

JOSEPH ALAN BINS,
THOMAS J. ELERT, and
SUSAN ROBERTS,

Plaintiffs,

v.

Case No.: 26-CV-2400

Case Code: 30701

WISCONSIN ELECTIONS COMMISSION,

Defendant,

and

NATHAN POLLNOW,

Intervenor-Defendant.

**PROPOSED INTERVENOR DEFENDANT NATHAN POLLNOW'S
BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION FOR TEMPORARY
RESTRAINING ORDER AND TEMPORARY INJUNCTION**

Proposed Intervenor-Defendant Nathan Pollnow, by his attorneys, submits this brief in opposition to the motion for temporary restraining order and temporary injunction filed by the above-captioned Plaintiffs.

For at least the last three years, the Wisconsin Elections Commission (“WEC”) has communicated that absentee ballot voters who have already completed and submitted unspoiled absentee ballots to their municipal clerk are not permitted to revote a new ballot. Yet, Plaintiffs suggest that a July 10, 2026 letter from WEC to municipal clerks (the “July Guidance”) somehow ushered in a sea change to Wisconsin election law by reiterating that voters who cast absentee ballots—just like Election Day voters—are not entitled to do-overs after they have

already completed the voting process. That assertion is astounding, and the Court should reject it.

Equally astounding is Plaintiffs' claim that Wisconsin law enshrines a long-held individual right to re-vote an absentee ballot when a voter changes their mind. As Wisconsin statutes make clear, no such right exists—neither Plaintiffs nor any other voters have the right to spoil or destroy an already voted absentee ballot simply because they want to change their vote. Moreover, the “re-voting” scheme envisioned by Plaintiffs poses significant risks of chaos, fraud, and the dilution and pollution of votes, and it will undermine faith and trust in our election system if implemented. In short, re-voting is unlawful in Wisconsin for good reasons, and Plaintiffs' motion should be denied.

BACKGROUND

Just days before the August 2022 partisan primary, WEC staff issued guidance to municipal clerks and a press release instructing that clerks or a voter may spoil¹ a previously submitted absentee ballot in order to obtain another ballot and vote again (“2022 Guidance”). (Decl. Goehre ¶¶ 2-4, Exs. A-B). The 2022 Guidance was not approved by two-thirds of the Commissioners of WEC and, therefore, was never a properly issued guidance under Wis. Stat. § 5.05(1e). (Decl. Goehre ¶ 5). Regardless, the 2022 Guidance was enjoined by the Waukesha County Circuit Court in October 2022. (Decl. Goehre ¶¶ 6-7, Ex. C).

¹ A “spoiled ballot” is one that “was cast in a form or manner that does not comply with applicable rules.” *Ballot*, Black’s Law Dictionary (11th ed. 2019).; *Stroede v. Soc’y Ins.*, 2021 WI 43, ¶ 12, 397 Wis. 2d 17, 24, 959 N.W.2d 305, 308 (Courts may “consult a dictionary in order to guide our interpretation of the common, ordinary meanings of words.”). Spoiling a ballot, in the election context, takes place before the voter returns the ballot. *See* Wis. Stat. § 6.80(c) (on election day, an elector who “spoils” his or her ballot, “may receive another, by returning the defective ballot”); Wis. Stat. § 6.86(5) (“Whenever an elector returns a spoiled . . . absentee ballot to the municipal clerk . . . the clerk shall issue a new ballot to the elector[.]”)

Since October 2022, WEC has not instructed clerks that voters who have already returned their unspoiled absentee ballots are permitted to revote their ballots if they change their mind about who they want to vote for. (Decl. Goehre ¶ 9, Ex. E). Indeed, WEC's most recent guidance before the July Guidance— a May 27, 2026 letter to clerks and election officials addressing “Ballot Spoiling” (the “May Guidance”)—indicated that voters are not permitted to revote their absentee ballots once they have already submitted them. The May Guidance reiterated that Wisconsin law only allows a voter to receive another ballot “by returning the defective ballot to the municipal clerk.” (Doc. No. 5 at 40-41). It did not state that voters were allowed to spoil an absentee ballot after having already returned it or that voters could revote an absentee ballot after already returning their unspoiled ballot. Furthermore, WEC expressly stated in the May Guidance that it had “opted not to reissue its two guidance documents from August of 2022,” which are the foundation of Plaintiffs’ requested relief in this action. In other words, WEC rejected the 2022 Guidance by notifying clerks that WEC was not reissuing it.

Thereafter, and consistent with the May Guidance’s rejection of the 2022 Guidance, WEC issued the July Guidance, which replaced the May Guidance, and further clarified 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.

In summary, once an absentee ballot has been returned to the municipal clerk, it cannot be spoiled and reissued for any reason.

(Doc. No. 5 at 6). Once again, WEC reiterated that it “opted not to reissue its two guidance documents from August 2022.” (*Id.* at 5). The July Guidance is consistent with Wisconsin law and with the information WEC has communicated to the public since October 2022. Although Plaintiffs Bins and Elert voted their absentee ballots prior to the July Guidance, Plaintiff Roberts

mailed her completed absentee ballot six days after the July Guidance. (Compare Doc. No. 8 ¶ 5, Doc. No. 3 ¶ 5, with Doc. No. 6 ¶ 6).

Wisconsin law states that a municipal clerk “shall not return the ballot to the elector” once returned. Wis. Stat. § 6.86(6). There are two, and only two, exceptions to that prohibition. First, an elector (or an elector’s agent) can “spoil” his or her absentee ballot and “return” it to the clerk. *Id.* § 6.86(5). In other words, the spoiling happens *before* the ballot is “returned.” Second, a clerk may return an absentee ballot submitted “with an improperly completed certificate or with no certificate.” *Id.* § 6.87(9). Those are the only two circumstances under which clerks can either provide electors with a new ballot or return to them an already completed ballot.

The purpose of Section 6.86(6) is, in part, to “prevent the potential for fraud or abuse” in the absentee voting process, which the Legislature finds is “exercised wholly outside the traditional safeguards of the polling place.” *Id.* § 6.84(1). That is why, for example, the process is surrounded by safeguards, including a prohibition on the clerk issuing “the elector an absentee ballot unless the elector presents proof of identification.” *Id.* § 6.86(5), 6.86(1)(ar). And importantly, the Legislature has expressly instructed that the procedure in Section 6.86 “shall be construed as mandatory” and that “ballots cast in contravention of the procedures specified in those provisions may not be counted.” *Id.* § 6.86(2).

For these reasons, the Court of Appeals has already held that the interpretation promoted by Plaintiffs (*i.e.*, that an otherwise completed and previously returned absentee ballot can be spoiled and a new ballot issued) was not likely to succeed, in part, because § 6.86(5) indicates that “the absentee ballot is already spoiled or damaged when it is returned by the elector.” (Decl. Goehre ¶ 9, Ex. D at 3). Intervenor-Defendants in *Kormanik*, who asserted the same argument as

Plaintiffs here, petitioned for interlocutory appeal of the Waukesha County Circuit Court's injunction, which the Court of Appeals denied and held, among other things, that petitioners had not shown a substantial likelihood of success on the merits and that *Kormanik* circuit court's "interpretation of the relevant statutes appear[ed] reasonable." *Id.* at 3.

As a candidate for office in the August Primary and registered, Pollnow has a direct interest in the administration of the election, including the absentee ballot voting process, in accordance with Wisconsin law. (Decl. Pollnow ¶¶ 2-3). As such, Pollnow will be directly impacted by Plaintiffs' attempt to alter the absentee voting process through their request that this Court invalidate the July Guidance—which simply restates the law and status quo—and their request that this Court declare that absentee voters may revote after already having voted an unspoiled ballot—a concept that is not even contemplated by law, let alone authorized by law. *Id.* ¶¶ 5-10.

Moreover, since Wisconsin law does not allow the type of revoting of absentee ballots that Plaintiffs request, there are no safeguards or other chain-of-custody requirements in place if the laws were changed to allow an absentee voter to revote after having already returned a completed absentee ballot. *Id.* ¶ 7. For example, there are no rules, regulations, or safeguards to ensure that a person who may request to destroy a previously submitted absentee ballot in order to revote, is actually the person who voted that absentee ballot or his or her designated agent. *Id.* ¶ 8. This could lead to countless votes being invalidated by bad actors or misguided officials and directly harm the outcome of Pollnow's election and other elections in the process. *Id.* ¶ 9. Such a result would also violate Wisconsin's public policy and statutes related to returning, spoiling, and administering absentee ballot voting that were enacted "to prevent the potential for fraud and

abuse” associated with the privilege of voting by absentee ballot. *Id.* ¶ 10; Wis. Stat. § 6.84(1), (2).

LEGAL STANDARD

Wisconsin law requires a plaintiff seeking a temporary restraining order or a temporary injunction to demonstrate: (1) a reasonable probability of success on the merits; (2) that an injunction is necessary to preserve the status quo; (3) a likelihood of irreparable harm if an injunction is not issued; and (4) no other adequate remedy at law exists. *Serv. Employees Int’l Union, Local 1 v. Vos*, 2020 WI 67 ¶ 93, 393 Wis. 2d 38, 95, 946 N.W.2d 35, 64. *Milwaukee Deputy Sheriffs’ Ass’n v. Milwaukee County*, 2016 WI App 56, ¶20, 370 Wis. 2d 644, 883 N.W.2d 154 (citing *Werner v. A.L. Grootemaat & Sons, Inc.*, 80 Wis. 2d 513, 520–21, 259 N.W.2d 310 (1977)).

“[I]njunctive relief is addressed to the sound discretion of the trial court; competing interests must be reconciled and the plaintiff must show that “equity favors issuing the injunction.” *Carlin Lake Ass’n v. Carlin Club Props., LLC*, 2019 WI App 24, ¶44, 387 Wis. 2d 640, 929 N.W.2d 228. “This burden reflects that ‘injunctions are not to be issued lightly but only to restrain an act that is clearly contrary to equity and good conscience.’” *Id.* (quoting *Bartell Broads., Inc. v. Milwaukee Broad. Co.*, 13 Wis. 2d 165, 171, 108 N.W.2d 129 (1961)).

ARGUMENT

I. Plaintiffs Have Not Established a Reasonable Probability of Success on the Merits.

Plaintiffs seeks to authorize municipal clerks to spoil (*i.e.*, cancel) already-voted, unspoiled absentee ballots and then issue new ballots to electors upon request. Such a directive contradicts the express and mandatory language of Wis. Stat. §§ 6.84, 6.86(5), and 6.86(6). Put simply, Wisconsin law does not empower a voter or a clerk to spoil *already-voted absentee*

ballots simply because electors have changed their minds about who they prefer. Such “re-voting” invites chaos and undermines faith and trust in our election system.

The Wisconsin Legislature has provided strong justifications for its procedures governing absentee balloting. Because “voting by absentee ballot is a privilege exercised wholly outside the traditional safeguards of the polling place,” the Legislature has found “that the privilege of voting by absentee ballot must be carefully regulated to prevent the potential for fraud or abuse.” Wis. Stat. § 6.84(1); *Priorities USA v. Wis. Elections Comm’n*, 2024 WI 32, ¶18, 412 Wis. 2d 594, 8 N.W.3d 429. These regulations help “prevent overzealous solicitation of absent electors who may prefer not to participate in an election.” *Id.* They guard against “undue influence on an absent elector to vote for or against a candidate,” and “other similar abuses.” *Id.* These “policy choices enacted into law by the legislature” demand “[j]udicial deference.” *Kalal*, 2004 WI 58, ¶44.

Furthermore, Plaintiffs’ requested relief should be rejected for several other reasons besides the merits. First, Plaintiffs lack standing to bring their suit since they have voted, their vote will be counted, and their suggested harm is, at best, purely speculative. Second, Plaintiffs’ suit is untimely, as it seeks to change the election procedures while the election is underway. Third, Plaintiffs’ suit is barred by laches due to their unreasonable delay in bringing their suit almost months after the May Guidance and after absentee ballot voting has already commenced. For all these reasons, Plaintiffs cannot show that they are reasonably likely to succeed on the merits.

A. Plaintiffs' Requested Relief and Interpretation of Wis. Stat. § 6.86(5) is Contrary to Law.

Plaintiffs request to authorize “re-voting” of previously returned, unspoiled absentee ballots run afoul of the Legislature’s simple and clear absentee-ballot procedures. Plaintiffs suggest that voters may vote their unspoiled ballot, and days or weeks later, decide to spoil their previously voted ballot and receive a new one in the event the voter changes their mind. *Id.* But voters who have changed their mind did not return a ballot that was “damaged,” “spoiled,” or “with an improperly completed certificate or no certificate.” Wis. Stat. §§ 6.86(5), 6.86(6), 6.87(9). As a result, such voters are prohibited by law from receiving a new ballot. *Id.*

Wisconsin’s election statutes governing the procedures for returning and spoiling absentee ballots are unambiguous. Courts must adhere to the plain, clear words of the statute. *Brown Cnty. v. Brown Cnty. Taxpayers Ass’n*, 2022 WI 13, ¶ 3, 400 Wis. 2d 781, 971 N.W.2d 491 (“When interpreting statutes, we begin with the language of the statute. If the meaning of the statute is plain, we need not inquire further.” (citation omitted)). Moreover, the requirements set forth in Sections 6.86(5), 6.86(6), and 6.87(9) are not advisory directives subject to discretion. They are “mandatory.” Wis. Stat. § 6.84(2). Indeed, any “[b]allots cast in contravention of the procedures specified in those provisions may not be counted.” *Id.*; *see also Jefferson v. Dane Cnty.*, 2020 WI 90, ¶ 16, 394 Wis. 2d 602, 951 N.W.2d 556.

Under Section 6.86(6), once a voter “delivers an absentee ballot to the municipal clerk, the municipal clerk shall not return [a] ballot to the elector” other than as “authorized in § 6.86(5) or § 6.87(9).” In other words, clerks are *forbidden* from returning absentee ballots to voters unless authorized by one of the two cited provisions. Under the first provision, a clerk may return a ballot that lacks the required witness certification on the outside of absentee ballot envelope. *Id.* § 6.87(9). That exception is not at issue here. The second provides that “the clerk

shall issue a new ballot to the elector” when “[the] elector *returns a spoiled or damaged absentee ballot* to the municipal clerk ... and the clerk believes that the ballot was issued to or on behalf of the elector *who is returning it.*” *Id.* § 6.86(5) (emphases added).

Plaintiffs’ interpretation, applicable to ballots that are unspoiled when returned, do not fit within that provision. Ballots that, at the time they are submitted, reflect perfectly valid votes are not “spoiled or damaged.” To the contrary, they are, at the moment of submission, indisputably unspoiled and undamaged. Moreover, as the statute makes clear, the temporal sequencing of events matters. The only time a clerk may issue a new ballot is when an elector has “return[ed]” a ballot in a “spoiled or damaged” condition—and even then, only if the clerk independently observes the spoliation and damage within a certain number of days before the election concludes. *Id.* In other words, the ballot spoliation or damage precedes the return. Plaintiffs’ effort to flip that temporal sequencing finds no support in the text.

Plaintiffs’ interpretation not only ignores the temporal sequencing reflected in the statute’s plain terms, but it also distorts the plain meaning of the word “spoil.” A “spoiled ballot” is one that “does not comply with applicable rules.” *Ballot*, Black’s Law Dictionary (11th ed. 2019). A validly completed and return absentee ballot that the voter later regrets is still valid. The voter’s state of mind—or change of mind—has no bearing on whether the ballot “compl[ies] with applicable rules.” *Id.* Plaintiffs interpret the word “spoil” to mean any disconnect between the returned ballot and the voter’s current state of mind. But that subjective, amorphous standard has no basis in the text, and it distorts its plain meaning beyond recognition.

In short, Plaintiffs request that this Court add words to the statute. This Court must decline that invitation. *Segregated Account of Ambac Assurance Corp. v. Countrywide Home Loans*, 2017 WI 71, ¶15, 376 Wis. 2d 528, 898 N.W.2d 70 (A Court “will not rewrite the statute”

to create rights “where the legislature has not.”) Section 6.86(5) sets forth an exception to the otherwise categorical prohibition on returning absentee ballots to voters. That exception is for “spoiled or damaged ballots,” not unspoiled and undamaged ballots requested to be spoiled or damaged for any reason, as Plaintiffs would have it. Where the Legislature has written a statute that clearly *forbids* replacement ballots (with two listed exceptions), Plaintiffs see a statute that *requires* a replacement ballot, regardless of whether those exceptions apply. Such an interpretation is improper. Courts must “give statutory language its common, ordinary, and accepted meaning” and “interpret statutory language in the context in which it is used . . . in relation to the language in surrounding or closely related statutes; and reasonably, to avoid absurd or unreasonable results.” *Priorities USA v. Wis. Elections Comm’n*, 2024 WI 32, ¶15, 412 Wis. 2d 594, 8 N.W.3d 429.

The clarity of the statute should end the inquiry. But if more is needed, these “carefully regulated” procedures related to returning, spoiling, and recording absentee ballots serve important government interests. As the statutes make clear, the legislature enacted them “to prevent the potential for fraud and abuse” associated with voting by absentee ballot. *Id.* § 6.84(1), (2). That is why it specified that those ballots cast in contravention of these provisions “may not be counted.” *Id.* § 6.84(2).²

The statutes at issue in this case make it unambiguous who may spoil an absentee ballot (the voter), when an absentee ballot can be spoiled (before it is returned), and why these rules must be strictly enforced (to prevent absentee voting fraud or abuse). These safeguards further “the State’s interest in counting only the votes of eligible voters” and the “orderly

² As noted in the bipartisan Carter-Baker Report, “[a]bsentee ballots remain the largest source of potential voter fraud” and citizens who vote in places other than their established precinct or clerk’s office are, among other things, “more susceptible to pressure, overt and subtle, or to intimidation.” Comm’n on Fed. Election Reform, Building Confidence in U.S. Elections, Report of the Commission on Federal Election Reform, 46 (Sept. 2005) (Co-Chair President Jimmy Carter and Co-Chair James Baker, III).

administration” of elections. *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 196 (2008). Without them, electors are at risk of having their votes changed by someone else, thrown out by accident, or diluted by unlawful double votes. Plaintiffs’ disregard for these safeguards undermines “public confidence in the fairness of elections and the perceived legitimacy of the announced outcome.” *Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2340 (2021).

Indeed, if put into practice, Plaintiffs’ flawed interpretation would not only violate the express provisions of Section 6.86(5), but it would also trigger cascading violations. For example, under § 6.88, when clerks receive absentee ballots that are not damaged or spoiled, they are required to place them in “a carrier envelope which shall be securely sealed and endorsed with the name and official title of the clerk.” The envelope must say: “This envelope contains the ballot of an absent elector and must be opened in the same room where votes are being cast at the polls during polling hours on election day...” Wis. Stat. § 6.88(1) (Likewise, in a central count municipality under Section 7.52, the envelope must be delivered to the board of absentee ballot canvassers and remained sealed until election day.)³

On Plaintiffs’ reasoning, however, clerks would be required to *reopen* this securely sealed envelope upon the request of any voter, for any reason, at any time, before the election concludes, sift through the ballots in that envelope, remove their absentee ballot, and have it destroyed. Not only does that invite error and doubt, but the unsealing of the envelope and handling of previously secured ballots directly violates the stringent chain of custody requirements in Section 6.88. Again, another violation of the rules of statutory interpretation.

³ In fact, WEC published Form EL-125, the absentee ballot carrier envelope, for clerks to secure returned absentee ballots until election day in compliance with Section 6.88. WEC, Absentee Ballot Carrier Envelope EL-125, https://elections.wi.gov/sites/default/files/legacy/gab_forms/4/el_125_absentee_ballot_carrier_envelope_2008_08_20655.pdf (noting that the “certificate should be attached to any container which is used to transport absentee ballot envelopes to the polling place” and “must be opened in the same room where votes are being cast at the polls during polling hours on election day”).

Priorities USA, 2024 WI 32, ¶15; *Kalal*, 2004 WI 58, ¶ 46. (“[S]tatutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely related statutes; and reasonably, to avoid absurd or unreasonable results.”) Indeed, if Plaintiffs’ requested relief went into effect, Wisconsin voters, including Intervenor-Defendant, will face the irreparable harm of disenfranchisement due to the risk of their votes being changed by someone other than themselves or diluted by double voting.

Plaintiffs’ other arguments fail as well. First, Plaintiffs’ reference to the “will of the electors” in section 5.01(1) is inapplicable in this case. “[M]atters relating to the absentee ballot process,” such as § 6.86, “shall be construed as mandatory.” Wis. Stat. § 6.84(2). That “mandatory rule of construction applies “[n]otwithstanding s. 5.01(1).” *Id.*; *Priorities USA*, 2024 WI 32 ¶18. Second, this suit does not implicate the right to vote. *Common Cause Ind. v. Lawson*, 977 F.3d 663, 664 (7th Cir. 2020) (“[A]s long as the state allows voting in person, there is no constitutional right to vote by mail.”) *Tully v. Okeson*, 977 F.3d 608, 613 (7th Cir. 2020) (“[T]he fundamental right to vote means the ability to cast a ballot, but not the right to do so in a voter's preferred manner, such as by mail.”) Plaintiffs’ claims relate to the privilege of voting by absentee ballot and, moreover, there is no dispute that Plaintiffs’ have voted for the candidates of their choosing at the time they returned their absentee ballots. In doing so, the unspoiled ballots returned by Plaintiffs definitively represented the “will of the electors.” *Roth v. LaFarge Sch. Dist. Bd. of Canvassers*, 2004 WI 6, ¶27, 268 Wis. 2d 335, 677 N.W.2d 599. (“A ballot legally cast by a voter cannot be rejected” and “because there is a qualifying mark in a qualifying place on the ballot, the vote should be counted, so as to give effect to the will of the voter.”)

Third, there is no basis to suggest that the July Guidance violates Wisconsin’s Equal Protection Clause. The July Guidance does not result in any voters before the July Guidance

being treated differently from voters after the July Guidance. The July Guidance merely restated Wisconsin law, which existed in the same form before and after the July Guidance. Likewise, the July Guidance restated WEC's communication on the topic dating back to October 2022, and the clarification provided therein did not impact voters differently.

Lastly, the July Guidance and May Guidance, treat absentee ballot voters in the same manner as Election Day voters in that both absentee ballot voters and Election Day voters have the right to spoil their ballots and return their spoiled ballot to the clerk or election official in order to vote a new ballot. Wis. Stat. §§ 6.86(5), 6.80(2)(c). There is no difference in that regard. In fact, if Plaintiffs' proffered interpretation of § 6.86(5) is correct, it would give the privilege of voting an absentee ballot greater rights than those voting on Election Day. An individual who returns a completed ballot on Election Day, cannot come back later in the day to spoil his or her ballot and vote again. Once that Election Day ballot is completed and returned, the voting process for that individual has concluded. It is no different for absentee ballot voters. It is Plaintiffs' requested relief that would cause grave equal protection ramifications—not the other way around.

B. Plaintiffs Lack Standing.

Plaintiffs do not have standing to bring this lawsuit. An action for declaratory judgment under Wis. Stat. § 227.40(1) is “the exclusive means of judicial review of the validity of a rule or guidance document.” As such, Plaintiffs may bring such an action “*only* when it appears from the complaint and the 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[s].” *Id.* Under § 227.40(1), Plaintiffs must show that (1) the agency guidance threatens to interfere with or impair legal rights or privileges; and (2) the

plaintiffs' own legal rights or privileges will be impaired. Wis. Stat. § 227.40(1). Plaintiffs fail to meet that test.

Plaintiffs claim that they properly voted by absentee ballot and that, when they submitted their absentee ballots, they were not spoiled. Although Plaintiffs now complain that they'd like to change their votes, that does not establish an "actual or threatened impairment of their rights" and that is not "hypothetical or conjectural." *Black River Forest*, 2022 WI 52, ¶ 21 (internal quotation marks omitted). As shown above, nothing in the July Guidance violated Wisconsin law and, to the contrary, it expressly reiterated Wisconsin law and the status quo. Even though Plaintiffs desire to change their vote, they have no right to do so after already completing and returning their unspoiled absentee ballots. Indeed, Plaintiffs have indisputably fulfilled their privilege to vote by absentee ballot for the candidate of their choice when they returned their unspoiled absentee ballots.

Moreover, Plaintiffs made the conscious choice not to wait before returning their absentee ballot in an election cycle that seemingly changes by the day, if not faster. In almost every election for a statewide office, there are numerous partisan candidates initially, but there are always some that do not maintain their campaigns by Election Day. It should be no surprise to any voter that, in a field of numerous Democratic candidates for Governor, that one or more would suspend their campaign or drop out of the race prior to the August Primary. Yet, Plaintiffs opted to choose their candidate early and return their ballots. Simply because their originally voted for candidate drops out of the race, does not mean that they have been disenfranchised or that their vote does not count. To the contrary, that vote still counts no matter what.

Accordingly, Plaintiffs assertions of harm are unfounded, there is no injury recognized by law, and they do not have standing. *Brown v. Wisconsin Elections Commission*, 2025 WI 5, ¶ 16 (Plaintiffs have no standing when they did not allege that “challenged election activity . . . made it more difficult for him to vote or affected him personally in any manner.”)

C. Plaintiffs Suit is Untimely or, Alternatively, Barred by Laches.

As shown above, the July Guidance did not alter voting rules or procedures. Rather, it is Plaintiffs requested relief that seeks to alter absentee ballot voting procedures. In the election context, courts routinely deny untimely requests for injunctive relief because of the prejudice that doing so would cause. Such claims may be too late even when brought *before* the election, when they are made too close to the start of voting. *Hawkins v. Wis. Elections Comm’n*, 2020 WI 75, ¶¶ 9-10, 393 Wis. 2d 629, 948 N.W.2d 877; *Fulani v. Hogsett*, 917 F.2d 1028, 1031 (7th Cir. 1990) (“In the context of elections . . . any claim against a state electoral procedure must be expressed expeditiously.”) That is because, “[a]s time passes, the state’s interest in proceeding with the election increases in importance as resources are committed and irrevocable decisions are made.” *Fulani*, 917 F.2d at 1031.

Here, Plaintiffs attempt to alter absentee ballot voting procedures after voting is already underway for the August Primary. Moreover, Plaintiffs seek to alter such procedures in a way that is contrary to Wisconsin law. For all these reasons, Plaintiffs’ suit is untimely and improper.

Likewise, Plaintiffs’ attempt to enjoin procedures in effect for years, and which were unchanged by the May Guidance and July Guidance, under which thousands have already voted, is also barred by laches. Laches applies when a party engages in “unreasonable delay” and where the party raising laches had a “lack of knowledge the claim would be raised” and suffers prejudice. *Trump v. Biden*, 2020 WI 91, ¶ 10, 394 Wis. 2d 629, 951 N.W.2d 568, *cert denied*, 141 S. Ct. 1387 (2021). Here, Plaintiffs had knowledge of the May Guidance and voting procedures more than three

years that did not permit voters to vote again after having already returning a completed, unspoiled absentee ballot, which the July Guidance did not change; Intervenor-Defendant had no knowledge that Plaintiffs would bring their claims; and there would be material prejudice if Plaintiffs' requested remedy were granted, since it would be contrary to law, open the door to potential fraud, and absentee voters would obtain rights that Election Day voters do not have. Accordingly, such prejudice exists and is due to the unreasonable delay caused only by Plaintiffs. *Sawyer v. Midelfort*, 227 Wis. 2d 124, 159, 595 N.W.2d 423 (1988).

II. The Requested Relief and Injunction Will be Contrary to the Status Quo, and Will Not Preserve the Status Quo.

Plaintiffs' requested relief will not return us to the status quo, but would inject unauthorized and unlawful procedures into Wisconsin elections, which are directly contrary to the status quo that has existed for over three years. "The status quo is the last uncontested status which preceded the pending controversy." *Westinghouse Elec. Corp. v. Free Sewing Mach. Co.*, 256 F.2d 806, 808 (7th Cir. 1958); *LTD Commodities, Inc. v. Perederij*, 699 F.2d 404, 406 (7th Cir. 1983) ("[I]t is the last uncontested status preceding the controversy which is to be maintained by the court, rather than a status wrongfully altered by unilateral action after a dispute has arisen."). From a clear reading of the May Guidance, there is no question that WEC did not state, instruct, or endorse the concept that voters can revote their ballot after having already returned an unspoiled absentee ballot. Plaintiffs attempt to mischaracterize the May Guidance is refuted by its clear and express terms.

That May Guidance, first, restated Wisconsin law allowing a voter to receive another ballot "by returning the defective ballot to the municipal clerk." As such, WEC expressly noted that the ballot must be spoiled when returning it. It did not state that voters were allowed to spoil an absentee ballot after having already returned it or that voters could revote an absentee ballot

after already returning their unspoiled ballot. Second, WEC expressly stated that it “opted not to reissue its two guidance documents from August of 2022,” which are the foundation for Plaintiffs’ requested relief in this action.

The July Guidance did not change the substance of the May Guidance, but further clarified the specific relief that Plaintiffs request in this suit. In particular, the July Guidance provided 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.” (Doc. No. 5 at 6). Furthermore, WEC reiterated, again, that it “opted not to reissue its two guidance documents from August 2022.” (*Id.* at 5). As such, the July Guidance was consistent with Wisconsin law, and consistent with the information WEC has provided to the public since October 2022. Plaintiffs blatantly seek to alter the foregoing status quo through the relief requested in this suit, and by mischaracterizing the relevant WEC guidance and Wisconsin law, which must be rejected.

III. Plaintiffs Have Not Shown a Likelihood of Irreparable Harm.

Plaintiffs must establish that they will suffer irreparable injury prior to the final adjudication of the underlying claim and that, without the temporary relief sought, any future injunction “would be rendered futile.” *Werner*, 80 Wis. 2d at 520. Rather than argue that Plaintiffs will lose the ability to vote in the August Primary, Plaintiffs claim they are irreparably harmed by losing the “ability to cast a meaningful vote.” (Doc. No. 7 at 19). But the subjective belief of what is “meaningful” does not equate to losing the ability to vote or being irreparably harmed. Furthermore, Plaintiffs’ suggestion that they have lost the ability to cast a ballot for the person of their choice is false. It is undisputed that Plaintiffs completed and returned their

unspoiled absentee ballots for the candidates that they chose at that time. Simply because Plaintiffs' subjective choices later changed, does not mean that they were ever lacking a choice when they voted their unspoiled absentee ballot.

Even more apparent is that Plaintiffs cannot establish, and have submitted no evidence to even suggest, that their original choice made in their unspoiled absentee ballot cannot or will not be counted, or that the candidate will not win the August Primary. To the contrary, Plaintiffs votes set forth in their unspoiled absentee ballots will be counted and that count will not occur until 8 p.m. on Election Day. There is no evidence to suggest that the candidates they voted for have not won or cannot win—to the contrary, those candidates can still collect sufficient numbers of votes to win, even if they have suspended their campaigns or indicated they are dropping out of the race. In fact, as Plaintiffs expressly note, Milwaukee County Executive David Crowley, a candidate for Governor, stated he was dropping out of the race on July 8th, and ten days later stated that he is now back in the race. (Doc. No. 7 at 5). A voter who originally voted for David Crowley, may have felt they wasted their vote when he dropped out, only to realize days later that he is still in the race. Even though he dropped out for ten days, he can still win the race—just as others who have stated they are dropping out could still win the race. This is just another example of why Plaintiffs stated harm is not real, and is certainly not irreparable.

IV. Wisconsin Law Already Provides a Remedy for a Properly “Spoiled” Absentee Ballot.

While the scenario that Plaintiffs present and the relief they request is contrary to law, that does not mean that voters do not have options or other ways to remedy a spoiled absentee ballot that has yet to be returned. First, as noted above, Plaintiffs are not required to return their absentee ballots over a month before an Election, as Plaintiffs Bins and Elert generally did here. With so many candidates running for Governor on the Democratic side, and knowing that

elections can turn quickly, voters can choose to wait until closer to Election Day or on Election Day to vote for their preferred candidate and for the very reason Plaintiffs complain of—they may change their mind.

Second, even if Plaintiffs had marked their absentee ballot weeks ago, they still could have held it in their possession to account for the possibility of changes in the Governor's race and changing their mind about who they want to vote for. This is particularly relevant to Plaintiff Roberts, who completed and returned her unspoiled absentee ballot on July 16th, six days after the July Guidance. Indeed, one of the two express exceptions to the prohibition that clerks "shall not return the ballot to the elector" is when the voter returns a spoiled ballot to the municipal clerk. Wis. Stat. §§ 6.86(6), 6.86(5). Had the Plaintiffs simply held their completed absentee ballot after originally marking their ballots, their change of mind prior to returning the absentee ballot would represent an error in their ballot and, upon returning that "spoiled" ballot and requesting another ballot, they would be entitled to another ballot to vote. However, Plaintiffs choose not to do so.

Wisconsin law already adequately and clearly sets forth procedures to vote another absentee ballot when the original ballot is spoiled, however, Plaintiffs disregarded those procedures. Plaintiffs' buyer's remorse stemming from their unspoiled ballot is simply not justification for upending Wisconsin law.

CONCLUSION

Plaintiffs have failed to establish the requirements for obtaining a temporary restraining order or temporary injunction, and their motion should be denied.

Dated this 27th day of July, 2026.

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