

FILED
05-12-2026
CIRCUIT COURT
DANE COUNTY, WI
2026CV001514
Honorable David Conway
Branch 17

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH __

DANE COUNTY

LEAGUE OF WOMEN VOTERS OF WISCONSIN,
612 W. Main St., Ste. 200
Madison, WI 53703

Plaintiff,

v.

Case No. _____
Case Code: 30701
Declaratory Judgment

WISCONSIN ELECTIONS COMMISSION; ANN S. JACOBS,
MARK L. THOMSEN, CARRIE RIEPL, DON M. MILLIS,
ROBERT F. SPINDELL, JR., MARGE BOSTELMANN, in
their official capacities as Commissioners; and MEAGAN
WOLFE, in her official capacity as Administrator of the
Wisconsin Elections Commission,
201 W. Washington Ave., Second Floor
Madison, WI 53703

Defendants.

SUMMONS

THE STATE OF WISCONSIN,

To each person named above as a Defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

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, and to Fair Elections Center, 1629 K St. NW, Suite 300, Washington, DC 20006. 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: May 12, 2026

Respectfully submitted,



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* Motion for admission *pro hac vice* forthcoming

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Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff League of Women Voters of Wisconsin (“LWVWI” or “the League”) seeks declaratory and injunctive relief and alleges as follows:

NATURE OF ACTION

1. Mail-in absentee voting is a pillar of Wisconsin’s election infrastructure. In every election, significant percentages of Wisconsin voters exercise their right to vote by mail.¹ Because

¹ In the 2025 spring election, more than 335,000 Wisconsin voters cast their vote by mail-in absentee ballot, or approximately 14 percent of the more than 2.3 million total ballots cast. Wis. Elections Comm’n, *2025 Spring Election Statistics Report* (Oct. 2, 2025), <https://elections.wi.gov/resources/statistics/2025-spring-election-voting-and-registration-statistics-report>. In the 2024 general election, upwards of 600,000 Wisconsin voters cast their vote

no voter should ever lose their right to vote due to a technical error that can be easily fixed, many states' laws require local election officials to offer mail-in voters an opportunity to correct or "cure" such fatal defects like errors in filling out the certificate envelope. But not so in Wisconsin.²

2. Rather than requiring all municipal clerks to notify mail-in voters of a technical error on their ballot certificate and provide those voters with an opportunity to cure their ballot prior to rejection, Wis. Stat. § 6.87(9) grants municipal clerks complete and sole discretion to decide whether to mail back to voters an absentee ballot that bears an improperly completed certificate (or lacks a certificate altogether) or otherwise give voters the opportunity to correct the certificate's defect. Under this discretionary system, offering an opportunity to cure is entirely optional. Some Wisconsin voters are provided timely, adequate notice and the opportunity to correct a defective or missing certificate—so that their vote is counted—while other similarly situated Wisconsin voters are not. Even municipal clerks who currently provide their mail-in

by mail-in absentee ballot, representing nearly 18 percent of the more than 3.4 million total ballots cast. Wis. Elections Comm'n, *2024 General Election Statistics Report* (June 2, 2025), <https://elections.wi.gov/resources/statistics/2024-general-election-voting-and-registration-statistics-report>. In the 2023 spring election, more than 283,000 Wisconsin voters cast their vote by mail-in absentee ballot, representing approximately 15 percent of the more than 1.8 million total ballots cast. Wis. Elections Comm'n, *2023 Spring Election Statistics Report* (Oct. 2, 2023), <https://elections.wi.gov/resources/statistics/2023-spring-election-voting-and-registration-statistics-report>. In the 2022 general election, over 447,000 Wisconsin voters cast their vote by mail-in absentee ballot, representing nearly 17 percent of the more than 2.6 million total ballots cast. Wis. Elections Comm'n, *2022 General Election Statistics Report* (June 1, 2023), <https://elections.wi.gov/resources/statistics/2022-general-election-voting-and-registration-statistics-report>.

² Wisconsin is in the minority of states without a mandatory notice and cure process for defective absentee ballots. Thirty-three states and the District of Columbia require election officials to notify voters when there is a missing signature or a signature discrepancy—and require that voters must be given an opportunity to correct it. See Nat'l Conf. of State Legislatures, *Table 15: States With Signature Cure Processes* (July 17, 2025), <https://www.ncsl.org/elections-and-campaigns/table-15-states-with-signature-cure-processes>.

absentee voters with notice and an opportunity to cure could suddenly reverse course during a future election and exercise their discretion under Wis. Stat. § 6.87(9) to deny curing opportunities.

3. “Without question, the right to vote is a fundamental right[.]” *Milwaukee Branch of NAACP v. Walker*, 2014 WI 98, ¶ 23, 357 Wis. 2d 469, 851 N.W.2d 262 (citing *State ex rel. Frederick v. Zimmerman*, 254 Wis. 600, 37 N.W.2d 473, 480 (1949)). Indeed, the Wisconsin Constitution explicitly confers and guarantees the right to vote to all adult citizens of this State. Wis. Const. art. III, § 1; *State ex rel. McGrael v. Phelps*, 144 Wis. 1, 128 N.W. 1041, 1046 (1910) (stating right to vote “is guaranteed both by the Bill of Rights, and the exclusive instrument of voting power contained in section 1, art. 3, of the [Wisconsin] Constitution . . .”).

4. Just as the Wisconsin Constitution guarantees the fundamental right to vote, it also guarantees the right to due process:

All people are born equally free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness; to secure these rights, governments are instituted, deriving their just powers from the consent of the governed.

Wis. Const., art. I, § 1. “[A]rt. I, § 1 of the Wisconsin Constitution prohibit[s] government actions that deprive any person of life, liberty, or property without due process of law.” *Stone v. Wis. Elections Comm’n*, 2025 WI App 68, ¶ 40, 418 Wis. 2d 611, 28 N.W.3d 211 (quoting *State v. Ozuna*, 2017 WI 64, ¶ 22, 376 Wis. 2d 1, 898 N.W.2d 20).

5. It is axiomatic that the fundamental right to vote cannot be denied without due process. “Due process is flexible and calls for such procedural protections as the particular situation demands.” *Stone*, 2025 WI App 68, ¶ 40 (quoting *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976)). The fundamental requisite of procedural due process is notice and the opportunity to be heard at a meaningful time and in a meaningful matter. *Id.* (citing *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970)); *see also id.* (“There can be no doubt that at a minimum the due process clause

requires that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.”) (citation modified) (quoting *State v. Lagrone*, 2016 WI 26, ¶ 48, 368 Wis. 2d 1, 878 N.W.2d 636).

6. Wis. Stat. § 6.87(9) runs afoul of Wisconsin’s Due Process Clause because it fails to *require* both notice and an opportunity to be heard before depriving U.S. citizens of their fundamental right to vote. Rather, Section 6.87(9) purports to give clerks the discretion to act unconstitutionally—to deny a voter adequate notice and/or an adequate opportunity to cure a mail-in absentee ballot. The statute provides only that municipal clerks who receive absentee ballots with an improperly completed certificate or that lack a certificate “*may*” return those defective absentee ballots to the voter to correct the defect “*whenever time permits* the elector to correct the defect and return the ballot within the period authorized under sub. (6).” Wis. Stat. § 6.87(9) (emphasis added).

7. Under current Wisconsin law, municipal clerks may retain the ballot, not inform the voter of the fatal defect, and reject it under Wis. Stat. § 6.88(3)(b). Likewise, clerks may mail back a ballot too close to Election Day, thereby depriving the voter of any opportunity to correct the defective certificate by mail or in person. Under this wholly arbitrary and discretionary system, some voters will receive notice and an opportunity to correct their absentee ballot certificate, while others will not. Wis. Stat. § 6.87(9).

8. Accordingly, Wis. Stat. § 6.87(9) violates the Due Process Clause of the Wisconsin Constitution.

JURISDICTION AND VENUE

9. This Court has jurisdiction over the subject matter of this dispute pursuant to Article VII, Section 8 of the Wisconsin Constitution and Wis. Stat. § 753.03, which provide for subject matter jurisdiction over all civil matters within this State.

10. This Court has jurisdiction to grant declaratory relief pursuant to Wis. Stat. § 806.04.

11. This Court has personal jurisdiction over Defendant Wisconsin Elections Commission (“WEC”); Defendants Commissioners Ann S. Jacobs, Mark L. Thomsen, Carrie Riepl, Don M. Millis, Robert F. Spindell, Jr., and Marge Bostelmann, in their official capacities as members of the Wisconsin Elections Commission; and Defendant Meagan Wolfe, in her official capacity as Administrator of the Wisconsin Elections Commission (collectively, “Defendants”). Defendant WEC is a state agency organized under the laws of the State of Wisconsin. Defendant WEC, its Commissioners, and the Administrator perform their work and have their principal place of business in Madison, Wisconsin.

12. Venue is appropriate in Dane County, under Wis. Stat. § 801.50, because Defendants are located in and conduct their official business in Dane County.

PARTIES

13. Plaintiff LWVWI was founded in 1920 by the suffragists who fought to win the right to vote for women through the Nineteenth Amendment. LWVWI is a nonpartisan, nonprofit, non-stock corporation organized under the laws of the State of Wisconsin with its principal office located at 612 West Main St., Suite 200, in the City of Madison, Dane County, Wisconsin. LWVWI has grassroots support from 21 local Leagues³ and approximately 2,600 members statewide.

14. LWVWI is an affiliate of League of Women Voters of the United States, which has 800 state and local Leagues in all 50 states, the District of Columbia, and the Virgin Islands. The

³ LWVWI has local Leagues in Appleton-Fox Cities, Ashland/Bayfield County, City of Beloit, Dane County, Door County, Douglas County, Greater Chippewa Valley, Greater Green Bay, City of Janesville, the La Crosse Area, Marathon County, Manitowoc County, Milwaukee County, Northwoods, Ozaukee-Washington Counties, the Ripon Area, Sheboygan County, St. Croix Valley, the Whitewater Area, Winnebago County, and the Wisconsin Rapids Area.

League works to expand informed, active participation in state and local government, giving a voice to all Wisconsinites.

15. LWVWI is dedicated to encouraging its members and the people of Wisconsin to exercise their fundamental right to vote. LWVWI's mission is to empower voters and defend democracy. LWVWI does this by promoting political responsibility through informed and active participation in government and acting on selected governmental issues. The League seeks to maximize eligible voter participation through its voter registration, education, and outreach efforts and to encourage civic engagement through registration and voting.

16. Just this year, LWVWI has engaged in a wide range of activities to educate and assist mail-in absentee voters. Any threat to the ability of Wisconsinites to cast a ballot is a threat to LWVWI's mission and work. The lack of a uniform, statewide mandate requiring municipal clerks to provide absentee voters with notice and the opportunity to correct improperly completed or omitted certificates deprives voters of their right to due process before their ballot is rejected. Such arbitrary and inconsistent curing procedures undermine absentee voters' understanding of the requirements for voting by mail and confidence in the absentee voting system. Likewise, arbitrary and inconsistent curing procedures risk harming the League's reputation as a trusted resource and community partner, because voters who rely on and cast their absentee ballots in accordance with the League's information and guidance may blame the League for their disenfranchisement. Addressing these issues requires the League to undertake and invest in a significant public education campaign (*i.e.*, via in-person and virtual programming, online via the League's website and Vote411, and via social media) to teach voters about every step in the mail-in absentee voting

process—namely, by preparing and publishing step-by-step guides on how to request an absentee ballot, cast an absentee ballot, and check the status of an absentee ballot.⁴

17. The League's work is especially necessary to mitigate against the risk that a voter's absentee ballot could be rejected without any notice and/or opportunity to cure. For example, in 2025, the League created an Ambassador Toolkit for Election Education Resources that included information on proof of residence, voter registration, absentee and early voting, and Election Day voting.⁵ In 2026, the League updated its Ambassador Toolkit to, among other things, recommend voters return their absentee ballot in person if within two weeks of Election Day.⁶

18. In every election, hundreds of League members serve as poll workers or volunteer election observers. To fulfill these duties, hundreds of League members vote by absentee ballot in every election. Specifically, in the recent April 7, 2026 election, at least 163 League members voted by mail-in absentee ballot. These League members' mail-in absentee ballots are jeopardized by the lack of mandatory notice and curing opportunities across the state.

⁴ See, e.g., League of Women Voters of Wis., *Absentee and Early Voting*, <https://my.lwv.org/wisconsin/voter-information/absentee-and-early-voting> (last visited May 11, 2026); see also, e.g., *Voting in My State – Wisconsin*, Vote411, <https://www.vote411.org/wisconsin> (last visited May 11, 2026); see also e.g., League of Women Voters of Wis., *Ballot Bulletin: Absentee Voting/Vote by Mail*, <https://my.lwv.org/wisconsin/article/ballot-bulletin-absentee-voting-vote-by-mail> (last visited May 11, 2026); League of Women Voters of Wis., *8 Things Every Voter Should Know About Absentee and Early Voting in Wisconsin*, <https://my.lwv.org/wisconsin/article/8-things-every-voter-should-know-about-absentee-and-early-voting-wisconsin> (last visited May 11, 2026).

⁵ League of Women Voters of Wis., *2025 Voter Education Ambassador Toolkit, Election Education Resources*, <https://docs.google.com/document/d/1jDIXvA8G09IYL99WkAeGL2zrryH1b6UgxpbnNIEUIvw/edit?tab=t.0> (last visited May 11, 2026).

⁶ League of Women Voters of Wis., *2026 Voter Education Ambassador Toolkit, Election Education Resources*, <https://docs.google.com/document/d/1cj5ZYGMOYBdNTclwnJ15UaYYwqzI7dL4LUhZv3U55AY/edit?tab=t.0> (last visited May 11, 2026).

19. Defendant WEC is an administrative body created under the laws of Wisconsin that administers and enforces Wisconsin election law. Defendant WEC is comprised of six appointed members.

20. Defendant WEC's statutory responsibility is to administer and enforce Wisconsin's election laws. *See Wis. Stat. §§ 5.05(1), 5.05(2m), 5.06(1)*. Because Defendant WEC has general authority to administer elections and enforce state and federal election laws, it may be enjoined to remedy violations of law committed by municipal clerks who administer elections at the local level. *See Wis. Stat. § 5.05(1)* (“The elections commission shall have the responsibility for the administration of chs. 5 to 10 and 12 and other laws relating to elections and election campaigns . . .”). WEC is also responsible for issuing “updated guidance or formal advisory opinions” to municipal clerks after Wisconsin courts issue binding decisions against it. *Wis. Stat. § 5.05(5t)*.

21. Defendant WEC also provides instruction on many of the statewide procedures for election administration, including how absentee ballot certificate envelopes must be handled. Defendant WEC prepares and publishes election manuals, publishes the election laws for distribution to municipal clerks, trains election officials, and conducts voter education. *Wis. Stat. §§ 7.08(3), 7.08(4), 5.05(7), 5.05(12)*.

22. Defendants Commissioners Ann S. Jacobs, Mark L. Thomsen, Carrie Riepl, Don M. Millis, Robert F. Spindell, Jr., and Marge Bostelmann are sued in their official capacities as the members of the Wisconsin Elections Commission. Defendant Commissioner Jacobs is currently serving as the Chair of Defendant WEC.

23. Defendant Meagan Wolfe is sued in her official capacity as the Administrator of the Wisconsin Elections Commission.

24. Although municipal clerks make the initial decision about whether to reject an absentee ballot, Defendants are proper parties because they have the power to review those decisions and investigate violations of election laws. Wis. Stat. § 5.06(1), 5.06(4). Defendant Commissioner and Chair Jacobs is also charged with certifying the final results of statewide elections (among others)—tallies which omit ballots that have been rejected in violation of the Due Process Clause of the Wisconsin Constitution. *See* Wis. Stat. § 7.70(3)(d).

FACTUAL ALLEGATIONS

A. Mail-in absentee voting overview

25. Registered voters in Wisconsin apply for and obtain absentee ballots in a variety of ways: by mail-in application, electronic application, in person at the municipal clerk's office under Wis. Stat. § 6.86(1)(a), or at an alternate site under Wis. Stat. § 6.855; by signing a statement and filing a request to receive absentee ballots under Wis. Stat. § 6.86(2), Wis. Stat. § 6.86(2m)(a) (indefinitely confined voters) or Wis. Stat. §§ 6.22(4), 6.24(4), or 6.25(1)(c) (military and overseas voters); by agent as provided in Wis. Stat. § 6.86(3) (hospitalized voters); by delivering an application to a special voting deputy under Wis. Stat. § 6.875(6) (voters in retirement homes and residential care facilities); or by email or fax as provided in Wis. Stat. § 6.86(1)(ac).

26. Voters may cast and return absentee ballots in a variety of ways. Many absentee voters mail their absentee ballots to the municipal clerk's office or drop them off in person. Wis. Stat. § 6.87; Wis. Elections Comm'n, *Form EL-128, Uniform Instructions for Wisconsin Absentee Voters* (rev. May 14, 2024).⁷ In-person absentee voters vote prior to Election Day at the municipal clerk's office or designated alternate sites, though their ballots are not processed and counted until Election Day. Wis. Stat. §§ 6.855, 6.87, 6.88. Ballots returned by mail must arrive at the municipal

⁷ Form EL-128 is available at: https://elections.wi.gov/sites/default/files/documents/EL-128%20Uniform%20Instructions%20Standard_1.pdf.

clerk's office by no later than 8:00 p.m. on Election Day. Wis. Stat. § 6.87(6). A voter can also return their absentee ballot directly to the municipal clerk's office by Election Day; the clerk must then bring it to the voter's polling place by 8:00 p.m. *Id.*

27. For an absentee ballot to be counted, the voter must return their ballot in a completed certificate envelope. Wis. Stat. § 6.88(3)(b); *see also* Wis. Elections Comm'n, *Election Day Manual for Wisconsin Election Officials* (Aug. 2024) ("EDM")⁸ at 105 ("If a clerk, or election inspector, finds that a certificate is insufficient, they shall not count the ballot. Wis. Stat. § 6.88(3)(b).") and 155 ("The [absentee] ballot must be received by Election Day with the certification properly completed in order to be counted."); *see also* Wis. Elections Comm'n, *Election Administration Manual for Wisconsin Municipal Clerks* (Aug. 2024) ("EAM")⁹ at 99–100 (same) and 240 (same).

28. The Official Absentee Ballot Certificate and Application on the ballot envelope contains fields for the voter or the clerk to provide information on the voter. Pursuant to Wis. Stat. § 6.87(2), 6.87(4)(b)1., 6.87(6d), the voter's witness is required to complete and sign the witness certification, which requires the witness to provide their printed name and their address:

⁸ The EDM is available at: https://elections.wi.gov/sites/default/files/documents/ED%20Manual-August%202024_0.pdf.

⁹ The EAM is available at: <https://elections.wi.gov/sites/default/files/documents/EA%20Manual-August%202024.pdf>.

Official Absentee Ballot Certificate & Application

CLERK OR DEPUTY >> Initial Here >> In-person absentee voter showed valid POI _____ Voter exempt from or met POI requirement _____

STEP 1 **CLERK OR VOTER must complete this part**

Voter Information

City Name: Election Date (mm/dd/yyyy) _____
 Village Name:
 Town Name:

Name (Last, First, Middle) _____

Street Address _____

County _____ City _____

State _____ Zip _____ Ward _____ Ald. Dist _____

STEP 2 **VOTER must complete this part**

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

- I am a resident of the ward or of the aldermanic district of the municipality in the county of the state of Wisconsin indicated hereon **OR** I am entitled to vote in the ward or aldermanic district at the election indicated hereon
- I am not voting at any other location in this election
- I am unable or unwilling to appear at the polling place in the ward on Election Day, or I have changed my residence within the state from one ward to another less than 28 days before the election
- I displayed the ballot unmarked to the witness and in the presence of no other person marked the ballot and enclosed and sealed it in this envelope in a manner that no one but myself and an assistant under s. 6.87 (5), if I requested assistance, could know how I voted
- I requested this ballot and this is the original or a copy of that request

X

Voter Signature _____


Certification of Assistant (If applicable)
 I certify that the voter is unable to sign their name due to a disability and that I signed the voter's name at the direction and request of the voter

Assistant Signature

STEP 3 **WITNESS must complete this part**

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

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


WITNESS REQUIRED

X

Witness Signature _____

Witness Printed Name _____

Witness Address (Number, Street Name, City) _____

See Wis. Elections Comm'n, *Form EL-122, Official Absentee Ballot Certificate & Application* (rev. Aug. 7, 2023);¹⁰ *see also* EDM at 90–92, 188–89; EAM at 72–74.

B. Under Wis. Stat. § 6.87(9), municipal clerks are not required to provide voters notice and an opportunity to cure defects in their mail-in absentee ballot certificate.

29. When a municipal clerk receives an absentee ballot that bears an improperly completed certificate or lacks a certificate altogether, the municipal clerk has three options: (a) mail the absentee ballot back to the voter under Wis. Stat. § 6.87(9); (b) attempt to contact the voter to arrange for curing the defective or omitted ballot certificate; or (c) reject the absentee ballot under Wis. Stat. § 6.88(3)(b). EDM at 101–02; *see also* EAM at 94.

30. The optional absentee ballot certificate curing procedure set forth in Wis. Stat. § 6.87(9) is as follows:

If a municipal clerk receives an absentee ballot with an improperly completed certificate or with no certificate, the clerk *may* return the ballot to the elector, inside the sealed envelope when an envelope is received, together with a new envelope if necessary, *whenever time permits* the elector to correct the defect and return the ballot within the period authorized under sub. (6).

Wis. Stat. § 6.87(9) (emphasis added).

31. Defendant WEC advises municipal clerks to “make every effort to review absentee certificate envelopes as they receive voted absentee ballots from voters so that they can choose to exercise their authority under § 6.87(9) or § 6.88(3) ahead of Election Day” and to document any certificate errors in the Absentee Ballot Log (EL-124). EDM at 102; *see also* EAM at 94.

32. Upon information and belief, some clerks will contact the elector regarding purported defects in the absentee ballot certificate prior to or in conjunction with mailing the absentee ballot back to the voter, and some subset of those clerks allow the voter to cure said

¹⁰ Form EL-122 is available at: https://elections.wi.gov/sites/default/files/documents/EL-122%20Standard%20Absentee%20Ballot%20Certificate%20%28rev.%202023-08%29_2.pdf.

defects so that the ballot can be counted. Other clerks will decline or fail to contact the voter to arrange for curing the defective ballot certificate, and the ballot will ultimately be rejected and not counted.

33. Section 6.87(9) “does not limit how a municipal clerk should ‘return the ballot’ to the elector.” EDM at 102; *see also* EAM at 94–95 (same).

34. Upon information and belief, some municipal clerks will mail back absentee ballots to voters under Wis. Stat. § 6.87(9) as late as the Thursday before Election Day—effectively denying the voter any opportunity to cure the defective certificate because there is insufficient time for the voter to receive the returned ballot via regular mail, correct the purportedly defective certificate, and then return the ballot with the corrected certificate via regular mail to the municipal clerk’s office by 8:00 p.m. on Election Day. Due to mail delays, WEC and the United States Postal Service (“USPS”) urge voters to mail their absentee ballots back at least seven days before Election Day.¹¹

35. Even when voters return their absentee ballot on time, USPS delays cause some number of absentee ballots to arrive after 8:00 p.m. on Election Day, resulting in their rejection. For example, in the April 7, 2026 election, USPS failed to deliver 269 absentee ballots to election officials in Milwaukee by 8:00 p.m. on Election Day. Although 252 of the 269 ballots had postmarks on or before April 6, 2026, USPS did not deliver said ballots to election officials until Wednesday, April 8, 2026. As a result, election officials rejected all 269 late-arriving ballots.¹²

¹¹ *See, e.g., Vote Absentee: Request an Absentee Ballot*, MyVote Wis. Step 4, <https://myvote.wi.gov/en-us/Vote-Absentee-Guide> (last visited May 11, 2026) (“USPS recommends mailing your ballot back at least 7 days before Election Day.”).

¹² Molly Beck, *Milwaukee election chief cites mail delays for uncounted ballots*, Milwaukee J. Sentinel (Apr. 10, 2026), <https://www.jsonline.com/story/news/politics/2026/04/09/milwaukee-election-chief-cites-mail-delays-for-uncounted-ballots/89532650007/>; *see also* Sam Kraemer and Nick Beversdorf, *Milwaukee Election Commission: 269 absentee ballots received Wednesday*,

36. Upon information and belief, some municipal clerks impose a cutoff on the Friday before Election Day. The clerks send any absentee ballots with a defective certificate received after that cutoff to the voter's polling place on Election Day but do not directly contact the voter. Although the voter could theoretically cure the defective certificate on Election Day at their polling place, on information and belief, many voters with defective certificates on their absentee ballots do not receive prior notice of the defect or instructions on how to cure said defect, rendering this opportunity to cure inadequate. A notation on myvote.wi.gov that there is a problem with a voter's ballot does not constitute direct and adequate notice to the voter of either the defect or the mechanics of curing.

37. If the municipal clerk mails back an absentee ballot to the voter under Wis. Stat. § 6.87(9), the voter must return the corrected ballot so it is delivered to the polling place no later than 8:00 p.m. on Election Day. EDM at 103; *see also* EAM at 95.

38. If the voter needs to correct the original certificate envelope, the original witness need not be present to witness the voter correcting the defect. EDM at 103; *see also* EAM at 95.

39. However, if the witness signature or witness address is improperly completed or missing, the voter and their original witness must go together to the clerk's office or polling place for the witness to correct the defect, unless the voter informs the clerk that their witness has permission to go to the clerk's office or polling place to correct the defect in the witness certification. EDM at 103; *see also* EAM at 95–96.

40. Providing the voter with a new certificate envelope may be necessary if the voter and witness are unable to correct the defect on the existing envelope. Additionally, if the voter or

Fox6 Milwaukee (Apr. 9, 2026), <https://www.fox6now.com/news/milwaukee-election-commission-more-absentee-ballots-received-wednesday>.

witness seeks to correct the certificate envelope in the clerk's office, the clerk may issue a new certificate to the voter for this purpose. An election inspector at the polls may also issue a new certificate envelope, if necessary. Wis. Stat. § 6.87(9); *see also* EDM at 104; EAM at 96. If the municipal clerk has provided the voter with a new certificate envelope, the voter must request that their original witness once again complete the witness certification on the absentee ballot certificate. EDM at 104; *see also* EAM at 96.

41. If the municipal clerk determines that the certificate is defective, the clerk shall not count the absentee ballot and shall instead label it "To Be Rejected" and keep it separate from the rest of the absentee ballots when delivering ballots to the polling place. These ballots should be kept separate to allow the voter to correct any defects prior to 8:00 p.m. on Election Day. EDM at 105; EAM at 99–100; *see also* Wis. Stat. § 6.88(3)(b).

42. After 8:00 p.m. on Election Day, if a ballot is rejected, an inspector must write "rejected, insufficient certificate" on the back of the ballot. The rejected ballot should then be reinserted into the certificate envelope in which it was delivered, and the ballot enclosed in its envelope should be securely sealed in an envelope marked for rejected absentee ballots. *See* Wis. Stat. § 6.88(3)(b); *see also* EDM at 105; EAM at 100.

43. A voter may also request that the municipal clerk cancel or "spoil" a mail-in absentee ballot that has already been returned.

44. Because Wis. Stat. § 6.87(9) does not require municipal clerks to provide voters with notice and an opportunity to cure defective or missing absentee ballot certificates, the statute gives municipal clerks license to deny due process to those voters. Upon information and belief, some Wisconsin mail-in absentee voters are unconstitutionally deprived of the opportunity to correct certificate defects prior to their ballot's rejection.

45. Wis. Stat. § 6.87(9) vests municipal clerks and their staff with complete discretion to return a ballot to the voter or not, and they need not notify the voter of the fatal defect or omission that will cause the ballot's rejection. In short, a municipal clerk's discretion, as well as their gut decision as to whether "time permits" another roundtrip via regular mail for the ballot—and *not* the operation of any uniform legal requirement—dictate whether the voter will receive *any* notice of defects or omissions in the absentee ballot certificate. Accordingly, municipal clerks may arbitrarily determine whether and which defective ballots cast by mail-in absentee voters will ultimately be counted.

46. If the clerk *chooses* to mail the absentee ballot back to the voter, WEC's Election Day Manual recommends that the clerk "*should* contact a voter directly (phone, email, or otherwise) to notify the voter that there is a defect with their certificate envelope so that the voter may take steps to correct the defect," but Wisconsin law merely authorizes and does not require any such notification. EDM at 102 (emphasis added); *see also* EAM at 94–95 (same). The Election Day Manual and the Election Administrative Manual also advise clerks that whenever time permits, a clerk *may* choose to return the ballot to the voter (a) via USPS; or (b) in the clerk's office or at the polling place on Election Day, thereby allowing the voter to correct the certificate in person. EDM at 102; EAM at 94–95; *see also* Wis. Stat. § 6.87(9). "If necessary, a clerk may include a new certificate envelope to the voter when returning a ballot for a voter to correct pursuant to § 6.87(9)." EDM at 102–03; EAM at 94–95. The repeated use of "may" instead of "shall" betrays that these statements are mere suggestions, not legal requirements.

47. Some municipal clerks do not uniformly provide adequate notice and an adequate opportunity to cure defective absentee ballot certificates, even within their own municipalities. Without objective and uniform requirements, municipal clerks adopt a wide variety of practices

and procedures under Wis. Stat. § 6.87(9) that fail to provide all voters with adequate notice and/or adequate opportunities to cure defective absentee ballot certificates.

48. For example, upon information and belief, Mequon's current municipal clerk has adopted processes and procedures pursuant to Wis. Stat. § 6.87(9) that have resulted in the disenfranchisement of mail-in absentee voters. If the Mequon clerk or her deputies decide that the absentee ballot certificate is defective, the clerk will return the absentee ballot to the voter via regular mail if the ballot was received by the clerk's office up to and including the Thursday before Election Day. Returning an absentee ballot to a voter within one week of Election Day amounts to a *de facto* rejection of the ballot because there is insufficient time for the voter to receive the returned ballot in the mail, let alone correct the purported defect and return the absentee ballot with the corrected certificate by 8:00 p.m. on Election Day.¹³

49. If, however, the Mequon clerk receives an absentee ballot with a purportedly defective certificate on or after the Friday before Election Day, upon information and belief, the clerk will not return the ballot to the voter. Rather, the clerk will flag the ballot for rejection in the WisVote system and send the ballot to the voter's polling place. If the voter fails to cure the defect by 8:00 p.m. on Election Day at the polling place, the ballot will be rejected.

50. As to notice, in response to records requests, the Mequon clerk's office produced email correspondence with voters notifying them of defects in their absentee ballot certificates. In each instance, the clerk had notified voters whose ballots were received on or before the Thursday before Election Day. However, in response to the same records requests, the Mequon clerk did not

¹³ *Supra* notes 11–12; see also Tamia Fowlkes, *Sen. Tammy Baldwin presses USPS over Wisconsin mail delays*, Milwaukee J. Sentinel (Apr. 7, 2026), <https://www.jsonline.com/story/news/local/2026/04/07/tammy-baldwin-delivers-a-firm-condemnation-of-usps-mailing-delays-in-letter-to-postmaster-general/89490650007/>.

produce any similar correspondence with voters whose ballots were received on or after the Friday before Election Day.

51. As another example, upon information and belief, the City of Racine's municipal clerk appears to have adopted processes and procedures pursuant to Wis. Stat. § 6.87(9) that have resulted in the disenfranchisement of mail-in absentee voters. In response to records requests, the clerk produced only two documents, both of which were spreadsheets that identified voters who returned their absentee ballots with defective certificates. The clerk coded these ballots as "Mail Back," "Return to Reject," or "Return to be Rejected." Upon information and belief, "Mail Back" indicates ballots that were returned to the voter for certificate correction, whereas "Return to Reject" and "Return to be Rejected" indicate ballots that were sent to central count to be formally rejected. The City of Racine's municipal clerk produced no records indicating that its office notified or otherwise communicated with any of the listed voters prior to or in conjunction with returning and/or rejecting their absentee ballots.

C. The Wisconsin Legislature has failed to amend Wis. Stat. § 6.87(9) to comply with due process requirements.

52. In recent years, including the 2025-2026 legislative session, the Wisconsin Legislature has considered several bills that would have amended Wis. Stat. § 6.87(9) to mandate notice and cure procedures. *See* Assemb. B. 617, 2025-2026 Leg., Reg. Sess. (Wis. 2025)¹⁴ and

¹⁴ The text of Assembly Bill 617 (as introduced and as amended) and legislative history is *available at*: <https://docs.legis.wisconsin.gov/2025/proposals/ab617>. Assembly Substitute Amendment 2 to Assembly Bill 617 is *available at*: https://docs.legis.wisconsin.gov/2025/related/amendments/ab617/asa2_ab617.

S.B. 624, 2025-2026 Leg., Reg. Sess. (Wis. 2025)¹⁵; *see also* Assemb. B. 537, 2025-2026 Leg., Reg. Sess. (Wis. 2025)¹⁶ and S.B. 511, 2025-2026 Leg., Reg. Sess. (Wis. 2025).¹⁷

53. Although municipal clerks have expressed support for such standardization to ensure that there is no “ambiguity in the duty of the municipal clerk to notify the voter,” the Legislature has not passed any corrective legislation. *See Co-Sponsorship Memorandum from Rep. Lee Snodgrass and Sen. Jeff Smith*, Wis. Legis. Ref. Bureau, LRB 4530/1 (Oct. 1, 2025) (“This bill clarifies state statute for municipal clerks who receive an absentee ballot with an improper or missing certificate. . . . This bill would change ‘may’ with ‘shall’ ensuring there is no ambiguity in the duty of the municipal clerk to notify the voter. . . . Municipal clerks are supportive of this change as they appreciate standardizing practices across municipalities.”).

CLAIM FOR RELIEF
COUNT ONE – VIOLATION OF DUE PROCESS
(Wis. Const., art. I, § 1)

54. The factual allegations contained in the preceding paragraphs are incorporated into Count One, as though fully set forth herein.

55. “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 [or her] by the constitution. . . . [N]o right is more jealously guarded and protected by the departments of government under our constitutions, federal and state, than is the right of suffrage.” *Frederick*, 37 N.W.2d at 480.

¹⁵ Senate Bill 624 is the Wisconsin State Senate counterpart to Assembly Bill 617. Senate Bill 624 never advanced out of committee. The text of Senate Bill 624 and legislative history is *available at*: <https://docs.legis.wisconsin.gov/2025/proposals/sb624>.

¹⁶ Assembly Bill 537 is *available at*: <https://docs.legis.wisconsin.gov/2025/related/proposals/ab537>.

¹⁷ Senate Bill 511 is *available at*: <https://docs.legis.wisconsin.gov/2025/related/proposals/sb511>.

56. “Thus is given the right to vote a dignity not less than any other of many fundamental rights,”—considered even a “sacred right of the highest character.” *McGrael*, 128 N.W. at 1046.

57. Article 1, Section 1 of the Wisconsin Constitution “prohibit[s] government actions that deprive any person of life, liberty, or property without due process of law.” *Stone*, 2025 WI App 68, ¶ 40 (quoting *Ozuna*, 2017 WI 64, ¶ 22).

58. This Court has established a two-part test for determining a due process violation. First, the plaintiff must prove that she has been deprived of a recognized right. Second, the plaintiff must prove that “she has not been afforded process commensurate with the deprivation.” *Milewski v. Town of Dover*, 2017 WI 79, ¶ 20, 377 Wis. 2d 38, 899 N.W. 2d 303.

59. Whether the State may infringe on the right in question depends on whether it has engaged the proper procedure in doing so—namely, by providing adequate notice and an opportunity to be heard or cure prior to the deprivation of a constitutional right. “We know the nature of these safeguards well: The elements of procedural due process are notice and an opportunity to be heard, or to defend or respond, in an orderly proceeding, adapted to the nature of the case in accord with established rules.” *Id.*, ¶ 23 (citation modified); *see also Stone*, 2025 WI App 68, ¶ 40 (holding that at minimum, Wisconsin’s Due Process Clause requires notice and the opportunity to be heard at a meaningful time and in a meaningful manner).

60. Ultimately, the constitutional guarantee of due process protects individuals from the erroneous exercise of the State’s authority by imposing rules designed to prevent “the mistaken or unjustified deprivation of life, liberty, or property.” *Milewski*, 2017 WI 79, ¶ 23 (citation modified).

61. Wis. Stat. § 6.87(9) violates the Due Process Clause of the Wisconsin Constitution, Wis. Const., art. I, § 1, because it fails to *require* municipal clerks to provide mail-in absentee voters with notice and the opportunity to be heard when their ballot bears an improperly completed certificate or lacks a certificate altogether, prior to rejecting their ballot under Wis. Stat. § 6.88(3)(b). Under Section 6.87(9), the municipal clerk may—but is not *required* to—contact the voter or send the ballot back to the voter whenever the clerk believes “time permits,” and may instead retain the ballot, not inform the voter of the defect or offer an opportunity to cure it, and reject the ballot. A statute that purports to authorize such unconstitutional conduct is fatally defective.

62. The discretion Wis. Stat. § 6.87(9) confers upon municipal clerks results in a wide array of notification and curing practices—some of which do not satisfy procedural due process requirements—or the absence of any such practices. Upon information and belief, some municipal clerks notify voters of defects on their absentee ballots’ certificates and arrange opportunities for voters to cure those defects in person so that their ballots can be counted.

63. By contrast, other municipal clerks merely mail absentee ballots back to voters when the certificate is defective without otherwise notifying the voter or arranging for in-person curing. And some subset of those clerks return the ballot to the voter less than one week before the election, causing the *de facto* rejection of the ballot, given USPS mailing times, and depriving the voter of notice of the defect and options to cure.

64. Still other municipal clerks deliver absentee ballots with defective certificates to the voters’ polling places such that the voters can, in theory, cure the defect on Election Day. However, under Wis. Stat. § 6.87(9), the clerks may do so without providing notice to the voter, once again effectuating the *de facto* rejection of the ballot.

65. Lastly, again consistent with the discretion afforded them under Wis. Stat. § 6.87(9), some municipal clerks simply reject absentee ballots returned with a defective certificate, leaving voters without any knowledge of the defect and without any opportunity to remedy the defect and ensure their vote is counted.

66. A statute must conform to constitutional requirements, but Wis. Stat. § 6.87(9) purports to give municipal clerks a power that they cannot lawfully enjoy and that the Legislature could never confer—the power not to comply with the Wisconsin Constitution’s due process requirements.

67. Currently, no Wisconsin law or rule compels municipal clerks to provide adequate notice and an adequate opportunity to cure ballot defects. Nor does any law or rule compel Defendants to instruct municipal clerks that they *must* provide notice to voters of the imminent rejection of their ballot due to an improperly completed or missing certificate and afford them a curing opportunity. The lack of such a mandate fails to conform to the Wisconsin Constitution’s due process requirements. The right to due process is not guaranteed if government officials may arbitrarily decide to provide or withhold notice or may arbitrarily decide to provide or withhold an opportunity to correct a defect that would result in a ballot’s rejection.

68. Moreover, there is a high risk of erroneous deprivation of a liberty interest or statutory entitlement because, upon information and belief, most or all absentee voters whose ballot certificates are defective or missing will nevertheless be qualified to vote in Wisconsin.

69. Without adequate notice, there can be no adequate opportunity to correct the certificate. Although some municipal clerks provide voters adequate notice and an adequate opportunity to correct defects on the certificate, upon information and belief, others do not.

70. Given Wis. Stat. § 6.87(9) does not mandate notice and an opportunity to cure absentee ballot certificate defects, Defendants, acting in their official capacities, have deprived and will continue to deprive the League and its members of their rights under the Wisconsin Constitution's Due Process Clause.

PRAYER FOR RELIEF

Plaintiff respectfully requests that this Court enter an order granting Plaintiff the following relief:

- (a) Enter a declaratory judgment finding that Wis. Stat. § 6.87(9), which does not require that municipal clerks provide absentee voters with adequate notice and an adequate opportunity to correct an improperly completed or omitted absentee ballot certificate prior to the ballot's rejection, violates the Due Process Clause of the Wisconsin Constitution;
- (b) Issue injunctive relief requiring Defendants to establish and issue uniform, mandatory procedures, subject to the Court's review and approval, requiring municipal clerks to provide adequate notice whenever an absentee ballot's certificate is defective or missing, and to provide an adequate opportunity to cure any absentee ballot with a defective or missing certificate that would cause the ballot's rejection.
- (c) Order Defendants to circulate updated, mandatory guidance reflecting this Court's decision to all of Wisconsin's municipal clerks pursuant to Wis. Stat. § 5.05(5t);
- (d) Award the League their costs, disbursements, and reasonable attorneys' fees incurred in bringing this action; and
- (e) Award such other or further relief as this Court deems just and proper.

Dated: May 12, 2026

Respectfully submitted,



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* Motion for admission *pro hac vice* forthcoming

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