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CIRCUIT COURT
DANE COUNTY, WI
2026CV002400

BY THE COURT:

DATE SIGNED: July 29, 2026

Electronically signed by David Conway
Circuit Court Judge

STATE OF WISCONSIN CIRCUIT COURT BRANCH 17 DANE COUNTY

JOSEPH ALAN BINS, *et al.*,

Plaintiffs,

v.

WISCONSIN ELECTIONS COMMISSION, *et al.*,

Defendants.

MEMORANDUM AND ORDER

Case No. 2026CV002400

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Ballot spoiling is the process by which a voter who has incorrectly marked or damaged a ballot can replace the "spoiled ballot" with a new one. Plaintiffs Joseph Alan Bins, Thomas J. Elert, and Susan Roberts have filed an emergency motion for temporary injunctive relief contending that the Wisconsin Election Commission ("WEC") has violated their constitutional rights and acted outside of its statutory authority by changing the agency's longstanding absentee ballot spoiling guidance midway through the absentee voting period, after many voters, including Plaintiffs Bins and Elert, had already returned their absentee ballots. Dkts. 6–7. According to Plaintiffs, the WEC's new guidance now prohibits voters from spoiling their absentee ballot if (1) they change their mind about a candidate or voted for a candidate who drops out of the race, or (2) they have already returned their first ballot to the municipal clerk. Dkt. 7 at 4, 24.

Plaintiffs have asked the Court for emergency injunctive relief prior to the August 11, 2026 partisan primary election so that they may avail themselves of the ballot spoiling process under the WEC's former guidance. The Court held an emergency hearing on July 28, 2026, at which Plaintiffs appeared by attorneys Eduardo E. Castro II and Diane M. Welsh; the WEC appeared by attorneys Daniel P. Back and Dixon R. Gahnz; Intervenors Ann S. Jacobs and Mark Thomsen appeared telephonically by attorney Mark Leitner; and Intervenor Nathan Pollnow appeared by attorney Kurt A. Goehre. The Court's findings of fact and conclusions of law are stated below. Based on this analysis, the Court will deny Plaintiffs' motion.

FINDINGS OF FACT

I.

Wisconsin is currently in the midst of a quadrennial election campaign for state governor. The State will hold its partisan primary on August 11, 2026, followed by a general election on November 3, 2026. The August 11 partisan primary will include a highly competitive statewide race for the Democratic gubernatorial nomination. Although seven Democratic candidates will appear on the primary ballot, two of those candidates have already withdrawn from the race (*i.e.*, Missy Hughes and Sara Rodriguez) and more may do so before election day.

Absentee voting in the Wisconsin partisan primary commenced on June 25, 2026. All Wisconsin municipalities were required to distribute absentee ballots to eligible voters who had requested them as of that date and to fulfill any new requests received after June 25 within one business day. By July 10, 2026, the WEC reported that 42,657 absentee ballots had already been returned to municipal clerks around the state, Dkt. 5 ¶ 5, Ex. 2; by July 20, the number had increased to 71,310 absentee ballots, Dkt. 5 ¶ 13, Ex. 10; as of July 27, the number exceeded 100,000 absentee ballots, Dkt. 41 ¶ 5.

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II.

The WEC has exclusive authority to administer the state's election laws, including by providing guidance to local election officials on the proper interpretation of those laws. Wis. Stat. § 5.05; *Jefferson v. Dane Cnty.*, 2020 WI 90, ¶ 24, 394 Wis. 2d 602, 951 N.W.2d 556. In exercising this function, the WEC has long provided guidance and interpretation to municipal election clerks on how to administer the ballot spoiling statutes set forth at Wis. Stat. §§ 6.80(2)(c) and 6.86(5). Those statutes provide as follows:

> Wis. Stat. § 6.80(2)(c). Any elector who, by accident or mistake, spoils or erroneously prepares a ballot may receive another, by returning the defective ballot, but not to exceed 3 ballots in all.
>
> Wis. Stat. § 6.86(5). Whenever an elector returns a spoiled or damaged absentee ballot to the municipal clerk, or an elector's agent under sub. (3) returns a spoiled or damaged ballot to the clerk on behalf of an elector, and the clerk believes that the ballot was issued to or on behalf of the elector who is returning it, the clerk shall issue a new ballot to the elector or elector's agent, and shall destroy the spoiled or damaged ballot. Any request for a replacement ballot under this subsection must be made within the applicable time limits under subs. (1) and (3)(c).

Prior to 2026, the WEC's most recent ballot spoiling guidance on the topic was from August 1, 2022 ("August 2022 Guidance").[1] Dkt. 5 ¶ 8, Ex. 5. There, the WEC advised municipal clerks that "[a]fter a voter has been issued an absentee ballot at the clerk's office or by mail, they can request to spoil that ballot and receive a new one in the event the voter makes a mistake or changes their mind." Dkt. 5 ¶ 8, Ex. 5 at 2. The WEC also advised that an absentee voter could still spoil his or her ballot after returning it to the clerk as long as he or she did so before the absentee voting deadline. *Id.* The WEC reiterated these points in an August 2, 2022 press release. Dkt. 5 ¶ 9, Ex. 6 at 1.

[1] Before August 2022, the WEC had issued materially identical ballot spoiling guidance in October 2020. Dkt. 5 ¶ 11, Ex. 8.

Two months after the WEC issued the August 2022 Guidance, on October 10, the Waukesha County Circuit Court issued an injunction prohibiting the WEC from continuing the guidance upon finding it contrary to law. *See Kormanik v. WEC*, Waukesha Co. Case No. 2022-CV-001395, Dkt. 106. The WEC promptly withdrew the August 2022 Guidance on October 28, 2022, Dkt. 37 ¶ 9, Ex. E, and has not reissued it, Dkt. 41 ¶¶ 14–22. The circuit court's injunction remained in place from October 10, 2022, until February 11, 2026, when the Wisconsin Court of Appeals vacated the injunction because the plaintiff had failed to properly serve process. *See Kormanik v. WEC*, 2024AP408, 2026 WL 380350 (Wis. Ct. App. Feb. 11, 2026). Over this nearly four-year period, at least ten elections occurred without the WEC's August 2022 Guidance in effect. Dkt. 41 ¶¶ 15–16.

On May 27, 2026, the WEC issued a new guidance to address the effect of the Wisconsin Court of Appeals' decision vacating the *Kormanik* injunction ("May 2026 Guidance"). Dkt. 5 ¶ 6, Ex. 3. In that document, the WEC explained that it had "opted not to reissue" the August 2022 Guidance but had instead unanimously voted to approve the following guidance:

> Wisconsin law allows a voter who, by accident or mistake, spoils or erroneously prepares a ballot to receive another ballot by returning the defective ballot to the municipal clerk or election inspector. The municipal clerk should verify the identity of a person requesting to receive a replacement absentee ballot to ensure that it is the voter making the request. This voter verification process should include having the voter confirm the same information necessary to request an absentee ballot (e.g. name, full address, date of birth) and this verification process may include the municipal clerk asking the absentee voter to produce voter identification. The deadlines for requesting a replacement for a spoiled or erroneously prepared ballot are: [dates omitted] . . . A voter may only receive three replacement ballots in each election.

Dkt. 5 ¶ 6, Ex. 3 at 1–2. Notably, the May 2026 Guidance did not address whether voters can spoil a ballot if they change their mind, if they vote for a withdrawn candidate, or when they have already returned their first absentee ballot to the municipal clerk.

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Finally, on July 9, 2026, the WEC issued its most recent ballot spoiling guidance in which it withdrew the May 2026 Guidance and departed significantly from its previous advice about ballot spoiling ("July 2026 Guidance"). Dkt. 5 ¶ 2, Ex. 1. In particular, the July 2026 Guidance now provides that "once an absentee ballot has been returned to the municipal clerk it cannot be spoiled or reissued for any reason." Dkt. 5 ¶ 2, Ex. 1 at 1. It further provides that "if a voter returns their voted ballot and later changes their mind about who they would like to vote for or because the candidate they originally voted for has dropped out of the race, this does not constitute an 'accident or mistake'" that would allow the ballot to be spoiled. Dkt. 5 ¶ 2, Ex. 1 at 1–2. The WEC has since publicized its guidance on social media. Dkt. 5 ¶ 7, Ex. 4. As a result of this new guidance, the City of Madison municipal clerk, Lydia McComas, no longer allows absentee voters to spoil their returned ballots, whereas before the July 2026 Guidance she believed that doing so was legally allowed. Dkt. 35, ¶ 3; Dkt. 40 ¶¶ 2–3.

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III.

Plaintiffs are three Dane County voters who have already obtained and returned absentee ballots for the August 2026 partisan primary election and who now wish to spoil their ballot and vote for a different candidate because their chosen candidate has dropped out.

A.

Plaintiff Joseph Alan Bins is a registered voter residing in the Village of Waunakee who wishes to participate in the August 2026 primary election and who routinely votes by absentee ballot. Dkt. 8 ¶¶ 2–4. At his request, the Waunakee clerk sent him an absentee ballot on June 18, 2026. *Id.* ¶ 5. Bins promptly completed and returned the ballot to the clerk's office on June 29. *Id.* On his ballot, Bins indicated that he wished to vote for Sara Rodriguez in the

Democratic gubernatorial primary. *Id.* ¶ 6. Rodriguez has since dropped out of the race, and Bins now considers his vote for her to have been a mistake. *Id.* ¶¶ 6–7.

On July 17, 2026, Bins contacted the village clerk asking to spoil his ballot because his chosen candidate had dropped out. *Id.* ¶ 8, Ex. 1. The village clerk responded on July 19, that Bins could not spoil his ballot for that reason. *Id.* ¶ 9, Ex. 1. When Bins originally requested his absentee ballot and returned it to the clerk, he was aware of the WEC's previous guidance allowing absentee voters to spoil their ballot if they wished to vote for a different candidate. *Id.* ¶ 12. At that time, the WEC had not yet issued the July 2026 Guidance and Bins believed that he would be able to spoil his ballot if his preferred candidate dropped out. *Id.* ¶ 11. If allowed to do so, Bins would spoil his ballot and vote for a primary candidate who is still in the race. *Id.* ¶ 13.

B.

Plaintiff Thomas J. Elert is a registered voter residing in the City of Madison who routinely votes by absentee ballot due to disability. Dkt. 3 ¶¶ 2–4. At his request, the Madison clerk sent him an absentee ballot on June 24, 2026. *Id.* ¶ 5. Elert completed and returned the ballot to the clerk's office on July 8. *Id.* On his ballot, Elert indicated that he wished to vote for Sara Rodriguez. *Id.* ¶ 6. He now considers his vote to have been a mistake. *Id.* ¶¶ 6–7.

When Elert returned his absentee ballot to the clerk on July 8, Elert believed that Wisconsin law would allow him to spoil his ballot if his preferred candidate dropped out of the race. *Id.* ¶ 9. The WEC has since issued the July 2026 Guidance. *Id.* ¶ 8. Had he known he could not spoil his ballot if his candidate withdrew, Elert would have delayed returning his absentee ballot. *Id.* ¶ 10. If allowed to do so, Elert would spoil his ballot and vote for a primary candidate who is still in the race. *Id.* ¶ 11.

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C.

Plaintiff Susan Roberts is a registered voter residing in the City of Madison who routinely votes by absentee ballot due to age and disability. Dkt. 4 ¶¶ 2–4. Roberts placed her absentee ballot in the mail on July 16, 2026, and the Madison clerk received it on July 20. *Id.* ¶ 6. On her ballot, Roberts indicated that she wished to vote for Sara Rodriguez. *Id.* ¶ 7. She now considers her vote for Rodriguez to have been a mistake. *Id.* ¶¶ 7–8.

When Roberts returned her absentee ballot to the clerk on July 16, she was not yet aware of the July 2026 Guidance stating that absentee voters cannot spoil their ballot if they change their mind about a candidate or their candidate withdraws. *Id.* ¶ 9. Had she known of this guidance at the time, Roberts would have delayed returning her absentee ballot. *Id.* ¶ 10. If allowed, Roberts would spoil her ballot and vote for a candidate who is still in the race. *Id.* ¶ 11.

IV.

On July 23, 2026, Plaintiffs initiated this lawsuit by filing a complaint for declaratory judgment under three separate theories. First, Plaintiffs ask the Court to declare the July 2026 Guidance invalid because it conflicts with Wis. Stat. § 6.80(2)(c) and Wis. Stat. § 6.86(5). Dkt. 2 ¶¶ 68–70. Second, Plaintiffs ask the Court to declare that the July 2026 Guidance violates their right to vote established by Article I, Section 1 and Article III, Section 2 of the Wisconsin Constitution. *Id.* ¶¶ 71–75. Third, Plaintiffs ask the Court to declare that the July 2026 Guidance violates their right to equal protection guaranteed by Article I, Section 1 of the Wisconsin Constitution. *Id.* ¶¶ 76–83.

Plaintiffs have contemporaneously filed the emergency motion for temporary injunctive relief presently before the Court, in which they ask to enjoin the WEC from continuing the July 2026 Guidance while this case proceeds. Dkts. 6–7. The Court entered a case management

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order on July 24, setting a temporary injunction hearing for July 28, 2026, and requiring that a copy of the order be served on the WEC at least 24 hours prior to the hearing. Dkt. 10. Plaintiffs served the WEC on July 24, more than 96 hours before the hearing. Dkt. 12. The WEC filed an opposition brief with declarations and exhibits on July 27. Dkts. 33–34, 41. The Court has also accepted a non-party brief from the Wisconsin Institute of Law & Liberty. Dkt. 25.

On July 28, 2026, the Court granted two motions to intervene in this action—one from WEC Commissioners Ann S. Jacobs and Mark Thomsen, Dkts. 21–23, 43; and another from Nathan Pollnow, a candidate for Secretary of State, Dkts. 30–31, 51.

CONCLUSIONS OF LAW

I. JURISDICTION

A. Subject Matter Jurisdiction and Venue

In Wisconsin, "the exclusive means of judicial review of the validity of a rule or guidance document shall be an action for declaratory judgment as to the validity of the rule or guidance document brought in the circuit court for the county where the party asserting the invalidity of the rule or guidance document resides." Wis. Stat. § 227.40(1). "A declaratory judgment may be rendered whether or not the plaintiff has first requested the agency pass upon the validity of the rule or guidance document in question." Wis. Stat. § 227.40(1). Here, Plaintiffs are Dane County residents who have brought this declaratory judgment action in Dane County Circuit Court to seek judicial review of the validity of the WEC's July 2026 Guidance. This is sufficient to establish the Court's subject matter jurisdiction and venue over this action.

B. Personal Jurisdiction

When a plaintiff files a declaratory judgment action seeking judicial review of an agency guidance document, he or she must serve process "by delivering a copy to that officer or, if the

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agency is composed of more than one person, to the secretary or clerk of the agency or to any member of the agency." Wis. Stat. § 227.40(1). The plaintiff must also serve the Legislature's joint committee for review of administrative rules ("JCRAR") with a copy of the petition for declaratory judgment. Wis. Stat. § 227.40(5). Here, Plaintiffs have filed proof that on July 23, 2026, they personally served the WEC's administrator, Meagan Wolfe, as well as the legislative assistants to Senator Stephen Nass and Representative Adam Neylon—the two co-chairs of the JCRAR—with copies of their complaint and emergency motion. Dkt. 9. This is sufficient to give the Court personal jurisdiction over the WEC.

II. JUSTICIABILITY

The Wisconsin Declaratory Judgments Act sets forth the general rules governing declaratory relief. Wis. Stat. § 806.04. The purpose of the law is "to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations." *Id.* § 806.04(12). Under the statute, circuit courts may "declare rights, status, and other legal relations whether or not further relief is or could be claimed. *Id.* § 806.04(1). Any person "whose rights, status, or other legal relations are affected by a statute . . . may have determined any question of construction . . . arising under the [statute] . . . and obtain a declaration of rights, status, or other legal relations thereunder." *Id.* § 806.04(2). The statute is to be liberally construed to affect its remedial purpose. *Id.* § 806.04(12).

A justiciable controversy must exist before a court can exercise jurisdiction over a declaratory judgment claim. *Olson v. Town of Cottage Grove*, 2008 WI 51, ¶ 28, 309 Wis. 2d 365, 749 N.W.2d 211. Justiciability requires four things: (1) a claim of right must be asserted against one who has an interest in contesting it; (2) the controversy must be between persons whose interests are adverse; (3) the party seeking relief must have a legally protectible interest in

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the controversy; and (4) the issue must be ripe for judicial determination. *Id.* ¶ 29 (citing *Loy v. Bunderson*, 107 Wis. 2d 400, 320 N.W.2d 175 (1982)). "If all four factors are satisfied, the controversy is 'justiciable,' and it is proper for a court to entertain an action for declaratory judgment." *Olson*, 2008 WI 51, ¶ 29 (quote omitted).

Here, Intervenor Nathan Pollnow argues that Plaintiffs have not satisfied the third justiciability factor—a legally protectible interest—which addresses the concept of standing.[2] *See* Dkt. 36 at 13–15; *City of Madison v. Town of Fitchburg*, 112 Wis. 2d 224, 228, 332 N.W.2d 782 (1983). Wisconsin courts apply a two-prong test for standing to challenge an agency action under Wis. Stat. § 227.40: "(1) Does the challenged action cause the petition injury in fact? and (2) is the interest allegedly injured arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question?" *Friends of Black River Forest v. Kohler Co.*, 2022 WI 52, ¶ 18, 402 Wis. 2d 587, 977 N.W.2d 342 (quote omitted).

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Mr. Pollnow's standing argument appears to be predicated upon the assumption that Plaintiffs have misinterpreted the ballot spoiling statutes and therefore have suffered no injury. *See* Dkt. 36 at 13–15. This argument puts the cart before the horse: the Court must first determine whether Plaintiffs have asserted a legally protectible interest before it can determine, on the merits, whether the challenged guidance has injured that interest. Framed this way, the Court concludes that Plaintiffs have satisfied both prongs of the standing analysis. Under the first prong, the Court must ask "whether the petition alleges injuries that are a direct result of the agency action." *Id.* ¶ 21 (quote omitted). Plaintiffs meet this requirement by alleging that the WEC has issued a legally invalid guidance that has prevented them from exercising the statutory

[2] No party disputes the first, second, and fourth factors. Plaintiffs have sued the WEC claiming that its July 2026 Guidance has unlawfully deprived them of a statutory right. The WEC has an adverse interest in defending its guidance. And the facts of this case are sufficiently developed for the Court to resolve the ultimate question—namely, whether the July 2026 Guidance is in conflict with the law.

right to spoil their absentee ballots. Under the second prong, the Court must consider "whether the injury is to an interest which the law recognizes or seeks to regulate or protect." *Id.* ¶ 23 (quote omitted). An agency action that prohibits a citizen from exercising his or her ballot spoiling rights undoubtedly falls within the zone of interest protected by the absentee voting statutes. The Court concludes that Plaintiffs' claims are justiciable and that it is proper for the Court to entertain this action.

III. TEMPORARY INJUNCTION ANALYSIS

A temporary injunction's function is "to maintain the status quo, not to change the position of the parties or compel the doing of acts which constitute all or part of the ultimate relief sought." *Codept, Inc. v. More-Way North Corp.*, 23 Wis. 2d 165, 173, 127 N.W.2d 29 (1964). It remains in effect only "until the trial and determination of the action." *Laundry Workers Int'l Union*, 4 Wis. 2d at 557.

The Court may grant a temporary injunction "at any time before judgment upon its appearing satisfactorily to the court . . . by the complaint or answer or by affidavit that sufficient grounds exist therefor." Wis. Stat. § 813.04. When deciding whether to issue a temporary injunction, a circuit court must consider four criteria: (1) whether the movant has a "reasonable probability of success on the merits"; (2) whether the movant is "likely to suffer irreparable harm" absent an injunction; (3) whether the movant has "no other adequate remedy at law"; (4) whether an injunction is "necessary to preserve the status quo." *Gahl ex rel. Zingsheim v. Aurora Health Care, Inc.*, 2023 WI 35, ¶ 17, 413 Wis. 2d 418, 989 N.W.2d 561 (citing *Serv. Emps. Int'l Union, Loc. 1 v. Vos*, 2020 WI 67, ¶ 93, 393 Wis. 2d 38, 946 N.W.2d 35). If the Court grants or denies a temporary injunction, it must "set forth the findings of fact and conclusions of law which constitute grounds of its action." Wis. Stat. § 805.17(2).

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A. Probability of Success on the Merits

In an action for judicial review of an agency guidance, "the court shall declare the . . . guidance document invalid if it finds that it violates constitutional provisions or exceeds the statutory authority of the agency." Wis. Stat. § 227.40(4)(a). Here, Plaintiffs seek judicial review of the July 2026 Guidance arguing that it conflicts with the plain language of Wis. Stat. §§ 6.86(5) and 6.80(2)(c); that it violates their right to vote; and that it deprives them of equal protection. The Court will examine their probability of succeeding on each theory.

1. *Wis. Stat. §§ 6.80(2)(c), 6.86(5)*

An agency may not "implement or enforce any standard, requirement, or threshold" unless it is "explicitly permitted by statute." Wis. Stat. § 227.10(2m). Where an agency issues a guidance document contrary to a statute, the agency acts outside of its authority and the guidance document is invalid. Wis. Stat. § 227.40(4)(a). Here, Plaintiffs ask the Court to declare the July 2026 Guidance invalid because the following two statements within that document conflict with Wis. Stat. §§ 6.80(2)(c) and 6.86(5):

> (1) "[O]nce an absentee ballot has been returned to a municipal clerk, it cannot be spoiled for any reason," Dkt. 5 ¶ 2, Ex. 1 at 1; and
>
> (2) "If a voter returns their ballot and later changes their mind about who they would like to vote for or because the candidate they originally voted for has dropped out of the race, this does not constitute and 'accident or mistake.' The ballot cannot be spoiled and reissued for any reason," Dkt. 5 ¶ 2, Ex. 1 at 2.

Dkt. 2 ¶¶ 68–70; Dkt. 7 at 23–30. In response, the WEC and Nathan Pollnow argue that the July 2026 Guidance is consistent with the statutes and that Plaintiffs have misinterpreted those laws. Dkt. 33 at 6–8; Dkt. 36 at 8–13.

To resolve this dispute, the Court will need to perform its own statutory interpretation of Wis. Stat. §§ 6.80(2)(c) and 6.86(5). Statutory interpretation "begins with the language of the statute" and it ends there if the meaning is unambiguous. *State ex rel. Kalal v. Circuit Ct. for*

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Dane Cnty., 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110. The Court gives the language "its common ordinary and accepted meaning." *Id.*; *see also* Wis. Stat. § 990.01(1). "A dictionary may be utilized to guide the common, ordinary meaning of words." *Noffke ex rel. Swenson v. Bakke*, 2009 WI 10, ¶ 10, 315 Wis. 2d 350, 760 N.W.2d 156. The Court interprets the language "in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results." *Kalal*, 2004 WI 58, ¶ 46. When interpreting election statutes, courts must construe them "to give effect to the will of the electors." Wis. Stat. § 5.01(1).

First, Plaintiffs argue that the July 2026 Guidance violates Wis. Stat. § 6.86(5) by prohibiting voters from spoiling their absentee ballot after they have already returned it to the municipal clerk. Dkt. 7 at 23–26. Wis. Stat. § 6.86(5) provides as follows:

> Whenever an elector returns a spoiled or damaged absentee ballot to the municipal clerk, or an elector's agent under sub. (3) returns a spoiled or damaged ballot to the clerk on behalf of an elector, and the clerk believes that the ballot was issued to or on behalf of the elector who is returning it, the clerk shall issue a new ballot to the elector or elector's agent, and shall destroy the spoiled or damaged ballot. Any request for a replacement ballot under this subsection must be made within the applicable time limits under subs. (1) and (3)(c).[3]

According to Plaintiffs, this statute "does not prohibit spoiling a ballot *after* it is returned to the clerk." Dkt. 7 at 24. The WEC and Pollnow disagree. Dkt. 33 at 6–8; Dkt. 36 at 8–13.

The Court concludes that the unambiguous language of the statute does not allow a voter to spoil an absentee ballot after it is returned. The clerk's duty to issue a new ballot is triggered whenever a properly identified voter "returns a spoiled or damaged ballot." "Returns" is a

[3] Wis. Stat. § 6.86(1) requires a voter who wants to vote absentee to submit a written application to the municipal clerk by certain deadlines. In particular, a mail application must "be received no later than 5pm on the 5th day immediately preceding the election," and an in-person application must be made "no earlier than 14 days preceding the election and no later than the Sunday preceding the election." Wis. Stat. § 6.86(1)(b). Wis. Stat. § 6.86(3)(c) sets a separate deadline for hospitalized electors.

present tense verb. "Spoiled or damaged ballot" is a compound noun in which "ballot" is modified by past participial adjectives, "spoiled" and "damaged," that indicate an already finished action. On its face, the first sentence plainly requires an absentee ballot to already be "spoiled" or "damaged" at the time the voter returns it. If the Legislature's intent was to allow absentee voters to obtain new ballots after already returning their original ballot, it would have said so using the appropriate language in the proper grammatical tense (*e.g.*, "Whenever an elector has returned an absentee ballot to the municipal clerk that is or becomes spoiled . . .").

Plaintiffs challenge this interpretation by pointing to two nearby statutory phrases that they believe support an opposite reading. They first argue that the word "request" in the second sentence of Wis. Stat. § 6.86(5) would be surplusage if the first sentence contemplates an automatic exchange of an already-spoiled ballot for a new one. Dkt. 7 at 25 ("The voter has nothing to 'request' in that circumstance"). To the contrary, a "request" is simply "the act or an instance of asking for something."[4] An absentee voter who returns a spoiled or damaged ballot must ask the clerk to replace it or else the clerk will not know how to assist the voter. And it makes sense that the Legislature would require an absentee voter to make this "request" by no later than the statutory deadline for requesting an absentee ballot in the first instance.

Plaintiffs secondly assert that the very next subsection of the statute also undercuts the Court's interpretation. Wis. Stat. § 6.86(6) provides that a municipal clerk may not return an absentee ballot to a voter once the voter has submitted the ballot, "[e]xcept as authorized" by Wis. Stat. § 6.86(5). It is not clear what situation this exception envisions. No aspect of Wis. Stat. § 6.86(5) involves the municipal clerk returning a previously-submitted absentee ballot to a voter. Plaintiffs do not interpret the statute this way. Nor do they seek a return of their own

[4] *See* "Request," *Merriam-Webster.com Dictionary*, Merriam-Webster, https://www.merriam-webster.com/dictionary/request (last accessed July 28, 2026).

ballots. Instead, Plaintiffs' interpretation would have the clerk locate and destroy their spoiled ballots and issue them new ones. Although the Court can only speculate as to what Wis. Stat. § 6.86(6) contemplates, the statute says nothing about (and sheds no useful light upon) whether absentee voters may or may not spoil their ballots after returning them. It therefore does not change the Court's interpretation of Wis. Stat. § 6.86(5).

Second, Plaintiffs contend that the July 2026 Guidance contradicts Wis. Stat. § 6.80(2)(c) by prohibiting voters from spoiling their absentee ballot if they change their mind about a candidate or vote for a candidate who drops out of the race. Dkt. 7 at 26–30. Wis. Stat. § 6.80 governs the mechanics of in-person voting at a polling place on election day. While voting in person, "[a]ny elector who, by accident or mistake, spoils or erroneously prepares a ballot may receive another, by returning the defective ballot, but not to exceed three ballots in all." Wis. Stat. § 6.80(2)(c). An "accident" is "an unforeseen and unplanned event or circumstance," and a "mistake" means "to blunder in the choice of" something.[5] In other words, an in-person voter can "spoil" his ballot and obtain a new one if he fills in the ballot for the wrong candidate due to an unforeseen event or by simply blundering in his choice. This language would plainly include a scenario where the voter changes their mind about a candidate or learns that their chosen candidate has dropped out of the race. In practice, the voter would take his "spoiled" ballot back to the poll worker, exchange it for a new one, and proceed to correctly vote the new ballot. The poll worker would then "immediately destroy[]" the spoiled ballot. Wis. Stat. § 7.37(11).

While Wis. Stat. § 6.80(2)(c) does not govern absentee voting, it does appear to provide a definition of "spoiling" that is absent elsewhere in the law. "Typically, a term used in multiple

[5] "Accident" and "Mistake," *Merriam-Webster.com Dictionary*, Merriam-Webster, https://www.merriam-webster.com/dictionary/accident, https://www.merriam-webster.com/dictionary/mistake (last accessed July 28, 2026).

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subsections within a statute is given the same meaning." *Phelps v. Physicians Ins. Co. of Wis.*, 2005 WI 85, ¶ 58, 282 Wis. 2d 69, 698 N.W.2d 643. It therefore makes sense to interpret the term "spoiled" in Wis. Stat. § 6.86(5) to have the same meaning as it does in Wis. Stat. § 6.80(2)(c). In effect, this means an absentee voter who has not yet returned his ballot and who accidentally or mistakenly fills in the ballot for the wrong candidate may take the "spoiled" ballot back to the clerk and exchange it for a new one. But it does not mean that persons in Plaintiffs' position can still "spoil" their ballots after they have returned them.

Furthermore, the July 2026 Guidance is still consistent with the law even under this interpretation. The July 2026 Guidance does not say that a voter changing his mind or voting for a withdrawn candidate can never constitute an "accident or mistake" that would allow for spoiling. Instead, the guidance says that these things do not constitute an "accident or mistake" once the voter has already returned his or her ballot:

> If a voter returns their voted ballot and later changes their mind about who they would like to vote for or because the candidate they originally voted for has dropped out of the race, this does not constitute an "accident or mistake." The ballot cannot be spoiled and reissued for any reason.

Dkt. 5 ¶ 2, Ex. 1 at 2. This is really just another way of saying that an absentee voter cannot spoil his or her ballot for any reason, including "accident or mistake," once it has been returned to the clerk, which the Court concludes above is a correct interpretation of the law.

For all of these reasons, the Court concludes that Plaintiffs are unlikely to prevail on their claim that the July 2026 Guidance is contrary to statute.

2. *Right to Vote*

The Wisconsin Constitution 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). The Legislature is constitutionally authorized to regulate the election process, including

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by passing laws defining residency, controlling voter registration, and providing for absentee voting. Wis. Const. Art III, § 2. Pursuant to this authority, the Legislature has enacted numerous statutes governing the absentee voting process, including laws specifically allowing absentee voters to "spoil" their ballots under certain circumstances. *See* Wis. Stat. Chapters 5–12 (election laws generally); Wis. Stat. §§ 6.20, 6.84–89 (absentee voting requirements); Wis. Stat. § 6.86(5) (ballot spoiling requirements).

Plaintiffs ask the Court to declare that the July 2026 Guidance violates their right to vote as established by Article I, Section 1 and Article III, Section 2 of the Wisconsin Constitution. Dkt. 2 ¶¶ 71–75; Dkt. 7 at 30–31. But they do not dispute that the ballot spoiling requirements set forth at Wis. Stat. §§ 6.86(5) and 6.80(2)(c) are valid and reasonable exercises of the Legislature's constitutional power to regulate absentee voting. The Court has already decided above that the July 2026 Guidance is consistent with these statutes. Therefore, the Court concludes that Plaintiffs are unlikely to prevail on their claim that the July 2026 Guidance unlawfully burdens their constitutional right to vote.

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3. *Equal Protection*

Plaintiffs finally ask the Court to declare that the July 2026 Guidance violates their right to equal protection guaranteed by Article I, Section 1 of the Wisconsin Constitution. Dkt. 2 ¶¶ 76–83; Dkt. 7 at 31–34. This constitutional provision "has been interpreted as providing the same equal protection and due process rights afforded by the Fourteenth Amendment to the United States Constitution." *Mayo v. Wisconsin Injured Patients & Families Comp. Fund*, 2018 WI 78, ¶ 35, 383 Wis. 2d 1, 914 N.W.2d 678.

As an initial matter, the Court has already determined that the July 2026 Guidance is consistent with statutory law. To prevail on their claim that the July 2026 Guidance violates

equal protection, Plaintiffs would essentially need to prove that the statutes themselves are unconstitutional. Plaintiffs have made no such claim in this lawsuit. *See* Dkt. 2. Nevertheless, the Court will analyze Plaintiffs' equal protection claims as though they challenge only the constitutionality of the July 2026 Guidance and not the statutes it interprets.

When asserting an equal protection challenge, the Court must first determine whether the regulation "treats members of similarly situated classes differently." *Id.* ¶ 37 (quote omitted). Here, Plaintiffs allege that the July 2026 Guidance creates two class distinctions that impinge upon their fundamental right to vote: (1) absentee voters who spoiled their absentee ballots before July 9, and those who did not; and (2) voters who cast their ballots on election day and those who cast their ballots absentee. Dkt. 7 at 32. The Court will accept these classifications for purposes of the next stage of the analysis.

Next, the Court must determine the level of judicial scrutiny to apply to the classification at issue. Generally, a court will sustain a rule "that creates a distinction between treatment of different groups, if there exists a rational basis to support that distinction, provided that the distinction does not implicate a suspect class or impinge upon a fundamental right." *Mayo*, 2018 WI 78, ¶ 36 (quote omitted). Under rational basis review, the Court must uphold a regulation "unless it is patently arbitrary and bears no rational relationship to a legitimate government interest." *State v. Smith*, 2010 WI 16, ¶ 12, 323 Wis. 2d 377, 780 N.W.2d 90 (quote omitted). In contrast, when a distinction implicates a suspect class or impinges a fundamental right, then strict scrutiny usually applies and the regulation "must serve a compelling state interest; the [regulation] must be necessary to serving that interest; and the [regulation] must be narrowly tailored toward furthering that compelling state interest." *Mayo*, 2018 WI 78, ¶ 28 (cite omitted).

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Although voting is a fundamental right, Wisconsin courts deviate from the standard equal protection analysis and do not always apply strict scrutiny in voting cases. *See Milwaukee Branch of NAACP v. Walker*, 2014 WI 98, ¶¶ 23, 26–39, 357 Wis. 2d 469, 851 N.W.2d 262. Instead, the courts have adopted a balancing test whereby they determine the level of judicial scrutiny to apply to a voting regulation based on the severity of the burden it imposes on the right to vote. *Id.* In applying this analysis, the court focuses first on the "character and magnitude" of the burden in order to decide the level of judicial scrutiny— rational basis for non-severe burdens, strict scrutiny for severe burdens. *Id.* ¶¶ 39, 71 ("Strict scrutiny applies only when a statute imposes a severe burden on the exercise of the franchise"). The Court then applies the appropriate level of scrutiny to the State's identified interests to determine whether the voting regulation is constitutional. *Id.* ¶ 39.

Here, the Court concludes that the "character and magnitude" of Plaintiffs' classifications impose minimal to no burden on their right to vote. As to the first classification, the only difference between absentee voters who spoiled their ballot before and after July 9, 2026, is the level of detail contained in the WEC's active guidance at the time of their vote. Prior to July 9, the May 2026 Guidance did not address whether an absentee voter could spoil a ballot after returning it to the clerk. Dkt. 5 ¶ 6, Ex. 3 at 1–2. After July 9, the July 2026 Guidance accurately answered this question in the negative. This difference did not burden Plaintiffs' right to vote. At no time before or after July 9, did the law allow absentee voters to spoil their returned ballots, even if some clerks may have mistakenly allowed this to happen out of confusion or misunderstanding about the law. Plaintiffs cannot establish an equal protection violation based on being members of a class that was subject to lawful guidance.

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The second classification—voters who cast their ballots on election day vs. those who cast their ballots absentee—poses at most a minimal burden on Plaintiffs' right to vote. As explained, an absentee voter who has not yet returned his or her ballot and who mistakenly fills in the ballot for the wrong candidate may take the "spoiled" ballot back to the clerk, exchange it for a new absentee ballot, and then proceed to correctly vote the new ballot. Analogously, an election day voter who has not yet dropped his ballot in the ballot box and who mistakenly fills in the ballot for the wrong candidate can take his "spoiled" ballot back to the poll worker, exchange it for a new one, and then correctly vote the new ballot. Under either scenario, once the voter returns his ballot to the clerk or ballot box, the voter cannot then return later in the absentee voting period or on election day to "spoil" the ballot and cast a new one. The law treats these classes of voters as similarly as possible accounting for the practical differences in how they choose to exercise their right to vote. The Court therefore concludes that any minimal burden this arrangement imposes on the absentee voter easily satisfies rational basis review.

As a result, the Court concludes that Plaintiffs are unlikely to prevail on their claim that the July 2026 Guidance violates their right to equal protection.

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The Court has concluded that Plaintiffs are unlikely to prevail on any of their three declaratory judgment claims. "A temporary injunction is not to be issued unless the movant has shown a reasonable probability of ultimate success on the merits." *Werner v. A.L. Grootemaat & Sons, Inc.*, 80 Wis. 2d 513, 520, 259 N.W.2d 310 (1977) (cite omitted). The Court must therefore deny Plaintiffs' motion regardless of the other three temporary injunction factors.

ORDER

IT IS THEREFORE ORDERED that Plaintiffs' emergency motion for temporary restraining order and temporary injunction (Dkt. 6) is DENIED.