

STATE OF  
WISCONSIN

CIRCUIT COURT  
BRANCH \_\_\_\_\_

DANE  
COUNTY

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JOSEPH ALAN BINS  
1101 Connery Cove, Unit 308  
Waunakee, WI 53597

THOMAS J. ELERT  
406 Palomino Lane, Unit 2S  
Madison, WI 53705

SUSAN ROBERTS  
5141 Spring Court  
Madison, WI 53703

Plaintiffs,

v.

WISCONSIN ELECTIONS COMMISSION  
201 W. Washington Ave.  
Madison, WI 53703,

Defendant.

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Case No. 2026-CV-\_\_\_\_\_  
Case Code: 30701  
Declaratory Judgment

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**BRIEF IN SUPPORT OF THE EMERGENCY MOTION FOR TEMPORARY  
RESTRAINING ORDER AND TEMPORARY INJUNCTION**

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## INTRODUCTION

With the 2026 August Partisan Primary Election already well underway, the Wisconsin Elections Commission (the “Commission” or “WEC”) upended its rules regarding absentee ballot spoiling. For the better part of a decade, the Commission has recognized the longstanding interpretation of Wisconsin law that allowed electors to “spoil” their absentee ballot after it has been returned to the municipal clerk if the voter had made an error in their ballot. When this August primary began, the Commission stood by this practice. But on July 10, 2026, after tens of thousands of voters had already returned their absentee ballots, the Commission jettisoned its past interpretation and practice. On that very same day, the Commission, in a social media post, told voters that there was no “do-overs.”

The Commission’s new stance on absentee ballot spoiling violates Wisconsin election statutes and the state Constitution’s guarantees of the right to vote and to equal protection under the law. Moreover, WEC’s course reversal while voting was underway violates a basic tenet of election law that the rules of the election should not be changed close to – let alone during – an election. The Plaintiffs, which include one voter who specifically relied upon the Commission’s longstanding position when he decided when to return his absentee ballot, will all be disenfranchised from meaningfully participating in this August election unless this Court steps in.

Accordingly, the Plaintiffs ask the Court to grant immediate injunctive relief in the form of a temporary injunction, requiring the Commission to restore its

longstanding interpretation and guidance of section 6.86(5) by instructing municipal and county clerks to interpret and apply section 6.86(5) as follows:

- (1) Wis. Stat. § 6.86(5) permits voters to spoil their absentee ballot and request a new ballot after they have returned their first absentee ballot to the municipal clerk; and
- (2) Wis. Stat. § 6.86(5) permits a voter to spoil a ballot and receive a new one in the event the voter makes a mistake, including when they change their mind, within applicable time limits under Wis. Stat. §§ 6.86(1) and (3)(c).

Plaintiffs further request that any injunctive relief restrain the Commission from taking action or issuing any guidance or public communication contrary to this interpretation and require the Commission to rescind any guidance or public communication contrary to this interpretation immediately.

## **BACKGROUND INFORMATION**

### **I. The Current State of the August 2026 Partisan Primary**

On November 3, 2026, Wisconsin voters will elect a new governor. On August 11, 2026, the Partisan Primary will be held for political parties—including the Democratic Party, Republican Party, and others—to elect their preferred candidates to represent their party for various races, including for governor. The ballot includes numerous competitive primaries. For example, seven candidates for the Democratic nomination are listed on the ballot this election. Voters can also choose to write in a candidate of their choice, instead of selecting one of the seven listed candidates.<sup>1</sup>

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<sup>1</sup> For sample ballots from across the state of Wisconsin, see Wisconsin Elections Commission, “What’s On My Ballot,” <https://myvote.wi.gov/en-us/Whats-On-My-Ballot>.

The race for the Democratic gubernatorial candidate has been in flux. On June 22, 2026, candidate Missy Hughes suspended her campaign for governor, but her name remains on the ballot.<sup>2</sup> (Compl. ¶ 27.) On July 17, 2026, candidate Lieutenant Governor Sara Rodriguez, who is listed on the ballot as a candidate for governor, withdrew from the race.<sup>3</sup> (Compl. ¶ 28.) On July 8, 2026, candidate Milwaukee County Executive David Crowley suspended his campaign, and subsequently re-entered the race on July 18, 2026.<sup>4</sup> (Compl. ¶ 29.)

In accordance with Wisconsin election law, on June 25, 2026, all of Wisconsin's 1,850 municipalities were required to have distributed absentee ballots to eligible voters who requested them.<sup>5</sup> (Compl. ¶ 15.) However, nearly two weeks after most absentee ballots had been sent out, on July 10, 2026, the Commission issued new guidance regarding the practice of absentee ballot spoiling. (Compl. ¶¶ 30–31; July 10 WEC Ballot Spoiling Guidance, Welsh Decl. ¶ 2, Ex. 1). By that date, 42,657 absentee ballots had

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<sup>2</sup> Shawn Johnson, *Democrat Missy Hughes suspends campaign for governor, endorses Sara Rodriguez*, WPR (June 22, 2026), <https://www.wpr.org/news/democrat-missy-hughes-suspends-campaign-for-governor>.

<sup>3</sup> Jessie Opoien, *Sara Rodriguez drops out of Wisconsin governor race*, MILWAUKEE J. SENTINEL (July 17, 2026), <https://www.jsonline.com/story/news/politics/elections/2026/07/17/sara-rodriguez-drops-out-of-wisconsin-governor-race/90955193007/>.

<sup>4</sup> Jessie Opoien and Mary Spicuzza, *David Crowley reenters governor's race with backing of Gov. Tony Evers*, MILWAUKEE J. SENTINEL (July 18, 2026), <https://www.jsonline.com/story/news/politics/elections/2026/07/18/democrat-david-crowley-reenters-wisconsin-governors-race-with-backing-of-gov-tony-evers/90963169007/>.

<sup>5</sup> Wisconsin Elections Commission, *Deadlines for the August 11, 2026 Partisan Primary*, <https://myvote.wi.gov/en-us/Voter-Deadlines>.

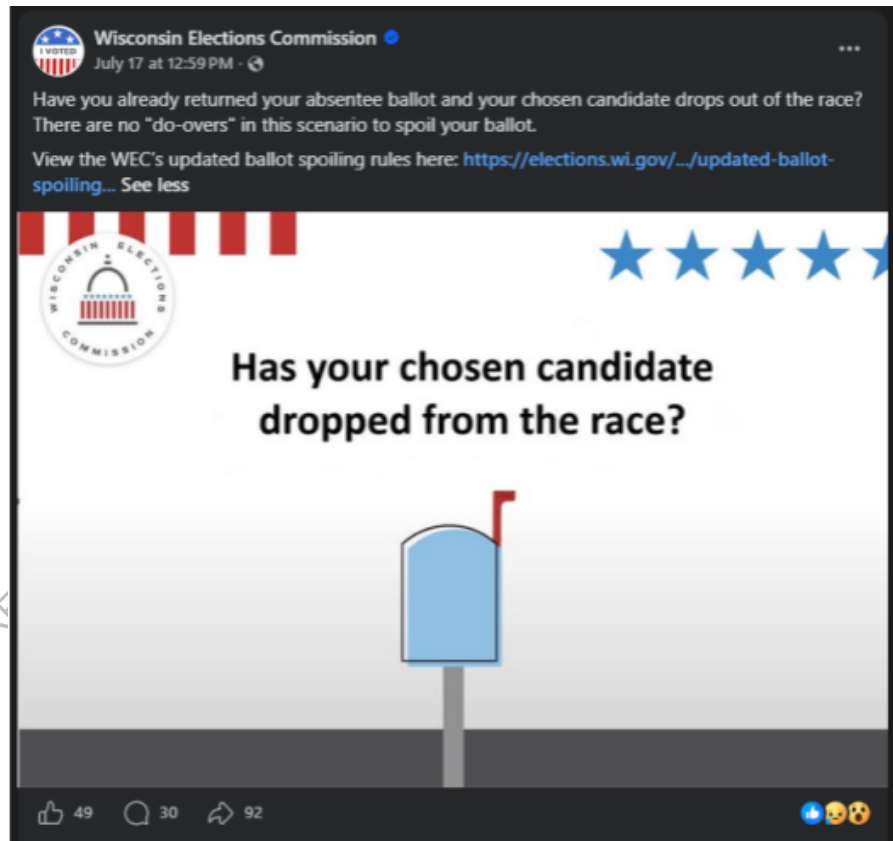
already been returned to municipal clerks. ( WEC July 10 Absentee Report, Welsh Decl. ¶ 5, Ex. 2).

Under Wisconsin election law, “[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 3 ballots in all.” Wis. Stat. § 6.80(2)(c). Similarly, “[w]henever an elector returns a spoiled or damaged absentee ballot to the municipal clerk, or an elector’s agent...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 the elector’s agent.” Wis. Stat. § 6.86(5). This process is colloquially referred to as “ballot spoiling.”

At the time absentee ballot voting had begun for the August election, the Commission had recently issued guidance on ballot spoiling. (Compl. ¶¶ 25–26; WEC May 27, 2026 Ballot Spoiling Guidance at 1 (the “May Guidance”), Welsh, Decl. ¶ 6, Ex. 3). However, the July 10 Guidance contained a marked departure from the May 27 Guidance. The July 10 Guidance replaces the May 27 Guidance and includes “two substantive changes to the May 27 guidance.” (July 10 Guidance at 1, Welsh Decl. ¶ 2, Ex. 1.) First, the Commission clarified that a voter may receive up to two replacement absentee ballots for a total of 3, including the original ballot. (*Id.*) Second, the Commission: “Determined 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.’ The ballot cannot be spoiled and reissued *for any reason.*” (*Id.* at 1, emphasis added.)

That very same day, the Commission posted the following on social media:



(Commission July 17 Facebook Post, Welsh Decl. ¶ 7, Ex. 4.)

## II. The Commission’s Longstanding Absentee Ballot Spoiling Guidance

The July 10 Guidance is a departure from the Commission’s longstanding interpretation and guidance for absentee ballot spoiling. Prior to the issuance of the May Guidance, the Commission’s most recent guidance on absentee ballot spoiling was from August 1, 2022. (Compl. ¶ 20; WEC August 2022 Spoiling Absentee Ballot Guidance, Welsh Decl. ¶ 8, Ex. 5.) Consistent with that guidance, the Commission 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.*" (*Id.* at 2.) (emphasis added). The August 2022 Guidance further provided that, so long as the request was made during the absentee voting deadlines, the voter could still spoil their ballot after it was returned to the clerk. (*Id.*) In an August 2, 2022 press release, the Commission reiterated that Wis. Stat. § 6.86(5) allows a voter to spoil his or her absentee ballot "to correct several issues, such as a damaged ballot; an error when voting the ballot (such as filing in the wrong circle or voting for too many candidates); *or the voter changing his or her mind after returning the absentee ballot.*" (WEC August 2022 Spoiling Ballot Press Release, Welsh Decl. ¶ 9, Ex. 6.) (emphasis added).

The August 2022 Guidance and the Commission's interpretation of section 6.86(5) were the subject of litigation in *Kormanik v. Wisconsin Elections Commission*, Waukesha Case No. 22-CV0991385; Court of Appeal, District II, Case No. 2024AP408. First, the circuit court enjoined the August Guidance and WEC's interpretation of section 6.86(5) that permitted spoiling of a ballot after it has been returned to the municipal clerk. *Kormanik v. Wisconsin Elections Comm'n*, No. 2024AP408, 2026 WL 380350, at \*1 (Ct. App. Feb. 11, 2026) (summary disposition order, cited for context only). However, on February 11, 2026, the Court of Appeals *reversed* the circuit court's injunction and declaratory judgment, holding that the circuit court lacked competency to determine the merits and provide injunctive relief in the first instance. *Id.* at \*3.

Notably, during the *Kormanik* litigation, the Commission defended the August Guidance as being consistent with section 6.86(5), specifically pointing to its



longstanding interpretation and practice that permitted absentee ballot spoiling after an absentee ballot had been returned to the clerk and permitting a voter to spoil and receive a new ballot if they wished to change their mind. In an affidavit provided by Megan Wolfe, Administrator for the Commission, Wolfe pointed to two previous versions of the Commission's guidance regarding absentee ballot spoiling. (Affidavit of Megan Wolfe, Welsh Decl. ¶ 10, Ex. 7.)

Commission guidance issued on October 19, 2020 was consistent with the August 2022 guidance discussed above. (WEC October 2020 Guidance at 1, Welsh Decl. ¶ 11, Ex. 8.) The October 2020 Guidance also expressly provided that a ballot could be spoiled after it was returned to the municipal clerk. (*Id.* at 2).

Administrator Wolfe also noted that the "Commission's position regarding spoiling absentee ballots...has also remained substantially similar since the Wisconsin Government Accountability Board ("GAB"), in 2014, published comparable guidance." (Affidavit of Megan Wolfe at ¶ 8, Welsh Decl. ¶ 10.) That guidance provided that voters can spoil an absentee ballot *after* it has been returned to the clerk and did not prohibit spoiling a ballot if a voter wished to change their mind. (GAB 2014 Guidance, Welsh Decl. ¶ 12, Ex. 9.)

For over a decade, the Commission has interpreted section 6.86(5) as allowing voters to spoil their ballots after returning them to the clerk, and to receive a new ballot if they wish to change who they intend to vote for. Yet during an active primary, the Commission has suddenly changed course, and according to public reporting,

Commission Chairman Don Millis has no plans to call a meeting to discuss changing the July 10 Guidance.<sup>6</sup>

**III. Voters have relied upon the Commission's previous guidance and will now be disenfranchised.**

The Plaintiffs in this matter are all voters who will be disenfranchised by the July 10 Guidance. One of these voters is Joseph Bins. (Decl. of Joseph Bins.) Bins resides in the Village of Waunakee, routinely votes absentee, and requested an absentee ballot for the August 2026 primary election. (Bins Decl. ¶¶ 2-4.) Bins received his absentee ballot shortly after it was sent to him on June 18, 2026, promptly prepared his ballot and returned it, and it was received by the Waunakee clerk on or about June 29, 2026. (Bins Decl. ¶ 5). On his ballot, he indicated that he wished to vote for Sara Rodriguez, who subsequently dropped out of the race after Bins had returned his absentee ballot. (Bins Decl. ¶ 6). Bins now considers his attempt to vote for Sara Rodriguez a mistake because she is no longer a candidate for governor. (Bins Decl. ¶ 7.) On July 17, 2026, Bins contacted the Village of Waunakee Clerk requesting to spoil his ballot so that he could receive a new one. (Correspondence with the Village of Waunakee Clerk, Bins Decl. ¶¶ 8, 15, Ex. 1.) The Clerk informed him that he could not spoil his ballot because his preferred candidate has since dropped out. (Bins Decl. ¶¶ 9, 15, Ex. 1.)

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<sup>6</sup> Molly Beck, *Democrats Urge WEC to Rescind Rule Barring Absentee Ballot Revotes*, MILWAUKEE J. SENTINEL (July 21, 2026), <https://www.jsonline.com/story/news/politics/elections/2026/07/21/democrats-urge-wec-to-rescind-rule-barring-absentee-ballot-revotes/90993145007/>.

When Bins originally requested his absentee ballot and returned it to the Waunakee clerk, he believed that he would be able to spoil and receive a new ballot if he changed his mind about who he wished to vote for or if his preferred candidate dropped out of the race. (Bins Decl. ¶ 11). He had several acquaintances who had previously run for office, and thus, was aware of the Commission's previous guidance that would allow him to spoil his ballot if he wished to vote for a different candidate or made a mistake on his ballot. (Bins Decl. ¶ 12.) Bins wishes to submit a new ballot because he would like to "participate in the election in a meaningful way." (Bins Decl. ¶ 13.) As he puts it: "I have made a consistent effort to participate in every election that I can for the past decade. I view it as an important part of my civic duty. This election is very important to me and I want to make sure my vote counts." (Bins Decl. ¶ 14.)

Plaintiff Thomas J. Elert is a Wisconsin elector who has resided in Madison for 71 years. (Decl. of Thomas John Elert ¶¶ 1-3). Elert is a veteran with cardiovascular and pulmonary problems, which is why he routinely votes absentee. (Elert Decl. ¶ 4.) On or about June 24, 2026, the Madison City Clerk sent Elert his absentee ballot. (Elert Decl. ¶ 5.) He prepared his absentee ballot and returned it to the Madison City Clerk, who received it on or about July 8, 2026. (*Id.*) Elert indicated on his ballot in the Democratic gubernatorial primary election that he wished to vote for Sara Rodriguez. (Elert Decl. ¶ 6). Because Sara Rodriguez has since dropped out of that race, Elert no longer wishes to vote for her and believes he prepared his ballot erroneously. (Elert Decl. ¶¶ 6-7). Elert learned on the news that WEC guidance provides that a voter cannot request a new ballot if they want to change their mind about who they wish to vote for. (Elert ¶ Decl.

8). He believed when he returned his absentee ballot that Wisconsin law would allow him to spoil his absentee ballot and obtain a new one if he chose to vote for a different candidate. (Elert Decl. ¶ 9). Had he been aware that he could not spoil his ballot and receive a replacement one, he would have delayed returning his absentee ballot. (Elert Decl. ¶ 10). Elert has participated in the democratic process in every election for the past 57 years, including the four years that he served in the Navy; he is concerned that the July 10 Guidance denies him his right to vote. (Elert Decl. ¶ 12.)

Plaintiff Susan Roberts is an 80-year-old Wisconsin elector who resides in Madison. (Decl. of Susan Roberts ¶¶ 1-4.) Roberts routinely votes absentee because of her age and limited mobility. (Roberts Decl. ¶ 4.) Roberts has made an effort to vote in every election that she has been eligible to vote in since 1980. (Roberts Decl. ¶ 5.) Roberts returned her absentee ballot in the mail on or about July 16, 2026, and the Madison City Clerk received her ballot on July 20, 2026. (Roberts Decl. ¶ 6.) Roberts intended to cast her ballot in the Democratic primary for governor and marked her absentee ballot in favor of Sara Rodriguez. (Roberts Decl. ¶ 7.) Rodriguez withdrew from the race the day after Roberts put her absentee ballot in the mail. (*Id.*) Roberts no longer wishes to vote for her and considers indicating a vote for Rodriguez to be a mistake. (Roberts Decl. ¶ 8.) Roberts rarely uses social media, getting her news primarily through television and directly from news websites. (*Id.* at ¶ 9.) She only learned about WEC's guidance that voters cannot spoil and request a new absentee ballot if they change their mind about who they wish to vote for the day after she placed her ballot in the mail. (*Id.*) Had she been aware of the WEC guidance, Roberts

would have waited to return her absentee ballot. (Roberts Decl. ¶ 10). Roberts wishes to spoil her ballot so that she can participate in this election in a meaningful way. (Roberts Decl. ¶ 11.) It is important to Roberts that her vote count because she believes it is fundamental to being an American citizen and that is the primary way to hold government officials accountable. (Roberts Decl. ¶ 12.)

As of July 20, 2026, **71,310 electors** have returned their absentee ballots to the municipal clerk. (WEC July 20, 2026 Absentee Ballot Report, Welsh Decl. ¶ 13, Ex. 10.)

## **LEGAL STANDARDS**

### ***Standards for temporary injunctive relief***

The award of temporary injunctive relief is within a trial court's sound discretion. *State v. Spielvogel & Sons Excavating, Inc.*, 193 Wis. 2d 464, 479, 535 N.W.2d 28, 34 (Ct. App. 1995). To obtain a temporary injunction, the movant must show: "(1) the movant is likely to suffer irreparable harm if a temporary injunction is not issued; (2) the movant has no other adequate remedy at law; (3) a temporary injunction is necessary to preserve the status quo; and (4) the movant has a reasonable probability of success on the merits." *Milwaukee Deputy Sheriffs' Ass'n v. Milwaukee Cnty.*, 2016 WI App 56, ¶ 20, 370 Wis. 2d 644, 659, 883 N.W.2d 154, 161 (citing *Werner v. A.L. Grootemaat & Sons, Inc.*, 80 Wis. 2d 513, 520-21, 259 N.W.2d 310 (1977)).

### ***Standards for judicial review of agency guidance***

This is an action seeking judicial review of policy promulgated by an agency as "guidance." "[T]he exclusive means of judicial review of the validity of a rule or guidance document shall be an action for declaratory judgment." Wis. Stat. § 227.40(1).

“[W]hen it appears from the complaint and supporting evidence that the rule or guidance document or its threatened application interferes with or impairs, or threatens to interfere with or impair, the legal rights and privileges of the plaintiff,” then the court “shall render a declaratory judgment.” *Id.* There is no administrative exhaustion requirement: “A declaratory judgment may be rendered whether or not the plaintiff has first requested the agency to pass upon the validity of the rule or guidance document in question.” *Id.*

“In any proceeding pursuant to this section for judicial review of a... guidance document, 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). State agencies act within their statutory authority only when they issue guidance consistent with state statute – guidance that conflicts with state statute exceeds their authority. Wis. Stat. § 227.10(2m); *see also Papa v. Wisconsin Dep't of Health Servs.*, 2020 WI 66, ¶ 41, 393 Wis. 2d 1, 26, 946 N.W.2d 17 (holding that an agency exceeds its statutory authority when agency guidance document conflicts with statute).

## ARGUMENT

Plaintiffs are entitled to temporary injunctive relief. As an initial matter, the Commission’s decision to change the rules for absentee voting when absentee voting has already begun, which both federal and state courts have recognized as impermissible, weighs heavily in favor of granting injunctive relief. And of course, Plaintiffs can meet all four prongs required to obtain temporary injunctive relief.

First, without immediate injunctive relief, the Plaintiffs and potentially thousands of other voters across Wisconsin will be prevented from fully exercising their right to vote in the August primary election, a clear irreparable harm. The right to vote, once lost, cannot be recovered. This is precisely the kind of harm that courts have found to be irreparable and with no adequate remedy at law — meeting the second requirement for injunctive relief. As for the third requirement, injunctive relief is necessary to restore the status quo. Consistent with its longstanding interpretation, at the beginning of this August Primary, the Commission's guidance did not prohibit voters from spoiling their ballots after they had been returned to municipal clerks, including if they wished to vote for different candidates. The Commission has thus disrupted the status quo.

Finally, Plaintiffs have a reasonable probability of prevailing on the merits of all three of their claims. The July 10 Guidance violates Wisconsin Statutes sections 6.86(5) and 6.80(2)(c). Further, the July 10 Guidance violates the Plaintiffs' inherent and constitutional right to vote and choose their preferred candidate. The July 10 Guidance is additionally invalid because it violates the Equal Protection Clause of the Wisconsin Constitution by treating absentee ballots differently in the middle of an election already underway, and by treating the right to spoil one's ballot differently based upon whether a voter chooses to use the absentee voting process or vote in person on Election Day.

**I. The Court should issue a temporary injunction so that WEC is not changing the rules governing absentee ballots mid-election.**

As an initial matter, the Commission altered the rules of the election after voting had already begun, in violation of basic principles of election law. The Commission is responsible for administering the Wisconsin Election Code and other laws relating to elections and election campaigns. Wis. Stat. § 5.05(1). Inherent to these statutes is the “basic tenet” that “[w]hen an election is close at hand, the rules of the road should be clear and settled.” *Democratic Nat’l Comm. v. Wisconsin State Legislature*, 141 S. Ct. 28, 31, 208 L. Ed. 2d 247 (2020) (Kavanaugh, J., concurring). Under the related *Purcell* principle, federal courts general decline to change the rules governing state elections close to – or in this case, *in the middle of an election* – because such changes can “result in voter confusion and consequent incentive to remain away from the polls.” *Purcell v. Gonzalez*, 549 U.S. 1, 4–5, 127 S. Ct. 5, 7, 166 L. Ed. 2d 1 (2006). The closer to an election, the greater the risk of voter confusion and harm. *Purcell*, 549 U.S. at 5. “Even seemingly innocuous late-in-the-day judicial alterations to state election laws can interfere with administration of an election and cause unanticipated consequences.” *DNC*, 141 S. Ct. at 31 (Kavanaugh, J., concurring). Critically, this principle ensures “running an orderly, efficient election and in giving citizens (including the losing candidates and their supporters) confidence in the fairness of the election.” *DNC*, 141 S. Ct. at 31 (Kavanaugh, J., concurring). Although the *Purcell* principle has often been invoked to prevent judicial action, it equally supports the notion that when a state agency disrupts an election that is already underway, a state court should respond and stop the damage.



The Wisconsin Supreme Court has similarly recognized the dangers of interfering in an election that is already underway. In *Hawkins v. Wisconsin Elections Commission*, the Wisconsin Supreme Court stated that “it would be unfair both to Wisconsin voters and to the other candidates on the general election ballot to interfere in an election that, for all intents and purposes, has already begun.” 2020 WI 75, ¶ 10, 393 Wis. 2d 629, 631, 948 N.W.2d 877. There, candidates for the Green Party filed an original action and sought temporary injunctive relief to have their candidates added to the ballot for the fall 2020 general election, after potentially thousands of absentee ballots had been printed and were sent to voters. *Id.* at ¶¶ 2-6. The Court did not even reach the merits of the petitioner’s case, reasoning that “requiring municipalities to print and send a second round of ballots to voters who already received, and potentially already returned, their first ballot would result in confusion and disarray and would undermine confidence in the general election results.” *Id.* at ¶ 10.

Here, WEC has not changed the ballots, but *has* changed the options available to absentee voters, an action with similar stakes. *Hawkins* cautions against such a change. Similarly, in *Brown v. WEC*, the Wisconsin Supreme Court stayed the circuit court’s ruling changing absentee ballot sites “just months before the August primary and November general elections” because it created “a risk that the circuit court’s ruling will disrupt ongoing preparations for those elections by creating uncertainty about which sites may be designated as alternate absentee balloting locations.” No. 2024AP232, slip op. at 5 (Wis. June 11, 2024) (citing *Purcell*, 549 U.S. at 4-5).

The July 10 Guidance is inconsistent with Wisconsin election law and the *Purcell* principle. Municipal clerks began issuing requested absentee ballots by no later than June 25, 2026. Under the May Guidance that was in effect when absentee ballots were issued to Wisconsin voters, the Commission did not advise clerks that it was departing from its longstanding interpretation that permitted voters to spoil their ballots if they had changed their minds because the candidate they originally selected had dropped out of the race. Voters relied on that interpretation. (Bins Decl. ¶¶ 11-12; Elert Decl. ¶¶ 9-10; Roberts Decl. ¶¶ 10-11.) For at least two weeks, election officials and voters were under the impression that voters could spoil their ballots if their ballot did not reflect their proper intent and will. But by adopting the July 10 Guidance, with just over a month before the election and thousands of votes cast, the Commission has created “confusion and disarray” and triggered “unanticipated consequences,” namely, preventing voters from participating in an election in a meaningful way.

The reasoning of *Hawkins* and *Brown* applies with equal force to the Commission. The Commission is charged by Wisconsin Statutes with administering and applying Wisconsin election law. It is a “basic tenet” of election law that the rules should not be changed close to an election, let alone while voting is already underway. The Commission should avoid “interfer[ing] in an election that, for all intents and purposes, has already begun.” *Hawkins*, 2020 WI 75, ¶ 10. This Court should issue injunctive relief to get this election back on track and restore the rights absentee voters had when it began.

The *Purcell* principle, and the related reasoning in *Hawkins* and *Brown*, lend support to all four of the factors Plaintiffs must show to obtain injunctive relief, and weigh heavily in favor of this Court's exercising its discretion to grant that relief.

Plaintiffs next address the four temporary injunction factors in turn.

**II. The Plaintiffs would suffer irreparable harm in the absence of a temporary injunction: they will not be able to choose their preferred candidate and the effect of the will of the elector will be thwarted.**

If this Court does not grant injunctive relief, the Plaintiffs will lose the ability to cast a meaningful vote in the August Partisan Primary. "Irreparable harm is that which is not adequately compensable in damages." *Allen v. Wisconsin Public Service Corp.*, 2005 WI App 400, ¶ 30, 279 Wis. 2d 488. "[A]t the temporary injunction stage the requirement of irreparable injury is met by a showing that, without it to preserve the status quo pendente lite, the permanent injunction sought would be rendered futile." *Werner*, 80 Wis. 2d at 520.

Injury to a constitutional right constitutes irreparable harm. *Democratic Nat'l Comm. v. Bostelmann*, 447 F. Supp. 3d 757, 769 (W.D. Wis. 2020) (collecting cases); *see also Doe 1 v. Madison Metro. Sch. Dist.*, 2022 WI 65, ¶ 93, 403 Wis. 2d 369 (Roggensack, J., dissenting) ("Many courts consider the on-going infringement of a constitutional right enough and require no further showing of irreparable injury... We should do so as well."). Courts have routinely found that the threatened loss or impairment of the constitutional and fundamental right to vote constitutes irreparable harm. *See, e.g., League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) ("Courts routinely deem restrictions on fundamental voting rights irreparable injury.")

(collecting cases); *Carey v. Wis. Elections Comm'n*, 624 F. Supp. 3d 1020, 1034 (W.D. Wis. 2022) (restrictions affecting voters with disabilities' "right to vote ... qualifies as an irreparable harm"); *Ezell v. City of Chicago*, 651 F.3d 684, 699 (7th Cir. 2011) ("[F]or some kinds of constitutional violations, irreparable harm is presumed"); *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) ("A restriction on the fundamental right to vote therefore constitutes irreparable injury.").

Here, the Plaintiffs' right to vote is enshrined in the Wisconsin Constitution. Wis. Const. Art. I, § 1; Art. III, ¶1. This right encompasses the right for each voter to "cast [a] ballot **for the person of his choice.**" *State ex rel. Frederick v. Zimmerman*, 254 Wis. 600, 37 N.W.2d 473, 480 (1949) (emphasis added). For absentee voters, this right is now under threat. Without prompt injunctive relief, the Plaintiffs are at risk of having their vote, and their right to choose their preferred candidate, be denied. What's more, temporary relief is necessary because a permanent injunction will be futile if relief is not granted as soon as possible before the August 11, 2026 election.

Indeed, the concerns underlying the *Purcell* principle and the Wisconsin Supreme Court's rulings in *Hawkins* and *Brown* dovetail with the notion that interfering in an ongoing election causes irreparable harm. The Court in *Hawkins* noted that any relief it could grant would "cause confusion and undue damage" to both voters and candidates. *Hawkins*, 393 Wis. 2d 629, ¶ 5. Rules should not be changed close to an election *because* elections inherently implicate the all-important right to vote, and infringing upon that right causes irreparable harm.

### III. The Plaintiffs have no adequate remedy at law.

Just as the Plaintiffs will be irreparably harmed, they have no adequate remedy at law absent injunctive relief. The Plaintiffs will either be allowed to spoil their ballots in the August Partisan Primary, or they will not, and no amount of damages or declaratory judgment can return their vote to them. “[O]nce the election occurs, there can be no do-over and no redress.” *League of Women Voters of N.C.*, 769 F.3d at 247; *Common Cause Ind. v. Lawson*, 327 F. Supp. 3d 1139, 1154-54 (S.D. Ind. 2018), *aff’d* 937 F.3d 944 (7th Cir. 2019) (finding no “adequate remedy at law” when an individual’s right to vote is violated, because “an individual cannot vote after an election has passed.”). “Traditional legal remedies would be inadequate, since infringement on a citizens’ [sic] constitutional right to vote cannot be redressed by money damages.” *Democratic Nat’l Comm. v. Bostelmann*, 451 F. Supp. 3d 952, 969 (W.D. Wis. 2020), *stay granted in part and denied in part*, 2020 WL 3619499 (7th Cir. April 3, 2020), *stay granted in part sub. nom. Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 589 U.S. 423 (2020); *Common Cause Ind.*, 327 F. Supp. 3d at 1154.

Indeed, to fully appreciate how inadequate any remedy at law would be, the Court need look no further than the Plaintiffs’ Declarations. *See e.g.*, (Bins Decl. ¶ 14) (“I have made a consistent effort to participate in every election that I can for the past decade. I view it as an important part of my civic duty.”); (Roberts Decl. ¶ 12) (“It is important for my vote to count because I believe that it is a fundamental to being an American citizen.”); (Elert Decl. ¶ 12) (“I want to participate in the democratic process

as I have in every election for the past 57 years, including the four years that I was serving in the Navy.”). This element is satisfied. Injunctive relief is warranted.

#### **IV. The requested relief is necessary to restore the status quo.**

The function of a temporary injunction is to maintain the status quo, not to change the position of the parties or compel a party to do acts which constitute all or part of the ultimate relief sought. *Codept, Inc. v. More-Way N. Corp.*, 23 Wis. 2d 165, 173, 127 N.W.2d 29, 34 (1964) “[C]ourts define ‘status quo’ as the last peaceable, uncontested status of the parties which preceded the actions giving rise to the issue in controversy.” *Praefke Auto. Elec. & Battery Co. v. Tecumseh Prod. Co.*, 123 F. Supp. 2d 470, 473 (E.D. Wis. 2000); accord, e.g., *Stemple v. Bd. of Educ. Of Prince George’s Cty.*, 623 F. 2d 893, 898 (4th Cir. 1980). When a plaintiff shows a reasonable probability of success on the merits and the prospect of serious or irreparable injury, “it is well-nigh an imperative duty of the court to preserve the status quo by temporary injunction.” *Shearer v. Congdon*, 25 Wis. 2d 663, 668, 131 N.W.2d 377 (1964) (internal quotation marks omitted).

Here, the “status quo” is a return to the Commission’s longstanding interpretation of section 6.86(5) and previous guidance that was reflected in the May 2026 guidance, which did not prohibit spoiling an absentee ballot after it was returned to the clerk and did not prohibit spoiling a ballot if a voter wished to vote for a different candidate. This was the Commission’s position when the August primary election began, and before approximately 71,000 voters had returned their absentee ballots. As the Wisconsin Supreme Court admonished, it is “unfair both to Wisconsin voters and to the other candidates on the general election ballot to interfere in an election that, for all

intents and purposes, has already begun.” *Hawkins*, 2020 WI 75, ¶ 10. Injunctive relief is necessary to restore the status quo.

**V. The Plaintiffs have a reasonable probability of prevailing in their lawsuit.**

The Plaintiffs have a reasonable probability of success on the merits of all three of their claims.

**a. The July 10 Guidance is inconsistent with Wisconsin Elections Statutes.**

The July 10 Guidance conflicts with the text of sections 6.86(5) and 6.80(2)(c), and is therefore invalid. The plain text of sections 6.86(5) and 6.80(2)(c), read in context with the rest of the election statutes, permit voters to spoil their ballot if they wish to change who they intend to cast their vote for. Because the statutes do not support the July 10 Guidance, its issuance exceeds the Commission’s authority.

The first principle of statutory interpretation in Wisconsin is that “the written text is the law; that is what legislators voted on and binds the public.” *Serv. Emps. Int’l Union Healthcare Wisconsin v. Wisconsin Emp. Rels. Comm’n*, 2025 WI 29, ¶ 7, 416 Wis. 2d 688, 694, 22 N.W.3d 876, 879 (citing *State ex rel. Kalal v. Cir. Ct. for Dane County*, 2004 WI 58, ¶ 44, 271 Wis. 2d 633, 681 N.W.2d 110). To determine the meaning of the statute, courts begin by examining intrinsic sources, which “include the statutory text at issue, related statutes and phrases, a statute’s place within the statutory structure, its stated or textually manifest purpose, and statutory history.” *Id.* at ¶ 8. Statutory text is interpreted “reasonably, to avoid absurd or unreasonable results.” *Kalal*, 271 Wis. 2d 633, ¶ 46.

Crucial to the interpretation of chapter 6 of the statutes is this instruction in chapter 5: “Except as otherwise provided, chs. 5 to 12 *shall be construed to give effect to the will of the voters*, if that can be ascertained from the proceedings.” Wis. Stat. § 5.01(1) (emphasis added). Wisconsin courts have repeatedly recognized that section 5.01 requires that the election statutes be construed to “give effect to the will of the voters” consistent with the constitutionally guaranteed right to vote. *See. e.g., Ollmann v. Kowalewski*, 238 Wis. 574, 300 N.W. 183, 185-86 (1941) (construing “will of the electors” provision consistent with the “constitutional right to vote”); *Stahovic v. Rajchel*, 122 Wis. 2d 370, 376, 380, 363 N.W.2d 243 (Ct. App. 1984) (emphasizing “the fundamental principle that, in construing election laws, the will of the electorate is to be furthered”; courts should “avoid[] thwarting the will of the electors”).

Turning to the procedure for spoiling an absentee ballot before it is cast, the statute provides, in full, that:

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).

Wis. Stat. § 6.86(5).

The July 10 Guidance conflicts with this statute in two ways. First, section 6.86(5) does not prohibit spoiling a ballot *after* it is returned to the Clerk, and second, it does not prohibit spoiling a ballot if the voter wishes to vote for a different candidate in the election. Yet the July 10 Guidance invents and imposes these prohibitions.



First, section 6.86(5) plainly authorizes a voter — or a clerk at the voter’s direction — to spoil a ballot before or after returning it to the clerk. A replacement ballot may be issued “within the time limits under subs. (1) and (3) (c).” Those time limits provide that mailed requests must be received “no later than 5 p.m. on the 5th day immediately preceding the election,” while in-person requests 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); *see also* § 6.86(3)(c) (providing additional deadlines for requests made by hospitalized voters). Previous guidance had acknowledged and incorporated these deadlines. (May 27, 2026 Guidance, Welsh Decl. Ex. 3; Aug. 2022 Guidance, Ex. 5; Oct. 2020 Guidance, Ex. 8.) The statute contains no other limitations on spoiling an absentee ballot. The language in prior WEC guidance was consistent with this plain language of section 6.86(5).

The July 10 Guidance’s interpretation that the ballot may only be spoiled by the elector *before* it is returned to the clerk — not after — violates the canon to give reasonable effect to every word and avoid surplusage. *Kalal*, 2004 WI 58, ¶ 46. The first sentence of section 6.86(5) instructs that upon receiving “a spoiled or damaged absentee ballot,” a clerk must issue a new ballot to the elector. The second sentence provides: “Any request for a replacement ballot under this subsection must be made within the applicable time limits under subs. (1) and (3) (c).” But there is no need for a process through which a voter may “request” a new ballot if only a voter may spoil a ballot and if a clerk who receives a ballot spoiled by the voter has an automatic and immediate obligation to replace it. The voter has nothing to “request” in that circumstance.

The only interpretation of the statute that gives effect to every word is WEC's long-standing interpretation, which properly interpreted the second sentence of section 6.86(5) as a grant of authority to spoil a voter's previously returned ballot upon that voter's request by the statutory deadlines set forth above. The language about "applicable time limits" in the second sentence underscores this point.

Those time limits come from sections 6.86(1)(b) and (3)(c). Section 6.86(1)(b) provides that mailed requests must be received "no later than 5 p.m. on the 5th day immediately preceding the election," while in-person requests must be made "no earlier than 14 days preceding the election and no later than the Sunday preceding the election." Subsection (3) sets slightly different deadlines for the special case of requests made by hospitalized voters. The specificity of those deadlines, together with the need to avoid surplusage, leaves no doubt that the legislature intended section 6.86(5)'s request process to serve some real function. The Commission's July 10 Guidance implies that the Legislature designed a complex system of deadlines for a process that does not exist. The Commission – and this Court – must avoid interpretations of statutes that lead to absurd or unreasonable results. *Kalal*, 2004 WI 58, ¶ 46.

Critically, section 6.86 does not prohibit a voter from spoiling a ballot if that voter has a change of heart about who to vote for. Nothing in Wisconsin law restricts the reasons a voter may choose to spoil an absentee ballot. Rather, section 5.01 expressly requires that section 6.85(5) "be construed to give effect to the will of the electors, if that can be ascertained from the proceedings." Wis. Stat. § 5.01(1). Previous guidance was

faithful to this command. Contrary to the July 10 Guidance, the Commission's previous guidance interpreting section 6.86(5) faithfully gave effect to the will of the elector.

What's more, an interpretation prohibiting the spoiling of absentee ballots is at odds with the plain interpretation and context of a "spoiled" ballot.<sup>7</sup> Section 6.80(2)(c) employs the term "spoiled." *Kalal*, 2004 WI 58, ¶ 46 ("[S]tatutory language is interpreted in the context in which it is used...in relation to the language of surrounding or closely-related statutes.") Section 6.80(2)(c), which governs the mechanics of voting on election day, refers to "any elector who, *by accident or mistake, spoils* or erroneously prepares a ballot." Wis. Stat. § 6.80(2)(c) (emphasis added).

As WEC explained in its appellate brief in *Kormanik*: "'Accident' and 'mistake' are not defined in the statutes, and therefore this Court may consult the dictionary to determine the meaning of these non-technical terms. *Moreschi v. Village of Williams Bay*, 2020 WI 95, ¶ 21, 395 Wis. 2d 55, 69, 953 N.W.2d 318; *Kalal*, 271 Wis. 2d 633, ¶ 53 (explaining that a word's ordinary meaning is "ascertainable by reference to [its] dictionary definition")."

The dictionary definitions of "mistake" and "accident" have not changed since WEC relied upon them to defend its previous guidance around absentee ballot spoiling. A leading dictionary defines "mistake" as "to blunder in the choice of" and to "confuse with another" and "to be wrong." *Mistake*, Merriam-Webster, <https://www.merriam->

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<sup>7</sup> Plaintiffs are indebted, in this portion of the argument, to the Brief of Appellant filed by WEC in *Kormanik v. Wisconsin Elections Commission*, 2024AP408 (May 1, 2025). Citations have been updated.

[webster.com/dictionary/mistake](https://www.merriam-webster.com/dictionary/mistake) (last updated July 17, 2026). A “mistake” can also mean an “error, misconception, or misunderstanding; an erroneous belief.” *Mistake*, Black’s Law Dictionary (12th ed. 2024).

“Accident” means “an unforeseen and unplanned event or circumstance,” or “an unfortunate event resulting especially from carelessness or ignorance.” *Accident*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/accident> (last updated July 22, 2026). An “accident” is also defined as “something that does not occur in the usual course of events or that could not be reasonably anticipated.” *Accident*, Black’s Law Dictionary (12th ed. 2024).

Again, Plaintiffs can hardly make their point more eloquently than WEC once did:

Spoiling a ballot by “accident or mistake” could therefore include an elector’s choosing multiple candidates when only one is allowed – an error on the face of the ballot. However... a “spoiled” ballot may also contain an error that does not appear on the face of the ballot. The spoiling may be the result of an elector’s choosing a candidate she does not intend to vote for, choosing no candidates when she intended to choose one or some, choosing a candidate who an elector confuses with another person, or choosing a candidate who the elector misunderstood was still in (or would stay in) the race but had already withdrawn (or later withdraws).

**A spoiled ballot may be one that the elector completed by “accident or mistake.”**

Brief of Appellant, *Kormanik v. WEC*, Wis. Ct. App. 2024AP408 (May 1, 2025) (emphasis added). Although previous Commission guidance was consistent with this interpretation of “spoiled,” the July 10 Guidance abandons this plain meaning and contextual interpretation.

The July 10 Guidance also puts section 6.86(5) in unnecessary conflict with section 6.86(6), which states that “if an elector mails or personally delivers an absentee ballot to the municipal clerk” – in other words, if the absentee ballot is out of the voter’s possession and with the clerk – the clerk may only return it pursuant to the exceptions set out in sections 6.86(5) and 6.87(9). The Commission’s prior interpretation of the statute – which allowed voters to request the spoiling of their ballots “within the applicable time limits under subs. (1) and (3) (c)” – is correct because one should not needlessly render statutory provisions in conflict if they can be interpreted harmoniously.

The outcome of prior litigation does support WEC’s July 10 Guidance. In *Kormanik*, the Court of Appeals reversed the circuit court decision, concluding that the circuit court lacked competency to proceed because Kormanik had not properly served the Legislature. *Kormanik v. WEC*, No. 2024AP408, 2026 WL 380350, at \*1 (Ct. App. Feb. 11, 2026). Because of this reversal, there is no court order that either compels the Commission to alter its long-held interpretation on ballot spoiling or supports the Commission’s new prohibition. Notably, the Wisconsin Legislature did not intervene in *Kormanik* in support of Kormanik’s challenge to WEC’s prior interpretation on ballot spoiling. And, the Wisconsin Legislature has not amended the relevant statutes in a manner which would trigger or support WEC’s change in interpretation.

Simply put, the July 10 Guidance imposes limits on absentee voters that are not authorized by statute, and therefore, exceeds the Commission’s authority. Ultimately, the Plaintiffs have a reasonable probability of prevailing on their claim that July 10

Guidance will be declared invalid because it is unsupported by statute and exceeds the Commission's authority.

**b. The July 10 Guidance violates the inherent and constitutional right to vote.**

The July 10 Guidance violates the Plaintiffs' inherent right to vote, which is protected by Article I, Section 1 and Article III, Section 1 of the Wisconsin Constitution and which Wisconsin Courts have reaffirmed for over a hundred years.

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 rights guaranteed to him 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. It is a right which was enjoyed by the people before the adoption of the constitution and is one of the inherent rights which can be surrendered only by the people and subject to limitation by the fundamental law.

*State ex rel. Frederick v. Zimmerman*, 254 Wis. 600, 613, 37 N.W.2d 473, 480 (1949);

*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").

This right to vote includes "the right of a qualified elector to cast his ballot **for the person of his choice**." *Frederick*, 254 Wis. at 613 (emphasis added). This right cannot be "destroyed or substantially impaired," nor can any legislation "deprive or limit the right of a citizen to **express his choice** for the selection of public officers." *Id.* at 613-14 (emphasis added); see also *State v. Cir. Ct. for Marathon Cnty.*, 178 Wis. 468, 190 N.W. 563, 566 (1922) ("While the right of the Legislature to regulate the right of franchise is acknowledged, such regulation, however, cannot proceed to the extent where it

materially impairs or destroys the right of the elector to **exercise a free choice at the election.**") (emphasis added). Emphasizing this aspect of the right to vote, the Wisconsin election statutes open with the promise that they "shall be construed to give effect to the will of the electors." Wis. Stat. § 5.01(1); *see also Ollmann*, 300 N.W. at 185-86 (construing "will of the electors" as an extension of the "constitutional right to vote"); *Stahovic*, 122 Wis. 2d at 376, 380 (emphasizing "the fundamental principle that, in construing election laws, the will of the electorate is to be furthered" and that courts should "avoid[] thwarting the will of the electors").

Here, the July 10 Guidance violates the Plaintiffs' fundamental, constitutional right to vote. Inherent in the right to vote is the right to choose the candidate of their choice. Consistent with this right, Wisconsin election statutes are to be construed to "further the will of the electorate" and to avoid "thwarting the will of the elector." The July 10 Guidance not only violates these constitutional principles but advances a flawed interpretation of sections 6.80(2)(c) and 6.86(5) that runs headlong into section 5.01 and these constitutional principles. *See Am. Fam. Mut. Ins. Co. v. Wisconsin Dep't of Revenue*, 222 Wis. 2d 650, 667, 586 N.W.2d 872 (1998) ("Given a choice of reasonable interpretations of a statute, this court must select the construction which results in constitutionality."). Because the July 10 Guidance infringes upon the right to vote, the Plaintiffs have a reasonable probability of success on the merits.

#### **VI. The July 10 Guidance violates Wisconsin's Equal Protection Clause.**

The July 10 Guidance violates Wisconsin's Equal Protection Clause as set out in Article I, Section 1 of the Wisconsin Constitution: "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.” This constitutional provision includes the right to vote and equal protection of that franchise.<sup>8</sup>

“The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote over that of another.” *Bush v. Gore*, 531 U.S. 98, 104–05, 121 S. Ct. 525, 530, 148 L. Ed. 2d 388 (2000); *Trump v. Biden*, 2020 WI 91, ¶ 31 fn.12, 394 Wis. 2d 629, 951 N.W.2d 568 (noting that striking ballots in Dane and Milwaukee County during a Statewide recount, but not all other 70 Wisconsin counties, raised equal protection concerns). The July 10 Guidance violates this Equal Protection clause in two ways: first, by treating voters who spoiled their absentee ballots before July 10 differently than those who did not, and second, by treating voters differently between those who cast their ballots on election day than those who cast their vote via the absentee ballot procedures.

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<sup>8</sup> “The protections afforded by Article I, Section 1 of the Wisconsin Constitution are the “substantial equivalent” to those afforded by the Fourteenth Amendment to the United States Constitution.” *In re Commitment of Hager*, 2018 WI 40, ¶ 35 fn. 21, 381 Wis. 2d 74, 911 N.W.2d 17. *But see Matter of Adoption of M.M.C.*, 2024 WI 18, ¶ 52, 411 Wis. 2d 389, 5 N.W.3d 238, *cert. denied sub nom. A.M. B. v. McKnight*, 145 S. Ct. 1051, 220 L. Ed. 2d 382 (2025) (Dallet, J., concurring): “we have a long history of interpreting our constitution to provide greater protections for the individual liberties of Wisconsinites than those mandated by the federal Constitution. “



- c. The July 10 Guidance violates the Equal Protection Clause by treating voters who received and cast their ballots before July 10 differently from absentee voters who received and cast their ballots on or after WEC issued its guidance on July 10.**

Because WEC jettisoned previous guidance while voting was underway, some voters were able to avail themselves of WEC's previous guidance and received more favorable treatment than the later voters. Any earlier voter who successfully spoiled their ballot and received and submitted a new one before July 10 exercised a right that WEC extinguished for any subsequent voters as of July 10. On the other hand, such voters are now prevented from spoiling their ballot and requesting a third, as allowed by statute, and if WEC advises clerks not to count their already-submitted second or third ballots, these earlier voters will have been disenfranchised for purposes of the August primary. Likewise, some earlier voters, including Plaintiff Bins, received less favorable treatment than the later voters. Any earlier voter who filled out and mailed in an absentee ballot thinking they could change their mind later voted at a disadvantage compared to voters who learned, after July 10, that they would not be able to spoil their ballot. This is precisely the kind of "later arbitrary and disparate treatment" that "values one person's vote over that of another" that contravenes the equal protection guarantee of the right to vote.

- d. The July 10 Guidance violates the Equal Protection Clause by treating absentee voters worse than voters who will cast their ballots on Election day.**

In addition, the July 10 Guidance treats absentee voters worse than voters who cast their ballots on Election Day. If Bins were to vote in person on Election Day, he

would be entitled to up to two replacement ballots at his request, without having to justify the reason. *See* Wis. Stat. § 6.80(2)(c). If he accidentally filled in the wrong bubble, overheard someone say his preferred candidate had dropped out, or simply had a last-minute change of heart, he could obtain a new ballot as long as the ballot had not been accepted by the voting machine. Indeed, a voter who accidentally “over-votes” will have their ballot rejected by the voting machine and will be issued a new one. As described in Section V.a, *infra*, both sections 6.86(5) and 6.80(2)(c) permit a voter to spoil a ballot and receive another before their vote is cast. And yet, despite the Legislature providing essentially the same procedure for absentee voting and Election Day, the Commission’s July 10 Guidance treats these voters differently. When the “right to vote” is granted on “equal terms,” WEC cannot treat one person’s vote as more valuable than another.

## CONCLUSION

If this Court does not act, the Plaintiffs, and potentially thousands more Wisconsin voters, will be disenfranchised. For over a decade, the Commission has issued guidance, maintained the position, and argued in court that Wisconsin election law permits voters to spoil an absentee ballot after it has been returned to the clerk and for the purpose of changing who an absentee voter wishes to vote for on Election Day. The Commission was correct before, and it is wrong now. The July 10 Guidance must be rescinded as soon as possible before the August primary election.

Respectfully submitted this 23rd day of July, 2026.

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Electronically Signed by Diane M. Welsh

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<sup>9</sup> Effective August 1, 2026, the address for Pines Bach LLP will be 2 E. Mifflin St., Suite 600, Madison, WI 53703.