

FILED
10-23-2026
CIRCUIT COURT
DANE COUNTY, WI
2026CV002400

BY THE COURT:

DATE SIGNED: October 23, 2026

Electronically signed by David Conway
Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 17

DANE COUNTY

JOSEPH ALAN BINS, *et al.*,

Plaintiffs,

v.

WISCONSIN ELECTIONS COMMISSION, *et al.*,

Defendants.

MEMORANDUM AND ORDER

Case No. 2026CV002400

Plaintiff Joseph Alan Bins, Thomas J. Elert, and Susan Roberts are registered voters who returned absentee ballots in the recent Democratic gubernatorial primary election for a candidate who subsequently withdrew from the race. Upon learning that their preferred candidate had withdrawn, Plaintiffs wished to spoil their original ballots and cast new ones for an active candidate. However, the Wisconsin Elections Commission (“WEC”) issued guidance in July 2026, while absentee voting was already underway, stating that voters may not spoil absentee ballots after returning them to the clerk. Plaintiffs therefore filed this lawsuit seeking a declaratory judgment and injunction barring the WEC from continuing its new guidance. They argue that the new guidance is contrary to Wisconsin election laws and violates their constitutional rights to vote and to equal protection. The Court denied Plaintiffs’ request for temporary injunctive relief on July 29, 2026, in a lengthy and detailed order. Dkt. 52.

Defendant WEC has now filed a motion to dismiss Plaintiffs' complaint, which has been joined by Intervenor–Defendant Nathan Pollnow. Dkts. 53–54, 56. The motion is fully briefed and ready for disposition. To provide a clean record for appellate review, the Court will incorporate by reference the contents of its order denying the temporary injunction. Dkt. 52. The findings of fact in that order are materially the same as the factual allegations of Plaintiffs' complaint, which the Court now must accept as true along with reasonable inferences. *Compare* Dkt. 2 with Dkt. 52 at 2–7. Although the standard of review for a motion to dismiss differs from the standard for a temporary injunction, the difference is immaterial here because both motions hinge on the proper legal interpretation of two election statutes—Wis. Stat. § 6.80(2)(c) and Wis. Stat. § 6.86(5).¹ The Court's conclusions of law in the temporary injunction order apply with equal weight to the present motion and therefore the Court adopts them fully. The only remaining task for the Court is to address the three new issues raised in the current briefing that were not before it at the temporary injunction stage.

I.

Plaintiffs argue that the Court should draw upon Wis. Stat. § 6.87(4)(b)1 when interpreting the term “returns” and give it the “technical” or “specially-defined” meaning set forth in that statute. Dkt. 58 at 9–11. Under Wis. Stat. § 6.87(4)(b)1, an absentee voter may return a completed absentee ballot to the municipal clerk by mail or in person. According to

¹ The present motion seeks dismissal for failure to state a claim upon which relief can be granted under Wis. Stat. § 802.06(2)(a)6. When analyzing the legal sufficiency of a complaint, the Court begins with the basic civil pleading standard: A complaint must set forth “[a] short and plain statement of the claim, identifying the . . . transactions or occurrences out of which the claim arises and showing that the pleader is entitled to relief.” Wis. Stat. § 802.02(1)(a). To satisfy this general standard, a plaintiff must allege factual allegations which, if true, would “plausibly suggest a violation of applicable law.” *Data Key Partners v. Permira Advisers, LLC*, 2014 WI 86, ¶ 21, 356 Wis. 2d 665, 849 N.W.2d 693. “[T]he sufficiency of a complaint depends on the substantive law that underlies the claim made because it is the substantive law that drives what facts must be pled.” *Id.* ¶ 31. In applying this analysis, the court must “accept as true all facts well-pleaded in the complaint and the reasonable inferences therefrom.” *Id.* ¶ 19.

Plaintiffs, this indicates that the “Legislature was envisioning that the ballot might not be hand-delivered to the clerk’s office and that a request for a new replacement ballot might have to come after a ‘return’—after the ‘damaged or spoiled’ absentee ballot was either *mailed* or *personally delivered* to the municipal clerk.” *Id.* at 10 (emphasis in original).

In Wisconsin, “[a]ll words and phrases shall be construed according to common and approved usage; but technical words and phrases and other that have a peculiar meaning in the law shall be construed according to such meaning.” Wis. Stat. § 990.01(1). “Returns” is a commonplace word that has no technical or peculiar meaning in the law. Wis. Stat. § 6.87(4)(b)1 does not purport to define the term. It merely states that after an absentee voter completes an absentee ballot, the ballot “shall be mailed by the elector, or delivered in person, to the municipal clerk.” *Id.* Nowhere does this statute equate the process for returning an absentee ballot with the process for returning a spoiled ballot. The latter is separately codified at Wis. Stat. § 6.85(5). But, in any event, the statute governing absentee ballot spoiling also appears to allow for the return of a spoiled absentee ballot by mail or in person:

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. § 6.85(5). This statute might appear to contemplate an absentee voter or his agent returning a spoiled ballot in person to the clerk’s office. But upon close reading, the language does not prevent an absentee voter from returning a spoiled ballot by mail. For instance, an absentee voter might mail back an unsealed ballot to the clerk along with a letter stating that the enclosed ballot is spoiled and that the voter requests a new one. This would satisfy the

requirement that the absentee ballot already be spoiled at the time it is returned. *See* Dkt. 52 at 12–16. It would also give meaning to the statutory language requiring that the voter request a new ballot within time limits that differ for requests made in person or by mail.

II.

Plaintiffs argue that “even if the Court determines that section 6.85(5) may also reasonably support WEC’s interpretation embodied in the July [2026] Guidance, the Court should still invalidate the guidance because such an interpretation violates Plaintiffs’ fundamental, constitutional right to vote.” Dkt. 58 at 14. This argument is a non-starter. Plaintiffs have not alleged that the absentee ballot spoiling statute itself is an unconstitutional exercise of legislative power. *See* Dkt. 2 ¶¶ 71–75. The Court has ruled that “the unambiguous language of the statute does not allow a voter to spoil an absentee ballot after it is returned.” Dkt. 52 at 13. The July 2026 Guidance is entirely consistent with the statute: “[O]nce an absentee ballot has been returned to the municipal clerk it cannot be spoiled or reissued for any reason.” *Id.* at 52. Accepting for present purposes that the statute is constitutional, a WEC guidance document that strictly follows the statute’s unambiguous language is necessarily constitutional as well. The two concepts are legally inseparable.

III.

Defendants argue that Plaintiffs’ claims are now moot because they sought only prospective relief in advance of the now-completed August 2026 election. Dkt. 54 at 6–7. Plaintiffs respond that they seek declaratory relief that the July 2026 Guidance violates Wisconsin law both for the August 2026 election and future elections. Dkt. 58 at 18–19.

The mootness doctrine is predicated upon the general rule that “court[s] will not determine abstract principles of law.” *City of Racine v. J-T Enters. of Am., Inc.*, 64 Wis. 2d 691,

699, 221 N.W.2d 869, 874 (1974). “An issue is moot when its resolution will have no practical effect on the underlying controversy.” *PRN Assocs. v. State of Wisc. Dep’t of Admin.*, 2009 WI 53, ¶ 25, 317 Wis. 2d 656, 766 N.W.2d 559; *see also J-T Enters. of Am.*, 64 Wis. 2d at 700–02 (1974); *Fort Howard Paper Co. v. Fort Howard Co.*, 273 Wis. 356, 360, 77 N.W.2d 733 (1956). “It is generally thought to be in the interest of judicial economy to avoid litigating issues that will not affect real parties to an existing controversy.” *In re G.S., Jr.*, 118 Wis. 2d 803, 805, 348 N.W.2d 181 (1984) (citation omitted).

Here, Plaintiffs are seeking a declaratory judgment invalidating the July 2026 Guidance as inconsistent with statutory law. It is true that Plaintiffs are now aware of the guidance and going forward can take steps to prevent the type of injury they allege here. But this does not mean that the WEC’s position poses no conceivable restriction on their statutory rights in the future if their interpretation is ultimately validated on appeal.

Moreover, several exceptions exist to the mootness doctrine, including when the issue is of great public importance or when the issue arises often and an appellate decision is essential. *Marathon Cnty v. D.K.*, 2020 WI 8, ¶ 19, 390 Wis. 2d 50, 937 N.W.2d 901 (citation omitted). Both exceptions would apply here even if Plaintiffs’ claims were moot. As the record shows, the Waukesha Circuit Court and Court of Appeals have already wrestled with the very same legal issues involved in this case. Although the Court of Appeals ultimately dismissed the *Kormanick* case on procedural grounds, the question of how to interpret the ballot spoiling statutes will undoubtedly continue to arise. And this case pertains to the right to vote and how voters may exercise that sacred right—a virtually *per se* matter of great public importance.

* * * * *

For these reasons, and those set forth in substantial detail by the Court's order denying temporary injunctive relief, the Court must grant the motion to dismiss for failure to state a claim but not on the basis of mootness.

ORDER

IT IS THEREFORE ORDERED that Defendant Wisconsin Elections Commission's motion to dismiss the complaint (Dkt. 53) is GRANTED. The case is dismissed with prejudice.

This is a final order for purposes of appeal.

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