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**STATE OF WISCONSIN  
COURT OF APPEALS, DISTRICT II  
CASE NO. 2024AP408**

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NANCY KORMANIK,

Plaintiff-Respondent,

vs.

WISCONSIN ELECTIONS COMMISSION,

Defendant-Co-Appellant,

DEMOCRATIC NATIONAL COMMITTEE,

Intervenor-Co-Appellant,

RISE, INC.,

Intervenor-Appellant.

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On Appeal from the March 4, 2024 Judgment of the  
Circuit Court for Waukesha County, Case No. 2022CV1395  
The Honorable Brad D. Schimel, Presiding

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**REPLY BRIEF OF INTERVENOR-CO-APPELLANT  
DEMOCRATIC NATIONAL COMMITTEE**

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## INTRODUCTION

This Court held this appeal in abeyance while the Wisconsin Supreme Court was considering *Brown v. Wisconsin Elections Commission*, 2025 WI 5, 414 Wis. 2d 601, 16 N.W.3d 619, which presented closely analogous issues about the standing of individual electors to challenge administrative action by the Wisconsin Elections Commission (“WEC”). DBr9.<sup>1</sup> The Supreme Court ruled last February in *Brown* that an individual elector did not have standing to challenge a WEC decision concerning Racine’s location of in-person absentee voting sites, even though he strongly believed WEC’s decision was illegal, because it did not “*personally* affect[] him,” “ma[k]e it more difficult for him to vote or affect[] him *personally* in any manner,” cause him to “*personally* suffer[] ... any injury,” or “injure him *personally* in any way.” 2025 WI 5, ¶¶16-17 (emphasis added).

The Democratic National Committee (“DNC”) demonstrated in its opening brief that *Brown* controls the outcome here. DBr16-25. Although the two cases involve different procedural postures and statutory standing provisions, the relevant standing provisions in both cases require a demonstration that plaintiffs have been *personally injured in fact* (or are threatened with such injury) by the challenged WEC actions. Just as Kenneth Brown was not personally injured by WEC’s approval of Racine’s location of early voting sites, Nancy Kormanik was not personally injured by WEC’s guidance concerning how other absentee voters may spoil and revote their own ballots. The standing issues are materially indistinguishable.

Indeed, as DNC previously demonstrated (DBr19), Kormanik has an even weaker claim to standing than Brown. Brown filed an administrative complaint under Wis. Stat. § 5.06(1) against the Racine City Clerk, which WEC rejected. Three Justices believed this administrative rejection of Brown’s complaint was sufficient,

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<sup>1</sup> Citations to “DBr\_\_” are to DNC’s May 1, 2025 opening brief. Citations to “KBr\_\_” are to Kormanik’s June 2 response. Citations to “App\_\_” are to the May 1 Appendix to DNC’s opening brief.

by itself, to cause him “personal injury,” 2025 WI 5, ¶¶30-32, 41-43 (Grassl Bradley, J., dissenting), but the *Brown* majority held this was insufficient to establish standing, *id.* ¶¶18-24. Here, Kormanik did not even file a complaint with WEC or suffer a rejection by WEC. Unlike Brown, she apparently did nothing to complain about WEC’s challenged action before filing suit.

Kormanik virtually ignores *Brown*, mentioning that decision in only two paragraphs of her argument. KBr32-34. Indeed, she claims *Brown* is “*entirely irrelevant to Kormanik’s standing*” for various reasons, *id.* at 32 (emphasis added)—most of which were addressed and refuted in DNC’s opening brief and *none* of which justify a different outcome here. Part I of this reply demonstrates that Kormanik has fallen far short of establishing any sort of cognizable personal injury caused by WEC’s challenged guidance.

Part II demonstrates that, even if Kormanik has standing, the Circuit Court erred as a matter of law in its invalidation of WEC’s challenged guidance regarding the spoiling and replacement of previously returned absentee ballots. WEC’s longstanding guidance is based on a reasonable reading of the concededly ambiguous statutory language and best comports with the “will of the electors” standard, Wis. Stat. § 5.01(1), while protecting against any potential risk of double-voting or other wrongdoing.<sup>2</sup>

## ARGUMENT

### I. *Brown v. WEC* bars Kormanik’s claim to standing.

DNC demonstrated in its opening brief that Kormanik’s standing to seek judicial review of WEC’s guidance is governed by the “personal injury” and “personal stake” requirements of Wis. Stat. § 227.40(1). DBr16-19. *Brown* held that decisions

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<sup>2</sup> This reply does not address (a) the sufficiency of Kormanik’s service of process or (b) whether WEC’s challenged guidance is an improperly promulgated rule. DNC joins WEC’s arguments on both issues.

construing standing under Section 227.40(1) and other provisions of chapter 227 also apply to claims of standing under Section 5.06(8), which governed standing in that case. 2025 WI 5, ¶¶13-23; *see id.* ¶21 (standing requirements interpreted “consistently across appeals statutes”).

Kormanik argues she either is exempt from the “personal injury” standing requirement altogether or that she meets it because of considerations not present in *Brown*. She is wrong across the board.

**A. Kormanik lacks standing under Section 806.04(2).**

Kormanik argues she is asserting a claim under the Uniform Declaratory Judgments Act (“UDJA”), Wis. Stat. § 806.04(2), as well as under Section 227.40(1), and that the “personal injury” requirement applies only to claims under the latter, not the former. KBr26-27, 36; *see id.* at 26 (“the opposing parties are mistaken that Kormanik needs to allege she is ‘personally injured’ to sue under the” UDJA). But even assuming she could raise an independent declaratory judgment claim under Section 806.04(2) notwithstanding Section 227.40(1)’s “exclusivity” provision, standing under the UDJA is governed by the identical “personal injury” requirement that applies to chapter 227 cases. “To have standing [under the UDJA], Plaintiffs need to demonstrate they *actually ‘have a personal stake in the outcome* and [are] *directly affected by the issue* [] in controversy.” *Planned Parenthood of Wis., Inc. v. Schimel*, 2016 WI App 19, ¶19, 367 Wis. 2d 712, 877 N.W.2d 604 (emphasis added) (citation omitted); *see City of Madison v. Town of Fitchburg*, 112 Wis. 2d 224, 228, 332 N.W.2d 782 (1983) (UDJA standing requires “a *personal stake in the outcome*”) (emphasis added); *Vill. of Slinger v. City of Hartford*, 2002 WI App 187, ¶9, 256 Wis. 2d 859, 650 N.W.2d 81 (UDJA standing requires “a *personal stake in the outcome*” that is “*directly affected by the issues* in controversy”) (emphasis added).

Kormanik’s argument that “personal injury” isn’t necessary for standing under the UDJA is based on her misreading of a string of *ripeness* decisions holding that a plaintiff need not await an *actual* personal injury before seeking declaratory relief. KBr26-27. But personal injury must at the very least be “threatened” for the plaintiff to have standing. *Brown*, 2025 WI 5, ¶14; *see id.* ¶16. Kormanik has asserted *no* cognizable personal injury here, either “actual” or “threatened.”

**B. Kormanik lacks standing under Section 6.84.**

Kormanik also invokes Wis. Stat. § 6.84, arguing it grants her standing to sue to ensure “an election administered according to law.” KBr34; *see id.* at 27, 31-33. The Circuit Court also relied on Section 6.84, App16, and DNC’s opening brief demonstrated this provision has no bearing on standing. DBr20-21. “[A]ll § 6.84 does is set forth the *consequences* of a statutory violation”—if a court determines an absentee voting requirement covered by that provision has been violated, it has a “mandatory” duty to exclude the challenged ballots, but that has no impact on the “meaning” or interpretation of the underlying requirement itself. *Priorities USA v. Wis. Elections Comm’n*, 2024 WI 32, ¶¶31, 45, 412 Wis. 2d 594, 8 N.W.3d 429. By the same token, Section 6.84’s instructions about the *consequences* of a violation say nothing about who has *standing* to sue for an alleged violation. Section 6.84 cannot be read to create one set of standing requirements in absentee voting cases and another set of standing requirements in all other election cases.

*Brown* provides further support for this conclusion. The plaintiff there argued that Wis. Stat. § 5.06(1), which allows a voter to file an administrative complaint with WEC challenging actions by local election officials, “establishes a general statutory right for an elector to compel her or his local election officials to comply with the law.” 2025 WI 5, ¶19. The Supreme Court rejected that claim, emphasizing that an administrative enforcement mechanism grants no “freestanding right” to sue in court “to compel local election officials to comply with the law.” *Id.* Likewise,



Section 6.84's instruction that certain violations carry "mandatory" consequences grants no "freestanding right" to individual electors to sue to ensure that election officials comply with absentee voting laws.

**C. "Judicial policy considerations" do not override the standing requirements of Section 227.40(1).**

Kormanik also argues that, even if she does not have standing under Wis. Stat. § 227.40(1), "[j]udicial policy considerations provide *independent support* for [her] standing in this case[.]" KBr29 (emphasis added). She bases this argument on *McConkey v. Van Hollen*, 2010 WI 57, 326 Wis. 2d 1, 783 N.W.2d 855, which DNC addressed in its opening brief. DBr21-22. Little needs to be added to that prior discussion, which Kormanik wholly ignores. *McConkey* was a common-law standing decision not controlled by a statutory standing provision, and turned on what the Court labeled the "*unique circumstances* of th[at] case." 2010 WI 57, ¶17 (emphasis added). Standing here is governed by Section 227.40(1), which requires plaintiffs to demonstrate a "personal interest" and "personal stake" in the outcome. There is no support for allowing such statutory standing requirements to be cast aside through an amorphous multi-factor judicial "balancing" test based on changing notions of "sound judicial policy." 2010 WI 57, ¶15.

**D. Kormanik lacks standing under Section 227.40(1).**

Kormanik argues that, even if she must demonstrate a "personal interest" under Section 227.40(1), WEC's challenged guidance threatens her with "personal" injury to "at least four legally protectible interests[.]" KBr31. She fails on all counts.

**1. "Vote pollution."** Kormanik claims to have "a legally protectible interest in ensuring that her vote is not polluted," and that "*Brown* doesn't disturb" this supposed interest. *Id.* at 31-32; *see id.* at 9, 33. But as DNC previously demonstrated, the "vote-pollution" theory of standing was unequivocally rejected by a majority of the Wisconsin Supreme Court and has *never* constituted the law in

Wisconsin. See *Teigen v. Wis. Elections Comm’n*, 2022 WI 64, ¶67, 403 Wis. 2d 607, 976 N.W.2d 519 (Hagedorn, J., concurring), *reconsideration denied*, 2022 WI 104, 997 N.W.2d 401 (unpublished), *overruled on other grounds by Priorities USA v. Wis. Elections Comm’n*, 2024 WI 32, 412 Wis. 2d 594, 8 N.W.3d 429; see also *id.* ¶205 n.1 (A.W. Bradley, J., dissenting) (vote-pollution theory “***do[es] not constitute precedential authority***”) (emphasis added). DNC’s opening brief also demonstrated the “vote-pollution” theory repeatedly has been rejected by other Wisconsin state and federal courts, and by the overwhelming weight of bipartisan judicial authority throughout the country. DBr22-25 & nn.8-11. Kormanik completely ignores DNC’s detailed analysis and the dozens of cases cited in its opening brief.<sup>3</sup>

Kormanik is correct that *Brown* “decline[d] to express an opinion about whether [‘vote-pollution’] claims would be sufficient to confer standing,” but that is only because *Brown*’s lawyers wisely chose not to raise such claims given how frequently other courts have rejected them. 2025 WI 5, ¶16 n.5; see KBr32-33. That hardly suggests that “*Brown* doesn’t disturb Kormanik’s legally protectible interest in an unpolluted vote,” KBr33, since such an “interest” has never been recognized under Wisconsin law. Likewise, although Kormanik asserts that “even the DNC recognizes that *Teigen*’s standing analysis is still intact despite *Priorities USA*,” *id.* at 34, that is only because standing was not at issue in *Priorities USA* (and besides, there never has been a *Teigen* “standing analysis” that has any precedential effect, “intact” or otherwise).

**2. Other alleged “personal interests.”** Kormanik also claims enforceable “personal interests” in “the equal administration of Wisconsin’s election laws,” “elections being administered according to law,” and the maintenance of “her confidence in the integrity of Wisconsin’s electoral process.” KBr33-36. These claimed

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<sup>3</sup> As DNC previously demonstrated, Wisconsin courts treat federal decisions about standing as “persuasive authority,” DBr24 & n.10 (citing numerous authorities). Kormanik’s response ignores *all* these persuasive decisions.

“interests” are not in any way “personal” to Kormanik herself, but are shared in common with all other citizens. Federal and state courts repeatedly have rejected claims of standing resting on these sorts of “generalized grievances.” An individual voter’s allegation “that the law ... has not been followed” is “precisely the kind of undifferentiated, generalized grievance about the conduct of government” that fails to support a claim of standing. *Lance v. Coffman*, 549 U.S. 437, 442 (2007); *see Wis. Voters All. v. Pence*, 514 F. Supp. 3d 117, 120 (D.D.C. 2021) (Wisconsin voters lacked standing because their “interest in an election conducted in conformity with the Constitution ... merely assert[ed] a ‘generalized grievance’ stemming from an attempt to have the Government act in accordance with their view of the law” (citation omitted)). Kormanik’s “personal interest” claims of standing would open Wisconsin courts to a “universe of entities or people . . . without bounds.” *Krier v. Vilione*, 2009 WI 45, ¶20, 317 Wis. 2d 288, 766 N.W. 2d 517.

## **II. WEC’s guidance is consistent with Wisconsin election statutes and the “will of the electors” standard.**

DNC’s opening brief demonstrated that WEC’s guidance about spoiling returned absentee ballots and obtaining replacements faithfully tracks and implements the concededly ambiguous language of Wis. Stat. § 6.86(5)-(6) and related statutes, and honors the overarching “will of the electors” standard, *id.* § 5.01(1), while guarding against any potential risk of double-voting or undermining ballot integrity. Kormanik repeatedly insists the relevant statutory provisions are “plain” and “unambiguous,” KBr14, but even the Circuit Court acknowledged that, while in its view those provisions are “*generally*” and “*essentially*” unambiguous, Kormanik’s reading “leaves superfluous language in the statute” and “the court can’t reconcile [Kormanik’s] position with the plain language of the statute.” App17-20 (emphasis added); *see* App20 (discussing the “surplusage problem”). The Circuit Court resolved that acknowledged ambiguity through resort to Section 6.84(2), which it held

imposes “strict” and “harsh” rules of statutory construction in absentee voting cases in lieu of the “will of the electors” provision of Section 5.01(1). App19. The Court repeatedly emphasized that, absent a “strict” and “harsh” construction of these statutory ambiguities, “that could result in the elector’s vote being prohibited from being counted” under Section 6.84(2). App21.

That was fundamental error under *Priorities USA*, which held that Section 6.84 “gives us no principles of interpretation that give any insight into the actual *meaning* of the absentee balloting statutes that follow it,” but simply prescribes “the *consequences* of a statutory violation” rather than an interpretative “gloss” to be put on the statute’s interpretation. 2024 WI 32, ¶¶31, 45 (emphasis added). Kormanik responds that *Priorities* “doesn’t even mention the ‘will of the electors.’” KBr22. True enough, but if Section 6.84 does not apply in interpreting the *meaning* of Section 6.86(5)-(6)—the clear import of *Priorities*—that necessarily means that Section 5.01’s “will of the electors” standard governs instead.

Kormanik’s statutory analysis is flawed in numerous additional respects, some of which include:

1. Kormanik repeatedly claims WEC’s guidance authorizes clerks to “**return**” previously completed absentee ballots to electors in violation of Section 6.86(6)’s prohibition against such returns. KBr9, 11-13, 17 (emphasis added). That is false. WEC’s guidance authorizes a clerk to **destroy** a previously completed absentee ballot at an elector’s direction, but the clerk may never **return** the ballot to the elector (except under the narrow circumstances covered in Wis. Stat. § 6.87(9)). DBr12-13, 27-28.

2. Kormanik also claims WEC’s guidance authorizes clerks and electors to alter ballots that already have been “**cast**.” KBr9, 15, 17, 21-22, 26, 30, 32 (emphasis added). Wrong again. “Cast” ballots may *never* be altered. But as DNC previously demonstrated, an absentee ballot is not “cast” at the time it is mailed or returned in person to the clerk, but only on election day itself after it has been

securely held for safekeeping in the interim. DBr31-34. It is undisputed that a completed absentee ballot that has been returned to the clerk may be “pulled” where an incomplete or mistaken voter or witness certification must be corrected, *see* Wis. Stat. § 6.87(9), or where an absentee voter dies after returning her ballot, *see* DBr33-34 & n.15. WEC’s guidance about destroying absentee ballots that have been returned to the clerk but not yet “cast” creates no ballot security or integrity risks that are any different from these other situations.

3. Kormanik also claims WEC’s guidance is a “novel exception and procedure,” suggesting it was only adopted in 2022 and warning it opens the door to fraud and other mischief. KBr15; *see id.* at 10-11. But as DNC previously demonstrated, the challenged guidance dates back at least to 2014, was applied in numerous election cycles since then with no reported problems, and is conditioned on compliance with stringent destruction, recordkeeping, and chain-of-custody safeguards, none of which Kormanik addresses. DBr12-15. Moreover, Kormanik failed to submit (after ample opportunities to develop a factual record through discovery) *any* evidence of even a *single* instance of mistake or wrongdoing in the application of the challenged guidance during the many election cycles it was in effect. *Id.* at 14-15.

4. Both Kormanik and the Circuit Court read Section 6.86(5) as requiring an absentee voter to declare her completed ballot to be “spoiled or damaged” *at the time she returns it*, as opposed to *after* she has returned it. KBr15-16; App21-22. That is one possible reading of this ambiguous statute but far from the only one; nothing in the statute requires such a contemporaneous declaration of error at the time the voter returns her ballot. As DNC previously demonstrated, there are a variety of circumstances in which a voter plausibly may not realize her absentee ballot is “spoiled”—that it reflects an accident, mistake, or error by her—until after she has returned it. DBr13-14, 29. Refusing to allow the absentee elector to correct her mistake because she already has *returned* her ballot—but not yet actually “cast” it—

cannot be reconciled with other statutory “spoiling” provisions that allow an elector to “change” her vote “and to correct any error ... prior to casting [her] ballot.” Wis. Stat. § 5.91(16); *see id.* § 6.80(2)(c); DBr31-34. Nor can it be reconciled with the “will of the electors” requirement in Section 5.01(1), which is “***much more than a rule of construction***”—it is an outright “***mandate*** to the judicial tribunal before whom the proceedings are pending” to honor an elector’s “will” wherever possible. *State ex rel. Pelishek v. Washburn*, 223 Wis. 595, 270 N.W. 541, 544 (1936) (emphasis added). WEC’s guidance honors that “mandate” and an elector’s “will.” The Circuit Court’s judgment does not.

### CONCLUSION

The Circuit Court’s judgment (App4-8) should be reversed and remanded for dismissal with prejudice.

Dated this 17th day of June, 2025.

Respectfully submitted,

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**CERTIFICATION REGARDING BRIEF FORM AND LENGTH**

Pursuant to Wis. Stat. § 809.19(8g)(a), I hereby certify that this reply 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. The length of this reply brief is 2,990 words.

Dated: June 17, 2025

Electronically signed by Charles G. Curtis, Jr.  
Charles G. Curtis, Jr.

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**CERTIFICATE OF ELECTRONIC FILING/SERVICE**

I certify that on this 17th day of June, 2025, and in compliance with the requirements of Wis. Stat. § 801.18(6), I caused copies of this reply brief to be electronically filed with the Clerk of Court using the Wisconsin Appellate Court Electronic Filing System, which will accomplish electronic service upon all parties' counsel who are registered users.

Dated: June 17, 2025

Electronically signed by Charles G. Curtis, Jr.  
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