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SUPREME COURT

SUPREME COURT OF WISCONSIN

Appeal No. 2024AP2484

DEMOCRATIC NATIONAL COMMITTEE,

Petitioner-Respondent-Petitioner,

v.

HEATHER BOEHM, Clerk of the City of Whitewater,

Respondent,

and

REPUBLICAN NATIONAL COMMITTEE,

Intervenor-Appellant.

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On Appeal from the Circuit Court for Walworth County
The Honorable David M. Reddy, Presiding
Circuit Court Case No. 2024-CV-730

BRIEF OF PETITIONER-RESPONDENT-PETITIONER DEMOCRATIC NATIONAL COMMITTEE

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INTRODUCTION

On Election Day, 2024, two polling locations in the City of Whitewater experienced unprecedented turnout and same-day voter registration, which brought extraordinary delays and wait times to vote. Recognizing that extremely long lines threaten access to the ballot, the Democratic National Committee ("DNC") sought a court order to extend polling hours. The circuit court agreed that the exceptional circumstances justified an extension, allowing voters who may have left the line or been deterred from joining it to return and vote.

After the election results had already been certified, the Republican National Committee ("RNC") appealed, arguing that the circuit court lacked authority to extend polling hours. The court of appeals agreed, at least in this case, and reversed the circuit court's judgment. The panel majority confounded the law, and the concurrence—though correct on the law—afforded inadequate deference to the circuit court's expedited factfinding. Ultimately, if state courts do not have the authority to extend polling hours, even when the right to vote is threatened, voters will be disenfranchised when crises inevitably arise.

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This Court should reverse the decision of the court of appeals, affirm the circuit court's order, and hold that state courts have the authority to extend polling hours when circumstances threaten the right to vote. The Court should further hold that challenges to a court order extending polling hours must be brought before the election is certified, to protect voter trust and the finality of the certified result.

ISSUES PRESENTED

1. Do state courts have the authority to grant election participants' requests to extend polling hours to avoid infringing on Wisconsinites' right to vote?

   Circuit Court answered: Yes.

   Court of Appeals answered: The circuit court did not have authority to extend polling hours, at least under the circumstances presented here.

   This Court should answer: Yes.

2. Did the Republican National Committee ("RNC") timely challenge the Circuit Court's order extending polling hours?

   Circuit Court: The RNC did not raise a post-order challenge in the circuit court.

   Court of Appeals: Although the court recognized the appeal was moot, it nonetheless ruled on the merits.

   This Court should answer: No.

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ORAL ARGUMENT AND PUBLICATION

This case is appropriate for oral argument and publication because it presents an issue which is of substantial and continuing public interest involving the right to vote. Wis. Stat. § 809.23(a)(5).

STATEMENT OF THE CASE

A. Unprecedented Election Day turnout resulted in exceptionally long wait times for voters.

During the 2024 presidential election, two polling locations in the City of Whitewater saw unprecedented voter turnout. (R. 3:1; App. 3.) Along with the presidential race, the ballot included elections for

Congress, the state assembly, various county positions, and municipal judge, along with statewide and municipal referenda. *Final Unofficial Election Night Results Detailed Report by Municipality*, Walworth County Clerk (Nov. 6, 2024); *Jefferson County Results*, Jefferson County Clerk (Nov. 11, 2024).[1]

Both polling locations at issue are on or near the University of Wisconsin–Whitewater campus: the City of Whitewater Armory and UW–Whitewater University Center. (R.14:9; App. 13). The University Center polling location saw extraordinary turnout, including more than 1,000 new voter registrations, which led to exceedingly long wait times and overwhelmed election workers. *UW-Whitewater Students Wait for More than Four Hours to Vote After Judge Extends Polling Hours*, WTMJ-4 (Nov. 5, 2024, updated Nov. 6, 2024).[2] Local media reported that some voters waited four-and-a-half to five hours to vote. (*Id.*) The Chief Election Inspector at the University Center polling location noted that this was the first election in which Whitewater had used the electronic poll book system, Badger Books. (*Id.*). Badger Books are "an electronic version of the paper poll book," used by election inspectors "to check in voters and assign them a serial voter number, process absentee ballots, and process Election Day Registrations." *Badger Books*, Wisconsin Elections Commission.[3] The Chief

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[1] Whitewater is in both Walworth County and Jefferson County. Pursuant to Wis. Stat. § 902.01(2)(b), (4), the DNC requests the Court take judicial notice of these election results, as reported by the Counties, and "whose accuracy cannot reasonably be questioned." Available at: https://www.co.walworth.wi.us/DocumentCenter/View/15918/11-05-24-by-Municipality-PDF; https://apps.jeffersoncountywi.gov/jc/election/results/11052024.

[2] The DNC requests that the Court take judicial notice of the facts presented in this news article, per Wis. Stat. § 902.01.

[3] Pursuant to Wis. Stat. § 902.01(2)(b),(4), the DNC requests the Court take judicial notice of this description, provided by a government agency at: https://elections.wi.gov/elections/badger-

Election Inspector explained that "[t]o register an individual on that system takes quite a bit longer than if you were just doing it on paper." *UW-Whitewater Students Wait*, *supra*.

Evelyn Schmidt, a poll observer, witnessed these long lines and administrative delays and provided a declaration to the circuit court. Schmidt arrived at the University Center polling location at approximately 6:00 PM on Election Night. (R. 1:9.) She observed "very long lines," and that voters who needed to update their registrations had to "wait in line for up to five hours." (*Id.*) Based on conversations with volunteers, Schmidt estimated there had been between 400 and 500 voters in line when she arrived around 6:00 PM, waiting to update their registrations and cast their ballots. (*Id.*) Schmidt was particularly concerned with the long lines because of UW-Whitewater's significant population of students with disabilities and the limited opportunities to sit while waiting to register and vote. (R. 1:10.)

Throughout the day, the DNC attempted to work collaboratively with Whitewater to "find solutions, to try and make the lines go faster, to try and help people register quicker." (R. 14:4; App. 8.) However, "because the demand was so overwhelming for the city staff, it became very clear late in the day that relief was going to be necessary . . . . [W]hen it became clear that [the DNC's] efforts were just not going to be enough, this filing was brought on seeking relief." (*Id.*)

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books#230548828-885740124 *See* Wis. Stat. § 902.01; *Wisconsin Med. Soc'y v. Morgan,* 2010 WI 94, ¶ 18 n. 7, 328 Wis.2d 469, 787 N.W.2d 22 (taking judicial notice of an "easily accessible" document created by a state agency).

B. The circuit court ordered the Clerk to provide additional time to appear or return to vote.

Based on the threat to the franchise posed by long lines and extensive wait times, the DNC sought emergency relief in Walworth County Circuit Court. (R. 1:5–6.) The DNC argued that the constitutional and statutory right to vote would be harmed due to significant polling place delays, through no fault of the voters. (R. 1:1.) The DNC requested only a narrow remedy: extending polling hours from 8:00 PM to 10:00 PM at the Armory and the University Center. The DNC also requested that the order permit voters in line as of 10:00 PM to remain in line and cast their ballots, *cf.* Wis. Stat. § 6.78(1m) (rule applied to default closing time), and that poll workers designate ballots cast by voters who arrived at the polls after 8:00 PM, analogous to the procedures outline in section 6.96 of the Wisconsin Statutes, to facilitate further review if needed. (R. 1:5.)

Because the DNC sought emergency relief after regular court hours, electronic filing was unavailable. Rather, the DNC hand-delivered the Petition to the Walworth County Sheriff for delivery to the Duty Judge, the Honorable David M. Reddy. The DNC notified counsel for City Clerk Heather Boehm and the RNC of the Petition and secured their presence at the telephonic hearing. (R. 14:2; App. 6.) The court heard the Petition around 9:30 PM. (*Id.*)

The DNC, the RNC, and the Clerk each offered argument. (R. 14; App. 5-11.) In support of the Petition, the DNC argued that relief was necessary to protect the fundamental right to vote, which was threatened by lines of up to five hours and administrative delays, which could cause voters to depart without voting or to be dissuaded from attempting to vote. (R. 14:3; App. 7.) DNC counsel stated that as of 9:00 PM, poll

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observers still reported two-hour long lines at the University Center and over an hour at the Armory. (R. 14:3-4; App. 7-8). DNC counsel also noted that there would be no prejudice to any party if the court were to grant the requested remedy: all voters in the impacted precincts, regardless of political preference, would benefit. (R. 14:4; App. 8).

In turn, the RNC repeated objections it had set out earlier in a written opposition brief but did not present contrary testimony or evidence. (R. 14:5-7; App. 9-11); (R. 2). Specifically, the RNC argued that section 6.96 only applies "when federal court rules are issued to extend polling hours at polling locations," and so the DNC's Petition was not statutorily authorized. (R. 14:6; App. 10). The RNC also argued that there was no evidence that "any voter was disenfranchised" and that the petition was based on speculation and hearsay. (R. 14:5-6; App. 9-10).

Clerk Boehm did not oppose the DNC's petition or challenge factual representations made in support of the requested relief. However, counsel for Clerk Boehm stated that he did not "have enough information to corroborate the complaints in the petition." (R. 14:7; App. 11).

Ultimately, the circuit court granted the DNC's Petition, in part, stating,

> I'm looking at an informational memorandum from the Wisconsin Elections Commission. And it states as follows, which is Stats Section . . . 6.96 provides for an extension of voting hours by court order. While the statute refers to a federal court order, Wisconsin circuit courts have regularly determined that they have the inherent jurisdiction and authority to issue such orders. So I think that takes care of a concern of the RNC with respect to the language in 6.96. The Court also believes that there's—to err on the side of caution, what's the harm. 6.96 also says that if there is an allowance of the election occurring after hours, that the inspectors, before giving the elector a ballot, write on the back of the ballot in notation quote S period 6.96 end quote.

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(R. 14:8; App. 12). In crafting a remedy, the court determined that because the ruling was at 9:37 PM, it would extend the polling hours for both University Center and the Armory polling locations to 10:30 PM. (R. 14:9; App. 13). By reopening the line to register and vote for only fifty-three minutes, the court significantly reduced the DNC's initial requested relief to extend polling hours by two hours. (R. 1:7). Given the emergency nature of the requested relief, the hearing lasted only approximately fifteen minutes. (R. 14:2-11; App. 3-15).

C. The RNC did not pursue relief from the court order prior to certification of the election results.

The Walworth County and Jefferson County Boards of Canvassers met and submitted certified results of the election prior to the statutory deadline of November 19, 2024. Wis. Stat. § 7.60(5)(a). Because there were no recounts for any relevant races in Walworth County or Jefferson County, the deadline to issue certificates of election for county offices was three business days after the meetings of the respective boards. Wis. Stat. § 7.60(6). The deadline for the Wisconsin Elections Commission to complete its public canvass and issue certificates of election was December 1, 2024. Wis. Stat. § 7.70(3)(a), (c).

The RNC neither moved for reconsideration in the circuit court nor sought a stay of the circuit court order. The RNC did not even seek emergency relief or file an appeal prior to the canvassing and certification of the election results. Prior to certification, ballots cast by voters who entered the line during extended polling hours were specifically marked and capable of being segregated and ultimately excluded from the certified count, should the extension have been overturned by reconsideration or on appeal. (*See* R. 1:5.) However, the certified results do not distinguish votes

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cast by electors who entered the line during extended hours from those cast by voters who entered the line during regular hours. *See* Summary Statement of the Board of Canvassers: Walworth County (Nov. 13, 2024), *available at* https://elections.wi.gov/media/30371/download.[4]

The court of appeals reversed the circuit court's order, concluding that the circuit court erred in extending polling hours. *Democratic Nat'l Comm. v. Boehm*, 2026 WI App 44, ¶ 1, 39 N.W.3d 523. The court of appeals noted that because the case is otherwise moot, it was not remanding the matter. *Id.* ¶ 75, n. 14. This appeal followed.

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STANDARD OF REVIEW

Judicial Authority

"The issue of whether judicial authority exists is a question of law and therefore one which this court reviews de novo." *GMAC Mortg. Corp. v. Gisvold*, 215 Wis. 2d 459, 480, 572 N.W.2d 466 (1998) (citing *Breier v. E.C.*, 130 Wis. 2d 376, 381, 387 N.W.2d 72 (1986).

Injunctive Relief

A circuit court's decision whether to grant or deny an injunction is within the sound discretion of that court. *Kocken v. Wis. Council 40,* 2007 WI 72, ¶ 24, 301 Wis. 2d 266, 732 N.W.2d 828. Appellate courts review a circuit court order granting injunctive relief to determine whether the circuit court erroneously exercised its discretion. *Id.* ¶ 25.

Timeliness

The issue of timeliness is one of equity, correlated to the concept of laches. *State ex rel. Wren v. Richardson*, 2019 WI 110, ¶ 14, 389 Wis. 2d 516,

[4] The DNC requests the Court take judicial notice of this statement, for the reasons stated in footnote 1.

936 N.W.2d 587. When reviewing a circuit court's decision regarding laches, whether a party proved all elements is a legal question reviewed de novo, whereas the decision to apply laches is reviewed for abuse of discretion. *Id.* ¶ 16.

ARGUMENT

I. Circuit courts have authority to extend polling hours to protect the right to vote.

When presented with circumstances that threaten the right to vote, state courts have the authority to extend polling hours to protect that right. *See Boehm*, 2026 WI App 44, ¶ 76 (Neubauer, J., concurring).

A. Circuit courts have equitable authority to issue injunctions providing additional time to vote on Election Day.

In Wisconsin, it has long been established that circuit courts have the "authority to grant equitable relief, even in the absence of a statutory right." *Breier*, 130 Wis. 2d at 388–89. Equitable authority is a "variant of the inherent authority doctrine," permitting courts to grant remedies when there is no explicit statutory authority to do so. *Id.* at 388. Equitable authority is rooted in article I, section 9 of the Wisconsin Constitution, which entitles "every person" to a remedy in the law for "every wrong." Wis. Const. art. I § 9; *see also Breier*, 130 Wis. 2d at 389.

Appropriate exercise of equitable authority responds to an invasion of "a legally protected right." *GMAC Mortg. Corp.*, 215 Wis. 2d at 480. In other words, equitable authority permits a court faced with a "wrong" to provide "complete justice." *Breier,* 130 Wis. 2d at 389. Ultimately, state courts have "a duty to enforce the rights protected under the Wisconsin Constitution." *Matter of Adoption of M.M.C.*, 2024 WI 18, ¶ 37, 411 Wis. 2d 389, 5 N.W.3d 238 (R. Bradley, J., concurring) (citing *State v. Halverson*, 2021

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WI 7, ¶ 23, 395 Wis. 2d 385, 953 N.W.2d 847). Such rights are "fixed by the constitution," and the judiciary "is the mere instrument provided by the constitution to ascertain and enforce their rights as fixed by that instrument." *Wis. Just. Initiative, Inc. v. Wis. Elections Comm'n*, 2023 WI 38, ¶ 18, 407 Wis. 2d 87, 990 N.W.2d 122 (quoting *Att'y Gen. ex rel. Bashford v. Barstow*, 4 Wis. 567 (1855)).

The exercise of equitable authority to right wrongs "may not be limited absent a 'clear and valid' legislative command." *GMAC Mortg. Corp.*, 215 Wis. 2d at 480 (quoting *State v. Excel Management Servs.*, 111 Wis. 2d 479, 490, 331 N.W.2d 312 (1983)). However, a court cannot exercise equitable authority "if such exercise would ignore a statutory mandate." *Id.* at 476. Thus, if a statute is specific and clear about what must be done, a court does not have equitable authority to say otherwise. *Id.* at 476–77.

In sum, courts have equitable authority when two conditions have been met: (1) a legally protected right has been invaded and (2) there is no statutory mandate or limitation that clearly bars relief. *Id.* at 476. Both conditions are present when a circuit court exercises equitable authority to extend polling hours on Election Day. Thus, circuit courts have repeatedly exercised equitable authority to extend polling hours when electors' constitutional right to vote is threatened, whether by misdirection of voters away from a polling place, technology issues, or bomb threats. *See Boehm*, 2026 WI App 44, ¶ 90 (Neubauer, J., concurring) (collecting cases).

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B. The right to vote is a legally protected right.

The right to vote is a legally protected right, and state courts have equitable authority to grant orders that would protect that right when it is threatened. The right to vote is "a sacred right of the highest character." *State ex rel. McGrael v. Phelps*, 144 Wis. 1, 15, 128 N.W. 1041, 1046 (1910); *see*

also League of Women Voters of Wis. v. Walker, 2014 WI 97, ¶ 140, 357 Wis. 2d 360, 851 N.W.2d 302 (Abrahamson, C.J., dissenting) (citing *Phelps*, 144 Wis. at 15). Article III section 1 of the Wisconsin Constitution guarantees that voting is a right to be protected, not a privilege voters must earn by enduring circumstances unforeseen and unforeseeable. *League of Women Voters*, 357 Wis. 2d 360, ¶ 19. The Wisconsin Constitution expressly confers the right to vote on "[e]very United States citizen age 18 or older who is a resident of an election district of this state." Wis. Const. Art. III, § 1 (1986).[5] "The right of a qualified elector to cast a ballot for the election of a public officer, which shall be free and equal, is one of the most important of the rights guaranteed to him by the constitution . . . . [N]o right is more jealously guarded and protected . . . than is the right of suffrage." *State ex rel. Frederick v. Zimmerman*, 254 Wis. 600, 613, 37 N.W.2d 473 (1949); *see also Reynolds v. Sims*, 377 U.S. 533, 554 (1964) ("Undeniably the Constitution of the United States protects the right of all qualified citizens to vote, in state as well as in federal elections.").

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Thus, the right to vote is a "legally protected right." Yet, the right to vote may be threatened in a number of circumstances on Election Day: polls may be closed or may need to be relocated due to a bomb threat or severe weather, administrative issues may cause extreme delays, voting equipment may fail, or a polling center may lose electricity. Voters may have only a limited window during regular polling hours to vote, and so these localized crises may prevent them from casting a ballot, for no fault

[5]Article III, section 1(2) of the Wisconsin Constitution was subject to a statewide referendum in the November 2024 election. 2021 J.R. 13, 2023 J.R. 8, vote Nov. 2024. It now reads: "Only a United States citizen age 18 or older who is a resident of an election district in this state is a qualified elector of that district who may vote in an election for national, state, or local office or at a statewide or local referendum." Wis. Const. Art. III, § 1(2) (2025).

of their own. To not count a citizen's vote "for no fault of his own would deprive him of his constitutional right to vote." *Ollmann v. Kowalewski*, 238 Wis. 574, 300 N.W. 183, 185 (1941). Where extraordinary or emergency circumstances cause voters to leave polling places without casting a ballot, the right to vote demands a site-specific opportunity for them to return and exercise their right to vote, which merely equalizes the opportunity for all eligible voters to cast a ballot that will be counted. *See Boehm,* 2026 WI App 44, ¶ 76 (Neubauer, J. concurring). The likely alternative is disenfranchisement.

The majority decision of the court of appeals searched in vain for countervailing harms, situating its opposition to relief under abstract notions of "election integrity," the risk of "illegally cast votes diluting legally cast votes," and the "loss of confidence of the public in the integrity of our elections." *Boehm,* 2026 WI App 44, ¶ 13. However, an election in which eligible voters are deprived of their rights by a bomb threat or administrative breakdown also lacks "integrity." *See, e.g.*, *Republican Nat'l Comm. v. Sec'y of State*, --- N.W.3d ---, 2026 WL 1855827, at *1 (Mich. Ct. App. June 26, 2026) ("Electoral integrity [is] enhanced by . . . ensuring that everyone with a legal right to vote is able to do so." (quoting Nat'l Academy of Pub. Admin, *Protect Electoral Integrity and Enhance Voter Participation* (2021)), *pet. for rev. pending*, No. 170494 (Mich. filed Aug. 7, 2026).

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Ballots cast by eligible voters also cannot trigger vote dilution merely because judicial intervention was needed to address a crisis specific to their precinct, particularly where—as here—there is no allegation that ineligible voters cast ballots during extended polling hours. *See Gray v. Sanders*, 372 U.S. 368, 381 (1963) (contrasting the rights of "all qualified

voters . . . to cast their ballots and have them counted" with "the diluting effect of illegal ballots" (citing *United States v. Saylor*, 322 U.S. 385 (1944), and *Ex parte Siebold*, 100 U.S. 371 (1879)); *see also Saylor*, 322 U.S. at 386 (addressing fraud achieved by stuffing ballot box with ballots not cast by any elector); *Siebold*, 100 U.S. at 378–79 (same). Rather, the most reasonable inference is that these voters would have cast ballots earlier, absent the substantial administrative issues in their precincts. And certainly, long lines that may require voters to leave the polls without successfully casting a ballot and without an opportunity to return undermine confidence in the fairness of our election system. *See, e.g.*, *Mich. State A. Philip Randoph Inst. v. Johnson*, 833 F.3d 656, 663–64 (6th Cir. 2016) ("Longer lines at the polls 'reduce[ ] the confidence voters have that their votes are counted,' impose additional monetary costs on voters that must stand in line, and may even turn some voters away from voting at all." (quoting Charles Stewart III, Caltech/MIT Voting Tech. Proj., *Managing Polling Place Resources* 11 (2015), https://perma.cc/Q9VF-LDW8)).

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Fortunately, the "integrity" of an election does not turn on brittle adherence to core polling hours, as the Legislature recognized when establishing procedures for polling hour extensions ordered by federal courts. *See* Wis. Stat. § 6.96. Otherwise, late openings—which are regrettable but routine—would fundamentally undermine our democracy. *See, e.g.*, Kayla Huynh, *Four Milwaukee Public Schools Polling Places Delayed in Opening on Election Day*, Milw. J. Sentinel (Apr. 7, 2026). Preventing courts from extending polling hours in the name of "election integrity" would only ensure inequities.

The site-specific risk of disenfranchisement when an emergency polling hour extension is denied is significant and should not be

discounted. Consider a voter whose polling location is in a relatively small ward, is adequately staffed, and experiences no technical difficulties. That voter could be in and out of the polling location within five minutes. Compare this to a voter whose polling location serves a dense community with a high share of renters or students. Voters in this polling location are more likely to need to register on election day, and high turnout may strain the staff and technology resources available. *See, e.g.*, Presidential Comm'n on Election Admin., *The American Voting Experience* 36–45 (2014), https://perma.cc/68WE-JKSJ. As the experience in Whitewater demonstrates, upgrading technology, a power outage, or deliberate interference (such as a bomb threat) can transform a moderate wait at this type of poll into an extreme burden. And when that burden becomes extraordinary, it becomes increasingly likely that jobs, children, classes, and other inflexible commitments will prevent voters from remaining in line to cast a vote or even joining a line that appears hours long. The rights of voters in the latter polling location—and only in that location—are threatened, for no fault of their own. They have not, as the court of appeals majority suggested "been afforded the same opportunity to vote as any other elector in the state," *Boehm*, WI App 44, ¶ 69, merely because their polling place operated during core hours. The one-size-fits-all method applied here does not create equal opportunity to vote, particularly in circumstances like this case.

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As this Court emphasized more than 150 years ago, "[s]urely it would be a strange attempt to protect the elective franchise and preserve the purity of elections, to put it in the power of inspectors of election, by careless accident or corrupt design, to disfranchise constitutional voters." *State ex rel. Wood v. Baker*, 38 Wis. 71, 87–88 (1875). The same principle must

apply to those who set polling hours. In "extraordinary or exigent circumstances which do not require relocation, our state courts properly can and have exercised equitable authority to extend voting hours to protect electors' constitutional right to vote." *Boehm,* 2026 WI App 44, ¶ 90, (Neubauer, J. concurring). This Court should affirm that, when this "sacred right" of suffrage is invaded, it is within state courts' equitable authority to protect it.

C. Wisconsin Statutes do not limit state courts' authority to protect the right to vote.

Nothing in the Wisconsin Statutes limits state courts' authority to protect the right to vote by extending polling hours. Certainly, there is no "clear and valid" legislative command stating that a state court cannot protect the right to vote through polling hour extensions. *GMAC Mortg. Corp.*, 215 Wis. 2d at 480. Therefore, state courts have equitable authority to act.

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Statutory interpretation begins with the language of the statute – "the statute's enacted language" – to determine what the statute means. *Serv. Emps. Int'l Union Healthcare Wis. v. Wis. Emp. Rels. Comm'n (SEIU)*, 2025 WI 29, ¶ 7, 416 Wis. 2d 688, 22 N.W.3d 876 (citing *State ex rel. Kalal v. Cir. Ct. for Dane Cnty.*, 2004 WI 58, ¶ 44, 271 Wis. 2d 633, 681 N.W.2d 110 (internal citations omitted)). This includes looking at intrinsic sources, "related statutes and phrases, a statute's place within the statutory structure, its stated or textually manifest purpose, and statutory history." *Id.* ¶ 8. The context of the words used in a statute are important: "statutory language is interpreted in the context in which it is used, not in isolation but as part of a whole; in relation to the language surrounding or closely-related statutes." *Kalal*, 271 Wis. 2d 633, ¶ 46.

Wisconsin Statutes Chapter 6 governs "the electors" and procedures "by which Wisconsinites cast their ballots." *Jefferson v. Dane Cnty.*, 2020 WI 90, ¶ 16, 394 Wis. 2d 602, 951 N.W.2d 556. Section 6.78(1m) provides that polls at every election shall be open from 7:00 AM until 8:00 PM. Section 6.78(4) states that "[a]ny elector waiting to vote, whether within the polling booth or in the line outside the booth at the time the polls officially close, shall be permitted to vote." These set core voting hours, but nothing about the plain text of these provisions expressly prohibits voting at other times. Neither contains words that signal inflexible directives, such as "only" or "exclusively." Other election statutes do contain such limiting, mandatory language. *See, e.g.*, Wis. Stat. § 6.77(1) ("An elector may vote *only* at the polling place for his or her residence designated by the governing body or board of election commissioners.") (emphasis added). Although section 6.78 makes clear that those in line by 8:00 PM can vote, it does not provide a legislative or administrative means to address unforeseen circumstances that might limit access to the polls on Election Day.[6]

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Section 6.96 also does not limit judicial intervention. Rather, section 6.96 provides steps municipal clerks and inspectors must take "[w]henever any elector is allowed to vote at a polling place pursuant to a federal court order after the closing time provided under s. 6.78." Wis. Stat. § 6.96. The statute recognizes that polling hours *may* be extended by a federal court order, and accordingly, creates a procedure to ensure that such ballots cast subject to a court order are marked, consistent with the state's obligation to

[6] Section 7.37 of the Wisconsin Statutes allows election inspectors to relocate polling locations to another location when "it becomes impossible or inconvenient to hold an election at the designated location." But the section does not address issues that would not be resolved by relocating a poll, such as whether polling hours may be extended to compensate for time lost before and during relocation.

identify such ballots under the Help America Vote Act of 2002 (HAVA). *See* 52 U.S.C. § 21082(c). But section 6.96 does not dictate that polling hours *may only* be extended by a federal court; only such language would impose a "clear and valid" prohibition of state court relief to combat disenfranchisement.

Although legislative history need not be consulted if the statutory text is plain and unambiguous—as in this case—it may confirm or verify a plain-meaning interpretation. *SEIU,* 416 Wis. 2d 688, ¶8 (citing *Kalal,* 271 Wis. 2d 633, ¶51). The legislative history of section 6.96 confirms that the Legislature neither created an exception to voting beyond the section 6.78 closing time nor prohibited state courts from extending access to the polls if needed. Section 6.96 was enacted pursuant to 2003 Wisconsin Act 265. Act 265's purpose was to change "procedures and administration of elections" to "implement[] numerous federal mandates imposed upon this state under the federal Help America Vote Act of 2002 and enable receipt of federal aids by this state under the act." Analysis of 2003 Reg. Sess. A.B. 600; *see also* Wis. Legis. Reference Bureau, Assemb. Amend. Memo., 2003 Reg. Sess. A.B. 600 ("Generally, Engrossed Assembly Bill 600 implements provisions of the federal Help America Vote Act of 2022 (HAVA)"). As explained by the Wisconsin Legislative Reference Bureau, "[t]his bill provides that if a federal court orders that a polling place remain open after the official closing hour of 8 p.m., any electors who vote after hours must vote by ballot and have their ballots marked to indicate that they voted after the official closing hour pursuant to a federal court order." Wisconsin Bill Analysis, 2003 Reg. Sess. A.B. 600. Again, section 6.96 mandates a procedure for marking ballots cast after the polls close if ordered by a *federal* court. Had the Legislature intended to foreclose the

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longstanding practice of state courts extending polling hours when crises threaten the right to vote, it would have said so with clarity and an expression of intent in the legislative record. *See Teigen v. Wis. Election Comm'n*, 2022 WI 64, ¶ 63, 403 Wis. 2d 607, 650–51, 976 N.W.2d 519, 541 (recognizing that "the legislature 'does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions'" (quoting *Whitman v. Am. Trucking Ass'n*, 531 U.S. 457, 468 (2001)); *cf. Whitman*, 531 U.S. at 468 ("Congress . . . does not . . . hide elephants in mouseholes.").[7]

Beyond sections 6.78 and 6.96, other statutes referenced by the court of appeals majority also do not set out a "clear and valid" limit on a state court's authority to act when the right to vote is threatened. *See Boehm*, 2026 WI App 44, ¶ 73 n.13. Sections 5.25 and 7.37 provide instructions for clerks and election inspectors governing what to do in an "emergency" that requires relocation of a polling place. However, there is a difference between an "emergency" that would require relocation of a polling place and extraordinary circumstances in which voting may continue at the polling place, albeit following a temporary closure or with an extremely long line. Nothing in the statutes limits what can be done in these latter scenarios.

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[7] The Legislature's focus on the availability of federal court extensions is understandable, given that HAVA implies federal courts have the authority to issue extension orders, a novel venue for such requests. *See* 52 U.S.C. § 21082(c). At the time the DNC petitioned for the polling hour extensions at issue—more than two decades after HAVA's effective date—the Wisconsin Election Commission ("WEC") still offered only circuit court templates for such requests. *See* WEC, *Court Document Templates for Extension of Polling Hours* (captured Aug. 22, 2025), https://web.archive.org/web/20250822190251/https://elections.wi.gov/memo/court-document-templates-extension-polling-hours. To date, "there has never been a federal court order to extend voting in Wisconsin on Election Day." WEC, *Court Document Templates for Extension of Polling Hours* (Oct. 1, 2026), https://perma.cc/RLK6-GNQZ.

Ultimately, Sections 6.78 and 6.96 provide instructions for conducting elections, but these instructions do not limit what a state court may do when the right to vote is threatened. To read these sections otherwise would unreasonably "impair the right to vote," which election laws must not do. *League of Women Voters*, 357 Wis. 2d 360, ¶ 50; *see also State v. Cir. Ct. for Marathon Cnty.*, 178 Wis. 468, 190 N.W. 563, 565 (1922) (The right to vote "may not under our Constitution and laws be destroyed or even unreasonably restricted."). For this reason, state courts have equitable authority to extend polling hours.

II. The circuit court did not abuse its discretion by issuing the injunction to extend polling hours.

Having established that the circuit court had the authority to issue an injunction extending polling hours, this Court should hold that the circuit court did not abuse its discretion in doing so. *Kocken v. Wis. Council 40,* 2007 WI 72, ¶ 24, 301 Wis. 2d 266, 732 N.W.2d 828. "While, as in all discretionary acts of a court, reasonable persons may sometimes differ in the outcome, all that this court need find to sustain a discretionary act is that the trial court examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach." *Loy v. Bunderson*, 107 Wis. 2d 400, 414–15, 320 N.W.2d 175 (1982).

A reviewing court will "generally look for reasons to sustain a circuit court's discretionary determination." *Miller v. Hanover Ins. Co.*, 2010 WI 75, ¶30, 326 Wis. 2d 640, 785 N.W.2d 493. Even if the circuit court "sets forth no reasons or inadequate reasons for its decision, [this Court] will independently review the record to determine whether the circuit court

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properly exercised its discretion and whether the facts provide support for the court's decision." *Id.* (internal citation omitted).

A. The circuit court properly exercised its discretion.

In granting the emergency injunction to extend polling hours, the circuit court properly exercised its discretion under exigent circumstances. As explained above, the circuit court applied the proper legal standard. The court received an uncontroverted petition alleging that administrative failures and unprecedented voter turnout and registration caused delays of up to five hours. (R. 1:9-10.) Particularly during an emergency telephonic hearing, the court could logically infer without further direct evidence that some impacted voters likely could not remain in line for this extreme duration. Therefore, the administrative breakdown threatened to disenfranchise voters—particularly those with disabilities—by forcing them to leave the line without voting or dissuading them from joining the line when they had limited time to vote. (R. 1); see also *Boehm*, 2026 WI App 44, ¶ 96 (Neubauer, J., concurring) (describing impacts as "predictable"). The availability of emergency relief should not turn on the availability of affidavits from voters who could not vote, which would place additional burdens on voters already defeated by a polling place crisis. Injunctive relief looks forward, asking whether there is a "sufficient probability" that rights at issue *will* be violated. *Pure Milk Products Co-op v. Nat'l Farmers Org'n*, 90 Wis. 2d 781, 800, 280 N.W.2d 691 (1979). Extending polling hours permitted eligible voters who had to leave the line or could not join it the ability to return to the poll to vote after 8:00 PM, without the need to wait continuously, miss class or work, or make care-giving arrangements. The circuit court's order protected against the loss of Whitewater residents' ability to vote.

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Further, the circuit court used statutory precautions to protect the integrity of the election, should the order have been timely challenged and overturned. The court, in its order, required that ballots of electors arriving between 8:00 PM and the extended closing of 10:30 PM be marked. (R.3 at 2; App. 4.) Had the RNC timely and successfully challenged the order, the clerk and Board of Canvassers easily could have determined which votes to exclude from the final count.

When faced with extreme administrative delays, the circuit court properly exercised its discretion to prevent further harm to the right to vote. Although the concurring opinion below applied the correct legal framework, it erred in deeming an award of modest relief based on "thin facts" to be an abuse of discretion. *Boehm*, 2026 WI App 44, ¶ 87 (Neubauer, J., concurring). The concurrence stated that there was "no showing that the delays denied the electors' constitutional right to vote," *id.*, but the concurrence later recognized that the threat of such deprivation—or at least an impermissible abridgment—may be inferred from a five-hour line, *id.* ¶ 96. In an emergency telephonic hearing, the evidentiary burden cannot be so high as to render relief unreasonably difficult to obtain. The deference afforded to circuit courts under the abuse-of-discretion standard warrants affirmance here. *See Kocken*, 301 Wis. 2d 266, ¶ 24.

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B. Parties other than clerks can and should petition to extend polling hours when circumstances require it.

Should crises arise that harm or impair the right to vote, the responsibility should not fall solely on municipal clerks to petition for extended polling hours. The court of appeals complained that the petition was not at "the request of a neutral elections clerk or an affected elector

unable to otherwise vote, but at the request of one of the nation's two most highly partisan organizations." *Boehm,* 2026 WI App 44, ¶ 10. However, on Election Day clerks may not have the capacity to bring an emergency injunction to the court or, as here, may be unable to confirm on-the-ground realities. Political parties —though undoubtedly interested in election results — typically have the means and capacity to raise these concerns. It may be in a political party's interest that eligible voters have the ability to cast ballots that will be counted, and that interest may be protected by bringing an action to keep the polls open when circumstances so warrant.

Clerks and other election officials should not be wholly responsible for preparing and filing injunctions while managing their election day responsibilities and responding to election administration issues. When problems arise, election officials are typically focused on solving them at the polls and should not be diverted to litigate delays in court. Impacted voters perforce lack the time to remain in an hours-long line; it is not reasonable to expect them to find a lawyer on Election Day to petition for their rights. Courts should not limit who may seek an injunction or raise negative inferences when a political party or candidate petitions the court.

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III. The RNC did not timely challenge the circuit court's injunction.

By not appealing the circuit court order until after the election was certified, the RNC's challenge was barred by laches. This Court should clarify that a challenge to an order extending polling hours must be brought before the election is certified.

A. A challenge to a court's decision regarding election administration should be prompt.

The RNC delayed its appeal of the circuit court's decision until after the election had been certified. The court of appeals determined that the matter was moot but decided the case anyway. However, this case raises the important question of when a party that opposes an extension of polling hours may challenge a court order that does so.

Here, the RNC took no steps to protect its asserted rights before the election results were finalized. The RNC sought no emergency stay of the circuit court's order and did not seek reconsideration before the circuit court. The RNC produced no evidence to contradict the declaration and representations the DNC offered at the proceeding. The RNC did not seek to exclude any votes cast by voters who arrived at the polls after 8:00 PM, which had been marked pursuant to the court order. Nor did the RNC seek an expedited appeal prior to the certification of the election results. Instead, the RNC chose to remain quiet and wait until after the election had been certified to file an appeal. This delay should have foreclosed the RNC's appeal.

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Even in ordinary circumstances, laches bars relief to "those who sleep on their rights to the detriment of the opposing party." *Wren*, 389 Wis. 2d 516, ¶ 14. In election litigation, "extreme diligence and promptness are required." *Trump v. Biden*, 2020 WI 91, ¶ 10, 394 Wis. 2d 629, 951 N.W.2d 568 (quoting 29 C.J.S. Elections § 459 (2020)). Thus,

> in election contests, a court especially considers the application of laches. Such doctrine is applied because the efficient use of public resources demands that a court not allow persons to gamble on the outcome of an election contest and then challenge it when dissatisfied with the results, especially when the same challenge could have been made before the public is put through the time and expense of the entire election process.

> Thus if a party seeking extraordinary relief in an election-related matter fails to exercise the requisite diligence, laches will bar the action.

Id. The RNC's appeal lacked the necessary "extreme diligence and promptness."

The court of appeals erred in rejecting the DNC's argument that the RNC's belated appeal was barred by laches. As this Court made clear in *Trump v. Biden*, "[p]arties bringing election-related claims have a special duty to bring their claims in a timely manner." *Id.* ¶ 30. Election law cases carry with them an "expectation of reasonable diligence." *Id.* (citing *Wren*, 389 Wis. 2d 516, ¶ 20). The time to challenge a ruling is "not after all the ballots have been cast and the votes tallied." *Id.* ¶ 22. When a party delays bringing a challenge in an election law case, the doctrine of laches is properly implicated.

The court of appeals merely acknowledged that the RNC "initiated this appeal within the lawful time limits," *Boehm,* 2026 WI App 44, ¶ 37, without recognizing broader equitable principles at play. In an election context, "the need for finality in the election process requires that the time and method of challenging election results be limited and at some point come to an end." *State ex rel. Shroble v. Prusener*, 185 Wis. 2d 102, 115, 517 N.W.2d 169 (1994). The standard, statutory deadlines for an appeal are incongruous with the electoral canvass and certification process. *See Trump*, 394 Wis. 2d 629, ¶ 13 (reasoning that "unreasonable delay" depends upon "the facts of a particular case" (internal citation omitted)). It is simply not "reasonable" to bring a challenge to an order to extend polling hours after the election results have been certified.

Indeed, laches "can and regularly does apply" to actions brought within statutory deadlines, such as the statutes of limitation, but are

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nonetheless unreasonable. *Wis. Small Bus. United, Inc. v. Brennan*, 2020 WI 69, ¶ 16, 393 Wis. 2d 308, 946 N.W.2d 101 (citing *Wren*, 389 Wis. 2d 516, ¶ 13 n.8). In the context of laches and election disputes, other state supreme courts have noted that "merely complying with the time limits . . . for filing a notice of appeal may be insufficient if the appellant does not also promptly prosecute the appeal." *Lubin v. Thomas*, 144 P.3d 510, 512 (Ariz. 2006) (en banc); *see also, e.g.*, *Md. State Bd. of Elections v. Ambridge*, 330 A.3d 700, 729 (Md. 2025) (applying laches to ballot proposition challenge based on "prejudice to the electoral process"); *Liddy v. Lamone*, 919 A.2d 1276, 1289 (Md. 2007) (challenge to attorney general candidate's eligibility was barred by laches despite falling within statutory timeframe); *State ex rel. Hills Cmtys., Inc. v. Clermont Cnty. Bd. of Elections*, 746 N.E.2d 1115, 1117–18 (Ohio 2001) (dismissing appeal noticed twenty-seven days after an election for failure to "act with the diligence and promptness required in [an] election case"); *Ellis v. Swenson*, 16 P.3d 1233, 1239 (Utah 2000) (recognizing "with regard to election controversies" that "laches may bar an appeal, despite the fact that the appeal was timely filed for jurisdictional purposes"); *Harris v. Purcell*, 973 P.2d 1166, 1170 (Ariz. 1998) (en banc) (applying laches to bar election dispute where a party "failed to exercise diligence in . . . advancing his case").

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In order for a challenge to an election-related decision to have an actual impact on the underlying controversy, and to avoid disturbing the finality of certified election results, challenges to election-related court orders must be prompt. This Court should so rule.

B. The Court should hold that challenges to injunctions extending hours must be brought prior to certification.

Although all election-related challenges should be prompt, challenges to court orders extending polling hours carry with them an additional layer of urgency and should be brought well before the election is certified. In Wisconsin, county boards must certify elections to the Wisconsin Elections Commission "no later than 14 days after the general election except a presidential election," in which case the deadline is "no later than 7 days after a presidential election." Wis. Stat. § 7.60(4), (5)(a). A successful challenge prior to certification would mean that those votes cast by electors who entered the line after polling hours were extended could be removed from the total count, as the ballots had been marked.

Mandating challenges to extension orders to occur before certification would also have practical effects on election administration. Most notably, this timing would allow candidates, whose results may be impacted by such a challenge, to file recount petitions. Wis. Stat. § 9.01(1)(a) ("The petitioner shall file a verified petition . . . not later than 5 p.m. on the 3rd business day following the last meeting day of the municipal or county board of canvassers . . . or, if more than one board of canvassers makes the determination, not later than 5 p.m. on the 3rd business day following the last meeting day of the last board of canvassers which makes a determination following canvassing of all valid provisional ballots."). In order to protect the integrity of elections and ensure the finality of certified results, the Court should hold that a challenge to a court order extending polling hours must be brought prior to certification or else be barred by laches.

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CONCLUSION

For the foregoing reasons, this Court should reverse the court of appeal's decision, affirm the circuit court's decision, and hold that state courts have the authority to extend polling hours to avoid infringing on Wisconsinites' right to vote. This Court should further hold that the doctrine laches bars challenges to polling hour extensions after election certification.

Respectfully submitted this 28th day of October, 2026.

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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. The length of the brief is 7,430 words.

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