter*, 405 U.S. 134, 143 (1972); accord *Pa. State Conf. of NAACP Branches*, 2024 WL 1298903, at *8 (holding that the right to vote does not “encompass[] the right to have a ballot counted that is defective under state law”), which is a “privilege,” not a right, under Wisconsin law, Wis. Stat. § 6.84; *Teigen*, 976 N.W.2d at 543; see *supra* pp.10–12. Thus, the absentee-ballot witness requirement—which applies only to the privilege of absentee voting—does not deprive anyone of “the right . . . to vote,” 52 U.S.C. § 10101(a)(2)(B), as that term is understood under state, federal, or constitutional law. Instead, all qualified voters may avoid the absentee-ballot requirement completely merely by voting in person on election day—an “easy” process in this State. Wis. Stat. §§ 6.76–.78, 6.80; *Vote.org*, 39 F.4th at 306; *Luft v. Evers*, 963 F.3d 665, 672 (7th Cir. 2020); accord *Frank v. Walker*, 768 F.3d 744, 748 (7th Cir. 2014).

Third, even if the Materiality Provision did apply, Section 6.87’s witness-address requirement is “material” to determining a voter’s qualifications to vote under state law and thus would not be precluded by the Materiality Provision. See, e.g., *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 191 (2008);

Teigen, 2022 WI 64, ¶ 71; *Common Cause v. Thomsen*, 574 F. Supp. 3d 634, 636 (W.D. Wis. 2021); accord *Pa. State Conf. of NAACP Branches*, 2024 WL 1298903, at *8. The Materiality Provision only forecloses application of state laws that are not “significant” or “essential,” *Material*, Oxford English Dictionary Online (Mar. 2024),¹² “to a determination whether an individual may vote under” Wisconsin’s myriad laws that bear on the ability of an individual to cast a vote—including, but not limited to those “substantive qualifications” like voter age, citizenship, and residency, *Common Cause*, 574 F. Supp. 3d at 639–40 (rejecting challenge to voter ID law because information contained on an ID was “material to a determination whether an individual may vote under Wisconsin law”); *Vote.Org*, 89 F.4th at 489 (Texas’ wet signature requirement was a “material requirement” and part of an individual’s qualifications to vote). Section 6.87’s witness requirement plays a “significant,” *Material*, Oxford English Dictionary Online, *supra*, role in the absentee-voting process given that “[t]he statutory requirements governing absentee voting must be completely satisfied or ballots may not be counted,” *Teigen*, 976 N.W.2d at 539 (citing Wis. Stat. § 6.84(2)).

¹² Available at <https://doi.org/10.1093/OED/1098947801> (subscription required).

II. While This Court Need Not Decide The Issue In Order To Vacate The Circuit Court’s Judgment, The Legislature Respectfully Submits That An “Address” Of An Absentee-Ballot Witness Under Section 6.87 Is Best Understood As A Witness’ Street Number, Street Name, And Municipality

As the Legislature explained above, this Court need only reject the Circuit Court’s erroneous, unadministrable definition of a witness “address” under Section 6.87 to resolve this appeal. *Supra* Part I.A. Nevertheless, to the extent that this Court concludes that it needs to articulate a definition of “address” in this case, the Legislature respectfully submits that the best reading of the undefined term “address” in Section 6.87(2) is the one that WEC had articulated as requiring three components: a street number, street name, and name of municipality.

a. *Text.* While Section 6.87 does not define “address,” the best reading of the term is a witness’ “street number, street name, and name of municipality.” The “common, ordinary, and accepted meaning,” *Kalal*, 2004 WI 58, ¶ 45, of the term “address” is “[t]he particulars of the place where a person lives . . . , typically consisting of *a number, street name, the name of a town or district,*” *Address*, Oxford English Dictionary Online, *supra* (emphasis added). These “particular[]” components comprise what is typically “considered” the “location where a person . . . can be contacted by post.” *Id.* While an address may at times include other components, including a zip code, those details are not always included in an address, as the term is commonly understood. *See id.* For example, for purposes of the U.S. Postal Service, a “full address” must contain the addressee’s “name,”

“street address,” and “city or town name,” but a “postal code” need only be provided “if known.” App.100–01. So, because an address, as that term is commonly understood, requires these three basic pieces of information, a witness “address” under Section 6.87 is incomplete when one of them is missing. Wis. Stat. § 6.87(6d), (9).

The Circuit Court’s criticism of the Legislature’s (and WEC’s) definition of “address” from the Oxford English Dictionary is incorrect. R.233 at 3. The Circuit Court recognized that the Oxford English Dictionary defines an “address” as the “particulars of the place where a person lives or an organization is situated, *typically* consisting of a number, street name, the name of a town or district, and *often* a postal code.” R.233 at 3 (quoting *Address*, Oxford English Dictionary, *supra*). But the Circuit Court then misunderstood the Legislature as arguing “that the items the Oxford English Dictionary states are ‘typically’ part of an address are universal components, but the items the dictionary says are ‘often’ part of an address are not.” R.233 at 3. Respectfully, this is not the Legislature’s argument. *Supra* pp.40–41; R.224 at 12–14; R.230 at 3–5. Rather, the Legislature point is that the Oxford English Dictionary’s “typical[]” components of an “address”—number, street name, and name of a town or district—comprise the “*ordinary*” and “*common*” meaning of that word, *Kalal*, 2004 WI 58, ¶¶ 45–49 & n.8 (emphases added), while the other components that are merely “often” part of an address—such as a postal code—fall outside the ordinary meaning of this term, *supra* pp.40–41; R.224 at 12–14; R.230 at 3–5. This follows both from the ordinary meaning of the words “typical” and “often,” as used in the Oxford

English Dictionary’s definition of “address”: something that is “typical” is “[o]f the nature of” or “emblematic” of a thing, *Typical*, Oxford English Dictionary Online (July 2023),¹³ while something that is merely “often” appears “[m]any times” or “on numerous occasions,” *Often*, Oxford English Dictionary Online (Mar. 2024).¹⁴

The Circuit Court further criticized the Legislature’s Oxford English Dictionary definition because this dictionary has multiple definitions of the term “address.” R.233 at 3. But “[m]any words have multiple dictionary definitions” and “the applicable definition depends upon the context in which the word is used.” *Kalal*, 2004 WI 58, ¶ 49. Thus, a court’s duty under the ordinary-meaning inquiry is to select the *best* meaning of a statutory term from among its multiple potential meanings—including by relying on other considerations like statutory context and purpose, as well as history. *Id.* As such, these alternative definitions of an “address” within the Oxford English Dictionary do not undermine the Legislature’s proffered definition based upon that dictionary. And, of course, Plaintiffs’ preferred dictionary definition from Merriam-Webster also provides alternative definitions, *see Address*, Merriam-Webster Online, *supra* (“directions for delivery on the outside of an object (such as a letter or package)”), yet the Circuit Court did not likewise conclude that there were “problems with

¹³ Available at <https://doi.org/10.1093/OED/8072365958> (subscription required).

¹⁴ Available at <https://doi.org/10.1093/OED/7210545543> (subscription required).

[this] dictionary source,” even as it adopted that definition in its summary-judgment order, R.233 at 3–4.

b. Context and Purpose. The Legislature’s goal in enacting Section 6.87(2) and its surrounding statutes support the Legislature’s interpretation of “address.” *Kalal*, 2004 WI 58, ¶ 46. To begin, interpreting “address” as requiring three components accords with the statute’s “manifest . . . purpose,” *Dinkins*, 2010 WI App. 163, ¶ 12 (citation omitted), of “prevent[ing] the potential for fraud or abuse” that inherently accompanies the “privilege” of absentee voting, Wis. Stat. § 6.84(1). Additionally, and in part because the Legislature has a “guarded attitude” with respect to that privilege, the absentee-voting laws must be “strictly construed.” *Lee v. Paulson*, 2001 WI App. 19, ¶ 7, 241 Wis.2d 38, 623 N.W.2d 577 (citing Wis. Stat. § 6.84(2)). Requiring a witness address to include a street number, street name, and name of municipality serves the State’s interest in preventing such “fraud” and “abuse,” Wis. Stat. § 6.84(1), because it ensures that an election official has the means to locate an absentee-ballot witness and confirm the identity of the absentee-voter, if questions about the ballot arise. The only way to “strictly construe[]” “address” is as requiring all three mandatory elements. *Lee*, 2001 WI App. 19, ¶ 7; *see also* Wis. Stat. § 6.84.

The statutory “context,” *Kalal*, 2004 WI 58, ¶ 46, in which “address” must be interpreted is in accord. As explained above, multiple provisions within Chapter 6 and beyond use the term “address” in different iterations. *See supra* pp.29–30, 43–44. For example, Section 6.87(2) requires an absentee voter to certify, on

his ballot envelope, that “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) (all ellipses and brackets in original). Thus, Section 6.87(2) requires an absentee voter to provide the same three pieces of information the Legislature believes should be required of a ballot witness, under a strict interpretation of the term “address.” Moreover, a voter wishing to vote by absentee ballot must first register to vote, *id.* § 6.20, requiring the voter to verify his identity by providing “proof of residence,” *id.* § 6.34(3)(b)2. “[T]o be considered proof of residence,” the voter must produce documents that contain an “address, including a numbered street address, if any, and the name of a municipality.” *Id.* These provisions—all of which regulate the absentee-voting process—are “closely-related” and therefore must be interpreted “as a coherent whole.” *Kalal*, 2004 WI 58, ¶¶ 46, 49. Doing so compels the conclusion that, under Section 6.87(2), a witness address must contain the same three pieces of information as a voter’s address and proof of residence.

c. *History.* The history of Wisconsin’s absentee-voting laws “confirm[s]” that the Legislature’s understanding of Section 6.87 as requiring a three-component witness-address is correct. *See Kalal*, 2004 WI 58, ¶ 51; *see also Teigen*, 2022 WI 64, ¶ 178 (Hagedorn, J., concurring). Casting an absentee ballot is a privilege, not a right, in Wisconsin, *see* Wis. Const. art. III, § 2, which privilege the State “carefully regulate[s]” with its absentee-voting laws, Wis. Stat. § 6.84(1). When the State first enacted a

comprehensive absentee-voting scheme in 1915, it required absentee voters to request an absentee ballot, 1915 Wis. Act 461, § 44m—2, swear an affidavit before a qualified officer, *id.* §§ 44m—5–6, and return both the completed ballot and affidavit to the officer issuing the ballot, *id.* § 44m—6. The statutory scheme required the absentee voter to return an affidavit containing his or her “address,” including the “[s]treet and number” and “city.” *Id.* §§ 44m—3, 5. Notably, the 1915 law required the absentee voter to mark the ballot only “in the presence of” the official, who was in turn required to enclose the ballot in an envelope bearing his own “post-office address,” *id.* § 44m—5, imposing harsh penalties for both the absentee voter and official if they failed to comply with these requirements, *id.* §§ 44m—5–6.

In the following years, the Legislature has reformed Wisconsin’s absentee voting regime while retaining the traditional emphasis on ensuring absentee ballots are properly witnessed. In its 1966 revision to the absentee voting statutes, the Legislature permitted certain qualified absentee electors to forego the affidavit requirement by instead “mak[ing] and subscrib[ing] to the certification before 2 witnesses,” 1965 Wis. Act 666, § 1, which alternative witnessing provision required both absentee witnesses to execute a witness certification and provide their names and addresses, *see id.* If an absentee voter elected to use this alternative to cast his or her ballot and the “certification” on the ballot was “found to be insufficient,” the law required that “the vote shall not be accepted or counted.” *Id.* (creating Wis. Stat. § 6.88). The Legislature subsequently expanded absentee voting to all

otherwise qualified electors and reduced the number of required witnesses to one, but it has preserved the requirement that an absentee voter's witness must provide his or her "address" on the certification. See 1999 Wis. Act 182, §§ 90m, 95p. As such, Wisconsin's current absentee voting regime still requires absentee ballots to be certified by one witness who provides an "address," Wis. Stat. § 6.87(2), which statutory term WEC, the Legislature, and state officials alike have consistently understood as requiring absentee voter witnesses to include a street number, street name, and municipality name on a witness certification, *supra* pp.10–12, 14–15.

d. Administrability. Finally, interpreting "address" under Section 6.87(2) to require a street number, street name, and name of municipality provides a straightforward and workable rule. See *Kalal*, 2004 WI 58, ¶ 46. Wisconsin has over 1,800 municipal clerks who are responsible for evaluating whether absentee ballot certificates meet the statutory requirements. Further, *any* "adult U.S. citizen" may serve as an absentee ballot witness—not just residents in the community of an absentee voter, or even residents of Wisconsin. Wis. Stat. § 6.87(b)(1). Requiring the over 1,800 clerks to accept or reject absentee ballots based on whether or not three objective, easily identifiable criteria are satisfied thus ensures uniformity and predictability in the way these ballots are treated on a statewide basis. Put differently, the tri-part definition of "address" allows clerks to determine easily whether a ballot is complete without implicating any subjective determinations that will result if clerks have to determine what information a

“reasonable person in the community” would find sufficient to “identify a location where the witness may be communicated with,” as necessary under the Circuit Court’s interpretation of Section 6.87. App.23. WEC’s and the Legislature’s three-component definition therefore provides the uniformity necessary to ensure that each absentee ballot is treated in a consistent and equal manner, without the risk that individual clerks will apply disparate, locally contrived, or context-based standards. Indeed, many municipal clerks and absentee voters used WEC’s September 2022 Guidance and Uniform Instructions for Wisconsin Absentee Voters for the first time in the November 2022 general election—which guidance adopted the same definition of a witness “address” that the Legislature has put forward here—yet Plaintiffs could identify only 67 instances of ballots being rejected for issues they find concerning. R.213 at 8–9 (citing App.333–561).¹⁵

* * *

Based on the foregoing, the Legislature respectfully submits that the Court can—and should—resolve this case by rejecting the Circuit Court’s erroneous interpretation of Section 6.87’s witness address requirement and consequently reinstating the status quo. However, if the Court believes it needs to adopt a new definition of

¹⁵ As the Legislature explained in its reply at the stay-pending-appeal stage, in response to this Court’s third question in its February 9 Order, its definition of an address would cover a witness’ residential location or—if the witness is living at a non-residential address, such as, for example, in a homeless shelter—a witness’ non-residential location. Thus, a person living at a non-residential location serving as a witness for an absentee voter poses no administrability concerns, under the Legislature’s definition.

“address,” it should adopt the Legislature’s three-part understanding of that term.

CONCLUSION

This Court should reverse the Circuit Court’s grant of summary judgment to Plaintiffs and remand for entry of summary judgment in the Legislature’s favor.

Dated: April 3, 2024

Respectfully submitted,

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CERTIFICATION BY ATTORNEY

I hereby certify that this brief conforms to the rules contained in s. 809.19 (8) (b), (bm) and (c) for a brief. The length of this brief is 10,175 words.

Dated: April 3, 2024

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