



Wisconsin Elections Commission

212 East Washington Avenue | Third Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8005 | elections@wi.gov | elections.wi.gov

MEMORANDUM

DATE: For the June 17, 2020 Special Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Meagan Wolfe, Administrator
Wisconsin Elections Commission

SUBJECT: Petition for Administrative Rulemaking on “Ballot Harvesting”

A. Petition for Administrative Rulemaking.

On June 8, 2020, pursuant to Wis. Stat. § 227.12, the Commission received a “Petition for Rulemaking” from the Wisconsin Institute for Law and Liberty (“WILL”) on behalf of 5 individuals identified as voters and taxpayers who have an interest in an agency administrative rule to clarify the terms of absentee voting in Wisconsin. I have attached the cover letter and petition for your reference.

Wis. Stat. § 227.12 states:

- (1) Unless the right to petition for a rule is restricted by statute to a designated group or unless the form of procedure for a petition is otherwise prescribed by statute, a municipality, an association which is representative of a farm, labor, business or professional group, or any 5 or more persons having an interest in a rule may petition an agency requesting it to promulgate a rule.
- (2) A petition shall state clearly and concisely:
 - (a) The substance or nature of the rule making requested.
 - (b) The reason for the request and the petitioners’ interest in the requested rule.
 - (c) A reference to the agency’s authority to promulgate the requested rule.
- (3) Except as provided in sub. (4), within a reasonable period of time after the receipt of a petition under this section, an agency shall either deny the petition in writing or proceed with the requested rulemaking. If the agency denies the petition, it shall promptly notify the petitioner of the denial, including a brief statement of the reason for the denial. If the agency proceeds with the requested rule making, it shall follow the procedures prescribed in this subchapter.

[Sub. (4) does not apply to the WEC].

Wisconsin Elections Commissioners

Ann S. Jacobs, chair | Marge Bostelmann | Julie M. Glancey | Dean Knudson | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

The petitioners seek an administrative rule regarding “ballot harvesting” which they define as a third party requesting an absentee ballot for an elector, and/or returning an absentee ballot on behalf of the elector after it has been completed. The petitioners state that they seek an administrative rule from the Commission to make it clear that Wisconsin law does not permit so-called ballot harvesting. The petitioners state that under the current statute, only the voters, themselves, are authorized to make the written application for an absentee ballot (not a third party-with the exception of hospitalized electors) and that only the elector shall mail in the ballot or deliver it in person.

The petition requests that a rulemaking proceeding begin as soon as practicable under Ch. 227 of the Wisconsin Statutes. The cover letter that accompanies the petition asks the Commission to take up the petition immediately and state that based on the “timeliness of this matter, using the emergency rulemaking process under Wis. Stat. § 227.24 would be appropriate.” The permanent rulemaking proceeding and the emergency rulemaking proceeding contain different steps and timelines which are outlined below.

B. Permanent and Emergency Rulemaking Steps and Timelines

In 2017, Commission staff provided the Commission a document that outlined the steps necessary for promulgating a permanent rule under Ch. 227 of the Wisconsin Statutes. Given the abbreviated timeframe to prepare materials for this agenda item, that document is attached and is titled, “Administrative Rulemaking Process.” Commission staff believe the steps outlined in the document from 2017 are substantially the same as the process now, although some of the references to email addresses where information is to be sent may be out of date. That document outlines generally 31 steps involved in the process, including a brief description of the step and the applicable statutory citations. Additionally, the Wisconsin Legislative Council has published a helpful flowchart that outlines the stages of administrative rulemaking for standard rules. For each stage, they assign an estimate as to the amount of time it takes for a rule to be fully promulgated. The Wisconsin Legislative Council estimates that from start to finish, for standard rules that move along the process without any major issues, take between 7 ½ and 13 months to promulgate. The Wisconsin Legislative Council flowchart is also attached.

For an emergency rule, there are less steps, but an emergency rule can only be in place for a limited period of time (150 days initially, with possible extensions not to exceed 120 days) and can expire prior to a regular/permanent rule is promulgated. Additionally, an agency must be able to justify that an emergency rule is necessary (“An agency may...promulgate a rule as an emergency rule without complying with the notice, hearing, and publication requirements under this chapter if preservation of the public peace, health, safety, or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures.”). Wis. Stat. § 227.24(1). The steps to promulgate an emergency rule are set out in Wis. Stat. § 227.24 and summarized below:

1. Commission directs staff to draft a scope statement and submit it to the Governor.
2. Department of Administration and the Governor review the scope statement, determines the agency has the authority to act as proposed and then issues approval or denial. Until approval is obtained, no work can be done on the rule by Commission staff.
3. Once approval is obtained, Commission staff prepares the scope statement to be published in the Administrative Register, which is published once a week. Copy of the scope statement is sent to the chief clerks in each house of the Legislature and DOA Secretary.

4. If directed to do so by either of the chairs of the Joint Committee for Review of Administrative Rules (JCRAR), hold a public hearing after providing at least 3-days' notice.
5. After the public hearing (if required), Commission reviews comments and testimony from hearing and approves statement of scope.
6. If no public hearing was required, scope statement must be published for at least 10 days before the Commission approves the statement of scope.
7. Commission staff drafts emergency rule, plain language analysis of the rule and fiscal analysis.
8. Submit completed emergency rule to Governor for approval.
9. Governor has discretion to approve or deny the rule as drafted – no provisions for amendments or modifications.
10. Once approval of emergency rule is obtained in writing, Commission staff publish the emergency rule in the *Wisconsin State Journal*. Once this publication occurs, the rule goes into effect.
11. Commission staff send the emergency rule to the chief clerks in each house of the Legislature and Legislative Reference Bureau (LRB) along with the statement of emergency finding.
12. Commission staff send the emergency rule to the Small Business Regulatory Review Board (if there is an impact on small business) on the same day it is sent to LRB.
13. Within 10 days of publishing the emergency rule, Commission staff mail a copy of the fiscal estimate to every member of the Legislature.
14. Commission holds a public hearing on the emergency rule within 45 days of the rule being published.
15. If necessary, seek extension of the emergency rule (must make request within 30 days of expiration of rule) for 60 days, with extensions not to exceed a total of 120 days.

C. Response to Petition for Rulemaking

On June 16, 2020, the Commission received a letter from the Wisconsin Democratic Party that opposes the petition for rulemaking on “ballot harvesting.” The letter requests that the Commission deny the petition and lists the following reasons for that opinion: WILL’s interpretation of the law is contrary to the statute and the Commission’s guidance, voters would be disenfranchised by WILL’s petition, Wisconsin voters are well-protected against fraud, and there are no emergency circumstances and they state that there is no mechanism under Wis. Stat. § 227.12 to petition an agency for an emergency rulemaking. The letter and attachment are included with this memorandum for the Commission’s consideration.

D. Preliminary Questions and Discussion

Commission staff believe the following questions and discussion points may help the Commission in its discussion of this item, and hopefully reach consensus on how to proceed.

- Commission action on the petition. Based on Wis. Stat. § 227.12, the Commission has a reasonable period of time to decide how it wants to handle the petition, meaning either direct the Commission staff to begin a rulemaking proceeding as requested, or deny the petition and provide a short statement as to why the petition is being denied.
- Emergency justification. The petition requests that the Commission begin a rulemaking proceeding as soon as possible. The cover letter associated with the petition asks the Commission to use the emergency rule provisions under Wis. Stat. § 227.24, but provides no other justification for why an emergency rule is more appropriate than a permanent rule, other than a reference to the “timeliness” of

the matter – which implies the impending elections in August and November, but that is not specifically noted. If the Commission directs staff to begin a rulemaking proceeding, it will need to decide which path or paths should be taken – permanent, emergency, or both simultaneously. If the emergency rule is one of the paths, the Commission will need to articulate the specific emergency present for which the rule is needed so that the emergency finding is accepted by DOA and the Governor during their respective reviews of the rule documents.

- Commission’s authority to promulgate rules and subject matter of rules. The petitioners cite the Commission’s general authority to promulgate rules for the purpose of interpreting or implementing the laws regulating the conduct of elections or ensuring properly election administration under Wis. Stat. § 5.05(1)(f). While petitioners believe this is sufficient authority for the Commission to proceed with promulgating a rule that interprets §§ 6.86 and 6.87, additional research would be needed to determine whether more specific authority is needed to add prohibitions in the statute that have not previously been interpreted to exist. Along the same lines, additional research may be required to determine if the area for which the petitioners believe rules are necessary, are appropriate subject matter for a rule, or if such changes are more appropriately suited for the Legislature and not an administrative agency. If the Commission directs staff to begin the promulgation process, the drafting would have to be done carefully as to not contradict any current statute and stay consistent with the intent and language of the current statutes that petitioners state already prohibit ballot harvesting.

Staff Recommendation:

Commission staff provide no specific recommendation on a course of action related to the petition for administrative rulemaking, other than to ask the Commission to make a determination within a “reasonable period of time” on whether to deny the petition or direct staff to begin a rulemaking proceeding.



WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.
330 East Kilbourn Ave., Suite 725, Milwaukee, Wisconsin 53202
414-727-WILL
Fax 414-727-6385
www.will-law.org

June 8, 2020

Wisconsin Elections Commission
212 East Washington Avenue, Third Floor
P.O. Box 7984
Madison, Wisconsin 53707-7984

Via First Class Mail and Email to:
Meagan.Wolfe@wi.gov

RE: Submission of a Petition for Rulemaking

Dear Commissioners,

We represent five petitioners: Ardis Cerny, Annette Kuglitsch, Jayne Gohr, Barbara Struck, and Christopher Kliesmet. We are writing today to address issues related to so-called “ballot harvesting” in Wisconsin. In this context, “ballot harvesting” means a third party requesting an absentee ballot for an elector, and/or returning an absentee ballot on behalf of the elector after it has been completed. The legality of ballot harvesting varies from state to state. Wisconsin law makes it illegal, and we submit the attached Petition for Rulemaking to request that this Commission adopt rules to enforce the statutory prohibitions.

Some municipalities in Wisconsin have already announced plans to distribute absentee ballot applications and information to electors in their municipalities. The Commission plans to take similar action on a statewide basis. All of this will surely lead to a continued increase in voting via absentee ballot this fall. Due to this massive increase, it is more important than ever to have clear laws and regulations in place for all to follow regarding who may request and submit an absentee ballot in Wisconsin.

“Ballot harvesting” can begin when a third party requests an absentee ballot on behalf of an elector. Such a third party request is clearly unlawful in Wisconsin. Wis. Stat. § 6.86(1)(a) states that: “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.” Under this statute, only the voters, themselves, are authorized to make the written application for a ballot. No third person is authorized to make the request. The Petitioners we represent request a rule clarifying that any request for an absentee ballot must come directly from the elector and not from or through any third party.

With respect to the second half of “ballot harvesting,” i.e., a third party *returning* a completed absentee ballot, Wisconsin law is also clear. Wis. Stat. § 6.87(4)(b)1 provides that electors must place their ballot in an envelope and follow certain procedures, and that “[t]he envelope shall be mailed by the elector, or delivered in person, to the municipal clerk issuing the ballot or ballots.”

The statute obviously means that the *elector* shall mail it, or the *elector* shall deliver it “in person.” But because some might argue that the statute means that the *elector* shall mail it, or a third person may deliver it “in person,” the Commission should adopt a rule making it clear that whatever means is used to “vote” the ballot, i.e., deliver it to the municipal clerk, the voting of the ballot must be done by the elector and not by a third party.

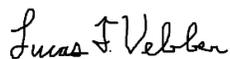
Given that the Commission has explicit statutory rulemaking authority here, *see* Wis. Stat. 5.05(1)(f), we are submitting herewith a Petition for Rulemaking requesting that the Commission adopt rules that prohibit the ballot being requested or being voted – i.e., delivered – by a third party.

Specifically, as laid out in the attached Petition for Rulemaking, the Petitioners request that WEC adopt a rule creating a new chapter of the Wisconsin Administrative code entitled “Methods for obtaining an absentee ballot and absent voting procedure” – which would provide (a) that only the elector may request an absentee ballot and the request must come directly from the elector (absent the circumstances set forth in Wis. Stat. 6.86 (3)); (b) that the phrase “the envelope shall be mailed by the elector” as used in Wis. Stat. 6.87 means that the elector and not a third party must place the envelope in the mail; and (c) that the phrase “delivered in person” as used in Wis. Stat. 6.87, means that an elector must return the ballot in person, and that a third party may not to do so on behalf of the elector.

Petitioners ask that the Commission take up the attached Petition for Rulemaking and immediately begin the rule promulgation process. Given the timeliness of this matter, using the emergency rulemaking process under Wis. Stat. § 227.24 would be appropriate.

Sincerely,

WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.



Lucas Vebber
Attorney for Petitioners

Enclosure

**PETITION FOR RULEMAKING
BEFORE THE
WISCONSIN ELECTION COMMISSION**

1. Petitioners Ardis Cerny, Annette Kuglitsch, Jayne Gohr, Barbara Struck and Christopher Kliesmet, by their undersigned counsel, hereby submit this Petition for Rulemaking to the Wisconsin Elections Commission (“WEC”) pursuant to Wis. Stat. § 227.12.

2. Petitioner Ardis Cerny is a person, a resident of Wisconsin, and a registered voter. Petitioner Cerny resides at W233N3037 Oakmont Court, Unit B in the City of Pewaukee, County of Waukesha and State of Wisconsin. Petitioner Cerny has an interest in this rule to clarify the terms of Wisconsin’s absentee voting statutes as a voter and as a taxpayer.

3. Petitioner Annette Kuglitsch is a person, a resident of Wisconsin and a registered voter. Petitioner Kuglitsch resides at 316 East Wabash Avenue in the City of Waukesha, County of Waukesha and State of Wisconsin. Petitioner Kuglitsch has an interest in this rule to clarify the terms of Wisconsin’s absentee voting statutes as a voter and as a taxpayer.

4. Petitioner Jayne Gohr is a person, a resident of Wisconsin and a registered voter. Petitioner Gohr resides at 280 North Mountain Drive in the City of Mayville, County of Dodge and State of Wisconsin. Petitioner Gohr has an interest in this rule to clarify the terms of Wisconsin’s absentee voting statutes as a voter and as a taxpayer.

5. Petitioner Barbara Struck is a person, a resident of Wisconsin and a registered voter. Petitioner Struck resides at 10133 West Hawthorne Road in the City of Mequon, County of Ozaukee and State of Wisconsin. Petitioner Struck has an interest in this rule to clarify the terms of Wisconsin’s absentee voting statutes as a voter and as a taxpayer.

6. Petitioner Christopher Kliesmet is a person, a resident of Wisconsin and a registered voter. Petitioner Kliesmet resides at 9272 North Thrush Lane in the Village of Bayside, County of Milwaukee and State of Wisconsin. Petitioner Kliesmet has an interest in this rule to clarify the terms of Wisconsin's absentee voting statutes as a voter and as a taxpayer.

7. Petitioners hereby request that WEC adopt administrative rules in order to specifically adopt an interpretation of a statute to govern its enforcement and administration of that statute, namely Wis. Stats. §§ 6.86 and 6.87, as laid out herein.

8. Wis. Stats. §§ 6.86 and 6.87 provide the statutory framework for Wisconsin's "Methods for obtaining an absentee ballot" and "Absent voting procedure", respectively, together also known as "absentee voting."

9. WEC has the responsibility for administering Chapters 5 to 10 and 12 of the Wisconsin Statutes. *See* Wis. Stat. § 5.05(1).

10. To carry out this statutory charge, the Legislature has empowered WEC to "Promulgate rules under ch. 227 applicable to all jurisdictions for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns, other than laws regulating campaign financing, or ensuring their proper administration." *See* Wis. Stat. § 5.05(1)(f).

11. Petitioners request that WEC promulgate a rule to make it clear that Wisconsin law does not permit so-called "ballot harvesting." In this context, "ballot harvesting" means a third party requesting an absentee ballot for an elector, and/or returning an absentee ballot on behalf of the elector after it has been completed.

12. Wis. Stat. § 6.86(1)(a) provides that "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.” There are exceptions to this for electors who are hospitalized to allow an agent to request a ballot on their behalf. Wis. Stat. § 6.86(3).

13. Under that statute, only the voters, themselves, are authorized to make the written application for a ballot. No third person is authorized to make the request, except under the statutory exemption for hospitalized electors.

14. Wis. Stat. § 6.87(4)(b)1. provides that electors must place their completed ballot in an envelope and follow certain procedures, and then states that “...The envelope shall be mailed by the elector, or delivered in person, to the municipal clerk issuing the ballot or ballots...”

15. That statute obviously means that the *elector* shall mail it, or the *elector* shall deliver it “in person.”

16. To improve clarity and ensure that all electors are aware of exactly what these statutes mean, WEC should adopt a rule making it clear that third parties may not request ballots for someone else, and that whatever means is used to “vote” the ballot, i.e., mail it or deliver it to the municipal clerk, the voting of the ballot must be done by the elector and not by a third party.

17. Given that WEC has explicit statutory rulemaking authority here, Petitioners request that the WEC adopt rules that explicitly interpret the absentee voting procedures statutes to provide that third parties may not request absentee ballots for electors (except in the limited circumstances described in Wis. Stat. § 6.86 (3)), and further that the obligation to mail a ballot or to deliver it in person must be done by the individual elector and not by a third person.

18. Specifically, Petitioners request that the WEC adopt a rule creating a new chapter of the Wisconsin Administrative code entitled “Methods for obtaining an absentee ballot and

absent voting procedure” – which provides (a) that third parties may not request absentee ballots for an elector except as set forth in sec. 6.86(3); (b) that the phrase “the envelope shall be mailed by the elector” as used in Wis. Stat. § 6.87 means that the elector and not a third party must place the envelope in the mail, and (c) that the phrase “delivered in person” as used in Wis. Stat. § 6.87, means that an elector must return the ballot in person, and that a third party may not do so on behalf of the elector.

WHEREFORE, Petitioners, through their undersigned counsel, submit this Petition for Rulemaking to WEC and request the rulemaking proceeding begin as soon as practicable, pursuant to the requirements of Chapter 227 of the Wisconsin Statutes.

DATED this 8th day of June, 2020.

Respectfully submitted,

WISCONSIN INSTITUTE FOR LAW & LIBERTY

/s/ Signed electronically by Lucas Vebber

Richard M. Esenberg, WI Bar No. 1005622
414-727-6367; rick@will-law.org

Brian McGrath, WI Bar No. 1016840
414-727-7412; brian@will-law.org

Lucas Vebber, WI Bar No. 1067543.
414-727-7415; lucas@will-law.org

330 East Kilbourn Avenue, Suite 725
Milwaukee, WI 53202-2828
414-727-9455; FAX: 414-727-6385

Attorneys for Petitioners

WISCONSIN ELECTIONS COMMISSION

212 EAST WASHINGTON AVENUE, 3RD FLOOR
 POST OFFICE BOX 7984
 MADISON, WI 53707-7984
 (608) 261-2028
 ELECTIONS@WI.GOV
 ELECTIONS.WI.GOV



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Administrative Rulemaking Process

Step :	Description:	Authority:	Provide to Admin. Rules Website and Gov.? ¹
1	Commission authorizes staff to draft a Statement of Scope for a proposed rule.	Wis. STAT. §§5.05(1)(f), 227.135	--
2	Staff drafts proposed Statement of Scope.	Wis. STAT. §§5.05(1)(f), 227.135(1), 227.24(1)(e)	--
3	Staff electronically submits ² proposed Statement of Scope to the Governor for consideration and approval.	Wis. STAT. §227.135(2); 2011 Executive Order #50, §II, ¶5	Yes
4	Staff receives Governor's approval of Statement of Scope in writing.	Wis. STAT. §227.135(2); 2011 Executive Order #50, §II, ¶5	Yes
5	Staff submits Governor-approved Statement of Scope to the Legislative Reference Bureau ³ for publication in the Administrative Register within 30 calendar days of receipt of Governor's written approval; staff also sends Statement of Scope to Secretary of the Department of Administration. ⁴	2011 Executive Order #50, §II, ¶9	Yes
6	Statement of Scope is published in the Administrative Register for at least ten (10) days.	Wis. STAT. §227.135(2)	Yes
7	Commission approves Statement of Scope after it has been published in the Administrative Register for at least ten (10) days.	Wis. STAT. §227.135(2)	--
8	Before initiating the preparation of the Economic Impact Analysis, Staff reviews Statement of Scope to determine whether it has changed in any meaningful way while being developed, and shall submit revised Statement of	2011 Executive Order #50, §IV, ¶2	--

¹ Email to SBOAdminRules@webapps.wi.gov. 2011 Executive Order #50; MANUAL, p. 23.

² Email to SBOAdminRules@webapps.wi.gov. See 2011 Executive Order #50, §I, ¶4; §II, ¶1.

³ Email to Admin-Code-Register@legis.wi.gov. MANUAL, p. 23, Rule 2.001(2).

⁴ Emailing to SBOAdminRules@webapps.wi.gov satisfies the WEC's duty to send to the Department of Administration. 2011 Executive Order #50, §I, ¶4.

	Scope to the Governor if any such changes occurred.		
9	Staff drafts language of proposed rule.	Wis. STAT. §§227.135(2), 227.137, 227.14	--
	Staff drafts analysis of proposed rule. Analysis includes a place to submit comments and a deadline for submitting those comments.	Wis. STAT. §227.14(2)	--
	Staff drafts fiscal estimate of proposed rule.	Wis. STAT. §227.14(4m)	--
10	(Optional) Staff submit proposed rule to Legislative Reference Bureau for “presubmission editing” and drafting comments.	MANUAL, p. 26, Rule 2.007.	--
11	Staff solicits information and advice from entities and individuals that may be affected by proposed rule by 1) posting proposed language on Wis. Admin website, 2) accepting comments for at least 14 calendar days (if little or no economic impact), or at least 30 days (if moderate impact), or at least 60 days (if significant impact)	2011 Executive Order #50, §IV, ¶¶1, 3.	Yes
12	Staff prepares Economic Impact Analysis for proposed rule with information obtained from entities and individuals that may be affected by the rule and with local governmental units that respond to WEC’s solicitation for information, unless rule will not have an economic impact.	Wis. STAT. §§227.137(2), (3); 2011 Executive Order #50, §IV, ¶¶1, 4, 8.	--
	Economic Impact Analysis includes determination as to whether the proposed rule would adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of the state.	Wis. STAT. §227.137(3)(e); 2011 Executive Order #50, §IV, ¶1, 5.	--
13	If the Commission intends to establish an advisory committee, the Commission must provide ⁵ a list of members to the Governor prior to establishing the committee (recommended if the EIA indicates that the rule will have a significant economic impact). <i>*Unlikely this will occur with the rules the Commission promulgates*</i>	Wis. STAT. §227.13; 2011 Executive Order #50, §III, ¶1; §IV, ¶6.	Yes
13	Staff prepares notice of submission of proposed rule to Rules Clearinghouse.	Wis. STAT. §§227.14(4m), 227.17	--
14	Commission approves notice of submission of proposed rule to Rules Clearinghouse, which includes the proposed rule order and Economic Impact Analysis.	Wis. STAT. §§227.14(4m)	--
15	Staff provides proposed final draft of proposed rule and Economic Impact Analysis to Legislative Council Rules Clearinghouse, ⁶ Governor/Secretary of DOA, ⁷ and	Wis. STAT. §227.137(4); 2011 Executive Order #50, §IV, ¶1	Yes

⁵ Email to AdminisitrativeRules@wisconsin.gov.

⁶ Email to: Clearing.House@Legis.wisconsin.gov.

	Legislature. ⁸ (pdf. for Gov. Office) <i>**Hard copy of economic impact analysis and proposed rule must be provided to Clearinghouse before it is considered filed and can be published in the register.</i>		
	Staff submits, to Legislative Reference Bureau for publication in Administrative Register, notice of submission of proposed rule to Rules Clearinghouse.	Wis. STAT. §§227.14(4m), 227.17	Yes
	Staff submits proposed rule to the Small Business Regulatory Review Board if rule may have an economic impact on small businesses.	Wis. STAT. §227.14(2g)	Yes
16	Staff submits revised Economic Impact Statement to Governor if there is a significant change in economic impact.	Wis. STAT. §227.137(4); 2011 Executive Order #50, §IV, ¶9.	Yes
17	Staff coordinates with Department of Administration to complete review and report if the Economic Impact Analysis indicates that the rule will cost \$20,000,000+ for implementation and compliance. Staff may not submit a report to the Legislature until DOA provides this report to the agency, if required.	Wis. STAT. §§227.137(3)(c), 227.137(6), 227.19(2); 2011 Executive Order #50, §IV, ¶11.	Yes
18	Within 20 days of receipt of rule and Economic Impact Analysis, Rules Clearinghouse provides staff with advisory and technical review report. 20 days starts once they receive the hard copy of the rule.	Wis. STAT. §227.15	Yes
19	Staff publishes notice ⁹ of public hearing at least ten (10) days prior to the hearing (if hearing required); ¹⁰ staff also provides such notice to Legislative Reference Bureau, and to Legislators. ¹¹ Staff is also required to take whatever steps it deems necessary to convey notice to interested persons.	Wis. STAT. §§227.16, 227.17(2), (3), 227.18; MANUAL, Rule 2.04(3), Rule 2.04(4).	Yes
	Staff holds public hearing, if required. Hearing may not occur until staff receives Rules Clearinghouse review	Wis. STAT. §§227.15(1), 227.16; <i>HM Distributors of</i>	--

⁷ Email to SBOAdminRules@webapps.wi.gov. See 2011 Executive Order #50, §I, ¶4; §IV, ¶1.

⁸ Via chief clerks of both houses: Patrick.Fuller@legis.wisconsin.gov, Jeff.Renk@legis.wisconsin.gov.

⁹ Staff must provide notice to every member of the Legislature who has filed a request for notice in writing with the LRB. Staff may receive a list of the names and addresses of those legislators from LRB upon request. MANUAL, Rule. 2.04(3).

¹⁰ Hearing not required if: 1) proposed rule brings an existing rule into conformity with a statute that has been changed or enacted or with a controlling judicial decision. Wis. STAT. §227.16(2)(b); 2) proposed rule is adopted as an emergency rule. Wis. STAT. §227.16(2)(c), and MANUAL, Rule 2.12; 3) proposed rule is being promulgated as directed by JCRAR under Wis. STAT. §227.26(20)(b). Wis. STAT. §227.16(2)(d), and MANUAL, Rule 2.06; 4) proposed rule published under the 30-day notice procedure in Wis. STAT. §227.16(2)(e). MANUAL, Rule 2.05; or 5) proposed rule consists of one or more forms that impose a requirement that meets the definition of a rule. Wis. STAT. §227.23.

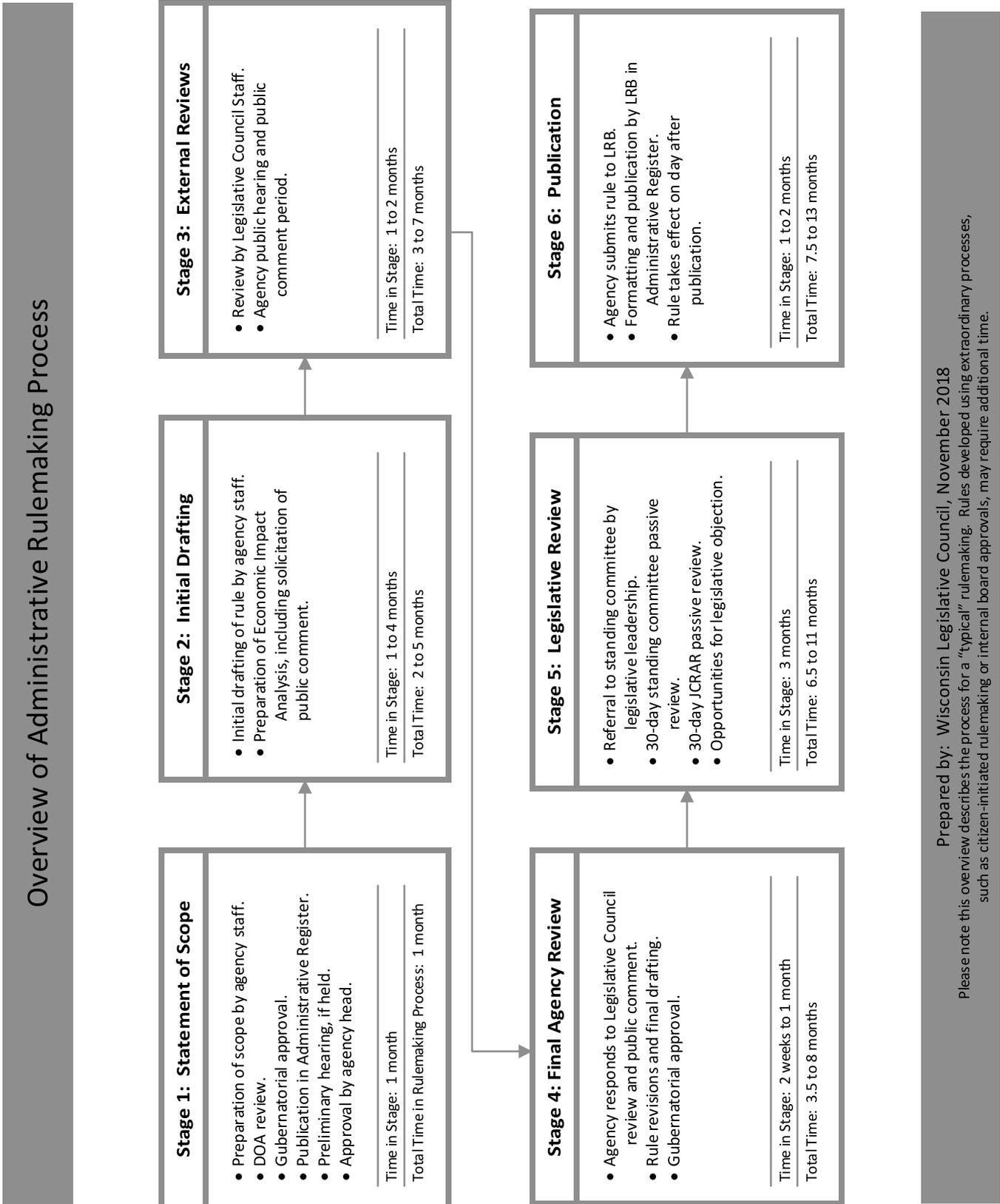
¹¹ Staff must provide notice to every member of the Legislature who has filed a request for notice in writing with the LRB. Staff may receive a list of the names and addresses of those legislators from LRB upon request. MANUAL, Rule. 2.04(3).

		report. Hearing to give interested parties a change to be heard and to have influence over final form of rule.	<i>Milwaukee v. Dept. of Agri.</i> , 55 Wis. 2d 261, 268 (1972)	
Alt. 20	Alt. 20.a.	If staff uses 30-day notice procedure instead of a public hearing, staff must provide notice to the Legislative Reference Bureau for publication in the Administrative Register.	Wis. STAT. §227.16(2)(e)	Yes
	Alt. 20.b.	If staff receives a petition within 30 days of publication, staff may not proceed with proposed rule until it holds a public hearing.	MANUAL, Rule 2.05(3)	Yes
		If staff does not receive a petition within 30 days of publication of the notice, staff may submit the proposed rule to the Governor for approval.	MANUAL, Rule 2.05(4)	Yes
21		Staff prepares final draft of rule, with analysis and fiscal estimate.	Wis. STAT. §§227.14(1), (2), 227.15(7); 2011 Executive Order #50, §V, ¶1.	--
22		Staff submits final draft of rule to Governor within 30 days after the public comment period.	Wis. STAT. §227.185; 2011 Executive Order #50, §V, ¶1; MANUAL, Rule 2.09(1)	Yes
23		Governor provides written approval of final draft of rule to staff.	Wis. STAT. §227.185; 2011 Executive Order #50, §V, ¶4	Yes
24		Staff prepares report for Legislature, with the proposed rule, the rule summary, reference to applicable forms, the fiscal estimate, any statement from SBRRB, the economic impact analysis, any DOA report, any energy impact report from PSC, the Rules Clearinghouse report, statement of the basis and purpose of proposed rule, summary of public comments, list of persons who appeared or registered for or against the proposed rule, any changes to the rule summary or fiscal estimate, response to recommendations from Rules Clearinghouse, final regulatory flexibility analysis for a rule that impacts small business, any changes to any energy impact report, any DOA report on housing, any response to any SBRRB report.	Wis. STAT. §227.19(3)	--
25		Staff prepares notice to chief clerk of each house of the legislature when the rule is in final draft form.	Wis. STAT. §227.19(2)	--
		Staff prepares notice of submission of rule to the Legislature.	Wis. STAT. §227.19(2)	--
		Staff records on each rule jacket the date of any agency public hearing held regarding the proposed rule.	MANUAL, Rule 3.02(1)	--
26		Staff submits notice, report, and rule to Legislature in triplicate. ¹²	Wis. STAT. §227.19(2); MANUAL, Rule 3.02(1)	Yes
		Staff submits, to the Legislative Reference Bureau for	Wis. STAT. §227.19(2)	Yes

¹² Via chief clerks of both houses: Patrick.Fuller@legis.wisconsin.gov, Jeff.Renk@legis.wisconsin.gov.

	publication in the Administrative Register, notice of submission of rule to the Legislature.		
27	Presiding officer directs each chief clerk to refer the rule jackets to one standing committee in each house.	WIS. STAT. §227.19(2)	--
28	Committee reviews the rule. Committee may request modifications of a proposed rule. Committee may object to a proposed rule if there is an absence of statutory authority, emergency relating to public health/safety/welfare, failure to comply with legislative intent, contrary to state law, change in circumstances since enactment of the law, arbitrary and capricious or imposing undue hardship.	WIS. STAT. §227.19(4)	--
29	When committee finishes review, rule referred to JCRAR. JCRAR review lasts 30 days, but may be extended. JCRAR will consider any committee objections, may make its own objections, ¹³ may seek modifications, and may approve part/whole of the rule. WEC may not promulgate the rule until JCRAR non-concurs in any objection or concurs in the approval.	WIS. STAT. §227.19(5)	--
30	When promulgated, staff files a certified copy of the rule and a Microsoft Word version of the rule with the Legislative Reference Bureau for incorporation in the Administrative Code and publication in the Administrative Register.	WIS. STAT. §§227.20, 227.21, 227.22; MANUAL, Rule 3.02(4)	Yes
31	Legislative Reference Bureau publishes rule in administrative register, and rule is effective upon first day of the month commencing after publication.	WIS. STAT. §227.22	Yes

¹³ If JCRAR objects, then it must take executive action within 30 days regarding introduction of a bill in each house to support the objection. WIS. STAT. §227.19(5)(e).





June 15, 2020

BY EMAIL

Wisconsin Elections Commission
212 East Washington Ave., Third Floor
PO Box 7984
Madison, WI 53707-7984
c/o Administrator Meagan Wolfe, Meagan.Wolfe@wi.gov

Re: Wisconsin Institute for Law and Liberty's June 8, 2020 Petition

Dear Commissioners and Administrator Wolfe:

On behalf of the Democratic Party of Wisconsin (“DPW”), we write in opposition to the petition filed on June 8, 2020, by the Wisconsin Institute for Law and Liberty (“WILL”), regarding what WILL pejoratively refers to as “ballot harvesting.”

WILL’s petition is a solution in search of a problem—but one that creates new and unsought problems. They offer no evidence of systemic or even anecdotal problems with absentee ballot tampering—which, as we discuss below, is already illegal under Wisconsin law. Nor do they offer any reason why Wisconsin voters who might struggle to return their absentee ballots should be denied assistance. Wisconsin election law requires no clarification. To the contrary, while couched as a mere statutory clarification, WILL’s proposed interpretation of Wis. Stat. §§ 6.86 and 6.87 would rewrite Wisconsin law and disenfranchise Wisconsinites whose health or physical challenges make it difficult for them to request and return their ballots without assistance. The Commission should reject this cramped and uncharitable interpretation of Wisconsin law.

WILL’s Interpretation is Contrary to the Statute and This Commission’s Guidance

WILL’s interpretation would rewrite Wis. Stat. § 6.87(4)(b)(1). The statute instructs that an absentee ballot “envelope shall be mailed by the elector, or delivered in person, to the municipal clerk issuing the ballot or ballots.” First, the statute does not specify that an elector must *personally* place the envelope in the mailbox. If an elector asks a family member to place their ballot in the mailbox, that should be understood to satisfy—as it always has been—the requirement that the “envelope shall be mailed by the elector.” Making it a felony for a citizen

to walk down the driveway and place their spouse or children's ballot in the mailbox is an absurd result that the legislature surely did not intend.

Second, WILL asks the Commission to rewrite the second part of the sentence in question as though it read: "the envelope shall be personally mailed or delivered in person by the elector to the municipal clerk issuing the ballot or ballots." That is not what the statute says. The statute does not require that the elector be the one to deliver a ballot in person to the municipal clerk, because the phrase "or delivered in person" is set off by commas and should be read to refer back to the object of the sentence, "the envelope." In other words, the statute contains two ways for "the envelope" to be returned "to the municipal clerk issuing the ballot or ballots"—either the envelope shall be mailed by the elector, or the envelope shall be delivered in person to the clerk. This Commission should not add requirements to how a ballot may be returned that do not appear in statute.

WILL's interpretation runs contrary to the advice Commission staff provided to clerks on March 31, 2020. Administrator Wolfe's memo to clerks specifically noted that "[a] family member or another person may also return the ballot on behalf of the voter."¹ Administrator Wolfe's advice was, and is, entirely consistent with the statute, which nowhere requires that an individual voter be the one to physically place their ballot in a mailbox, a drop box, or put it in their clerk's hands.

Voters Would Be Disenfranchised by WILL's Petition

This Commission is all too familiar with the myriad problems voters faced casting their absentee ballots for the April 7 election. Municipal clerks, inundated with many times the volume of absentee ballot requests that they had ever seen in a spring election, could not timely process all requests and promptly mail voters their ballots. Many voters waited weeks for their ballots to arrive, if they arrived at all. As a result, many voters did not receive their ballots until very close to election day—making it critical that they be able to get their ballots postmarked or put in a drop box as quickly as possible to ensure that their votes were counted. At the same time, many voters were also justifiably scared to leave their homes to go to a post office to get their ballot postmarked or to a municipal clerk's office to return their ballot in person—understandable, given that the state was under Governor Evers' Safer-at-Home order. Immunocompromised and differently abled voters in particular needed help from healthier family members or volunteers to get their ballots returned in time.

¹ Memorandum from Meagan Wolfe to Wisconsin Municipal Clerks re Absentee Ballot Return Options, March 31, 2020, <https://elections.wi.gov/sites/elections.wi.gov/files/2020-03/Ballot%20Return%20Options%203.31.2020.pdf>.

In connection with the April 7 election, DPW’s Voter Assistance Hotline talked with nearly 2000 voters facing difficulty making their voices heard, many of whom needed help returning their absentee ballots. These voters were not alone—their struggles were illustrative, but not unique. WILL’s interpretation of the law would have denied these voters their right to vote or forced them to take unnecessary health risks to cast their votes.

For instance, we talked to Joanne Glasser from La Crosse.² Her husband’s absentee ballot arrived on April 6, and Joanne’s never arrived. Fortunately, Joanne was able to vote at a drive-through window and return her husband’s ballot at the same time, which helped protect him from potential exposure—both Joanne and her husband are over the age of 65, but her husband is even older, and she was scared of exposing him to COVID-19. Gretchen Weiss of River Hills is a college student who was sheltering with her family.³ Her whole family requested absentee ballots, but their ballots did not arrive until just before April 7. When they learned that their ballots had to be postmarked by April 7, they realized that they would have to go to a post office to be certain their ballots were postmarked in time. Upset at the prospect of exposing multiple family members to COVID-19, Gretchen’s mother took all of their ballots to the post office by herself to ensure that the ballots were postmarked, but minimize the risk to the family. Richard of Madison lives alone in public housing. He got his ballot on April 4, but had no way to get a witness for his ballot. Fortunately, the League of Women Voters in Madison had organized to provide volunteer witnesses, one of whom met him in his building’s parking lot to witness his ballot from a safe distance. Richard was happy to have the witnessing assistance, but was worried his ballot would not arrive in time to be counted if he mailed it. After explaining his concerns to the volunteer, she offered to take his ballot to a drop box, which Richard felt would ensure his vote was counted.

Other voters did not have family members willing to put themselves at risk to protect the right of their loved ones to vote, or volunteers willing to expose themselves to protect the franchise. If WILL has its way in creating another roadblock to voting, many voters like Richard, who were helped by a volunteer, will be disenfranchised like other voters we spoke with.

For example, Joyce Evans-Campbell and her husband are both disabled.⁴ Their mail is delivered a block from their home, a distance Joyce is unable to manage but that her husband, on

² Declaration of Joanne Glasser.

³ Declaration of Gretchen Weiss.

⁴ Declaration of Joyce Evans-Campbell.

his good days, can handle; to send outgoing mail, however, they must go to their local post office. Election day was not one of his good days, and Joyce had to stay close to watch him as he underwent home dialysis. No volunteer organizations were actively picking up ballots in their neighborhood, so Joyce could not go to the post office to mail their absentee ballots, despite the painstaking effort Joyce and her husband expended to request and fill them out. Dolores Garm of Cudahy, who lives alone and is immunocompromised, could not get a witness for her ballot and was fearful of going out in public to try to find one.⁵ She tried to find a way to have her ballot witnessed and collected, but there weren't any nonprofits able to provide that service in her area. These stories, representative of many Wisconsinites' experiences, show that voters in Wisconsin are *already* disenfranchised in the absence of the sort of help which is currently not guaranteed and which WILL seeks to make illegal. We should make it easier, not harder, for people to exercise their right to vote.

WILL's restrictive interpretation of the statute would have required Joanne's husband to return his ballot himself, forcing him to choose between exposure to the virus or not voting. It would have, absurdly, required Gretchen's entire family go to the post office and each individually mail their ballots, quadrupling the chances of exposure and infection. And it would have prevented Richard from entrusting his ballot to a volunteer and risked not being returned through the mail in time to be counted.

Wisconsin Voters Are Well-Protected Against Fraud

We want to make explicit that WILL is attempting to conflate the legitimate assistance some voters need in requesting or returning their absentee ballots—assistance which is entirely permissible under Wisconsin law—with illegal ballot tampering. But nothing could be further from the truth. In North Carolina, ballots were collected by Republican operatives, *who then altered the ballots, including adding votes in races where the voter had not made a choice.*⁶ Wisconsinites are already protected against this type of fraud, however. Wis. Stat. § 12.13 makes it a crime to engage in various forms of election tampering, including: willfully or negligently failing to deliver official ballots prepared for an election after undertaking to do so, *id.* § 12.13(3)(c); preparing an official ballot with intent to change the result of an election, *id.* § (3)(e); falsely make any statement for the purpose of obtaining or voting an absentee ballot, *id.* § (3)(i); marking a ballot or depressing a button for a candidate other than the one chosen by the

⁵ Declaration of Dolores Garm.

⁶ Leigh Ann Caldwell, *Key witness testifies to tampering with absentee ballots in N.C. House race*, NBC News (Feb. 18, 2019), <https://www.nbcnews.com/politics/elections/key-witness-testifies-tampering-absentee-ballots-n-c-house-race-n972896>.

elector, when assisting a voter with a physical disability or who is unable to read or write English, *id.* § (3)(j); fraudulently change an elector’s ballot, *id.* § (3)(m). Some of these are Class I felonies, punishable by up to 3.5 years in prison and a \$10,000 fine. *Id.* § 12.60.

Further, Wisconsin voters are required to properly seal their ballots. Wis. Stat. § 6.87(4)(b)(1). Reopening and altering a sealed ballot would create visible tampering and that ballot would not be counted. Indeed, 550 absentee ballots were rejected in the April 7th election for failure to be properly sealed or due to evidence that the ballot had been opened and later re-sealed. Therefore, the sort of tampering WILL fears will occur is not only a felony, but logistically very difficult to carry out in mass quantity without discovery.

In short, Wisconsin voters are well-protected already from having their absentee ballots illegally tampered with. They do not need to be further protected from potential ballot fraud, and we reject WILL’s framing, which would term the assistance that Joanne, Gretchen, and Richard received “ballot harvesting,” rather than what it is: help. What Wisconsin voters need is simply a continuation of the entirely legal, above-board practice of having a family member or other assistant help return their absentee ballot by putting it in the mail or returning it to a drop box.⁷ We saw on April 7 that Wisconsin voters are deeply committed to our state and our democracy. All we ask for today is that the Commission not strip them of the help they need to make their voices heard.

There Is No Emergency

WILL asks the Commission to exercise its emergency rulemaking authority under Wis. Stat. § 227.24, which permits an agency to forgo the required notice and comment period “if preservation of the public peace, health, safety, or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures.”

There are no emergency circumstances. WILL makes a vague handwaving reference in its cover letter to “the timeliness of this matter.” But Wis. Stat. § 6.87 has been on the books for decades, and the language that “the envelope shall be mailed by the elector” was enacted before 1971. Surely if there were some emergency with respect to the language of the statute itself, it would have been identified in the 50 years the statute has been the law of the state. Nor does

⁷ Indeed, we note that earlier this year, the *en banc* 9th Circuit Court of Appeals ruled that Arizona’s criminalization of ballot collection violated Section 2 of the Voting Rights Act and the Fifteenth Amendment because of its disparate impact on American Indian, Hispanic, and African American voters. See *DNC v. Hobbs*, No. 18-15845 (2020), available at <https://cdn.ca9.uscourts.gov/datastore/opinions/2020/01/27/18-15845.pdf>.



WILL point to any changed circumstances or facts on the ground that indicate that Wisconsin faces an emergent threat of ballot fraud.

Lastly, we note that there is no mechanism under Wisconsin law to petition an agency for an *emergency* rulemaking. Although Wis. Stat. § 227.12 permits a petition for a regular rulemaking process, nowhere does it contemplate that that petition may seek an emergency process under section 227.24, and the Commission should reject any attempt to circumvent the required notice and comment period should it pursue this rulemaking.

* * *

Thank you in advance for your consideration. I would be glad to make myself available to the Commissioners or Commission staff to discuss the matter further.

Respectfully,

Ben Wikler, Chair
Democratic Party of Wisconsin

Encls.

DECLARATION OF JOANNE GLASSER

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. My name is Joanne Glasser. I am over eighteen years of age and competent to testify to the matters contained herein.
2. I am a resident of LaCrosse in LaCrosse County in Wisconsin, and my residence address is W5552 Southdale Drive, LaCrosse, 54601.
3. Yes, I did vote. I didn't know that would happen until 12:30 pm on election day. My ballot was in the mail that day. I'd requested it on March 26th. Neither my ballot nor my husband's had arrived by the Friday before election day, April 3rd, so I emailed the clerk to see what the situation was. I got a response that afternoon. My questions were, does it generally take over a week to receive a ballot? What was the deadline on the postmark for the ballot to be accepted? She said the ballot needed to be received by the 13th, and the polls would be open on election day.
4. On Monday, the 6th, when all the last-minute chaos was happening about whether we'd be able to delay the voting, I got an email from Wisconsin Conservation Voters that the election would take place on the 7th. My husband's ballot came on Monday, special delivery in a USPS truck, well after the usual mail delivery, and he drove directly to the mailbox and put it in, but mine was not with it. I knew we could get my husband's to the dropbox the next day, but I did not have a ballot.
5. Then I was told by your office that it was possible to request a ballot by email. So I called the election clerk's office on Monday afternoon, and they said yes, you can get a replacement by email. They would not send it out until that evening because they would be setting up for the election. I looked for it that evening, and nothing came. The same thing

happened on election day. I called again at 9:30 am and spoke to the election clerk, who told me that 10 minutes ago they learned that you could not request the ballot by email, and you would have to go to the polling place. They would have drive-up voting, so they would have staff outside to give you a ballot and they would accept it. In the mail that day, April 7th, at 12:30 pm, my ballot arrived, so I was able to vote and drop off both my and my husband's ballots in the dropbox.

6. I felt really frustrated. Eventually infuriated. Changing the rules at the last minute, which is what it amounted to, with replacement ballots, giving an extension, then having no extension, seemed to me the most blatant and transparent form of voter suppression I've ever heard of. I was very conflicted about going to the polls. I'm over the magic age, and my husband is even older. If I brought something home to him, that would be terrible. I was really angry I was put in that position.

7. Fortunately, or maybe not, when I was given the option of signing up for absentee ballots for all future elections, I did that. I assume that those will be sent as soon as they're eligible to be sent. I don't think we'll get in this time crunch again. I will watch the calendar carefully. It made me dig in and say, ok, then we're going to do what needs to be done.

8. I give this Declaration freely, without coercion, and without any expectation of compensation or other reward.

9. I understand that in giving this Declaration, I am not represented by a lawyer. Neither has any lawyer asked me to be their client or to serve in any way as anything other than a witness in this lawsuit.

10. I declare under penalty of perjury that the foregoing is true and correct.

Executed on 5/29/2020.

DocuSigned by:

Joanne Glasser

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Joanne Glasser

DECLARATION OF DOLORES MARIE GARM

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. My name is Dolores Marie Garm. I am over eighteen years of age and competent to testify to the matters contained herein.
2. I am a resident of Cudahy in Milwaukee County in Wisconsin, and my residence address is 3553 E Cudahy Ave, Cudahy, WI 53110-1102.
3. I wanted to get an absentee ballot for the April 7th election because I did not feel safe going out given the ongoing coronavirus pandemic. I was concerned because I have a lot of risk factors. I have heart disease, I'm 67, and have a lot of other problems. I'm disabled.
4. I requested my absentee ballot for the April 7th election right after they said it was available, and I received it on or around March 4th.
5. I received the ballot by mail, but saw I needed a witness to properly fill out the ballot so it would be counted, and I had no one to witness. I live alone.
6. I called the Municipal Clerk to ask what to do, and they said I needed a witness. If I sent it in with just my signature, it wouldn't count. I couldn't do anything. I was not going to go out and find a stranger to sign my ballot. That didn't feel safe.
7. I've still got the dang thing. I really felt like I was disenfranchised, especially because they took away that extra week in which I could have maybe found a witness and returned my ballot. Why did they do that? And that was the US Supreme Court action. They took away that extra week right before Election Day; if they'd made that ruling right when they extended the deadline, I would have known I didn't have the extra week to figure it out.
8. I tried everything I could. I called the Democratic Party of Wisconsin's Voter Assistance Hotline on April 6th to see if they could help me. I thought, maybe if someone wants

my vote enough, maybe they would come and witness my absentee ballot and take my vote to the post office. That didn't happen. There weren't any nonprofits providing that service where I live.

9. Even if I had found a witness for my absentee ballot, I don't know how I could have gotten my ballot postmarked in time. I don't have any transportation to take my ballot to the post office, because I don't drive. I used to take cabs all the time, but now I'd be scared to death to get into one.

10. The whole experience made me feel disenfranchised. I was very frustrated. In the future, if they're still looking for signatures during this pandemic, I may not be able to do so.

11. I don't even know if I'll still be here in the same apartment in the next election or if I'll have to figure out how to re-register to vote in the middle of a pandemic. I'm supposed to move at the end of May, but right now there aren't any apartments available, because nobody is moving.

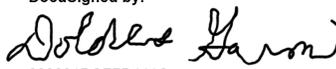
12. I will try to vote in future elections, but don't know if I'll be able to do it. Especially if this pandemic keeps going on until November. This whole experience was very dispiriting and frustrating.

13. I give this Declaration freely, without coercion, and without any expectation of compensation or other reward.

14. I understand that in giving this Declaration, I am not represented by a lawyer. Neither has any lawyer asked me to be their client or to serve in any way as anything other than a witness in this lawsuit.

15. I declare under penalty of perjury that the foregoing is true and correct.

Executed on 5/18/2020.

DocuSigned by:

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Dolores Marie Garm

DECLARATION OF JOYCE EVANS-CAMPBELL

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. My name is Joyce Evans-Campbell. I am over eighteen years of age and competent to testify to the matters contained herein.
2. I am a resident of Greenfield in Milwaukee County in Wisconsin, and my residence address is 3745 S Rivershire Dr, Apt 8, Greenfield, WI 53228-1156.
3. I am 70 years old and consider myself high risk for CoVid-19 so I did not feel safe at all voting in person. I also take care of my husband, who is on dialysis and not doing well. He is high risk, too. So, I did not want to go out and risk infecting him either.
4. I decided to vote by absentee ballot for this April 7th election and in the future because, in addition to the fact my husband and I are high risk for CoVid-19, it is hard for me to get around now.
5. Our mail is delivered about a block away and up an incline that I can't manage given my physical condition and that my husband has trouble with given his physical condition. My husband had to pick up the absentee ballot for me on one of his good days. We only receive mail there; the postman does not pick it up there.
6. Ultimately, I was unable to vote because neither I nor my husband could get out to deliver my absentee ballot to the polling drop-off locations or to the post office on election day, April 7, 2020.
7. The whole process of the absentee ballot has been confusing. I had to call the office of my municipal clerk because I was not even sure that I had successfully requested an absentee ballot either in-person or online. Then, when it arrived, and after I filled it out, I

inadvertently re-opened the absentee ballot because I wasn't sure if I had missed a section, and had to find out if it was okay to reseal it.

8. I called the Wisconsin Democrats Voter Protection Hotline on April 7th, to find out what to do about my ballot resealing issue. In addition to getting an answer on my ballot resealing question, I found out then that I had to mail my ballot in or drop it off that same day or it would not be counted.

9. Because I had read about the 7th Circuit's decision, I thought I had until April 13 to mail in the absentee ballot so I was not worried before April 7th about getting it in. If I had known the date would change at the last minute, I would have done things differently.

10. I could not get my ballot to any drop-off place on April 7th because my husband was really sick that day. Not only could he not leave the house to drop off our absentee ballots, but I needed to stay home to keep checking on him and I could not go myself. I knew there were long lines for ballot dropoff that day and so I could not leave for the time it would have taken to drop off the ballot without putting my husband's life at risk.

11. The irony is that even if I had managed to move heaven and earth to mail it on that day, it wouldn't have counted because it was metered mail and would not have been postmarked.

12. I am really hurt that I was unable to vote. In the past I have voted religiously; I am a devout voter and have only missed voting because of serious illness. When I was more healthy and younger, I always voted. I have been voting since I turned 18. My forefathers and others fought and died so would I have the right to vote. It is really hard to express how much this means to me and how mad I am, too. It is just wrong to make it so hard and to ask you to risk your lives. What kind of democracy makes you risk your life when some simple changes such as

giving absentee ballots to everyone and allowing more time to receive and return them would have made it okay?

13. I wrote a poem about my feelings about COVID19 (See Attachment A): One key line here: “Let’s not do politics. Pandemics do not care about red and blue:”

14. I wrote another poem about my feelings about the April 7th election (See Attachment B): One key section:

the latest coup is voter abandonment.
Sylvia’s 30-year voting at the polls. The COVID-19
absenteeism wrecked her record. Her son John’s
record ruined: Rejection of his mail-in ballot.

15. I give this Declaration freely, without coercion, and without any expectation of compensation or other reward.

16. I understand that in giving this Declaration, I am not represented by a lawyer. Neither has any lawyer asked me to be their client or to serve in any way as anything other than a witness in this lawsuit.

17. I declare under penalty of perjury that the foregoing is true and correct.

Executed on 5/29/2020.

DocuSigned by:

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Signature

JOYCE EVANS-CAMPBELL

Attachment A

[Sent under email subject title: “How Dare They Do Politics With COVID19?”]

Mayday Nation Diving into a Foggy Bottom

It doesn't matter if the mask is pulled tight,
I'm terrified.

It doesn't matter if it's daylight & darkness,
this rabid thing scares me,
frightens the world.

Spanish Flu of 1918—Worse, but...
None of us were here.

Now let's examine our time:
We don't know what's next. No one to blame.
We've lost our senses in a yellow wood.
Crazy to believe manure doesn't stink
& sweet azaleas do. Let's not do politics.
Pandemics don't care about red & blue:
Death is overrunning refrigerators, trucks
& morgues. Stench is worldwide.
I know. Ignore or dismiss. Facts don't lie.

What's beneath I don't know, can't know.
But I know paralysis when I feel it, smell it, hear it.
Paralysis evolves from unknowns:
Who tested positive?
I was at a dinner party, at Mardi Gras,
at an interview, at a church service, at dialysis.
A nation of cities running on fear — parboiled fear.

Living on Panic Street with six feet no-contact,

the medicinal choice between blue stars & dead air.

My eye contact says, "Please, don't breath-me."

I don't dare speak.

Why is testing not routine? If I test positive,

how bad will it be? If I need a ventilator,

will I get one? Will my C-pap substitute?

The streets are quieter. Low vehicle emission

violators parked in yards or parking lots.

We sit behind curtains in living rooms & dens,

peep outside in the a.m., to see whose car leaves.

Where're they going if they leave?

Boredom isn't in remission; Anxiety's on Broadway—

Readers and poetry writers, like me, stack books

bedside. More stored in my iPad;

Armed to eat arsenals of words. I chew them,

swallow them, & drink them like lemonade.

I'm thinking the Pandemic paralysis is made in America:

It's called disbelief. It's called denial not deNile River.

Take a deep breath & repeat after me: "There's nothing

to fear but fear itself." — President Roosevelt.

Attachment B:

The Political Sword

It isn't hyperbole. Democracy dies in the night.
But daylight? Democracy in a sunlight butchery
without a whimper about deadly coronavirus.
These insomniac night-shift thieves across
the nation for decades designed anti-voter schemes.
Bam. Coronavirus managed to achieve
what a vanquished Voter Rights Act couldn't.
Voter suppression, voter purging, voter ID laws.
Voter fraud is a thug who prowls urban streets
to sow the seeds for anti-voting.
Oh, the latest coup is voter abandonment.
Sylvia's 30-year voting at the polls. The COVID-19
absenteeism wrecked her record. Her son John's
record ruined: Rejection of his mail-in ballot.
Lordy, they "cop a squat" on a banister
of hope that voters would forget rights, sit it out
& drink cool lemonade in winter's last breath.
Risk it or risk or ditch it; uh huh,
but devout voters pray & vote: Bible & ballot.
but the Pandemic is a full-throttle threat at the poll.
Vote by Mail not permissible in Wisconsin, premiere

startup state the General Election bayou.

Never mind contagion & anti-democracy in daylight.

DECLARATION OF GRETCHEN WEISS

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. My name is Gretchen Weiss. I am over eighteen years of age and competent to testify to the matters contained herein.
2. I am a resident of River Hills in Milwaukee County in Wisconsin, and my residence address is 8250 North River Road, River Hills WI 53217.
3. I am currently a junior at Yale University and I have been registered to vote at my family's home address in Wisconsin since I turned 18.
4. I try to vote in every election. In the past I have voted in person when I have been home or using an absentee ballot when I'm away at school.
5. I was studying abroad in France when the pandemic started and I had to leave the country. My whole family decided to shelter together in Florida and that's where we've been residing since the pandemic.
6. About a week before the election, I went to MYVote to request my absentee ballot. I helped my other family members request their absentee ballots and upload their IDs at the same time. For myself and all of my family members, I requested that the ballots be sent to our Florida address.
7. After submitting the request for an absentee ballot I didn't think about it again until election day because I was focused on the news about the pandemic and its consequences.
8. On election day, I saw that the absentee ballots for my other family members had arrived in the mail but mine had not arrived.
9. I and all of my family members had received text reminders and updates from various sources reminding us to vote and advising us of changes to the process. My mom

corresponded with one of the texters about my missing ballot and was given the phone number for the Wisconsin Democrats voter assistance hotline.

10. I called the hotline and the volunteer gave me the contact information for my county clerk and suggested that I ask to see if a ballot could be emailed to me.

11. I called the clerk and she was very accommodating and helpful. She confirmed that my ballot request had been made properly and received. She also confirmed that she had mailed my ballot together with the ballots for my other family members on the same date, and speculated that it had gotten lost in the mail. Because I had made the original request on time, the clerk was able to email a ballot to me. The original ballot that was supposed to be mailed to me has never arrived.

12. I printed and completed the ballot that the clerk emailed to me, and my family members completed their ballots that had arrived in the mail.

13. Because we were receiving text reminders and following the news, we knew that the ballots had to be postmarked by election day.

14. My mother volunteered to take all of our family's ballots directly to the nearest post office to confirm that they would be postmarked. My mother was nervous about going out and into a public building in the midst of the pandemic, and wanted to go alone to spare the rest of us the exposure. My mother drove to the post office and got all of the ballots postmarked as required.

15. I believe it is important to vote in every election, but I was particularly interested in voting in the April election because I wanted the Democratic candidate to win the State Supreme Court seat.

16. I was thankful that I was able to complete my ballot on time, but I was frustrated with the process because I knew it was an important election with everything going on in Wisconsin, and many voters who were not as aware of all the rules as I was were going to have trouble voting or were going to have to take unnecessary risks to vote.

17. I will definitely continue to vote in future elections and will request an absentee ballot again if I am still away at school.

18. I give this Declaration freely, without coercion, and without any expectation of compensation or other reward.

19. I understand that in giving this Declaration, I am not represented by a lawyer. Neither has any lawyer asked me to be their client or to serve in any way as anything other than a witness in this lawsuit.

20. I declare under penalty of perjury that the foregoing is true and correct.

Executed on 6/4/2020.

DocuSigned by:
Gretchen Weiss
BBA018C50CA547D

Gretchen Weiss