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CLERK OF WISCONSIN
COURT OF APPEALS

**STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV**

RISE, INC. & JASON RIVERA,

Plaintiffs-Respondents,

WISCONSIN ELECTIONS
COMMISSION,

MARIBETH WITZEL-BEHL, City Clerk
for the City of Madison, Wisconsin,

TARA McMENAMIN, City Clerk for the
City of Green Bay, Wisconsin,

CELESTINE JEFFREYS, City Clerk for the
City of Green Bay, Wisconsin,

Defendants,

v.

WISCONSIN STATE LEGISLATURE,

Intervenor-Appellant.

Appeal No.
2024AP165

Circuit Court Case No.
2022CV2446

PLAINTIFFS-RESPONDENTS' RESPONSE BRIEF

On Appeal from the
Circuit Court for Dane County
Case No. 2022CV2446

The Honorable Ryan D. Nilsestuen, Presiding

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STATEMENT OF ISSUES FOR REVIEW

1. Wis. Stat. § 6.87(2) requires that an absentee ballot witness provide an “address” but does not define that term. The first issue for review is whether “address,” in this context, means specifically a “street name, street number, and municipality,” or instead comprises any information sufficient to convey “a location where the witness may be communicated with.”

The Circuit Court held that “address” means information sufficient to convey a location where the witness may be communicated with.

This Court should affirm.

2. Wis. Stat. §§ 6.87 and 6.88 establish the procedures local officials must employ to process and count absentee ballots. The second issue for review is whether a local official may reject or discount an absentee ballot on witness-address grounds when 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.

The Circuit Court held that such ballots must be accepted and counted.

This Court should affirm.

STATEMENT REGARDING ORAL ARGUMENT AND PUBLICATION

Oral argument and publication are appropriate in light of the importance of the proper standards for absentee-ballot witness addresses.

INTRODUCTION

Wisconsin law requires that an absentee ballot be witnessed, and further requires that the witness list their “address” on the absentee ballot certificate. Wis. Stat. § 6.87(2), (4)(b)1., (6d) (the “witness-address requirement”). But the statute does not define the term “address,” says nothing about what form the “address” must take, and does not require that the address include any particular components. Courts have a “duty to respect not only what [the legislature] wrote but, as importantly, what it didn’t write.” *Va. Uranium, Inc. v. Warren*, 139 S. Ct. 1894, 1900 (2019) (plurality op.).

The Circuit Court therefore properly held that the statute does not require any particular form of address: any form will do, so long as it suffices to indicate “a location where the witness may be communicated with”—the relevant plain meaning of the word “address.” Applying this straightforward, plain-language construction, the Circuit Court declared that no particular form of witness address is required, enjoined Wisconsin Elections Commission guidance suggesting that local officials should require one specific form of address, and enjoined the defendant municipal clerks from treating a witness address as inadequate merely because it is not in the clerk’s or Commission’s preferred form.

The Legislature—and only the Legislature—has appealed. But after arguing for nearly two years that “address” means only “street name, street number, and municipality,” and that any ballot certificate not meeting that standard must be set aside, the Legislature abruptly changes its position in its opening brief. The Legislature now leads with the bizarre suggestion that this Court should refuse to provide *any* construction of the governing statute. The Legislature urges the Court to vacate the Circuit Court’s order and so leave the term “address” to be interpreted willy-nilly by each of Wisconsin’s more than 1,500 municipal clerks. The Legislature offers no justification for this remarkable request, which fundamentally misunderstands the judicial role. Voters, witnesses, local officials, and the Commission all require clarity about that term if Wisconsin’s elections are to be

administered fairly and equally. It is the duty and role of the courts to provide that clarity for cases within their jurisdiction, as this case indisputably is.

In arguing for vacatur or reversal, the Legislature asserts again and again that the Circuit Court's ruling is "unadministrable." Yet, tellingly, not one of the four Defendants who actually administer the requirement has appealed. The reality is that Wisconsin's clerks are perfectly capable of administering a functional definition of "witness address," as the recent primary elections have well shown.

This Court should affirm.

STATEMENT OF THE CASE

I. Statutory Framework

Section 6.87 sets out Wisconsin's procedures for voting by absentee ballot. It requires that an absentee ballot be provided to the voter along with an envelope with a printed certificate on one side. Wis. Stat. § 6.87(2). Among other things, this certificate must bear a witness attestation, followed by fields for the witness's printed name, "address," and signature. Wis. Stat. § 6.87(2). When executing the absentee ballot certificate, the witness must provide their address in the given field. Wis. Stat. § 6.87(2), (4)(b)1. The statute does not define the term "address." *See* Wis. Stat. § 6.87; R.233:6.¹

During the absentee voting period, when a municipal clerk receives an "absentee ballot with an improperly completed certificate," "the clerk may return the ballot to the elector . . . whenever time permits the elector to correct the defect and return the ballot within the period authorized [by statute]." Wis. Stat. § 6.87(9). Municipal clerks are thus the officials who determine whether any given absentee ballot will be included in the election day absentee-ballot count without further action by the voter or will instead be returned to the voter for correction.

On election day, election inspectors process and count the absentee ballots.

¹ In this brief, "R." refers to document and page number in the record on appeal.

Wis. Stat. § 6.88(3). If an absentee ballot certificate “is missing the address of a witness, the ballot may not be counted.” Wis. Stat. § 6.87(6d). Municipal clerks are charged with training and supervising the election inspectors in their jurisdictions. Wis. Stat. § 7.15(1)(e); *see also* Wis. Stat. § 7.30.²

II. Factual Background

The witness-address requirement was enacted in 1965. R.233:4; *see also* 1965 Act 666 at 1244–45.³ But it and other absentee ballot procedures were treated as directory rather than mandatory for at least the next several decades. *See Sommerfeld v. Bd. of Canvassers of City of St. Francis*, 269 Wis. 299, 303, 69 N.W.2d 235 (1955), *superseded by statute as recognized in Teigen v. Wis. Elections Comm’n*, 2022 WI 64, ¶ 80, 403 Wis. 2d 607, 976 N.W.2d 519 (plurality op.). The record contains no indication that a single absentee ballot was disqualified based on an inadequate witness address between 1965 and 2016. Then, in March 2016, Section 6.87 was revised to add a new subsection (6d) providing that “[i]f a certificate is missing the address of a witness, the ballot may not be counted.” 2015 Act 261 § 78.⁴

In October 2016, in advance of the first general election under the revised statute, the Commission issued guidance advising municipal clerks about how to apply it. The guidance instructed that “a *complete* address contains a street number, street name and name of municipality.” R.4:5 (emphasis altered). But the guidance did not instruct clerks to invalidate ballots merely because a “complete address” was not provided. To the contrary, the guidance required clerks to cure incomplete

² A municipality may elect to establish a “municipal board of absentee ballot canvassers” to count absentee ballots in lieu of having its election inspectors perform that duty. Wis. Stat. §§ 7.52(1)(a); 7.53(2m). For purposes of this case, absentee balloting procedures do not materially differ in municipalities that make such a designation. *Compare* Wis. Stat. § 6.88 (default procedures for inspectors), *with* Wis. Stat. § 7.52 (alternative procedures for boards of canvassers).

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

⁴ Available at <https://docs.legis.wisconsin.gov/2015/related/acts/261>.

addresses themselves by looking up missing witness-address information and adding it to the ballot certificate. *Id.* Specifically, the 2016 guidance stated that, “[i]f clerks are reasonably able to discern any missing information from outside sources,” they should “mak[e] that correction directly to the absentee certificate envelope.” *Id.* The Commission summarized its guidance to be “that municipal clerks shall do all that they can reasonably do to obtain any missing part of the witness address.” R.4:6. From 2016 through the August 2022 primary election, Wisconsin elections were administered in accordance with that 2016 guidance.

On September 7, 2022, the Republican Party of Waukesha County and three individual Republican voters obtained an order from the Waukesha County Circuit Court enjoining the 2016 guidance. *See* R.38 at 105–07 (resulting final judgment). The question presented to the Waukesha court was whether the guidance was contrary to law because it required local officials to fill in missing address information on absentee ballot certificates. R.38:106. The Waukesha court answered that question by holding that local election officials lacked “the duty or ability to modify or add information to incomplete absentee ballot certifications.” *Id.* The plaintiffs did not raise the question of what constituted a witness’s “address” for purposes of Section 6.87, and nothing in the Waukesha court’s decision resolved that question—as this Court has previously recognized. *See Rise, Inc. v. Wis. Elections Comm’n*, 2023 WI App 44, ¶¶ 8, 22–23, 995 N.W.2d 500 (reproduced at Leg. Short App. 14–38).

On September 14, 2022, the Commission issued a clerk communication announcing that the Waukesha court had enjoined the 2016 WEC guidance as invalid and contrary to law. R.38:88–89. That communication informed clerks that the Waukesha court “had not overturned the existing WEC definition of address contained in the now-invalidated memoranda,” which required three components—“namely, street number, street name, and name of municipality.” R.38:88 (emphasis omitted). But the communication did not provide any statutory justification for that definition and did not resolve whether alternative forms that similarly provided

adequate information to locate a witness were acceptable and if not, why not. Clerks were therefore left to guess for themselves whether, for example, a zip code was an adequate substitute for a municipality name, or how to handle university residence halls, or witnesses who write “same address” because they live with the voter.

On October 14, 2022, Plaintiffs had an experienced elections research team survey over twenty of Wisconsin’s largest municipalities about their approaches to witness addresses after the Waukesha decision. R.91; *see also* R.88. Clerks offices’ in those municipalities reported several very different approaches to absentee ballot witness addresses. Fifteen of the twenty-one municipalities surveyed—among them Milwaukee, Appleton, and Janesville—reported that they were requiring a *five*-component witness address (street number, street name, municipality, state, zip). R.91 ¶ 9. Two other municipalities, Ashland and Fond du Lac, indicated that they were urging, but not requiring, absentee voters to have their witnesses list those five components out of an abundance of caution. R.91 ¶ 10. Only four municipalities of the twenty-one surveyed indicated that they were applying the three-component standard propounded in the September 14 Clerk Communication. R.91 ¶ 11. Contemporary press coverage and sworn statements from municipal and county clerks further confirmed that municipalities were neither taking consistent approaches to witness addresses nor defaulting to the three-component definition endorsed by the Commission’s guidance. R.104:5–6.

III. Procedural History

A. Parties

Plaintiffs in this action are Rise, Inc., and Mr. Jason Rivera. Rise is a student-led 501(c)(4) nonprofit organization that runs advocacy and voter mobilization programs in Wisconsin and around the country. R.211 ¶¶ 2–5. Rise’s mission is to empower college students to advocate for free public higher education and to end homelessness, housing insecurity, and food insecurity among college students. R.211 ¶ 2. Rise’s efforts to empower and mobilize students as participants in the political process are critical to its mission because building political power within

the student population is a necessary condition to achieving Rise's policy goals. R.211 ¶ 3. In 2020, Rise helped nearly 12,000 Wisconsin voters make a plan to vote. R.211 ¶ 7. Of these, 3,887 voted by mail. R.211 ¶ 8. In 2022, Rise helped just under 8,000 voters make plans to vote in municipalities around the state, including Madison, Racine, and Green Bay. R.211 ¶ 7. Rise brought this lawsuit because student voters Rise aims to mobilize are particularly likely to return absentee ballot certificates bearing witness addresses that do not satisfy the contrived, rigid definition of witness "address" endorsed by the Commission and the Legislature. R.211 ¶¶ 11–14.

Mr. Rivera is a qualified Wisconsin voter currently registered in Dane County. R.212 ¶ 5. Mr. Rivera has voted by absentee ballot in the past and plans to continue doing so in the future. R.212 ¶ 6.

Plaintiffs' original Complaint, filed on September 27, 2022, named the Wisconsin Elections Commission and City of Madison Clerk Maribeth Witzel-Behl as defendants. R.3:1. The Legislature intervened as a defendant shortly after the action was filed. R.71.⁵ After the November 2022 election, Plaintiffs filed a First Amended Complaint, adding City of Racine Clerk Tara McMenammin and City of Green Bay Clerk Celestine Jeffreys as defendants.

B. 2022 Emergency Litigation

Plaintiffs moved for a temporary injunction on September 28, 2022. R.5. The Circuit Court (Judge Colás) denied that motion on October 7, 2022, after finding that temporary injunction was "unnecessary to preserve the status quo." R.79. The Circuit Court did not address Plaintiffs' likelihood of success on the merits in that order, nor did it define "address." *Id.* Plaintiffs renewed their request for a temporary

⁵ The plaintiffs in case in which the Waukesha County Circuit Court had enjoined the 2016 guidance, also sought to intervene but their motion was denied, R.100, and this Court affirmed that denial, *Rise, Inc.*, 2023 WI App 44, ¶ 55.

injunction on October 25, 2022, citing the rapidly accumulating evidence that, with just weeks remaining before the election, Wisconsin lacked a uniform, statewide standard for witness addresses. R.103; R.104:1–4. The Circuit Court denied the motion, finding that the “status quo with respect to the definition of ‘address’ is the same as it has been for 56 years”: “Local clerks apply their understanding of the term ‘address’ to absentee ballot certifications, relying on non-binding advice from state elections authorities and, at least in some cases, advice from their municipal attorneys.” R.129:3. Accordingly, although it acknowledged the evidence that “there is variation in how clerks interpret the term,” the Circuit Court again held that a temporary injunction was not necessary to preserve the status quo. *Id.*

C. First Amended Complaint, Answers, and Consolidation

Plaintiffs filed the operative First Amended Complaint on March 24, 2023. R.160. Plaintiffs pleaded two claims. Count I sought a declaratory judgment under the Uniform Declaratory Judgments Act, Wis. Stat. § 806.04(2), that: (i) a witness “address” for the purposes of Wis. Stat. § 6.87(2) is “a place where the witness may be communicated with” and; (ii) an otherwise-valid absentee ballot certificate from which a local clerk can reasonably discern where the witness may be communicated with is properly completed for purposes of Wis. Stat. § 6.87(9). R.160 ¶ 72. Count II sought a declaratory judgment, pursuant to Wis. Stat. § 227.40, that the Commission’s September 14, 2022, Clerk Communication was invalid insofar as it adopted the three-component definition of witness address rather than the proper statutory definition set out in Count I. R.160 ¶ 82.

The First Amended Complaint also incorporated extensive allegations about how different sorts of witness addresses had been handled during the November 2022 election. *See* R.160 ¶¶ 1–10, 41–46. In particular, the First Amended Complaint alleged that each of the three named Clerk Defendants applied a different standard to witness addresses. Discovery on that allegation proved unnecessary—each Clerk Defendant admitted the allegations in their respective Answers:

- The Madison Clerk admitted that she interpreted witness “address,” for

purposes of Wis. Stat. § 6.87, to mean street number, street name, and at least one of either municipality or zip code, and returned absentee ballots with certificates not satisfying that definition to voters for correction. *See* R.178 ¶ 44; R.160 ¶ 44.

- The Racine Clerk admitted that she interpreted witness “address,” for purposes of Wis. Stat. § 6.87, to mean street number, street name, and municipality, and returned absentee ballots with certificates not satisfying that definition to voters for correction. *See* R.177 ¶ 45; R.160 ¶ 45.
- The Green Bay Clerk admitted that she interpreted witness “address,” for purposes of Wis. Stat. § 6.87, to mean street number, street name, municipality, and at least one of either state or zip code, and returned absentee ballots with certificates not satisfying that definition to voters for correction. *See* R.179 ¶ 46; R.160 ¶ 46.

These admissions render it a matter of undisputed fact, for purposes of this appeal, that absentee ballots were treated differently in different Wisconsin municipalities during the November 2022 election.

The Legislature moved to dismiss the First Amended Complaint, but the Court denied the motion. R.202. This case was subsequently consolidated for trial with *League of Women Voters of Wisconsin v. Wisconsin Elections Commission*, No. 22CV2472 (Cir. Ct. Dane Cnty.). R.203.

D. Summary Judgment Litigation and Decision

Plaintiffs moved for summary judgment on both counts of their Complaint, R.213, and the Commission and Legislature cross-moved, R.222; R.224. After briefing, the Circuit Court (Judge Nilsestuen) issued a decision granting summary judgment to Plaintiffs and holding that “address,” for purposes of Section 6.87’s witness requirement, means “a place where the witness can be communicated with.” R.233:4.

The Circuit Court’s decision rested on four points. First, the Circuit Court agreed with Plaintiffs that the Commission and Legislature’s three-component

standard would impose an unjustifiable atextual limit on permissible witness addresses. R.233:3. The Circuit Court emphasized that the Legislature’s own preferred dictionary definition supported Plaintiffs’ argument, because even that definition did not treat the Legislature’s three preferred components as mandatory. *Id.* Second, the Circuit Court reasoned that the elections statutes consistently are more specific when they intend to require specific address components—as in Section 6.34(3)(b)—or a specific type of address. R.233:3–4. Third, the Circuit Court concluded that Plaintiffs’ definition was administrable, because it just asks clerks to decide “whether they can locate the person based on the provided information.” R.233:5. And fourth, the Circuit Court held that Plaintiffs’ definition, unlike the Legislature’s, would avoid a violation of the Civil Rights Act’s Materiality Provision. R.233:6.⁶

The Circuit Court held a hearing to determine the precise scope of the remedy, and Plaintiffs submitted a proposed order. R.238. In brief, that order:

- Declares that “witness address” means “a place where the witness may be communicated with” and does not require any particular components. R.238:1.
- Declares that the witness-address requirement is satisfied, and the ballot certificate is not improperly completed, so long as the ballot certificate “contains sufficient information to allow a reasonable person in the community to identify a location where the witness may be communicated with.” *Id.*
- Orders the Commission to revise or rescind the September 2022 Clerk Communication’s three-component definition, to inform local elections officials of the Circuit Court’s ruling, and to refrain from

⁶ In a decision issued on the same day in *League of Women Voters*, the Circuit Court granted summary judgment to the League of Women Voters on a Materiality Clause claim as to four specific categories of absentee ballots. Supp. App. 022.

issuing inconsistent guidance going forward. R.238:2.

- Orders the Clerk Defendants to comply with the Circuit Court’s declarations in applying the witness-address requirement. R.238:3.

Notably, although counsel for all defendants were present at the remedial hearing, only the Legislature objected to the form of the order. *See* R.257:30–31. The Legislature’s main objection was to the “reasonable person” standard for the requirement’s application, which it criticized as “inadministrable.” R.257:26. Yet the Legislature also conceded that the “reasonable person” standard was an “objective standard,” and struggled to identify any real-world categories of certificates that would be difficult to evaluate under the standard. *Id.* The Circuit Court noted, in response, that “a couple of outlier scenarios” were likely inevitable in the context of election administration and did not constitute an administrability problem. R.257:44. The Court entered Plaintiffs’ proposed order at the conclusion of the hearing. R.238.

E. Motion for Stay Pending Appeal

The Legislature moved for a stay pending appeal. R.245. After briefing and a hearing, the Circuit Court denied the stay. R.252. Four days after the stay hearing, the Legislature moved this Court for a stay pending appeal and requested a decision within 72 hours. The Court construed the scheduling request as a motion for an *ex parte* stay, denied that motion as unjustified on the facts, and indicated that it would leave the Circuit Court’s order in effect through the February 20 spring primary election. This Court subsequently denied relief pending appeal on February 27. The Court indicated that “although the Legislature has made a showing of at least some likelihood of success on the merits, it has not made a strong showing.” Feb. 27, 2024, Court Order at 3 (“Stay Order”).

F. Commission’s Steps to Comply

On February 9, the Commission issued several communications to clerks about the Circuit Court’s decisions in this case and the *League of Women Voters* case. The Commission alerted clerks that the Circuit Court had declared that a

witness address means “a place where the witness may be communicated with” and that “Wis. Stat. § 6.87’s requirement that the witness’s address be included on the absentee ballot certificate does not require that any particular components or information be included” so long as there is “sufficient information to allow a reasonable person in the community to identify a location where the witness may be communicated with.” Supp. App. 003–004. The Commission further explained that the Circuit Court had declared that an absentee ballot certificate is not “improperly completed” under Section 6.87(9), and local elections officials should not reject, return for cure, or refuse to count an absentee ballot based on a witness’s address, as 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. Supp. App. 004.

The Commission also informed clerks that it was enjoined from promulgating rules, guidance, or any other documents inconsistent with the Circuit Court’s order but that it was not required to modify the text of the absentee ballot certificate envelopes based on the decision. *Id.* The Commission attached to its communication the Circuit Court’s final declaratory judgment and permanent injunction order. Supp. App. 005–007.

In addition to the February 9 Clerk Communication, the Commission issued a Q&A document, intended to offer “a practical guide to understanding” the communications issued with respect to absentee ballot witness addresses. Supp. App. 008–009. In that document, the Commission noted that “by definition,” what information is sufficient for a reasonable person in the community to identify a location where the witness can be communicated with will be “community specific.” Supp. App. 009. And it specified certain forms of addresses that must be deemed sufficient under the separate injunction in *League. Id.*

Finally, the Commission revised the September 14, 2022, Clerk Communication to remove the three-component definition of witness address. In its place, the revised Communication instructs that clerks should “refer to the

Commission's memoranda concerning *League of Women Voters of Wisconsin v. WEC, et al.* and *Rise, Inc., et al. v. WEC et al.* issued on February 9, 2024" for information related to the witness-address requirement. Supp. App. 010.

STANDARD OF REVIEW

This Court "review[s] summary judgment decisions de novo, applying the same methodology as the trial court." *Kiss v. Gen. Motors Corp.*, 2001 WI App 122, ¶ 9, 246 Wis. 2d 364, 630 N.W.2d 742. Under that methodology, summary judgment "is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Id.* Questions of statutory interpretation are reviewed de novo. *Estate of Miller v. Storey*, 2017 WI 99, ¶ 24, 378 Wis. 2d 358, 903 N.W.2d 759.

ARGUMENT

I. This Court should affirm the Circuit Court's definition of "witness address."

The Court should affirm the Circuit Court's declaratory judgment that a "witness address," for purposes of Section 6.87, is information sufficient to convey a location where the witness may be communicated with. That definition is correct as a matter of statutory construction and perfectly administrable.

A. The Circuit Court's functional definition of "witness address" is correct.

Text, context, statutory purpose, and related statutes all support the Circuit Court's functional definition of "address" as "a location where the witness may be communicated with," rather than any particular set of components. Thus, although a three, four, or five-component mailing address certainly suffices, alternatives like "same as voter," or a student's residence hall name, room number, and university, also constitute "addresses" for purposes of the statute.

Text. In construing a statute, courts "begin[] with the language of the statute." *State ex rel. Kalal v. Cir. Ct. for Dane Cnty.*, 2004 WI 58, ¶ 45, 271 Wis. 633, 681 N.W.2d 110 (quoting *Seider v. O'Connell*, 2000 WI 76, ¶ 43, 236 Wis. 2d 211, 612 N.W.2d 659). Here, the pivotal feature of the statutory language is that it just

requires an “address.” Wis. Stat. § 6.87(2). It does not, by its plain text, require any specific *sort* of address—a residential address, mailing address, or postal address, for instance. Nor does it, by its plain text, require any specific *form* of address—that is, any specific combination of the various components, like municipality or zip code, that may together constitute an address. As one Justice of the Wisconsin Supreme Court has put it: “Although Wis. Stat. § 6.87(6d) requires an address, § 6.87(2) and (6d) are silent on precisely what makes an address sufficient.” *Trump v. Biden*, 2020 WI 91, ¶ 49, 394 Wis. 2d 629, 951 N.W.2d 568 (Hagedorn, J., concurring).

An undefined term such as “address” must be given its “common, ordinary, and accepted meaning.” *Kalal*, 2004 WI 58, ¶ 45. Dictionaries are often helpful in determining the ordinary meaning of undefined terms. *See id.* ¶ 54. Here, the first entry in Merriam-Webster defines “address,” when used as a noun, as “a place where a person or organization may be communicated with.” *Address*, Merriam-Webster.⁷ This definition is an unmistakably functional one—rather than describing the concept as a composite of specific components, it encompasses the many possible forms an address may take by focusing on the concept’s essential purpose: to identify where the addressee may be communicated with. For that reason, the Merriam-Webster definition closely matches the plain text of Section 6.87 which—like the definition—does not indicate that an “address” must comprise any particular formal components.

That plain meaning definition also comports with the commonsense principle that a witness may convey an “address” without listing any specific address components. Consider a few examples:

- A witness who is the voter’s spouse or family member lists an address of “same,” “same as voter,” or “see above,” and the voter’s complete address

⁷ <https://merriam-webster.com/dictionary/address> (last updated June 11, 2023).

appears just above where the witness has signed.⁸

- A student witness lists an address of “Room 123, Liz Waters Hall, UW-Madison,” because that is how mail is processed on her campus.
- A witness in a community known locally by a colloquial name lists that colloquial name in lieu of the municipality’s legal name—for example, a witness in Como, Wisconsin, lists Como, rather than “the Town of Geneva,” as the municipality. *See* R.257:11; *see also infra* Section II.
- A witness lists a zip code or county in lieu of a municipality.

As a matter of “ordinary . . . meaning,” each of these witnesses has conveyed a perfectly valid address. *Kalal*, 2004 WI 58, ¶ 45. The Circuit Court’s definition rightly ensures that they will be treated as such.

The Legislature has little to say about the text beyond the rather comical assertion that it was error for the Circuit Court to look to Merriam-Webster rather than the Oxford English Dictionary—supposedly “the better-regarded source.” *See* Opening Br. 28. Nothing in Wisconsin law compels servile deference to one particular dictionary. And the Legislature’s suggestion is particularly rich because the Oxford English Dictionary is first and foremost a dictionary of *British* English, as the entry in question confirms. That entry 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; these particulars considered as a location where a person or organization can be contacted by post.

Address, Oxford English Dictionary.⁹ Several of the terms used to illustrate possible address components—“district” and “postal code”—are decidedly British. Merriam-Webster, by contrast is the direct heir to Noah Webster’s pathmarking

⁸ In the Commission’s useability testing of the current absentee-ballot envelope, which occurred after the merits briefing in the Circuit Court, one voter “returned a certificate envelope with a witness address that said, ‘same as above.’” Supp. App. 50.

⁹ https://www.oed.com/dictionary/address_n (subscription required) (last updated Sept. 2023).

work documenting *American English*. It was an entirely defensible choice of dictionary on the Circuit Court's part.

Later in its brief, the Legislature mounts a half-hearted defense of its own preferred definition of "address," once again leaning extremely heavily on the Oxford English Dictionary. *See* Opening Br. 39–42. But the Legislature's preferred definition undermines its three-part definition of address in at least three ways.

First, the Oxford entry's frontline definitional clause—"the particulars of the place where a person lives"—supports the Circuit Court's functional approach to determining whether something is an "address," not the Legislature's component-based approach. After all, many different combinations of particulars may suffice to convey "where a person lives" (or, for that matter, "where a person may be communicated with"). The particulars "Room 123, Liz Waters Hall, UW-Madison," for instance, certainly convey a place of residence, yet without including *any* of the three components that the Legislature would make mandatory.

Second, the exemplifying clause the Legislature wants the Court to focus on—"typically consisting of a number, street name, the name of a town or district, and often a postal code"—further undermines the Legislature's case. The adverb "typically" indicates that the items in the list that follow are *not* always required. Nor could they be. Even the Legislature admits that a "town" is not required, because Wisconsin's municipal types include cities and villages as well as towns. *See* Wis. Stat. ch. 60 (towns); ch. 61 (villages); ch. 62 (cities). And the entry's alternative of a "district" as a typical address component creates even more problems, because a "district" is a category of administrative division in England with no exact American equivalent. It perhaps most resembles a county, but the Legislature's three-component definition requires a municipality, not a county.

Third, as the Circuit Court emphasized in particular, the Legislature excludes zip codes from its definition of address, yet its preferred dictionary says a "postal code" is "often" part of an address. At the point at which the Legislature is saying that "typical" address components are always required but components that are

“often” part of an address do not suffice, it has plainly burrowed too deep into the dictionary.

Context. “Context is important to meaning,” so “statutory language is interpreted in the context in which it is used.” *Kalal*, 2004 WI 58, ¶ 46. Here, the statutory context further supports the Circuit Court’s definition. In particular, the witness-address requirement’s remedial provision requires that if an absentee ballot certificate “is *missing* the address of a witness, the ballot may not be counted.” Wis. Stat. § 6.87(6d) (emphasis added). That provision’s use of the term “missing,” rather than, for example, “incomplete,” supports the Circuit Court’s functional definition of address. Under the Legislature’s three-component definition of “address,” an address may be missing (where the field is blank) or not missing (where all three components are provided), but it may also be *partial*—where, for example, the witness provides street name and number but not municipality. And subsection (6d) is silent as to what to do about “partial” or “incomplete” addresses. The Legislature seems to assume that “partial” addresses count as “missing” addresses under subsection (6d), but the statute does not say that. The Legislature’s component-based definition thus leads straight to a second interpretive quagmire—at what point does an “address” move from “partial” to “missing”?

By contrast, the Circuit Court’s functional definition of “address” avoids the quagmire and harmonizes the subsection (6d) remedial provision with the witness-address requirement as a whole. Insofar as “witness address” means “a location where the witness may be communicated with,” rather than any specific components, whether an address is “missing” becomes a straightforward, binary determination. When the information on the certificate suffices objectively to convey where the witness may be communicated with, the address is not “missing.” Where the certificate does not sufficiently convey such a location, the address is “missing.” The immediate statutory context thus supports the Circuit Court’s holding.

The Legislature purports to make a “context” argument against Plaintiffs’

definition, Opening Br. 28–31, but that argument says nothing about the immediate statutory “context in which” the disputed term “is used.” *Kalal*, 2004 WI 58, ¶ 46. Rather, it is an argument about how the term “address” is used in *related statutes*—a different category of evidence under the *Kalal* framework that Plaintiffs address below. Much later in its brief, the Legislature makes an affirmative “context” argument to support its own definition. *See* Opening Br. 42. But the statute it invokes, Section 6.84, is irrelevant to the central question in this case. Section 6.84 first expresses a “policy” that “voting by absentee ballot is a privilege exercised wholly outside the traditional safeguards of the polling place,” Wis. Stat. § 6.84(1), before separately requiring that several statutory provisions “shall be construed as mandatory” such that ballots “cast in contravention of the procedures specified in those provisions may not be counted,” *id.* § 6.84(2). As relevant here, Section 6.84(2) applies to subsection (6d), the Section 6.87 remedial provision discussed immediately above, so that subsection must be “strictly construed” to prohibit counting of any ballot whose certificate is “missing” a witness address. The problem for the Legislature is that the question of what constitutes an “address” necessarily precedes the question whether a certificate is *missing* an address—as just explained. And nothing in Section 6.84(2) sheds light on the meaning of “address.”

Related statutes. Statutory language is interpreted “in relation to the language of surrounding or closely-related statutes.” *Kalal*, 2004 WI 58, ¶ 46. Where a lawmaking body “knows how to say something but chooses not to, its silence is controlling.” *Delgado v. U.S. Att’y Gen.*, 487 F.3d 855, 862 (11th Cir. 2007) (quoting *CBS Inc. v. PrimeTime 24 Joint Venture*, 245 F.3d 1217, 1226 (11th Cir. 2001)). And “[w]here the legislature uses similar but different terms in a statute, particularly within the same section, we may presume it intended the terms to have different meanings.” *State ex rel. Zignego v. Wis. Elections Comm’n*, 2020 WI App 17, ¶ 64, 391 Wis. 2d 441, 941 N.W.2d 284 (quoting *State ex rel. Dep’t of Nat. Res. v. Wis. Ct. of Appeals*, 2018 WI 25, ¶ 28, 380 Wis. 2d 354, 909 N.W.2d 114), *aff’d as modified*, 2021 WI 32, 396 Wis. 2d 391, 957 N.W.2d 208. This rule reflects the

sound idea that a “material variation in terms suggests a variation in meaning.” *State v. Schmidt*, 2021 WI 65, ¶ 57, 397 Wis. 2d 758, 960 N.W.2d 888 (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 170 (2012)).

Here, Section 6.87(2) does not require any particular form of witness address, instead requiring only an “address.” This puts it in stark contrast with other election laws which expressly specify a particular type or form of address. In particular:

- Section 6.87(2) requires that absentee voters’ own addresses be included in the following form: “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) (as in original).
- Section 6.87(2) requires that a clerk’s address printed on certificate envelopes be the “*post-office address* of the clerk.” *Id.* (emphasis added).
- Section 6.34(3)(b)(2) requires that proof-of-residency documents for military voters include a “complete residential address, including a numbered street address, if any, and the name of a municipality.” Wis. Stat. § 6.34(3)(b)(2).
- Section 6.15(2)(a) requires that new residents who wish to vote a presidential ballot swear that their prior “legal residence was in the ... (town) (village) (city) of ..., state of ..., residing at ... (street address);” and that they are currently “residing at ... (street address), in the [... ward of the ... aldermanic district of] the (town) (village) (city) of ..., county of ...” Wis. Stat. § 6.15(2)(a) (as in original).
- Section 8.10(2) requires that nomination papers list the candidate’s “street address” and “mailing address.” Wis. Stat. § 8.10(2)(b), (c).

Thus, if Wisconsin’s lawmakers had intended to require a particular type of witness address, or one that included particular components, the statute would surely say so—just as many other election statutes that require an address do. “A short sentence

would have done the trick,” and “[t]he silence . . . is strident.” Scalia & Garner, *supra*, at 182 (quoting *Comm’r of Internal Revenue v. Beck’s Est.*, 129 F.2d 243, 245 (2d Cir. 1942)). To require that a witness address take a particular form, as the challenged guidance did, is therefore not merely to construe an ambiguous statute but to impose a requirement that the statute simply does not impose.

The Legislature asserts that the above statutes show that “whenever Chapter 6 refers to an ‘address,’ it does so with reference to *particular* pieces of information.” Opening Br. 29. But every one of the statutes in question either specifies a particular type of address or specifies particular components. The Section 6.87 witness-address requirement is plainly more capacious, and the Circuit Court was right to construe it as such.

At least one Justice of the Wisconsin Supreme Court appears to agree: In *Trump*, Justice Hagedorn noted the “stark contrast” between Section 6.87’s witness-address requirement and other statutes that are “more specific,” and explained that the statute is “silent on precisely what makes an address sufficient.” *Trump*, 2020 WI 91, ¶ 49 (Hagedorn, J., concurring). The Legislature reads Justice Hagedorn to have “accepted as a fundamental premise that the definition [of address] comprises *particular components*.” Opening Br. 30–31. But his concurrence in *Trump* simply does not say that—it expresses uncertainty about what forms of address are adequate but does not suggest that the “silent” statute somehow requires just one, very specific form, as the Legislature argues. *Id.* In contrast, Plaintiffs’ position is fully consistent with Justice Hagedorn’s reasoning and provides a framework for answering his questions: Because the statute does not specify any particular form, any form will do, as long as it conveys a location where the witness may be communicated with.

Later in its brief, the Legislature suggests that “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.” Opening Br. 42–43. This is a baffling claim. A voter is required to provide street name and street number; *ward*

or *aldermanic district*; town, village, or city; and *county*. Wis. Stat. § 6.87(2). The ordinary meaning of “address” surely does not necessarily include a ward or aldermanic district and a county. No doubt for that reason, the Legislature has never argued that witnesses must provide their ward or aldermanic district or their county. And the Legislature does not attempt to explain how any other related statutes support its three-component definition—no doubt because they do not.

Purpose. Purpose is “perfectly relevant to a plain-meaning interpretation” so long as that purpose is “ascertainable from the text and structure of the statute itself.” *Kalal*, 2004 WI 58, ¶ 48. Here, the witness’s role, under Section 6.87, is to observe the voter voting the absentee ballot and then to attest, on the certificate, that the proper voting procedures were followed and the other requirements were met. Wis. Stat. § 6.87(4)(b)1. For the local officials who process absentee ballots, having the witness’s address on the ballot certificate ensures—at least in theory—that they will be able to reach the witness if a question arises about whether the voting procedure was properly executed. For instance, if an allegation is made that the voter was subject to undue influence at the time they marked the ballot, the witness could in theory be located and asked about the allegation. In practice, nothing in the record suggests that this ever happens, or that the witness’s address is used for anything at all.

Nevertheless, the Circuit Court’s functional definition of “witness address” furthers the putative statutory purpose. When the certificate contains sufficient information to allow a reasonable person to identify a place where the witness may be communicated with, then, *ipso facto*, the certificate allows local officials to communicate with the witness if they need to do so. From a municipal clerk’s perspective, it makes no difference whether the witness lists a zip code in lieu of a municipality or lists a residence hall name and room number in lieu of a street name and street number—the clerk still has enough information to communicate with the witness, so the purpose is fulfilled.

The Legislature, for its part, claims that requiring three-component addresses

will “ensure[] that an election official has the means to locate an absentee-ballot witness.” Opening Br. 42. Three-component addresses will certainly achieve that goal. The problem is that the Legislature provides no reason to throw out ballots whose certificates achieve that goal just as well using address components that do not happen to be on the Legislature’s preferred list.

Compliance with federal law. “State law should be construed, whenever possible, to be in harmony with federal law, so as to avoid having the state law invalidated by federal preemption.” *Marbry v. Superior Ct.*, 185 Cal. App. 4th 208, 231 (Cal. Ct. App. 2010); *see also Martin ex rel. Hoff v. City of Rochester*, 642 N.W.2d 1, 18 (Minn. 2002) (similar); *State v. Mooney*, 98 P.3d 420, 425 (Utah 2004) (similar). Here, the Circuit Court consolidated this case with a case raising a federal Materiality Provision challenge. It then held in that case, in a judgment entered after a joint hearing with the parties in this case, that the witness-address requirement in fact violates the Materiality Provision in several specific applications. Given that context and holding, it was hardly error for the Circuit Court to “opine[] on the federal Materiality Provision in this case.” Opening Br. 35. That said, the Legislature’s four pages of briefing about the Materiality Provision merits have been filed in the wrong appeal. Unless and until the Legislature obtains a reversal of the Circuit Court’s judgment in *League of Women Voters*, avoiding a conflict with federal law is a valid consideration in this case.

History. “Where statutory language is unambiguous, there is no need to consult extrinsic sources of interpretation,” including history. *Kalal*, 2004 WI 58, ¶ 46. But regardless, the Legislature’s “history” point is a series of non sequiturs. The Legislature claims that both it and the Commission have “consistently understood” Section 6.87 to require a three-component address. Opening Br. 45. Yet the Legislature’s own account of the legislative history reveals that the statutory term “address,” for purposes of the witness requirement, has been undefined since the Johnson Administration. Opening Br. 44 (citing 1965 Act 666). The Legislature’s understanding of the term as entailing three components is a litigation

decision made in September 2022, not a longstanding background fact of Wisconsin law. As for the Commission, it first opined on the contents of an “address” just seven years ago, in late 2016. *Supra* Statement, Part II. And the effect of its 2016 guidance was that ballots with certificates listing addresses like “same as voter” or a university residence hall room *were accepted and counted*—clerks were directed to “do all that they can reasonably do to obtain any missing part of the witness address,” and were authorized to add missing information to ballot certificates themselves. R.4:6.

B. The Circuit Court’s functional definition of “witness address” is administrable.

Breaking with its strategy in the Circuit Court and its stay briefing to this Court, the Legislature pins most of its hopes on its administrability argument. But the Legislature’s strategic pivot rests on a fatal misapprehension: It assumes that the Circuit Court’s definition of “address” and the “reasonable person” standard it adopted for applying that definition to difficult outlier cases are one and the same. They are not—the Legislature is tilting at windmills.

Plaintiffs’ operative Complaint raised multiple claims and included several discrete requests for relief. In particular, Plaintiffs sought a *two-part* declaratory judgment that:

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

R.160:25. In its decision granting Plaintiffs’ motion for summary judgment, the Circuit Court agreed with Plaintiffs’ definition of “address”—part a. of the requested relief—and set a hearing to determine the precise scope of further relief. R.233:6–7. In advance of that hearing, Plaintiffs submitted a proposed order. R.234. That order, which the Court adopted, declared that “the term ‘address’ in Wis. Stat. § 6.87(2) and (6d) means ‘a place where the witness may be communicated with.’” R.234:2. It then *separately* declared that “Wis. Stat. § 6.87’s requirement that the

witness's address be included on the absentee ballot certificate does not require that any particular components or information be included, but only that 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." *Id.* And it made two further declarations related to specific applications of those standards—one as to what counts as an "improperly completed" certificate under Section 6.87(9), and the other about ballot processing and counting under Section 6.88. *Id.*

In short, Plaintiffs' Complaint presented the definition of "address" and the application of that definition as related but discrete issues. The Circuit Court then decided those issues as such. And nearly all the Legislature's administrability arguments are about the "reasonable person" standard, *not* the underlying definition of "address." Those arguments therefore do nothing to suggest any problem with the definition of "address" as "a place where the witness may be communicated with." Plaintiffs address those arguments—and explain why they fail—in the next section.

The Legislature's few and cursory arguments about the administrability of the functional definition, rather than the reasonable person standard, also fail. The Legislature suggests that under a functional definition of address, "clerks have no way of knowing" whether the address provided by the witness is a place where the witness may be *reliably* communicated with. Opening Br. 34–35. But that is true under either party's definition of "address"—nothing stops a witness, under the Legislature's three-component approach, from providing a three-component address for a business, a friend's home, or the local Walmart. Nothing in the record establishes that local officials are verifying any witness address beyond examining the certificate to determine whether it appears to include a valid address. On this point, the Legislature's "administrability" concerns flow from the statutory scheme, not the Circuit Court's judgment.

The Legislature also complains several times over that the three-component

definition is binding on only the three Clerk Defendants at present. But the Circuit Court’s ruling was based entirely on statutory construction, and the statute binds all the clerks in the state. If this Court affirms the definition of “address” adopted by the Circuit Court, that definition will be binding statewide—this Court’s decisions indisputably settle statutory meaning for the whole state. And even now, as Plaintiffs’ stay brief explained, clerks generally follow court-mandated Commission guidance. Pls.-Resp’ts’ Resp. to Mot. for Stay Pending Appeal 42. Under the Circuit Court’s order, that guidance presently prescribes the functional definition of “witness address.” The Legislature points to zero evidence of clerk noncompliance with the guidance in either of the two elections just held under that guidance.

C. The proper definition of “witness address” is a question requiring judicial settlement.

Rather than defending its own definition of “address,” the Legislature now primarily asks the Court to leave it up to “each individual clerk” to decide what “address” means. Opening Br. 25. The Court should reject that suggestion. As the Legislature itself concedes in the *very next sentence of its brief*, in “making a ‘determination of statutory meaning,’ Wisconsin courts have a ‘solemn obligation’ to ‘faithfully *give effect* to the laws enacted by the legislature.’” *Id.* (emphasis added) (quoting *Kalal*, 2004 WI 58, ¶ 43–44). And nothing in Section 6.87 plausibly has the “effect” of leaving the proper definition of “address” to each clerk’s discretion. Rather—as with any other statute—the duty to construe the words in Section 6.87 falls to the courts. *See, e.g., Tetra Tech EC, Inc. v. Wis. Dep’t of Revenue*, 2018 WI 75, ¶ 50, 382 Wis. 2d 469, 914 N.W.2d 21 (“From the earliest days of our country, we have understood that the judiciary’s first and irreducible responsibility is to proclaim the law: ‘It is emphatically the province and duty of the judicial department to say what the law is.’” (quoting *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803))).

The Circuit Court’s judgment in this case “give[s] effect to the law[],” *Kalal*, 2004 WI 58, ¶ 44, by declaring the meaning of the disputed term “address.” That

was proper under the Uniform Declaratory Judgments Act, Wis. Stat. § 806.04, a “remedial” cause of action that must “be liberally construed” to “to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations” *id.* § 806.04(12). Plaintiffs have suffered and are suffering such uncertainty and insecurity, and the Legislature does not deny that Plaintiffs have standing to seek a declaratory judgment under that statute nor that the Circuit Court had jurisdiction to issue one. This Court has already acknowledged the “injurious” nature of “the differing interpretations of ‘address’ that were indisputably being applied before the circuit court ruling.” Stay Order at 4 (emphasis deleted). In November 2022, ballots that would have been accepted and counted in Madison were rejected in Racine and Green Bay, and ballots that would have been accepted and counted in both Madison and Racine were rejected in Green Bay—to say nothing of the many nonparty municipalities. Accordingly, Rise had to conduct its GOTV efforts across dozens of municipalities with shifting, conflicting definitions of “address.” *See supra* Statement, Parts I, III.C. And Mr. Rivera had to cast his absentee ballot in the context of the same uncertainty. *Id.* Only judicial settlement of the definition of “address” will stave off such uncertainty and inconsistency in future elections. The Circuit Court’s decision provided such a settlement, and the Legislature offers no adequate reason this Court should refuse to either affirm or reverse it.

II. This Court should affirm the Circuit Court’s reasonable person standard for resolving address sufficiency in difficult cases.

On appeal, the Legislature now trains most of its fire on one very narrow issue: whether the Circuit Court’s “reasonable person in the community” standard for *applying* the proper definition of “witness address” is administrable. As discussed above, that argument does not get the Legislature as far as it seems to think. The most important part of the judgment below—the definition of address—can and should be affirmed even if the “reasonable person” standard is not. In any case, the Legislature’s arguments against the standard fail.

The Legislature first argues that “no clerks” have any experience applying a “reasonable person” standard. Opening Br. 9. Yet clerks, as government officials, have a broad, fundamental obligation to perform their duties in the manner of a “reasonable official.” *Barnhill v. Bd. of Regents of UW Sys.*, 166 Wis. 2d 395, 408, 479 N.W.2d 917 (1992) (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)); *see also, e.g., Arneson v. Jezwinski*, 225 Wis. 2d 371, 381, 592 N.W.2d 606 (1999). More generally, “in Wisconsin, everyone has a duty to everyone else to act with reasonable care.” *Megal v. Green Bay Area Visitor & Convention Bureau, Inc.*, 2004 WI 98, ¶ 22, 274 Wis. 2d 162, 682 N.W.2d 857. And the Clerk Defendants—who, unlike the Legislature, must administer the Circuit Court’s order—have not appealed. It seems they believe themselves capable of acting reasonably, even if the Legislature does not.

The Legislature also complains that Section 6.87’s text does not support a “reasonable person *in the community*” standard. Opening Br. 27 (emphasis added). But as shown above, the statute incorporates a functional definition of “address”—a geographically bounded concept. And the *only* appropriate way to apply a functional geographic term to the real world is to do so as a reasonable person in the relevant real-world community would. To illustrate: consider the many unincorporated Wisconsin communities that have names different from the relevant municipality’s official name. For example, the most populated part of the Town of Geneva (in Walworth County) is locally known as “Como”—the name of the small adjacent lake. A “reasonable person” in that community would understand that a ballot certificate listing a street number, street name, and a municipality of “Como,” rather than “Town of Geneva,” sufficiently conveys an address. Yet there is no “municipality” in Wisconsin called “Como.” Employing the Legislature’s standard—which requires a “municipality,” with no flexibility for reasonable community knowledge—the Town of Geneva clerk would need to reject a certificate listing a witness address in “Como” even though she works in a building locals refer to as the Como Town Hall, on Como Road, a stone’s throw from the

Como Inn, a few blocks up the hill from Lake Como, and down the street from a large sign that reads “Welcome to Lake Como.” The absurdity of such a result speaks for itself.¹⁰

Further, the Legislature assumes that its three-component definition requires no reasonable-person principle to apply, Opening Br. 45–46, but that assumption is wrong. Even under a three-component regime, clerks will need to use local knowledge to make reasonable decisions, or absurd results will follow. Take spelling issues. Is a certificate bearing a three-component address invalid just because a municipality or street name is slightly misspelled? Surely not. But the Legislature would be hard-pressed to explain how to distinguish inconsequential from problematic misspellings without reference to whether a reasonable person in the community would understand what the witness meant. A certificate listing a municipality of “Lake du Flambeau,” for instance, plainly means to indicate that the witness’s address is in *Lac* du Flambeau. Yet the Legislature’s definition of address can account for such cases only if clerks are permitted to reasonably interpret the contents of the certificate in light of community knowledge. Or take certificates that include the Legislature’s formal components yet clearly reflect the witness’s refusal to provide a valid address—for example, “123 I Refuse St, Nowhere,” or “123 Rudolph the Reindeer Rd, North Pole.” The Legislature presumably wants those sorts of certificates to be rejected. Yet as a formal matter, each satisfies the Legislature’s standard—only permitting clerks to interpret the provided information as a “reasonable person in the community” would allow for their rejection.

The Legislature’s more specific quibbles are no more convincing. The Legislature makes much of the Circuit Court’s question about a UW-Madison residence hall the Circuit Court believed was named “Anderson,” apparently

¹⁰ Como is not an outlier; Wisconsin has nearly 200 unincorporated census-designated places. Some of them, such as Wind Lake (Racine County), Rib Mountain (Marathon County), and Okauchee Lake (Waukesha County) have populations in excess of 5,000—larger than many of Wisconsin’s small cities. Okauchee Lake even has its own post office.

because the university in fact has no such residence hall. Opening Br. 33–34. Yet again, the Legislature’s concern applies equally to its own rule—a clerk may not remember whether a given street exists, or mistakenly think it does, just as much as a residence hall. This case does not squarely present the question whether clerks may check their memories against objective extrinsic sources in such situations.¹¹

Finally, it bears emphasis that the “reasonable person in the community” standard will not change the outcome in most cases. The Legislature agrees that certificates that expressly convey its three preferred components are valid. So, too, are certificates that convey those three components indirectly—for example, an indication that the witness’s address is “same as the voter.” (The Commission took that position itself in *League*. See Supp. App. 040) So are addresses comprising street name, street number, and zip code—information with which one can reliably determine the Legislature’s three components, and which by themselves sufficiently convey everything a clerk would need to successfully locate the witness. That leaves only a small minority of atypical situations.

The Legislature’s fixation on the administrability of the “reasonable person” standard is a sideshow. This Court should not allow itself to be distracted. The crux of this case is simple. The Legislature wants to throw out Wisconsin’s ballots because of missing *witness* information—not voter information—even when the supposed defect has no practical effect. The problem for the Legislature is that the statute in dispute does not authorize that result, as the Circuit Court correctly concluded. It just requires an “address.” Any voter whose witness provides information reasonably satisfying that requirement should have their ballot accepted and counted.

¹¹ The Legislature briefly mentions “out-of-state witnesses,” Opening Br. 33, but it does not demonstrate that the Circuit Court’s decision cannot be applied to out-of-state addresses. There is no reason to think it cannot be; address submissions like “same as voter” or “123 Centennial Hall, University of Minnesota-Twin Cities” are just as coherent outside Wisconsin as in it.

CONCLUSION

For the foregoing reasons, the Court should affirm the decision and order of the Circuit Court.

Dated: April 24, 2024

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8) (b), (bm), and (c) for a brief produced with a proportional-serif font. This brief is set in 13-point Times New Roman, its footnotes and block quotes are set in 11-point Times New Roman, and the brief contains 9,428 words.

Dated: April 24, 2024

By: Electronically signed by Diane M. Welsh
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