

Within 45 days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The Answer must be sent or delivered to the Court, whose address is Clerk of Circuit Court, Dane County Circuit Court, 215 S. Hamilton Street, Madison, WI 53703; to Pines Bach LLP, 122 W. Washington Ave., Suite 900, Madison, WI, 53703; to Ali & Lockwood LLP, 300 New Jersey Ave NW, Suite 900, Washington, DC 20001; and to Elias Law Group LLP, 10 G Street NE, Suite 600, Washington, DC 20002. You may have an attorney help or represent you.

If you do not provide a proper answer within 45 days, the Court may grant Judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A Judgment may be enforced as provided by law. A Judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated: September 27, 2022

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COMPLAINT

COME NOW Plaintiffs Rise, Inc. (“Rise”) and Jason Rivera, by and through their undersigned counsel, and hereby assert a complaint for declaratory judgment and injunctive relief, pursuant to Wis. Stat. § 806.04 against Defendant Wisconsin Elections Commission (“WEC”), and for declaratory relief pursuant to Wis. Stat. § 806.04 against Defendant Maribeth Witzel-Behl, in her official capacity as City Clerk for the City of Madison Wisconsin, and allege and petition this Court as follows:

INTRODUCTION

1. With just six weeks until the 2022 general election, Wisconsin’s system for evaluating and counting absentee ballots has been thrust suddenly into a state of disarray. For the last six years, WEC has instructed local election officials that an absentee ballot certification containing sufficient information to enable an official to reasonably discern the witness’s address may be counted without further action. At least twelve state elections have been held with that guidance in place and have gone off without a hitch, including the recent August 2022 primary.

2. Earlier this month, however, a Waukesha County circuit court enjoined this crucial WEC guidance, leaving local election officials without clear directives on whether certain absentee ballots can be counted. Absent guidance, scores of Wisconsinites are at risk of having their votes thrown out for no reason other than clerks’ misapplication of Wisconsin election law.

3. In this action, Rise seeks declaratory and injunctive relief to ensure that the voters whom it seeks to engage and empower are not denied the right to vote (and to ensure that Rise is not required to divert crucial resources from other mission-central work to ameliorate that severe risk) as a result of Wisconsin election officials’ failure to correctly apply two state election statutes: (1) Wis. Stat. § 6.87(2), which requires that an absentee ballot include a certificate with space for

a witness to provide their “address”; and (2) Wis. Stat. § 6.87(9), which details the corrective measures a municipal clerk may take upon receiving an “improperly completed certificate” (together, the “Witness Address Requirement”).

4. Mr. Rivera seeks the same relief as Rise. Mr. Rivera is a registered Wisconsin voter who intends to vote absentee in the City of Madison, located within Dane County. He is concerned that, absent relief, Wisconsin voters will be systematically disenfranchised and Wisconsin elections will not be administered consistent with the rule of law.

5. Wisconsin law requires that an elector casting an absentee ballot complete a certificate on the envelope in which they return their ballot attesting to their eligibility to vote absentee. Wis. Stat. § 6.87(2). This certificate must be executed in the presence of a witness, who must provide their “address” on the certificate. Wis. Stat. §§ 6.87(4)(b)(1), 6.87(2). But the statute fails to define what components of a witness’s “address” are needed for the certificate to be properly completed within the meaning of Wis. Stat. § 6.87(9). And while the statute identifies certain steps clerks may take upon receiving an “improperly completed certificate,” Wis. Stat. § 6.87(9), its failure to define “address” means that different clerks across Wisconsin will come to different conclusions as to what address information is insufficient and thus when a certificate is “improperly completed” within the meaning of the statute.

6. This lack of statutory direction was previously remedied by uniform guidance issued by the WEC after consultation with and based on a recommendation from the Wisconsin Department of Justice. Affidavit of Diane Welsh (“Welsh Aff.”) Ex. 1, *Witness Address Corrections*, WEC, <https://elections.wi.gov/absentee-witness-address-corrections> (archived Aug. 3, 2022). That guidance determined that: (1) a “complete” witness address includes a street number, street name, and municipality; and (2) the statute does *not* require the rejection or curing

of an absentee ballot simply because the certificate does not include every piece of a “complete” witness address. Welsh Aff. Ex. 2, *Amended: Missing or Insufficient Witness Address on Absentee Certificate Envelopes*, WEC (Oct. 18, 2016) (the “2016 guidance”). Rather, if an official could reasonably discern the witness address components necessary to constitute a “complete” address based on the information the witness provided, the official was permitted to add the outstanding components to the absentee ballot envelope without contacting the voter. *Id.* Clerks’ addition of these various address components was undertaken simply to ensure witness addresses complied with WEC’s policy preference for a “complete address,” rather than to meet any statutory requirement. If the clerk *could not* reasonably discern the witness’s address, the clerk contacted the voter to obtain additional information. *Id.*

7. On September 7, 2022, Waukesha County Circuit Court Judge Michael Aprahamian enjoined the use of the 2016 guidance. Welsh Aff. Ex. 3, *White v. WEC*, No. 2022-CV-1008, unpub. order (Dkt. 167) (Sept. 7, 2022). It also enjoined WEC from “advising, guiding, instructing, publishing or otherwise communicating information to Wisconsin municipal clerks and local election officials that clerks or local election officials have the duty or ability to modify or add information to incomplete absentee ballot certifications.” *Id.* ¶ 8. But its order did not purport to reach the definition of “address” under Wis. Stat. § 6.87(2) or the question whether ballots of any sort should be counted. *See id.* ¶¶ 7–9. Indeed, the Waukesha court made both those points explicit. Welsh Aff. Ex. 4, *White v. WEC*, Tr. of Arg. of Temp. Inj. at 48:20-49:1 (Sept. 7, 2022) (“No one is asking me to determine what can be counted or not be counted. . . . That’s not part of any of the requested relief”); Welsh Aff. Ex. 5, *White v. WEC*, Tr. of Mot. to Stay Hr’g at 51:23-24 (Sept. 13, 2022) (“I was not enjoining the definition of address.”).

8. Nevertheless, the result of the September 7 injunction is that county and municipal election officials lack guidance on how to determine whether a witness address is sufficient to make the ballot certificate (i) completed, such that the ballot may be counted without further contact with the voter; or (ii) “improperly completed,” so as to require further contact with and information from the voter before the ballot may be counted.

9. One week after the injunction was issued, the WEC issued a communication to clerks stating its view that the injunction did not overturn WEC’s existing definition of address—“namely, street number, street name, and name of municipality.” At the same time, however, WEC acknowledged that, due to the injunction, it had withdrawn its prior guidance documents containing that definition. *Temp. Inj. on WEC Guidance re Missing Absentee Witness Address* (*White v. WEC*, 22-CV-1008), WEC, (Sept. 14, 2022), <https://elections.wi.gov/memo/temporary-injunction-wec-guidance-re-missing-absentee-witness-address-white-v-wisconsin> (the “WEC Sept. 14 guidance”). Indeed, the link to the web address where the 2016 guidance used to be found is now inactive. Compare <https://elections.wi.gov/memo/amended-missing-or-insufficient-witness-address-absentee-certificate-envelopes> with Welsh Aff. Ex. 1. WEC has neither approved nor issued any new guidance regarding the definition of “address” since that communication. There accordingly is no operative WEC guidance on what constitutes an “address” under § 6.87(2).

10. The combined result of both the lack of a clear definition for “address” and the invalidation of the WEC’s prior guidance means that lawful Wisconsin voters now face the very real risk of having their ballots thrown out as a result of clerks’ misapplication of the law. And, still worse, voters whose absentee ballots were accepted and counted during the August 2022 primary elections (which operated under the WEC’s prior guidance) may have their ballots rejected in November despite submitting their ballots with *identical* witness-address information.

11. This lack of clarity mere weeks before election day poses a significant threat to Rise, whose organizational mission is to empower and mobilize students nationwide, including in Wisconsin. Confusion surrounding the Witness Address Requirement creates a severe risk to the voting rights of the students with whom Rise works. It will also require Rise to divert resources, including both financial resources and staff time, to attempt to mitigate this harm, hampering its ability to support other mission-critical activities at the most crucial time in the election cycle. In particular, as a direct result of the need to divert resources to mitigate the harm caused by the present confusion surrounding the Witness Address Requirement, Rise will have fewer resources to support its ordinary voter mobilization, training, and outreach efforts to ensure that students in Wisconsin are able to exercise the franchise.

12. The confusion surrounding the Witness Address Requirement also poses a significant threat to the full political participation of intended absentee voters, a subject of grave concern to Mr. Rivera. Specifically, Mr. Rivera fears that many other absentee voters are not aware of the Waukesha court's decision, so they will continue to follow the procedures that have ensured their votes would be counted for every Wisconsin election held over the past six years. This could result in the systematic disenfranchisement of absentee voters around the state.

13. Wisconsin precedent and rules of statutory interpretation provide this Court with a straightforward path to interpret the statutes at issue. Importantly, Wisconsin law affirmatively requires Wis. Stat. § 6.87(2) and Wis. Stat. § 6.87(9) to be “construed to give effect to the will of the electors, if that can be ascertained from the proceedings, notwithstanding informality or failure to fully comply with some of their provisions.” Wis. Stat. § 5.01(1). Consistent with these principles—and with the dictionary definition of “address”—Plaintiffs request that this Court declare that, as used in Wis. Stat. §§ 6.87(2) and 6.87(9): (i) an “address” on a witness certificate

requires only the information necessary to reasonably discern the location where the witness may be communicated with, and (ii) an absentee ballot containing sufficient address information to identify and communicate with the witness is not “improperly completed” under § 6.87(9). Plaintiffs further request that the Court issue an injunction requiring WEC to instruct municipal and county clerks to apply these statutes accordingly.

14. The requested relief would restore the functional result of the 2016 guidance, ensuring that (i) lawful voters are not disenfranchised simply because a witness inadvertently omitted a piece of their address (e.g., the zip code) and (ii) the witness can be identified and communicated with, thereby fulfilling the government’s interest in having the ballot witnessed. This interpretation will also ensure that election officials do not apply the address requirement in a way that conflicts with federal law, which prohibits disenfranchising voters because of immaterial errors or omissions in their ballot materials. 52 U.S.C. § 10101(a)(2)(B).

PARTIES

15. Plaintiff Rise, Inc. is a student-led 501(c)(4) nonprofit organization that runs statewide advocacy and voter mobilization programs in Wisconsin and throughout the country. Rise has a national headquarters located at 820 Kodak Dr., Los Angeles, CA 90026. Rise’s mission is to fight for free public higher education and to end homelessness, housing insecurity, and food insecurity among college students. 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.

16. As part of its mission to empower and mobilize students, Rise employs organizing fellows. Rise currently has 16 organizing fellows in Wisconsin (based out of Madison, Milwaukee, and Oshkosh), who travel throughout the state as part of their work. In the months leading up to

an election, organizing fellows reach out to students to discuss making a concrete plan to vote. In these conversations, organizing fellows assist students in registering to vote, checking their voter registration status, finding their polling place, and deciding whether to vote by mail or in person. Rise also provides students with instructions on how to properly vote using the method they have chosen. In the final two weeks before election day, organizing fellows reach out to these same students to confirm that they will cast their ballots and that they understand how to properly cast a ballot under state law.

17. In states where voting by mail is accessible and unlikely to result in rejected ballots, Rise encourages students to vote by mail. In states where access to voting by mail is limited or where there is a significant likelihood of ballot rejection, Rise steers students toward in-person voting. Because Rise's choice about which method of voting to encourage underpins many subsequent decisions, it must be made well in advance of election day.

18. In prior elections, Rise has encouraged voters in Wisconsin to vote by mail. In 2020, Rise helped 12,000 Wisconsin voters make a plan to vote. Among these, 3,887 voted by mail. For the upcoming November elections, Rise has already helped nearly 4,000 students make a plan to vote. Of these, over 1,200 students voted absentee in 2020, and may plan to do so in this election.

19. The lack of guidance regarding the Witness Address Requirement directly harms Rise. With the 2016 guidance no longer in effect, there is a significant risk that election officials across the state will misapply the Witness Address Requirement, resulting in ballots being incorrectly rejected. To ensure student votes are still counted, Rise must now steer students away from voting by mail or provide them with supplemental training to ensure their witness certificates are accompanied by an address block that includes a street, house number, municipality, state, and zip code—details that are not required by Wisconsin law. Alternatively, Rise must expend

significant resources to determine what information constitutes a sufficient witness address in the view of each of the 1,850 municipal clerks' interpretations and tailor its training and outreach accordingly—a daunting if not impossible task. Each of these options requires diverting time and resources away from other mission-critical work that Rise would otherwise engage in to fulfill its mission and empower students throughout the state.

20. Plaintiff Jason Rivera is a fourth-year student at the University of Wisconsin-Madison. Mr. Rivera resides at 108 N Bedford St. Madison, WI 53703. Mr. Rivera was born in the City of Milwaukee and grew up there. He is employed as a Wisconsin Fellow by Rise, Inc. In that role, he works with other fellows to further Rise's mission of empowering college students to advocate for policies that put higher education within reach for all.

21. Mr. Rivera is a registered Wisconsin voter. He recently changed his registration from Milwaukee County to the City of Madison, in Dane County. He intends to vote in the upcoming November 8 general election and has requested an absentee ballot.

22. As an intended absentee voter himself, Rivera believes that absentee voters should have their votes counted and should not be disenfranchised based on trivial nonmaterial omissions from their witness certificates. He also believes that Wisconsin's elections should be administered under a proper construction of the state's election laws. Without a judicial declaration settling the meaning of the Witness Address Requirement and accompanying guidance from WEC, these objectives will not be served.

23. Defendant WEC is a governmental agency responsible for "the administration of chs. 5 to 10 and 12 and other laws relating to elections and election campaigns, other than laws relating to campaign financing." Wis. Stat. § 5.05(1). WEC is tasked with providing local election

clerks with education, training, and support in administering Wisconsin's elections. WEC is located at 201 West Washington Ave., Second Floor, Madison, Wisconsin 53707.

24. Defendant Meribeth Witzel-Behl is the City Clerk for the City of Madison, Wisconsin and is named in her official capacity. In her capacity as the City Clerk for the City of Madison, Ms. Witzel-Behl is responsible for the administration of elections in the City of Madison, where Mr. Rivera resides. *See* Wis. Stat. § 7.15(1). She is also specifically tasked with responsibilities under Wis. Stat. 6.87(9).

JURISDICTION AND VENUE

25. This Court has jurisdiction over the subject matter of this dispute under either or both Wis. Stat. § 753.03 or Wis. Stat. § 806.04.

26. Wis. Stat. § 753.03 provides for subject matter jurisdiction over all civil matters within this state.

27. Wis. Stat. § 806.04, the Declaratory Judgment Act, specifically grants this Court jurisdiction to declare rights, status, and other legal relations between parties.

28. Venue is proper in Dane County under Wis. Stat. § 801.50(2)(c) because WEC's office is located at 201 W. Washington Ave., Madison, in Dane County; because Ms. Witzel-Behl is the City Clerk for the city of Madison; because Mr. Rivera resides in Madison and intends to vote in Dane County; and because this impact voters in Dane County with whom Rise is working.

BACKGROUND FACTS

29. The procedure for absentee voting in Wisconsin is prescribed by Wis. Stat. § 6.87. That statute provides that an absentee ballot must be provided to the voter with a printed certificate on one side. Wis. Stat. § 6.87(2). Among other things, the certificate must have a witness statement, followed by the witness's printed name, "address," and signature. *Id.* The statute also provides

clerks with certain steps they may take upon receiving an “improperly completed certificate.” *Id.* § 6.87(9). In 2015, the Legislature added an instruction providing, for the first time, that “[i]f a certificate is missing the address of a witness, the ballot may not be counted.” Wis. Stat. § 6.87(6d).

30. Before the 2016 general election, WEC received “many calls from clerks asking how the new statutory requirement should be interpreted.” *See* Welsh Aff. Ex. 1. WEC reviewed the statute in consultation with the Wisconsin Department of Justice and determined that the statute does *not* require rejection of an absentee ballot simply because the certificate includes a partial witness address. *Id.* Rather, the “Department of Justice advised that a reasonable, defensible interpretation of the law would be to allow [] local election officials to add the municipality name to a witness certificate if the information could be reasonably ascertained by the official.” *Id.* In guidance issued in October 2016, WEC unanimously adopted this position. *See* Welsh Aff. Ex. 2. The 2016 guidance has been operative in every statewide election for the last six years—from October 2016 through the August 9, 2022 primary.

31. The 2016 guidance directed local election officials to “take corrective actions in an attempt to remedy a witness address error” and that, if they “are reasonably able to discern any missing information from outside sources, [they] are not required to contact the voter before making that correction directly to the absentee certificate envelope.” Welsh Aff. Ex. 2 at 1. If, however, local election officials could not ascertain the additional address components, they were required to contact the voter to remedy the issue before counting the ballot. *Id.*

32. On September 7, 2022, the Republican Party of Waukesha County and three individual Republican voters successfully obtained an injunction from the Waukesha County Circuit Court enjoining WEC from continuing to utilize the 2016 guidance. Welsh Aff. Ex. 3 ¶¶ 6–9. The Waukesha court focused specifically on the portion of the guidance that permitted local

election officials to fill in missing address information on a witness certificate, if the official could reasonably ascertain the information from what was provided. The Waukesha court concluded that local election officials “lacked the duty or ability to modify or add information to incomplete absentee ballot certifications.” *Id.* ¶ 8. But its order did not purport to reach the definition of “address” under Wis. Stat. § 6.87(2) or the question whether ballots of any sort should be counted. *See id.* ¶¶ 7–9.

33. While the Waukesha court enjoined the 2016 guidance in full, it did not consider the issue of what constitutes an adequate address for the purposes of Wis. Stat. § 6.87(2), and thus took no position on whether the 2016 guidance properly articulated the contours of an adequate address under the statute. *See* Welsh Aff. Ex. 5 at 47:1-5 (“I have done nothing and I’m not asked to interpret what is a missing address or what is an incomplete address and I’ve not decided, no one has asked me to decide what happens to absentee ballots that have an incomplete witness address.”).

34. This decision upended a uniform practice for counting absentee ballots that clerks had faithfully applied for at least twelve statewide elections, including the August 2022 primaries.

35. On September 14, 2022, WEC issued a communication to clerks informing them that the Waukesha court enjoined the 2016 guidance as invalid and contrary to law. WEC also informed clerks that the Waukesha court “had not overturned the existing WEC definition of address contained in the now-invalidated memoranda—namely, street number, street name, and name of municipality.” WEC Sept. 14 guidance.

36. Unfortunately, WEC’s September 14, 2022 communication does not clarify the Witness Address Requirement. Instead, the communication contains an inherent contradiction: it asserts that the temporary injunction did not overturn any definition of “address,” but also concedes

that its 2016 definition is contained only in “now-invalidated memoranda.” *Id.* WEC has not defined “address” for the witness address certificate in any other guidance or regulation. Thus, absent new guidance from WEC, Wisconsin’s 1,850 municipal clerks are left without clear guidance on what constitutes a sufficient witness address.

37. Concerns over the potential misapplication of the Witness Address Requirement are not theoretical. Last fall, the Legislative Audit Bureau released Report 21-19 on Elections Administration. *See* State of Wis. Legis. Audit Bureau, *Elections Admin.*, Rep. 21-19 (Oct. 2021), available at <https://legis.wisconsin.gov/lab/media/3288/21-19full.pdf>. The Bureau conducted a review of a random sample of 14,710 absentee ballot certificates cast from 29 municipalities in the November 2020 general election. *Id.* at 42. This review showed that 1,022 certificates (6.9 percent) in 28 municipalities had partial witness addresses, while only 15 certificates (0.1 percent) in 10 municipalities were missing a witness address in its entirety. *Id.* at 42-43. This sample suggests that, were clerks to wrongly reject ballots due to partial witness addresses, a significant number of Wisconsin would be disenfranchised.

38. Rejecting ballots solely for containing a partial witness address will result in voter disenfranchisement based on mere technicalities—in violation of Wisconsin principles of statutory interpretation and, as described in more detail below, raising serious concerns under the federal Civil Rights Act, 52 U.S.C. § 10101(a)(2).

LEGAL PRINCIPLES

39. Rise brings this declaratory judgment action to gain “relief from uncertainty and insecurity with respect to rights, status and other legal relations.” Wis. Stat. § 806.04(12).

40. This Court must resolve two related questions: (1) what constitutes an “address” under Wis. Stat. § 6.87(2); and (2) whether ballots with a partial address are “improperly completed” under Wis. Stat. § 6.87(9).

41. Interpreting the Witness Address Requirement to require only sufficient address information for a clerk to discern where a witness can be communicated with is consistent with the plain meaning of the word “address,” its statutory context, Wisconsin law, and the WEC and Wisconsin Department of Justice’s interpretation of the requirement, which has governed for the last six years. It also avoids an interpretation that likely violates the federal Civil Rights Act.

42. Any interpretation of Wis. Stat. §§ 6.87(2) and 6.87(9) must be judged under Wis. Stat. § 5.01, which requires that election laws be “construed to give effect to the will of the electors, if that can be ascertained from the proceedings, notwithstanding informality or failure to fully comply with some of their provisions.” *Id.*

43. Wis. Stat. § 6.87(2), by its plain reading, does not require a “complete address” for a witness statement to be valid. It simply requires an “address.”

44. The statutory context illustrates that the word “address” pertaining to a witness address in Wis. Stat. § 6.87(2) does not mean “complete address.”

45. First, Wis. Stat. § 6.87(2) itself requires that absentee voters provide far more specific address components: “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) (alterations in original).

46. The use of the term “address” elsewhere in the election code is also significantly more specific, *see, e.g.*, Wis. Stat. § 6.34(3)(b)(2) (voter identification must include “[a] current and complete residential address, including a numbered street address, if any, and the name of a

municipality”); Wis. Stat. § 6.18 (former Wisconsin resident seeking presidential absentee ballot must specify “[p]resent address,” including “[c]ity” and “[s]tate”); Wis. Stat. § 8.15(5)(b) (candidate seeking ballot access “shall include his or her mailing address” on nomination papers).

47. “Where 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. DNR 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.

48. Given that the Legislature defined with precision the requirements of an address in other provisions of the election code, including Wis. Stat. § 6.87(2)’s absentee voter address requirement, but failed to define “address” for the Witness Address Requirement, the Court should define “address” with respect to the Witness Address Requirement according to that term’s ordinary usage. *See Garcia v. Mazda Motor of Am., Inc.*, 2004 WI 93, ¶ 14, 273 Wis. 2d 612, 682 N.W.2d 365 (“[I]f a word is not defined in a statute, [courts] look next to recognized dictionary definitions to determine the common and ordinary meaning of a word.”).

49. Merriam-Webster defines the word “address” as “a place where a person or organization may be communicated with.” *Address*, Merriam-Webster, www.merriam-webster.com/dictionary/address (last visited Sept. 27, 2022).

50. Accordingly, where an otherwise lawful ballot contains a witness certificate with sufficient information to reasonably discern the place where the witness may be communicated with, that ballot may not be considered “improperly completed” under Wis. Stat. § 6.87(9).

51. This conclusion is consistent with the practical effect of the 2016 guidance—a ballot should be counted and requires no further action from the voter if a clerk can reasonably

discern where a witness may be communicated with. Plaintiffs merely ask that this Court restore that interpretation as a uniform standard statewide, consistent with Wisconsin rules of statutory interpretation and the dictionary definition of “address.”

52. This interpretation is also necessary to ensure that the Witness Address Requirement will not be applied in a manner that violates federal law. *See* U.S. Const. art. VI. The federal Civil Rights Act prohibits the state from denying any person the right to vote as the result of failure to comply with a requirement that is not material to the voter’s qualifications. 52 U.S.C. § 10101(a)(2). Specifically, Section 101 of the Civil Rights Act provides that

[n]o person acting under color of law shall . . . deny the right of any individual to vote in any election because of 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. (emphasis added).

53. Any ballot rejected by election officials merely because of their misinterpretation of the Witness Address Requirement under Wisconsin Law risks violating this provision of the Civil Rights Act because the complete address of the witness who certifies a voter’s absentee ballot is irrelevant to voter eligibility in Wisconsin.

FIRST CLAIM FOR RELIEF
Declaratory Judgment under Wis. Stat. § 806.04
(Against all Defendants)

54. The preceding paragraphs are incorporated by reference herein.

55. Wis. Stat. § 806.04(2) provides that any person “whose rights, status or other legal relations are affected by a statute . . . may have determined any question of construction or validity arising under the [] statute . . . and obtain a declaration of rights, status or other legal relations thereunder.”

56. Rise's legal rights and privileges are impaired by the lack of guidance regarding the handling of absentee ballots under Wisconsin law, specifically under Wis. Stat. §§ 6.87(2) and 6.87(9). Absent guidance as to the proper interpretation of Wis. Stat. § 6.87, voters will be wrongfully disenfranchised due to failure to include certain portions of a witness address. Rise will accordingly have to divert resources away from other mission-critical efforts to ensure that student voters who have already made a concrete plan to vote absentee either shift to voting in person (which may not be possible for some) or receive supplemental training and guidance to ensure that their witness statement is accompanied by an address block that includes a street, house number, municipality, state, and zip code, which is above and beyond what is required by Wisconsin law.

57. Mr. Rivera's legal rights and privileges also are impaired by the lack of guidance regarding the proper interpretation of Wis. Stat. §§ 6.87(2) and 6.87(9). The full political participation of absentee voters is threatened by that lack of guidance, as is the lawful administration of Wisconsin elections.

58. Under a proper interpretation of Wis. Stat. §§ 6.87(2) and 6.87(9), and consistent with Wisconsin statutory interpretation principles, otherwise lawful ballots that contain portions of a witness's complete address must be counted if a clerk can reasonably discern where the witness may be communicated with.

59. Without a proper interpretation of Wis. Stat. § 6.87, Wisconsin election officials are also at risk of violating the federal Civil Rights Act, which prohibits disenfranchising persons based on immaterial omissions or technicalities that have no bearing on whether a person is qualified to vote in that state. 52 U.S.C. § 10101(a)(2).

60. The Court should therefore declare the following:

- a. An “address” for the purposes of the Witness Address Requirement is a place where a witness may be communicated with;
- b. Accordingly, a witness address is sufficient under the statute if a local clerk can reasonably discern the location where a witness may be communicated with; and
- c. Absentee ballot certificates containing an “address” as defined above are not “improperly completed” under Wis. Stat. § 6.87(9).

SECOND CLAIM FOR RELIEF
Injunctive Relief under Wis. Stat. § 806.04
(Against Defendant WEC Only)

61. The preceding paragraphs are incorporated by reference herein.
62. Courts have authority “whenever necessary or proper” to grant “[f]urther relief based on a declaratory judgment or decree,” including injunctive relief. Wis. Stat. § 806.04(8). Thus, “[i]njunctive relief may be granted in aid of a declaratory judgment.” *Lewis v. Young*, 162 Wis. 2d 574, 581, 470 N.W.2d 328, 331 (Wis. Ct. App. 1991).
63. Injunctive relief is necessary and appropriate to ensure that absentee ballots are not being arbitrarily and illegally rejected.
64. The Court should therefore issue a permanent injunction requiring that WEC inform municipal and county clerks of the Court’s interpretation that the requirement for a witness address under Wis. Stat. § 6.87(2) is satisfied by a ballot certificate that includes sufficient information from which the clerk can reasonably discern the place where the witness may be communicated with. The Court should also require that WEC direct municipal and county clerks that an otherwise lawful ballot containing sufficient information from which the clerk can reasonably discern where the witness may be communicated with must be counted without any further action from the voter because the absentee ballot’s certificate is not “improperly completed” under Wis. Stat. § 6.87(9).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

1. A declaratory judgment that:
 - a. An “address” for the purposes of the Witness Address Requirement is a place where a witness may be communicated with;
 - b. Absentee ballot certificates that include portions of a witness’s address are sufficient under Wis. Stat. § 6.87(2) if a local clerk can reasonably discern where a witness may be communicated with; and
 - c. An otherwise valid ballot from which a local clerk can reasonably discern where a witness may be communicated with is properly completed for purposes of Wis. Stat. § 6.87(9).
2. Temporary and permanent injunctive relief directing WEC to instruct municipal and county clerks that they must count otherwise lawful absentee ballots if the witness address on such ballots includes sufficient information from which the clerk can reasonably discern where the witness may be communicated with.
3. Such other relief as the Court deems appropriate.

Dated: September 27, 2022

Respectfully submitted,

Electronically signed by Diane M. Welsh

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*Application for admission *pro hac vice*
forthcoming

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