

FILED
02-15-2024
Clerk of Court
Marinette County
2024CV000043
Honorable Jane M. Sequin
Branch 1

STATE OF WISCONSIN CIRCUIT COURT MARINETTE COUNTY

THOMAS OLDENBURG
W10614 Benson Lake Rd
Amberg, WI 54102

,

Plaintiff,

v.

WISCONSIN ELECTIONS COMMISSION,
Marge Bostelmann, Carrie Riepl,
Ann S. Jacobs, Donald Millis,
Robert F. Spindell, Jr.,
Mark L. Thomsen, Commissioners
212 East Washington Avenue,
Third Floor,
Madison, WI 53703,

Case No. _____

Case Code: 30701

and

MEAGAN WOLFE,
as Administrator of the
Wisconsin Elections Commission,
212 East Washington Avenue,
Third Floor,
Madison, WI 53703,

Defendants.

SUMMONS

STATE OF WISCONSIN:

To the above-named Defendants:

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

Within forty-five (45) days of receiving this Summons, you must respond with a

written Answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the Complaint. The court may reject or disregard an Answer that does not follow the requirements of the statutes. The Answer must be sent or delivered to the Court, whose address is: **Clerk of Circuit Court, Carrie Brazeau, 1926 Hall Avenue-1st Floor Courthouse Annex, Marinette, WI 54143,** and to Plaintiff's attorneys, whose address is **The Law Office of Kevin M. Scott LLC, 2665 S. Moorland Road, Suite 200, New Berlin, Wisconsin 53151.** You may have an attorney help or represent you.

If you do not provide a proper answer within forty-five (45) days, the court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future and may also be enforced by garnishment or seizure of property.

If you require assistance or auxiliary aids or services because of a disability, call **608-266-4311 (TDD 608-266-4625)**, and ask for the Court ADA Coordinator.

Dated at New Berlin, Wisconsin, this 15th day of February, 2024.

Electronically signed by Kevin M. Scott, Esq.

Kevin M. Scott (SBN 1036825)

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Electronically signed by Daniel J. Eastman, Esq.

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Attorneys for Plaintiff

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STATE OF WISCONSIN CIRCUIT COURT MARINETTE COUNTY

THOMAS OLDENBURG,

Plaintiff,

v.

WISCONSIN ELECTIONS COMMISSION,
Marge Bostelmann, Carrie Riepl,
Ann S. Jacobs, Donald Millis,
Robert F. Spindell, Jr.,
Mark L. Thomsen, Commissioners,

Case No. _____

Case Code: 30701

and

MEAGAN WOLFE,
as Administrator of the
Wisconsin Elections Commission,

Defendants.

COMPLAINT FOR DECLARATORY JUDGMENT

This case is brought against The Wisconsin Elections Commission (“WEC”) to obtain a declaration that, in order to be counted and/or included in the certified result of any election, all absentee ballots returned by voters that were requested through the website maintained by WEC—myvote.wi.gov (“MyVote”)—must be accompanied by a duplicate copy of the “request” for that ballot that was generated by the MyVote system bearing an original signature of the voter in the envelope in which the ballot is returned. Further, this action seeks to invalidate, and prevent the use of, absentee ballot envelopes recently approved by WEC. These envelopes violate Wisconsin election law and, if utilized, would cause voters to falsely certify that the ballot envelope itself is an

original or a copy of the ballot request generated through MyVote when it is not in any way.

To that end, Plaintiff Thomas Oldenburg by and through his attorneys, and as and for a Complaint against Defendants WEC, Marge Bostelmann, Carrie Riepl, Ann S. Jacobs, Donald Millis, Robert F. Spindell, Jr., Mark L. Thomsen as Commissioners; and Meagan Wolfe in her capacity as Administrator of WEC – the Chief Election Officer of the State of Wisconsin, alleges and states as follows:

PARTIES

1. Plaintiff Thomas Oldenburg is an adult resident, elector, and taxpayer of the State of Wisconsin with an address of W10614 Benson Lake Rd, Amberg, Wisconsin 54102.

2. Defendant WEC is an independent agency within the executive branch of the State of Wisconsin created under subchapter III of Chapter 15 of the Wisconsin Statutes at section 15.61.

3. WEC's address is 212 East Washington Avenue, Third Floor, Madison, WI 53703

4. The head of WEC is its six commissioners, who are currently Marge Bostelmann, Carrie Riepl, Ann S. Jacobs, Donald Millis, Robert F. Spindell, Jr. and Mark L. Thomsen.

5. Defendant Meagan Wolfe is an adult resident of the State of Wisconsin employed as the Administrator of WEC and who holds the statutory position of Chief Election Officer for the State of Wisconsin. Her official address is 212 East Washington Avenue, Third Floor, Madison, WI 53703.

COMPETENCY AND VENUE

6. This Court has competency to hear this case pursuant to Wis. Stat. §§ 806.04 (1) and (2) and 227.40.

7. Venue in this Court is proper pursuant to Wis. Stat. §§ 801.50(3)(a) and 227.40(1).

FACTS

STATUTORY REQUIREMENTS FOR OBTAINING AND RETURNING AN ABSENTEE BALLOT REQUESTED VIA ELECTRONIC MAIL

8. Wisconsin Statutes clearly state that absentee voting is not a right for any elector but is a privilege that requires careful regulation to protect not only the electors from abuse but also the 1,852 local clerks who are charged with administering fair and accurate elections.

9. Wis. Stat. § 6.84 provides—

SUBCHAPTER IV VOTING ABSENTEE

6.84 Construction.

(1) LEGISLATIVE POLICY. The legislature finds that voting is a constitutional right, the vigorous exercise of which should be strongly encouraged. **In contrast, voting by absentee ballot is a privilege exercised wholly outside the traditional safeguards of the polling place. The legislature finds that the privilege of voting by absentee ballot must be carefully regulated to prevent the potential for fraud or abuse;** to prevent overzealous solicitation of absent electors who may prefer not to participate in an election; to prevent undue influence on an absent elector to vote for or against a candidate or to cast a particular vote in a referendum; or other similar abuses.(Emphasis added).

(2) INTERPRETATION. Notwithstanding s. 5.01(1), **with respect to matters relating to the absentee ballot process, ss. 6.86, 6.87(3) to (7) to and 9.01(1)(b) 2. and 4. shall be construed as mandatory. Ballots cast in contravention of the procedures specified in those provisions may not be counted. Ballots counted in contravention of the procedures specified in those provisions may not be included in the certified result of any election.**

(emphasis added)

10. Wis. Stat. § 6.86 sets forth the specific and exclusive methods by which an elector may request an absentee ballot for any election.

11. Wis. Stat. § 6.86(1)(a)6. provides—

(1)

(a) Any elector of a municipality who is registered to vote whenever required and who qualifies under ss. 6.20 and 6.85 as an absent elector may make written application to the municipal clerk of that municipality for an official ballot by one of the following methods:

...

6. By electronic mail or facsimile transmission as provided in par. (ac).

12. Wis. Stat. § 6.86(1)(ac) provides in pertinent part—

(ac) Any elector qualifying under par. (a) may make written application to the municipal clerk for an official ballot by means of ... electronic mail. Any application under this paragraph need not contain a copy of the applicant's original signature. An elector requesting a ballot under this paragraph **shall return with the voted ballot a copy of the request bearing an original signature of the elector as provided in s. 6.87(4).** (emphasis added)

13. Wis. Stat. § 6.87(4) provides in pertinent part—

If the elector requested a ballot by means of ... electronic mail under s. 6.86(1)(ac), **the elector shall enclose in the envelope a copy of the request which bears an original signature of the elector.**

14. Wis. Stat. 6.84(2) provides that ballots cast in contravention of 6.86(1)(ac) and 6.87(4) may not be counted, and if counted, may not be included in the certified result of any election.

15. These statutory provisions protect both Wisconsin voters as well as the State's 1,852 local clerks by ensuring that any absentee ballot received by any requesting elector is, in fact, being voluntarily cast by that elector and nobody else.

16. Clerks must receive proof that a mailed ballot is being voluntarily voted by the named elector to allow clerks to properly tabulate absentee ballots. If the statutorily-mandated procedures are not followed related to absentee voting, the Legislature recognizes that it invites fraud and abuse in the process.

WEC OBTAINS A COURT RULING THAT ALL ABSENTEE BALLOTS REQUESTED THROUGH THE WEBSITE MYVOTE.WI.GOV ARE REQUESTS MADE BY “ELECTRONIC MAIL” UNDER WIS. STAT. § 6.86(1)(a)(6).

17. WEC maintains a system whereby voters can request absentee ballots for upcoming elections through the website myvote.wi.gov (“MyVote”).

18. WEC’s statutory authority to do so was recently challenged in the matter Scott Sidney v. Wisconsin Elections Commission, et al. Ozaukee County Case No. 2022CV000300 (“Sidney”).

19. In Sidney, Plaintiff averred that Wis. Stat. § 6.86 provided the exclusive means by which a Wisconsin voter may request an absentee ballot, and that nowhere in that statute was any provision that allowed requests for absentee ballots to be made through a website portal MyVote, and that the Circuit Court of Ozaukee County declare as such.

20. WEC argued in turn that such requests were authorized as “electronic mail” requests pursuant to Wis. Stat. § 6.86(1)(a)(6).

21. WEC asserted that utilizing MyVote to generate an email request for an absentee ballot was no different than the voter utilizing Outlook or any other computer mail program to do the same.

22. WEC further asserted that its maintenance of MyVote was simply a way to “assist” voters in sending an email ballot request under section 6.86(a)(1)6.

23. In a sworn affidavit filed as Document # 41 in Sidney (the “Kehoe Affidavit”), Robert Kehoe—the Deputy Administrator of WEC—testified as to the process involved when a “requester” requests an absentee ballot through MyVote.

24. A true and correct copy of the Kehoe Affidavit is attached as **Exhibit A**.

25. Mr. Kehoe testified in the Kehoe Affidavit that—

- 23. The MyVote online absentee ballot request feature is a **software tool that helps registered voters prepare and deliver an email request** to their municipal clerk.
...
- 30. When a valid requester completes the online request process, **the MyVote system automatically generates for the requester a completed EL-121 absentee ballot request form** using information the requester had previously submitted with their registration application. This is the same form used for handwritten absentee ballot requests.
- 31. **The MyVote system then attaches that completed form to an email and sends it to the requester’s appropriate municipal clerk.** The email may also include an image of the photo ID uploaded by the applicant. The municipal clerk will then process that application and, if approved, mail an absentee ballot to the address specified by the requester.
- 32. This MyVote request process has several advantages over manual requests in which requesters themselves fill out and submit form EL-121 to municipal clerks...the MyVote process assures municipal clerks that **electronic absentee ballot requests** are coming from an official, verified source (i.e. the MyVote system)...

(Exhibit A, pp. 7, 9)(emphasis added)

26. In turn, Mr. Sidney provided copies of what the MyVote system generated in response to a “requester” that completes the online absentee ballot request process at MyVote.

27. These copies were attached to sworn affidavits and filed as Documents ## 44 and 48 in Sidney.

28. True and correct copies of Documents ## 44 and 48 filed in Sidney are attached as **Exhibit B**.

29. The MyVote system generates an email, not from the elector directly, but from noreply.WEC@wi.gov. (the “MyVote Email”) that provides in pertinent part—

An absentee ballot request has been received from MyVote from a voter in your municipality! Please review **the attached request** and pay particular attention to the type of voter. **The request** may be from a military or a permanent overseas voter. The voter making **this request** is not required to provide a photo ID or has already provided a photo ID with a previous absentee ballot request. A record of **this request** has been created in WisVote.

Record and process **the attached absentee ballot request** received from MyVote the same way as an absentee ballot request received by email.

””

If you have any questions about how to process **this absentee ballot request** please contact the Wisconsin Elections Commission at elections@wi.gov or at (608) 266-8005.

(Exhibit B, pp. 1-2, 5-6, 9-10, 13-14, 17-18, 20-21, 23-24)(emphasis added)

30. An example of the “request” that is attached to the MyVote emails , and what Mr. Kehoe referred to as the “completed EL-121 absentee ballot request form” in the Kehoe Affidavit as being automatically generated by MyVote is below—

Wisconsin Application for Absentee Ballot					
Confidential Elector ID# (HNDI - sequential #)(Office Use Only)					
VOTER INFORMATION					
1	Municipality <input type="checkbox"/> Town <input type="checkbox"/> Village <input checked="" type="checkbox"/> City	CITY OF KENOSHA - KENOSHA COUNTY		County	Kenosha County
2	Last Name	Acevedo	First Name	Mabel	
	Middle Name	S	Suffix(e.g. Jr, II, etc.)	Voter Registration #:	700996906
	Phone		Fax	Email	
3	Residence Address: Street Number & Name	1547 17Th Ave			
	Apt. Number		City, State & Zip	Kenosha, 53140	
4	If you are a military or permanent overseas elector, fill in the appropriate circle (see instructions for definitions): <input type="checkbox"/> Military <input type="checkbox"/> Permanent Overseas				
I PREFER TO RECEIVE MY ABSENTEE BALLOT BY: (Ballot will be mailed to the address above if no preference is indicated)					
5	<input checked="" type="checkbox"/> MAIL	Mailing Address: Street Number & Name			
	<input type="checkbox"/> FAX	Apt. Number		City, State & Zip	
	<input type="checkbox"/> EMAIL	Fax Number			
	<input type="checkbox"/> ONLINE	Email Address			
I REQUEST AN ABSENTEE BALLOT BE SENT TO ME FOR: (mark only one)					
6	<input type="checkbox"/> The following elections: <input checked="" type="checkbox"/> All elections from today's date through the end of the current calendar year (ending 12/31). <input type="checkbox"/> I certify that I am indefinitely confined due to age, illness, infirmity or disability and request ballots be sent to me for every election until I am no longer confined or fail to return a ballot				
I certify that the application is made on request and by authorization of the named elector, who is unable to sign the application due to physical disability.					
ASSISTANT DECLARATION / CERTIFICATION (if required)					
Assistant Signature	X	Today's Date			
VOTER DECLARATION / CERTIFICATION					
Voter Signature	X Not Required	Today's Date		9/22/2022	

(Exhibit B, p. 4)(also see Exhibit B pp. 8, 12, 16, 19, 22, 25)

31. The parties both moved for summary judgment in Sidney, and Judge Stephen Cain of Ozaukee County delivered an oral ruling on the motions on January 5, 2024.

32. A true and correct copy of Judge Cain's oral ruling in Sidney is attached as **Exhibit C** (the "Ruling").

33. In the Ruling, Judge Cain agreed with WEC, holding that—

MyVote in the Court's estimation is not meaningfully different than someone using Outlook or some other available method to send an email. The Court does believe that the email from the voter to the

municipal clerk is what's expected from the statute and from the process.

(Exhibit C, p. 19 of 23)

34. Judge Cain further relied on and adopted the testimony of Mr. Kehoe in holding that WEC was acting properly by maintaining MyVote to assist voters in making electronic mail requests for absentee ballots—

Again, going to Mr. Kehoe's affidavit, this is document 41 in the record, he outlines the process of obtaining an absentee ballot. **MyVote allows data entry and then compiles that EL-121 request form.** 6.86(1)(ar) says the written application, not the email, must be received from the registered voter. Mr. Sidney makes issue that -- makes an issue of the fact that the email address from which the clerk receives comes from myvote@wi.gov. It's not coming from, for instance, joesmith@gmail.com. But the statute expects that the written application, not the email, must be received from the voter. To focus on the return email address I think loses sight of the fact that the written application is from the voter. And that's what the statute expects.

(Exhibit C pp. 17-18)(emphasis added)

35. As a result of WEC asserting, and Judge Cain explicitly adopting WEC's position in Sidney, **every single absentee ballot requested by a voter through MyVote is definitively an “electronic mail” request under Wisconsin Statutes.**

36. Further, based on Mr. Kehoe's sworn testimony, which was relied on and adopted by Judge Cain in granting WEC summary judgment in Sidney, the request for an absentee ballot is the EL-121 generated and attached to the email from the MyVote system that is sent to the municipal clerk, based on the “requester” completing the online request process as outlined in the Kehoe Affidavit.

THIS COURT NEEDS TO CLARIFY THAT THE “REQUEST” THAT A VOTER NEEDS TO INCLUDE A COPY OF IN THE ENVELOPE ALONG WITH AN ABSENTEE BALLOT REQUESTED VIA MYVOTE IS A COPY OF THE EL-121 GENERATED BY THE MYVOTE SYSTEM

37. As it has been established through Court Order that absentee ballot requests through MyVote are “electronic mail” requests pursuant to Wis. Stat. § 6.86(1)(a)6., **all such requests must be made in compliance with the tenets of Wis. Stat. § 6.86(1)(ac) and 6.87(4).**

38. To do so, a voter returning an absentee ballot requested through MyVote *must* include, *in the envelope* in which an absentee ballot is returned to the municipal clerk, a copy of the EL-121 generated by the MyVote system and attached to the email from the MyVote system as outlined above bearing an original signature of the voter.

39. **This provision gives Wisconsin’s 1,852 municipal clerks assurance** that the absentee ballot being returned is, in fact, being voluntarily submitted by a qualified elector properly registered to vote in the municipality.

40. Further, pursuant to Wis. Stat. § 6.84(2), unless a voter includes a copy of the EL-121 bearing an original signature of the voter in the envelope along with the ballot that was requested through MyVote, the ballot shall not be counted in the election, nor shall it be included in the certified result of any election.

THIS COURT MUST ADDITIONALLY TAKE ACTION TO INVALIDATE AND PREVENT THE USE OF ABSENTEE BALLOT ENVELOPES RECENTLY APPROVED BY WEC

41. Although WEC provided sworn testimony, accepted and adopted by the Ozaukee County Court, that the “request” for an absentee ballot through MyVote is the form automatically generated by the system, WEC has approved the use of new absentee ballot return envelopes that exacerbate and foment election fraud—as defined by

Wisconsin Statutes—by coercing a voter returning an absentee ballot requested through MyVote to falsely certify that *the envelope itself* is a “copy” of the absentee ballot request. The new WEC envelope is **not a replacement** for a signed copy of the ballot request to be included “in the envelope” in which the ballot is returned as required by section 6.87(4). The new envelope is an inducement to commit voter fraud.

42. In what appears to be a move by WEC made in anticipation of convincing the Ozaukee County Court to rule that all absentee ballot requests generated through MyVote are a form of email request, in August of 2023 WEC approved the design of new “Absentee Certificate Envelope” forms designated form EL-122.

43. According to a WEC press release dated August 11, 2023, entitled “ICYMI: Absentee Envelopes Get an Upgrade” (the “Press Release”), new absentee ballot envelopes approved by WEC at the August 4, 2023 meeting “will provide voters with a more user-friendly way to vote absentee in upcoming elections.”

44. A true and correct copy of the Press Release is attached as **Exhibit D**.

45. According to the Press Release, the EL-122 is “the Absentee Certificate Envelope (EL-122), the return envelope in which the voter returns his or her voted absentee ballot to the clerk,” and was one of the envelopes updated by WEC.

46. A true and correct copy of the former version of the EL-122 is attached as **Exhibit E**.

47. A true and correct copy of the new EL-122 as approved by WEC at the August 4, 2023 meeting is attached as **Exhibit F** (the “New EL-122”)

48. In the Press Release, the following quote from Chief Elections Officer for the State of Wisconsin, Defendant Meagan Wolfe is provided: “While the new envelope designs don’t involve drastic changes, we think the new design will make it easier for

absentee voters and their witness (sic) to follow the instructions and complete the process accurately and fully.”

49. In contrast to the previously-approved version of the EL-122, the version approved by WEC at the August 4, 2023 meeting provides that the voter must certify “subject to the penalties for false statements of Wis. Stat. § 12.60(1)(b),” that “I requested this ballot and this is the original or a copy of that request.”

50. Wis. Stat. § 12.60(1)(b) provides in pertinent part—

12.60 Penalties.

(1)

...

(b) Whoever violates s. ... 12.13...(3)...(i) may be fined not more than \$1,000, or imprisoned not more than 6 months or both.

51. Wis. Stat. 12.13(3)(i) provides in pertinent part—

12.13 Election Fraud

(3) PROHIBITED ACTS. No person may:

...

(i) Falsely make any statement for the purpose of obtaining or voting an absentee ballot under ss. 6.85 to 6.87.

52. Read together, sections 12.13(3)(i) and 12.60(1)(b) provide that if a voter makes any false statement for the purpose of obtaining or voting an absentee ballot, that person may be fined up to \$1,000 and imprisoned for up to six months.

53. WEC’s creation of the new EL-122 has put all voters who return an absentee ballot through MyVote in jeopardy of a criminal violation for which they may be imprisoned.

54. The New EL-122 asks them to certify that *the EL-122 itself* is “an original or a copy of the request” for the absentee ballot that is being returned.

55. However, the New EL-122 is not the original request for the absentee ballot being returned (if requested through MyVote), as WEC has testified. In fact, the Ozaukee County Court held, the “request” for an absentee ballot made via MyVote is the EL-121 automatically generate by the MyVote system when the requester completes the online request process.

56. The New EL-122 is not a copy of a request for an absentee ballot made through MyVote.

57. As such, by returning an absentee ballot requested via MyVote utilizing the New EL-122 and certifying that the New EL-122 is “an original or a copy” of the voter’s request for an absentee ballot, the voter is “[f]alsely mak[ing a] statement for the purpose of obtaining or voting an absentee ballot under ss. 6.85 to 6.87” and is subject to the penalty of section 12.60(1)(b).

58. In addition, by approving for use the New EL-122, and thus encouraging voters to falsely certify that the New EL-122 is an original or a copy of a voter’s request for an absentee ballot through MyVote, if any voter does so WEC officials are guilty of election fraud as defined by Wisconsin law.

59. The Wisconsin Legislature has not passed any legislation, nor has the Governor signed any legislation which would allow this change.

60. Wis. Stat. § 12.13(2)(b) provides in pertinent part—

12.13 Election Fraud

(2) ELECTION OFFICIALS.

...

(b) No election official may:

4. Intentionally assist or cause to be made a false statement, canvass, certificate or return of the votes cast at any election.

...

7. In the course of the person's official duties or on account of the person's official position, intentionally violate or intentionally cause

any other person to violate any provision of chs. 5 to 12 for which no other penalty is expressly prescribed.

61. Wis. Stat. § 12.60(1)(a) provides in pertinent part—

12.60 Penalties.

(1)

...

(a) Whoever violates s. ... 12.13...(2)(b)1. to 7. ...is guilty of a Class I felony.

62. A class I felony under Wisconsin Law carries a penalty of a fine not to exceed \$10,000 or imprisonment not to exceed 3 years and 6 months, or both. Wis. Stat. § 939.50(3)(i).

63. On August 9, 2023, WEC sent a communication to Wisconsin Municipal Clerks, Wisconsin County Clerks, the City of Milwaukee Election Commission, and the Milwaukee County Elections Commission (collectively “the Clerks”) (the “August 9 Communication”) that stated the following in part—

3. Reminders. Clerks should keep a few items in mind as they begin to order new envelopes:

a) **The new designs attached to this communication must be used for the elections in 2024 and beyond. Old envelopes may not be used per the Commission’s June 1 directive.**

(emphasis added)

64. A true and correct copy of the August 9 Communication is attached as **Exhibit G.**

65. On September 29, 2023 the ‘September 29, Communication’) that stated the following in part—

EL-120 and EL-122 are state templates, prescribed by unanimous vote of the Commission in accordance with state statute, for mandatory use in Wisconsin absentee voting processes. The Commission authorizes no changes to the forms, other than those associated with the varied postage practices of local election officials.

(emphasis original)

66. A true and correct copy of the September 29 Communication is attached as **Exhibit H.**

67. In sum, WEC is *mandating* that the State's clerks utilize a version of an EL-122 that foments election fraud as defined by Wisconsin Statutes.

68. In doing so, WEC is putting Clerks who print and provide New EL-122s to voters in a situation where they could be liable for violating Wis. Stat. § 12.13(2)(b) and subject to the penalties of Wis. Stat. § 12.60(1)(a).

69. WEC's actions in approving and mandating the use of the New EL-122—which violates Wisconsin law and foments the violation of law by voters and Clerks—are beyond the scope of its authority to administer “Chs. 5 to 10 and 12 and other laws relating to elections and election campaigns, other than laws relating to campaign financing.” Wis. Stat. § 5.05(1).

70. This Court must declare as such and halt the use of the New EL-122s to prevent widespread election fraud—as defined by Wisconsin Statutes—from occurring in upcoming elections.

COUNT I:
DECLARATORY JUDGMENT – WIS STAT. § 806.04

71. Plaintiff realleges and incorporates the allegations of this complaint as if fully set forth herein.

72. Wisconsin law provides that for an absentee ballot to be counted and/or included in the certified count of any election, compliance with sections 6.86, 6.87(3) to (7) and 9.01(b)2. and 4. is “mandatory.”

73. If the requirements of sections 6.86, 6.87(3) to (7) and/or 9.01(b)(2). and (4). are not met, an absentee ballot shall not be counted and/or included in the certified count of any election.

74. To comply with the mandate of sections 6.86(1)(ac) and 6.87(4) that “a copy of the request bearing an original signature” be included “in the envelope” when a voter is returning an absentee ballot requested through MyVote, the voter must include a copy of the “request” as identified by WEC in sworn testimony and adopted by the Court in Sidney—that being a copy of the “EL-121” automatically generated by the MyVote system when the requester completes the online request process.

COUNT II:
DECLARATORY JUDGEMENT – WIS. STAT. § 227.40

75. Plaintiff realleges and incorporates the allegations of this complaint as if fully set forth herein.

76. Wis Stat. § 223.23 provides that, generally, an agency may prescribe forms that qualify as a “rule” as set forth in Chapter 227.

77. However, Wis. Stat. § 227.10(2) provides that “No agency may promulgate a rule which conflicts with state law.”

78. Wis. Stat. § 6.86(1)(ac) requires all electors requesting a ballot via electronic mail return with the voted ballot a copy of the ballot request form EL-121 “bearing an original signature of the elector.”

79. Wis. Stat. §6.87(4) also requires an elector who requested a ballot from the local clerk by means of electronic mail under Wis. Stat. §6.86(1)(ac) to enclose *in the envelope* a copy of the request which bears an original signature of the elector. (emphasis added)

80. WEC has adopted the New EL-122 as the envelope in which a voter returns his or her voted absentee ballot to the clerk.

81. WEC has mandated that Clerks utilize the New EL-122 in providing absentee ballot return envelopes to voters.

82. The New EL-122 requires voters to certify subject to Wis. Stat. § 12.60(1)(b),” that “I requested this ballot and this is the original or a copy of that request.”

83. The New EL-122 was promulgated specifically for the purpose of interpreting and implementing Wis. Stat. §§ 6.86(1)(ac) and 6.87(4).

84. As a result, the New EL-122 is the equivalent of a rule as it is a “standard, statement of policy, or general order of general application” that has the force of law and that is issued by an agency to implement, interpret, or make specific legislation enforced or administered by the agency.” Wis. Stat. § 227.01(13).

85. But the New EL-122 encourages and induces election fraud—as defined by Wisconsin Statutes—in that it asks a voter to certify subject to penalty of law that the New EL-122 *itself* is an original or a copy of the request for an absentee ballot when, in fact, it is not.

86. In the case of absentee ballots requested through MyVote, the EL-122 is neither.

87. Requests made through MyVote generates an unsigned ballot application that is sent directly to the local election clerk, who then mails a ballot directly to the person and address stated in the application.

88. WEC has exceeded its authority by promulgating a rule that clearly dismantles the statutory protection afforded clerks in receiving with the mailed ballot the application “bearing an original signature of the elector.”

89. WEC has mandated the use of the New EL-122 which encourages violation of Wisconsin law. Further, as WEC has mandated its use in the state, declaratory judgment is appropriate as there is a ripe controversy surrounding what satisfies the mandatory requirements of sections 6.86(1)(ac) and 6.87(4), and whether the New EL-122s may be used in any upcoming election.

90. Plaintiff requests declaratory judgment from this Court to resolve the present controversies identified above, declaring that the new EL-122 violates Wisconsin law, its promulgation was a void and *ultra vires* act, and that they may not be used in any upcoming election.

WHEREFORE, Plaintiff respectfully requests that this Court issue:

A. A declaration that—

1. A voter who requests an absentee ballot through MyVote is making an “electronic mail” request pursuant to Wis. Stat. § 6.86(1)(a)6.;
2. Any voter who requests an absentee ballot through MyVote must comply with Wis. Stat. §§ 6.86(1)(ac) and 6.87(4);
3. To comply with the mandates of Wis. Stat. §§ 6.86(1)(ac) and 6.87(4), a voter returning a voted ballot requested via MyVote must include in the envelope a duplicate copy of the WEC approved and mandated “EL-121” automatically generated by the MyVote system when the requester completes the online request process bearing an original signature of the voter, pursuant to the mandates of Wis. Stat. §§ 6.86(1)(ac) and 6.87(4); and that.
4. Any voter who returns a ballot requested through MyVote that is returned without including in the return envelope a an originally signed duplicate copy of the “EL-121” automatically generated by the MyVote system when the requester completes the online request process shall not be counted in any election and/or shall not be included in the certified count of any election.

B. A further declaration that adoption of the New EL-122 violated Wisconsin law by mandating the making of false statements by voters subject to the penalty of Wis. Stat. § 12.60(2)(b) and in violation of Wis. Stat. § 12.13(2)(b)4. and 7., and that the New EL-122 shall not be used by any election official or voter in any upcoming election.

- C. An immediate injunction barring the use of the New EL-122 by anyone in relation to any upcoming Wisconsin election.
- D. A grant of such further relief as the court deems appropriate, including costs of this action.

Dated at New Berlin, Wisconsin, this 15th day of February, 2024.

Electronically signed by Kevin M. Scott, Esq.

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