

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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ONE WISCONSIN INSTITUTE, INC., *et al.*,

Plaintiffs,

v.

Case No. 15-CV-324

GERALD C. NICHOL, *et al.*,

Defendants.

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**DEFENDANTS' REPLY IN SUPPORT OF  
THEIR PROPOSED FINDINGS OF FACT**

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Defendants, by their undersigned counsel, respectfully submit this Reply in Support of Their Proposed Findings of Fact. Defendants have not included a reply where the proposed finding was undisputed by Plaintiffs.

1. Wisconsin Government Accountability Board ("GAB") form GAB-131 is the Wisconsin Voter Registration Application, which is completed by a voter and returned to the municipal clerk. (Declaration of Michael Haas, Jan. 7, 2016, ¶ 10 & Ex. D.)

**Undisputed.**

2. There are three things that a registered voter must do to obtain a ballot at the polling place on Election Day: (1) "State it": state his or her full name and address to election officials, (2) "Show it": present election officials with a proof of identification document, and (3) "Sign it": sign the poll list. (Declaration of Michael Haas, Jan. 7, 2016, ¶ 13 & Ex. G.)

Plaintiffs' Response: DISPUTED IN PART. To the extent the Proposed Finding of Fact only describes the process by which a registered voter with a qualified form of identification obtains a ballot,

it is UNDISPUTED. However, it is inaccurate to say that a registered voter must only show “a proof of identification document.” Rather, registered voters must show one of a limited number of qualified forms of identification to obtain a ballot. *See* Dkt. No. 71 at 16 (Mayer Rpt.) (“Wisconsin’s law is among the strictest [voter ID] laws in the country, with a limited number of qualifying IDs . . .”). For instance, many forms of identification, such as some student identification cards, Decl. of Renee Gagner at ¶ 10, “Veterans IDs,” Decl. of Scott Trindl at ¶ 17, and a “Go Pass” for seniors and people with disabilities, Decl. of Linea Sundstrom at ¶ 14, are not acceptable.

**REPLY: No genuine dispute.** Plaintiffs fail to demonstrate a genuine and material dispute; therefore, Defendants’ proposed finding should be treated as undisputed. The forms of acceptable photo identification are set forth in Wis. Stat. § 5.02(6m) and are not open to debate.

3. Voters must show qualifying proof of identification at the polling place to prove that they are who they claim to be. (Declaration of Michael Haas, Jan. 7, 2016, ¶¶ 13–14 & Exs. G, H.)

**Undisputed.**

4. GAB form GAB-121 is the Wisconsin Application for Absentee Ballot. (Declaration of Michael Haas, Jan. 7, 2016, ¶ 11 & Ex. E.)

**Undisputed.**

5. A voter can indicate on the GAB-121 form his or her preference to receive an absentee ballot in the mail or to vote the ballot in-person at a municipal clerk’s office. (Declaration of Michael Haas, Jan. 7, 2016, ¶ 11 & Ex. E.)

**Undisputed.**

6. A voter can request an absentee ballot to be mailed to him or her for elections on specific dates, for all elections that year, or for every election after the date the GAB-121 form is signed if the voter certifies that he or she is “indefinitely confined because of age, illness, infirmity or disability.” (Declaration of Michael Haas, Jan. 7, 2016, ¶ 11 & Ex. E.)

**Undisputed.**

7. A military or permanent overseas voter can request that an absentee ballot be sent to him or her via fax or e-mail. (Declaration of Michael Haas, Jan. 7, 2016, ¶ 11 & Ex. E.)

**Undisputed.**

8. Each of the individual voter Plaintiffs has a form of qualifying ID under the voter photo ID law. (Declaration of Clayton P. Kawski, Jan. 11, 2016, ¶¶ 4–5 & Ex. C at Response to Request for Admission No. 1, Ex. D at Response to Interrogatory No. 10.)

**Undisputed.**

9. The following table summarizes the facts regarding Plaintiffs' qualifying IDs:

| <b><u>Plaintiff</u></b> | <b><u>Forms of qualifying ID</u></b>                  |
|-------------------------|---|
| Renee M. Gagner         | Wisconsin DOT-issued driver license and U.S. passport |
| Anita Johnson           | Wisconsin DOT-issued driver license                   |
| Cody R. Nelson          | Wisconsin DOT-issued driver license                   |
| Jennifer S. Tasse       | Wisconsin DOT-issued driver license and U.S. passport |
| Scott T. Trindl         | Wisconsin DOT-issued driver license and U.S. passport |
| Michael R. Wilder       | Wisconsin DOT-issued driver license and U.S. passport |

(Declaration of Clayton P. Kawski, Jan. 11, 2016, ¶¶ 4–5 & Ex. C at Response to Request for Admission No. 1, Ex. D at Response to Interrogatory No. 10.)

**Undisputed.**

10. Plaintiffs One Wisconsin Institute, Inc. and Citizen Action of Wisconsin Education Fund, Inc. are corporations. (Declaration of Clayton P.

Kawski, Jan. 11, 2016, ¶¶ 4-5 & Ex. C at Response to Requests for Admission No. 3, 4, Ex. D at Response to Interrogatory Nos. 18, 19, 20.)

Plaintiffs' Response: DISPUTED AS TO RELEVANCE. The form of Plaintiffs' organizational structure is irrelevant to the claims at issue. In addition, the Proposed Finding of Fact is DISPUTED. Citizen Action of Wisconsin Education Fund is a non-profit organized under Section 501(c)(3) of the Internal Revenue Code. Decl. of Anita Johnson at ¶ 2. One Wisconsin Institute is a 501(c)(3) non-profit organization. Decl. of Scott Ross at ¶ 2.

**REPLY: Plaintiffs fail to properly create a dispute.** Plaintiffs do not rebut the proposed finding that these Plaintiffs are corporations. Their additional citations to evidence are contrary to this Court's summary judgment procedures, which require that "[w]hen a responding party disputes a proposed finding of fact, the response must be limited to those facts necessary to raise a dispute." (Dkt. 29: page 14 of 43.) Furthermore, the Court can take judicial notice pursuant to Federal Rule of Civil Procedure 201 that the Wisconsin Department of Financial Institutions has on record registered non-stock corporations with the names "One Wisconsin Institute, Inc." and "Citizen Action of Wisconsin Education Fund, Inc." See <https://www.wdfi.org/apps/CorpSearch/Search.aspx?>

11. Plaintiffs One Wisconsin Institute, Inc. and Citizen Action of Wisconsin Education Fund, Inc. have no members. (Declaration of Clayton P. Kawski, Jan. 11, 2016, ¶¶ 4-5 & Ex. C at Response to Request for Admission Nos. 3, 4, Ex. D at Response to Interrogatory Nos. 18, 19, 20.)

Plaintiffs' Response: DISPUTED. Defendants fail to define the term "member." Furthermore, Citizen Action of Wisconsin Education Fund has 123,000 supporters from each of Wisconsin's 99 state assembly districts and a volunteer base of over 38,000. Decl. of Anita Johnson at ¶ 2. One Wisconsin Institute has 90,000 online supporters. Decl. of Decl. of Scott Ross at ¶ 2; see also PPF0F ¶¶29, 32. "[I]t would exalt form over substance" to hold that only a "traditional voluntary membership organization" has "associational standing" under Article III to bring suit on behalf of its "constituency." *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 344-45 (1977). Lastly, the documents cited by Defendants do not substantiate the Proposed

Finding of Fact, but rather recite Defendants' attempt to secure the lists of Plaintiffs' supporters. *See* Decl. of Clayton P. Kowski, Jan. 11, 2016, ¶¶ 4-5 & Ex. C at Response to Request for Admission Nos. 3, 4, Ex. D at Response to Interrogatory Nos. 18, 19, 20.

**REPLY: No genuine dispute.** Plaintiffs fail to demonstrate a dispute, so Defendants' proposed finding should be treated as undisputed. Plaintiffs' responses to interrogatories stated that One Wisconsin Institute, Inc. and Citizen Action of Wisconsin Education Fund, Inc. "does not have 'members' as defined in Wis. Stat. § 181.0103(15)." Declaration of Clayton P. Kowski, Jan. 11, 2016, Ex. D. at Response to Interrogatory Nos. 18, 19, 20.

12. Each of the individual voter Plaintiffs is registered to vote. (Declaration of Clayton P. Kowski, Jan. 11, 2016, ¶¶ 4-5 & Ex. C. at Response to Request for Admission No. 2.)

**Undisputed.**

13. Some of the challenged laws were passed with the support of Republicans and Democrats. (Declaration of Clayton P. Kowski, Jan. 11, 2016, ¶¶ 6-12 & Exs. E-K.)

Plaintiffs' Response: DISPUTED IN PART. Defendants' Proposed Finding of Fact is vague and overbroad. Of the 243 votes cast in favor of the four challenged laws, only thirteen were cast by Democrats or Independents. *See* Declaration of Clayton P. Kowski, Jan. 11, 2016, ¶¶ 6-12 & Exs. E-K.

**REPLY: No genuine dispute.** Plaintiffs fail to demonstrate a dispute, so Defendants' proposed finding should be treated as undisputed. Plaintiffs' commentary is not properly part of a response to a proposed finding.

14. The following chart shows which of the challenged laws were passed with bipartisan support:

| <u>Legislative Act</u> | <u>Legislative Bill</u> | <u>Bipartisan Votes</u>   |
|------------------------|-------------------------|---|
| 2011 Wis. Act 23       | 2011 Assembly Bill 7    | <ul style="list-style-type: none"> <li>•Rep. Peggy Krusick (D),<br/>7th Assembly District;</li> <li>•Rep. Anthony J. Staskunas (D),<br/>15th Assembly District; and</li> <li>•Rep. Bob Ziegelbauer (I),<br/>25th Assembly District</li> </ul>   |
| 2011 Wis. Act 75       | 2011 Senate Bill 116    | <ul style="list-style-type: none"> <li>•Rep. JoCasta Zamarripa (D),<br/>8th Assembly District;</li> <li>•Rep. Leon D. Young (D),<br/>16th Assembly District;</li> <li>•Rep. Christine Sinicki (D),<br/>20th Assembly District;</li> <li>•Rep. Gordon Hintz (D),<br/>54th Assembly District;</li> <li>•Rep. Robert L. Turner (D),<br/>61st Assembly District;</li> <li>•Rep. Cory Mason (D),<br/>64th Assembly District; and</li> <li>•Rep. Amy Sue Vruwink (D),<br/>70th Assembly District</li> </ul> |
| 2011 Wis. Act 227      | 2011 Senate Bill 271    | <ul style="list-style-type: none"> <li>•Rep. Peggy Krusick (D),<br/>7th Assembly District; and</li> <li>•Rep. Bob Ziegelbauer (I), 25th<br/>Assembly District</li> </ul>  |
| 2013 Wis. Act 76       | 2013 Senate Bill 179    | <ul style="list-style-type: none"> <li>•Rep. Andy Jorgensen (D),<br/>43rd Assembly District</li> </ul>  |

(Declaration of Clayton P. Kawski, Jan. 11, 2016, ¶¶ 6–12 & Exs. E–K.)

Plaintiffs' Response: DISPUTED IN PART. Rep. Cory Mason represents the 62nd Assembly District.

**REPLY:** No genuine dispute. Defendants accept Plaintiffs' clarification of the proposed finding.

15. When asked in written interrogatories to identify and describe all the facts that support the allegations of intentional racial discrimination asserted in their amended complaint, Plaintiffs responded by first objecting and then referring Defendants back to the allegations in the amended

complaint, none of which show evidence of intentional racial discrimination that would meet the standards under the Fifteenth Amendment and Equal Protection Clause. (Declaration of Clayton P. Kawski, Jan. 11, 2016, ¶ 3 & Ex. B at Response to Interrogatory No. 5.)

Plaintiffs' Response: DISPUTED. Defendants make a legal argument and reach a legal conclusion as to the sufficiency of evidence presented by Plaintiffs. At the time of the Interrogatory responses, discovery was ongoing. *See* Declaration of Clayton P. Kawski, Jan. 11, 2016, ¶ 3 & Ex. B at Response to Interrogatory No. 5. Further, Plaintiffs have extensively substantiated the claim of intentional discrimination. *See, e.g.*, Dkt. No. 75 at 3-4 (expert report of Dr. Lichtman adhering to methodological guidelines of Supreme Court in *Arlington Heights* and setting forth seventeen “major” findings relevant to intent); *id.* at 4-5 (summarizing findings).

**REPLY: Plaintiffs fail to properly create a dispute.** Plaintiffs do not rebut the proposed finding regarding how Plaintiffs responded to Defendants' Interrogatory No. 5. Their additional commentary is contrary to this Court's summary judgment procedures, which require that “[w]hen a responding party disputes a proposed finding of fact, the response must be limited to those facts necessary to raise a dispute.” (Dkt. 29: page 14 of 43.)

16. The Government Accountability Board is in the process of promulgating a permanent rule that will permit voters to use technical college ID cards to vote. (Declaration of Michael Haas, Jan. 7, 2016, ¶ 3.)

**Undisputed.**

17. The permanent rule regarding technical college ID cards for voting will be published in the Wisconsin Administrative Register and will become effective on February 1, 2016. (Declaration of Michael Haas, Jan. 7, 2016, ¶ 4.)

**Undisputed.**

18. Two Democratic legislators, Rep. Anthony Staskunas, 15th Assembly District, and Rep. Peggy Krusick, 7th Assembly District, and one Independent legislator, Rep. Bob Ziegelbauer, 25th Assembly District, voted

to enact 2011 Assembly Bill 7. (Declaration of Clayton P. Kawski, Jan. 11, 2016, ¶¶ 6-7 & Exs. E, F.)

### **Undisputed.**

19. The current in-person absentee voting deadlines are helpful to local election officials. (Declaration of Diane Hermann-Brown, Jan. 8, 2016, ¶¶ 9-17; Declaration of Susan Westerbeke, Jan. 5, 2016, ¶¶ 7-13; Declaration of Tim McCumber, Jan. 6, 2016, ¶¶ 5-10; Declaration of Constance McHugh, Jan. 5, 2016, ¶¶ 5-10; Declaration of Kathleen Novack, Jan. 7, 2016, ¶¶ 14-17.)

Plaintiffs' Response: DISPUTED. To the extent the declarations recite the views of non-testifying persons, the statements should be disregarded as hearsay. *See, e.g.*, Decl. of Tim McCumber at ¶ 10 (“[m]ost clerks that I know are glad for the changes . . .”). Further, the Proposed Finding of Fact is DISPUTED, as clerks in densely populated areas declare that the reduction in in-person absentee voting has “imposed burdens on the Clerk’s Office’s staff” and that the change has strained resources because local officials must now “handle complaints about the limited hours for in-person absentee voting and voters’ inability to vote in person on weekends and the day before Election Day.” Decl. of Maribeth Witzel-Behl at ¶ 7. In addition, the reduction in in-person absentee voting has increased costs for clerks’ offices and added burdens to local election officials. *Id.* at ¶ 8. Lastly, the reduction has imposed new burdens on the Milwaukee City Election Commission, “because the reductions leave [the office] with less time to process a very large volume of voters.” Decl. of Neil Albrecht at ¶ 25.

**REPLY:** Plaintiffs fail to properly create a dispute. Plaintiffs do not rebut the proposed finding that the current in-person absentee voting deadlines are helpful to local election officials. Instead, they cite evidence regarding the unique circumstances of two local election officials.

20. The current in-person absentee voting deadlines make elections more cost-effective to administer. (Declaration of Diane Hermann-Brown, Jan. 8, 2016, ¶¶ 9-11; Declaration of Tim McCumber, Jan. 6, 2016, ¶ 4; Declaration of Susan Westerbeke, Jan. 5, 2016, ¶ 8; Declaration of Kathleen Novack, Jan. 7, 2016, ¶ 17.)



Plaintiffs' Response: To the extent the declarations recite the views of non-testifying election officials, the statements should be disregarded as hearsay. *See, e.g.,* Decl. of Tim McCumber at ¶ 10 (“[m]ost clerks that I know are glad for the changes . . . ”); Decl. of Kathleen Novack at ¶ 15 (“many clerks believe the current process is almost impossible to comply with . . . ”). Further, the Proposed Finding of Fact is DISPUTED, as clerks in densely populated areas report that the reduction in in-person absentee voting has “imposed burdens on the Clerk’s Office’s staff” and that the change has strained resources because local officials must now “handle complaints about the limited hours for in-person absentee voting and voters’ inability to vote in person on weekends and the day before Election Day.” Decl. of Maribeth Witzel-Behl at ¶ 7. In addition, the reduction in in-person absentee voting has imposed new burdens on the Milwaukee City Election Commission, “because the reductions leave [the office] with less time to process a very large volume of voters.” Decl. of Neil Albrecht at ¶ 25.

**REPLY: Plaintiffs fail to properly create a dispute.** Plaintiffs do not rebut the proposed finding that the current in-person absentee voting deadlines are helpful to local election officials. Instead, they cite evidence regarding the unique circumstances of two local election officials.

21. In the case of the City of Sun Prairie, the breathing room allowed by the current in-person absentee voting deadlines saves the money it would cost to hire additional limited term employees. (Declaration of Diane Hermann-Brown, Jan. 8, 2016, ¶ 11.)

Plaintiffs' Response: To the extent this proposed finding of fact is being offered to justify the State’s reductions in in-person days and hours, it is DISPUTED. The current in-person absentee voting deadlines have created more costs for city clerks’ offices, not fewer. *See* PPF0F ¶¶208-10.

**REPLY: Plaintiffs fail to properly create a dispute.** Plaintiffs have not cited any contrary evidence in support of their response; therefore, the proposed finding should be treated as undisputed. Proposed findings of fact are not evidence. The response is contrary to this Court’s summary judgment procedures, which require that “[w]hen a responding party

disputes a proposed finding of fact, the response must be limited to those facts necessary to raise a dispute.” (Dkt. 29: page 14 of 43.)

22. The logistical complexities and workload faced by Wisconsin’s local election officials is enormous in the weeks ahead of an election. (Declaration of Kathleen Novack, Jan. 7, 2016, ¶¶ 14-17; Declaration of Susan Westerbeke, Jan. 5, 2016, ¶¶ 11-13.)

Plaintiffs’ Response: The Proposed Finding of Fact reaches a conclusion that is not substantiated by the Declarations cited. *See* Declaration of Kathleen Novack, Jan. 7, 2016, ¶¶ 14-17; Declaration of Susan Westerbeke, Jan. 5, 2016, ¶¶ 11-13. Furthermore, to the extent this fact is being offered as a justification for any of the challenged laws, Plaintiffs DISPUTE this fact. The challenged laws have increased the workload on local election officials. *See* PPF0F ¶¶208-10.

**REPLY: No genuine dispute.** Plaintiffs have not cited any contrary evidence in support of their response; therefore, the proposed finding should be treated as undisputed. Additionally, proposed findings of fact are not evidence. The response is contrary to this Court’s summary judgment procedures, which require that “[w]hen a responding party disputes a proposed finding of fact, the response must be limited to those facts necessary to raise a dispute.” (Dkt. 29: page 14 of 43.)

23. Clerks work nights and weekends before an election just to get ready. (Declaration of Susan Westerbeke, Jan. 5, 2016, ¶ 12.)

Plaintiffs’ Response: The cited Declaration does not substantiate the basis for concluding that “[c]lerks already work nights and weekends before an election just to get ready,” nor does it establish the scope of the statement. To the extent the Proposed Finding of Fact is limited to Susan Westerbeke’s personal knowledge, it is UNDISPUTED. However, to the extent the Proposed Finding of Fact makes a broad statement about the workload of all clerks, it is DISPUTED. Other local election officials do not report that clerks work nights and weekends before elections. *See, e.g.,* Decl. of Neil Albrecht; Decl. of Maribeth Witzel-Behl.

**REPLY: No genuine dispute.** Defendants accept Plaintiffs' clarification of the proposed finding with regard to there being no dispute that it is limited to Ms. Westerbeke's personal knowledge.

24. Election officials do much more than just hand out absentee ballots. (Declaration of Susan Westerbeke, Jan. 5, 2016, ¶¶ 11-13.)

**Undisputed.**

25. Statewide databases of registration must be coordinated, and ballots need to be prepared. (Declaration of Susan Westerbeke, Jan. 5, 2016, ¶ 11.)

Plaintiffs' Response: Susan Westerbeke's Declaration does not state that local election officials must coordinate statewide registration databases. Rather, the Declaration states that data "needs to be imported" for absentee applications "in the statewide system." Declaration of Susan Westerbeke, Jan. 5, 2016, ¶ 11. To the extent this Proposed Finding of Fact is limited appropriately, it is UNDISPUTED. The Proposed Finding of Fact is ambiguous as to the clerk's role in "processing and preparing" absentee ballots. This Proposed Finding of Fact is DISPUTED, absent additional clarification.

**REPLY: No genuine dispute.** Defendants accept Plaintiffs' clarification of the proposed finding.

26. Election officials also mail absentee ballots and coordinate voting at nursing homes before in-person absentee voting begins. (Declaration of Constance McHugh, Jan. 5, 2016, ¶ 7.)

Plaintiffs' Response: Defendants' Proposed Finding of Fact is not substantiated by the Declaration of Constance McHugh, which states that she "mail[s] absentee ballots and coordinate[s] with nursing homes." Declaration of Constance McHugh, Jan. 5, 2016, ¶ 7. To the extent the Proposed Finding of Fact is appropriately limited to Constance McHugh's activities, it is UNDISPUTED.

**REPLY: No genuine dispute.** Defendants accept Plaintiffs' clarification of the proposed finding.

27. In Waukesha County, many municipal clerks are part-time workers. (Declaration of Kathleen Novack, Jan. 7, 2016, ¶ 17.)

**Undisputed.**

28. For the upcoming spring primary election, Waukesha County anticipates printing as many as 190 different types of specific ballots for the elections unique to each voting district. (Declaration of Kathleen Novack, Jan. 7, 2016, ¶ 16.)

Plaintiffs' Response: DISPUTED IN PART. The Declaration does not state that different types of ballots are printed for each voting district. See Declaration of Kathleen Novack, Jan. 7, 2016, ¶ 16. The Proposed Finding of Fact is otherwise UNDISPUTED.

**REPLY: Plaintiffs fail to properly create a dispute.** Ms. Novack's declaration refers to "getting 190 different ballot styles programmed, proofed, approved, and transmitted to the printer by January 18th or in 4 workdays." (Declaration of Kathleen Novack, Jan. 7, 2016, ¶ 16.) The obvious implication is that when the ballots are transmitted to the printer that they are then printed.

29. The Waukesha County Clerk's ballot preparation schedule is as follows:

- January 12 - clerk finalizes the order of candidates that will appear on the ballot.
- January 19 - print test batches of 20 to 25 ballots of each ballot type to make sure each will work on Election Day.
- January 25 - deliver ballots to voting locations by coordination with the municipal clerks.
- January 26 - special voting ballots delivered to nursing homes.
- January 26 - mail all absentee ballots that are being delivered by mail.
- February 1 - start of in person absentee voting.
- February 12 - the last day for in person absentee voting.
- February 15 - final preparation for February 16, 2016, Election Day, including finalizing ballots and getting them to the printer.

(Declaration of Kathleen Novack, Jan. 7, 2016, ¶ 16.)

Plaintiffs' Response: The Proposed Finding of Fact is not substantiated by the Declaration. The Declaration does not state that the Waukesha County Clerk's Office will finalize the order of candidates on January 12. Nor does it state that the Office will print test batches on January 19. Lastly, the Declaration does not establish that ballots are finalized and sent to the printer on February 15. *See* Declaration of Kathleen Novack, Jan. 7, 2016, ¶ 16. The Proposed Finding of Fact is otherwise UNDISPUTED.

**REPLY: No genuine dispute.** Defendants accept Plaintiffs' clarification of the proposed finding.

30. Returning to the 30-day in-person absentee voting timeline would be a strain on local election officials' staff and time. (Declaration of Susan Westerbeke, Jan. 5, 2016, ¶¶ 7-13; Declaration of Constance McHugh, Jan. 5, 2016, ¶ 7; Declaration of Tim McCumber, Jan. 6, 2016, ¶¶ 5, 9-10.)

Plaintiffs' Response: To the extent the declarations recite the views of non-testifying election officials, the statements should be disregarded as hearsay. *See, e.g.,* Decl. of Tim McCumber at ¶ 10 (“[m]ost clerks that I know are glad for the changes . . .”). The Proposed Finding of Fact is DISPUTED, as clerks in densely populated areas report that the reduction in in-person absentee voting has “imposed burdens on the Clerk's Office's staff” and that the change has strained resources because local officials must now “handle complaints about the limited hours for in-person absentee voting and voters' inability to vote in person on weekends and the day before Election Day.” Decl. of Maribeth Witzel-Behl at ¶ 7. In addition, the reduction has imposed new burdens on the Milwaukee City Election Commission, “because the reductions leave [the office] with less time to process a very large volume of voters.” Decl. of Neil Albrecht at ¶ 25.

**REPLY: Plaintiffs fail to properly create a dispute.** Plaintiffs do not rebut the proposed finding that returning to the 30-day in-person absentee voting timeline would be a strain on local election officials' staff and time. Instead, they cite evidence regarding the unique circumstances of two local election officials.

31. The current deadlines for in-person absentee voting give clerks time to do their jobs and lead directly to better election accountability. (Declaration of Diane Hermann-Brown, Jan. 8, 2016, ¶¶ 9-17; Declaration of

Susan Westerbeke, Jan. 5, 2016, ¶¶ 7-13; Declaration of Constance McHugh, Jan. 5, 2016, ¶¶ 5-10; Declaration of Tim McCumber, Jan. 6, 2016, ¶¶ 4-10.)

Plaintiffs' Response: DISPUTED. The Proposed Finding of Fact reaches a legal conclusion that is both vague and unsubstantiated by the Declarations. In particular, it is unclear what is meant by the term "better election accountability." The Declarations do not state that the change to in-person absentee voting leads to such an outcome. *See* Declaration of Diane Hermann-Brown, Jan. 8, 2016, ¶¶ 9-17; Declaration of Susan Westerbeke, Jan. 5, 2016, ¶¶ 7-13; Declaration of Constance McHugh, Jan. 5, 2016, ¶¶ 5-10; Declaration of Tim McCumber, Jan. 6, 2016, ¶¶ 4-10.). Furthermore, this Proposed Finding of Fact is DISPUTED, as various election officials contend that the current deadlines for in-person absentee voting strain local election officials. Decl. of Maribeth Witzel-Behl at ¶¶ 7-8; Decl. of Neil Albrecht at ¶ 25.

**REPLY: Plaintiffs fail to properly create a dispute.** First, the proposed finding does not make any legal conclusion whatsoever. Second, the cited declarations support the proposed finding. Third, the evidence that Plaintiffs have cited does not create a genuine dispute of fact.

32. 2013 Wisconsin Act 146 created uniformity for voters and is important to municipalities who cannot staff their offices on weekends and evenings. (Declaration of Constance McHugh, Jan. 5, 2016, ¶¶ 5-7; Declaration of Susan Westerbeke, Jan. 5, 2016, ¶¶ 7-9.)

Plaintiffs' Response: The term "uniformity" is ambiguous and undefined. Further, this Proposed Finding of Fact is DISPUTED, as in-person absentee hours can vary widely across municipalities. *See* Dkt. No. 95 (Lowe Dep.), at 108:3-111:24; Lowe Dep. Ex. 78; Dkt No. 94 (Kennedy Dep.), at 80:20-81:17) ("the reality is in many places, they don't offer that many hours . . . it provides a uniform window, but it doesn't provide uniform hours . . ."). Further, the experience of absentee in-person voting is far from uniform for voters across Wisconsin, with voters in many densely-populated municipalities experiencing significantly longer wait times than voters in less densely-populated municipalities. *See* Decl. of Neil Albrecht at ¶ 11; Dkt No. 95 (Lowe Dep.), at 141:23-142:1.

**REPLY: Plaintiffs fail to properly create a dispute.** First, Plaintiffs do not dispute the finding that 2013 Wisconsin Act 146 is important to municipalities who cannot staff their offices on weekends and evenings. Second, the evidence cited in the response does not support the propositions regarding in-person absentee hours “varying widely across municipalities” and “voters in many densely-populated municipalities experiencing significantly longer wait times than voters in less densely populated municipalities.” Mr. Albrecht only has personal knowledge regarding voting in Milwaukee. Third, Plaintiffs’ commentary is not properly part of a response to a proposed finding.

33. The standardized election hours help coordinate the many tasks required to collect and process absentee ballots, such as getting ballots ready and mailing them. (Declaration of Diane Hermann-Brown, Jan. 8, 2016, ¶¶ 9-10; Declaration of Susan Westerbeke, Jan. 5, 2016, ¶¶ 8-11; Declaration of Constance McHugh, Jan. 5, 2016, ¶¶ 5-7.)

Plaintiffs’ Response: The Declarations do not substantiate the statement that the reduction in in-person absentee hours helps “coordinate the many tasks required to collect and process absentee ballots . . .” See Declaration of Diane Hermann-Brown, Jan. 8, 2016, ¶¶ 9-10; Declaration of Susan Westerbeke, Jan. 5, 2016, ¶¶ 8-11; Declaration of Constance McHugh, Jan. 5, 2016, ¶¶ 5-7. Further, this Proposed Finding of Fact is DISPUTED, as various election officials contend that the current deadlines for in-person absentee voting strain local election officials. Decl. of Maribeth Witzel-Behl at ¶¶ 7-8; Decl. of Neil Albrecht at ¶ 25.

**REPLY: Plaintiffs fail to properly create a dispute.** First, Plaintiffs are incorrect because the evidence cited supports the proposed findings. Second, the Witzel-Behl and Albrecht Declarations do not support Plaintiffs’ proposition that “various election officials contend that the current deadlines for in-person absentee voting strain local election officials.” These two declarants have personal knowledge only of their own municipalities.

34. Holding in-person absentee voting in one location helps orderly election administration and saves costs. (Declaration of Diane Hermann-

Brown, Jan. 8, 2016, ¶¶ 3-8; Declaration of Constance McHugh, Jan. 5, 2016, ¶¶ 3-4; Declaration of Susan Westerbeke, Jan. 5, 2016, ¶¶ 3-5; Declaration of Kathleen Novack, Jan. 7, 2016, ¶¶ 3-13.)

Plaintiffs' Response: DISPUTED. The limited number of in-person absentee voting locations results in longer lines and crowding at polling places on Election Day. Albrecht Decl. at ¶¶ 14-21.

**REPLY: Plaintiffs fail to properly create a dispute.** First, Plaintiffs' evidence from Mr. Albrecht does not support their proposition. Mr. Albrecht only has personal knowledge regarding circumstances in Milwaukee. Second, Defendants' cited evidence supports the proposed finding, which has not been rebutted.

35. Having all absentee ballots in one location increases ballot security and decreases voter confusion over where to vote. (Declaration of Diane Hermann-Brown, Jan. 8, 2016, ¶¶ 6-7.)

Plaintiffs' Response: DISPUTED. Limiting in-person absentee voting to one location has created hardships and voter confusion, and local election officials have advocated to increase the number of locations where it is offered as a result. *See* Dkt. No. 72 (Burden Rpt.), at 26-27; Albrecht Decl. ¶¶ 12-14; Decl. of Maribeth Witzel-Behl 2016 at ¶4.

**REPLY: Plaintiffs fail to properly create a dispute.** First, Plaintiffs do not dispute the proposed findings that having all absentee ballots in one location increases ballot security and decreases voter confusion. Plaintiffs' propositions do not directly address these concepts. Second, Plaintiffs' propositions are not supported by the evidence cited. Third, Dr. Burden's report cannot support Plaintiffs' propositions because he has no personal knowledge regarding ballot security at a polling place or voter confusion, as he does not administer elections.

36. Having multiple locations for in-person absentee voting would mean less control over election procedures and over the absentee ballots. (Declaration of Susan Westerbeke, Jan. 5, 2016, ¶ 4; Declaration of Diane Hermann-Brown, Jan. 8, 2016, ¶¶ 3-8; Declaration of Kathleen Novack, Jan. 7, 2016, ¶¶ 3-13.)



Plaintiffs' Response: DISPUTED. Limiting in-person absentee voting to one location has created hardships and voter confusion, and local election officials have advocated to increase the number of locations where it is offered as a result. *See* Dkt. No. 72 (Burden Rpt.), at 26-27; Albrecht Decl. ¶¶ 12-14; Decl. of Maribeth Witzel-Behl 2016 at ¶4.

**REPLY: Plaintiffs fail to properly create a dispute.** First, Plaintiffs do not dispute the proposed findings that having multiple locations for in-person absentee voting would mean less control over election procedures and over the absentee ballots. Plaintiffs' propositions do not directly address these concepts. Second, Plaintiffs' propositions are not supported by the evidence cited. Third, Dr. Burden's report cannot support Plaintiffs' propositions because he has no personal knowledge regarding control over election procedures and over absentee ballots, as he does not administer elections.

37. Adding additional locations for in-person absentee voting would create additional logistical problems for municipalities that are already under a tight schedule to distribute and collect ballots. (Declaration of Kathleen Novack, Jan. 7, 2016, ¶¶ 3-14.)

Plaintiffs' Response: DISPUTED. Adding locations for in-person absentee voting would reduce logistical problems for municipalities by reducing overcrowding and longer lines at polling places on Election Day. Albrecht Decl. at ¶¶ 14-21.

**REPLY: Plaintiffs fail to properly create a dispute.** First, Plaintiffs do not dispute the proposed findings that municipalities are already under a tight schedule to distribute and collect ballots. Plaintiffs' propositions do not directly address these concepts. Second, Plaintiffs' propositions are not supported by the evidence cited. Third, Dr. Burden's report cannot support Plaintiffs' propositions because he has no personal knowledge regarding the logistics of the election process for municipal clerks, as he does not administer elections.

38. Voters may arrive at an absentee voting site before an election intending to both register and apply for an in-person absentee ballot. (Declaration of Susan Westerbeke, Jan. 5, 2016, ¶ 5.)

Plaintiffs' Response: The Declaration cited does not substantiate the Finding of Fact that voters “may arrive at an absentee voting site . . . intending to both register and apply for an in-person absentee ballot.” See Declaration of Susan Westerbeke, Jan. 5, 2016, ¶ 5. This Proposed Finding of Fact is also ambiguous and misleading. Voters may not either register or apply for an in-person absentee ballot on the final weekend or Monday before Election Day as a result of 2011 Wisconsin Act 23 and 2014 Wisconsin Act 146, an elimination which has disproportionately affected African-American voters. See Dkt. No. 71 at 38 (Mayer Rpt.).

**REPLY: Plaintiffs fail to properly create a dispute.** First, the proposed finding is supported by the evidence cited. Second, Plaintiffs' commentary should be disregarded because it goes beyond the proposed finding. Third, Plaintiffs' reference to voters registering to vote or applying for an in-person absentee ballot on the final weekend or Monday before Election day are irrelevant; that is not the state of the law. Fourth, Plaintiffs' reference to “an elimination which has disproportionately affected African-American voters” is both wholly unrelated to the proposed finding and is not supported by Dr. Mayer's report.

39. Access to the registration computer system is separate from absentee-voting applications, resulting in potential confusion for a person who shows up at a location where he or she can get an absentee ballot, but cannot register. (Declaration of Susan Westerbeke, Jan. 5, 2016, ¶ 5.)

Plaintiffs' Response: DISPUTED. The cited Declaration does not substantiate this Proposed Finding of Fact.

**REPLY: Plaintiffs are correct. The proposed finding is withdrawn.**

40. Municipalities did not have multiple locations for in-person absentee voting prior to 2013. (Declaration of Susan Westerbeke, Jan. 5, 2016, ¶ 3; Declaration of Kathleen Novack, Jan. 7, 2016, ¶ 3; Declaration of Constance McHugh, Jan. 5, 2016, ¶ 3.)

**Undisputed.**

41. The prior system that authorized the provision of absentee ballots to all voters by fax or email was burdensome on municipal clerks because, when such ballots were returned by voters, election officials needed to re-create the ballots before they could be run through the vote-tabulating machine and deposited into the ballot box. (Declaration of Constance McHugh, Jan. 5, 2016, ¶ 22; Declaration of Susan Westerbeke, Jan. 5, 2016, ¶ 30.)

Plaintiffs' Response: DISPUTED. Emailed and faxed ballots did not pose any difficulties for election officials. See Decl. of Neil Albrecht at ¶¶47-48 (“The Election Commission had no problems with these email kits. Returning the ballots was simple, and I am unaware of any instance in which a voter forwarded his or her ballot to another voter. Although the emailed ballot cannot be inserted directly into the tabulator after election officials receive it, it is simple to reconstruct these ballots and was not burdensome to do so. It certainly is much less work than working with a voter to attempt—sometimes unsuccessfully—to figure out a way to get a ballot to a remote location and back by mail in time for the ballot to be counted.”). In addition, the change has harmed at least two voters who would have otherwise cast ballots, and increased costs for local election officials. See Decl. of Maribeth Witzel-Behl at ¶¶ 27-28. Further, as voters in Milwaukee and Madison, among other areas, have encountered significant challenges as a result of the challenged laws, the change to in-person or mail delivery of absentee ballots has contributed to a cumulative negative effect on voters. See Dkt. No. 72 (Burden Rpt.), at 3-5.

**REPLY: Plaintiffs fail to properly create a dispute.** First, Plaintiffs' commentary is not properly part of a response to the proposed finding. Second, Plaintiffs' propositions do not directly respond to the proposed finding and are not supported by the evidence cited. Third, Plaintiffs do not rebut with any evidence the proposition that “election officials needed to re-create the ballots before they could be run through the vote-tabulating machine and deposited into the ballot box.” Fourth, Plaintiffs' citation to Dr. Burden's report does not support the idea that “voters in Milwaukee and Madison, among other areas, have encountered significant challenges as a result of the challenged laws, the change to in-person or mail delivery of absentee ballots has contributed to a cumulative negative effect on voters.”

42. Re-creating ballots creates a possibility of human error on the part of the election official. (Declaration of Constance McHugh, Jan. 5, 2016, ¶ 22; Declaration of Susan Westerbeke, Jan. 5, 2016, ¶ 30.)

Plaintiffs' Response: DISPUTED IN PART. While there might be some possibility of human error, election officials deny that there were problems with entering ballots into tabulators or reconstructing ballots. Decl. of Neil Albrecht at ¶¶47-48.

**REPLY: Plaintiffs fail to properly create a dispute.** First, Plaintiffs do not rebut the proposed finding that re-creating ballots creates a possibility of human error on the part of the election official. Second, Plaintiffs' additional propositions are not substantiated by the evidence cited. Third, Mr. Albrecht only has personal knowledge regarding Milwaukee.

43. Fax and email transmission of absentee ballots caused many ballots to be disqualified because of certification problems. (Declaration of Diane Hermann-Brown, Jan. 8, 2016, ¶ 35.)

Plaintiffs' Response: DISPUTED. Emailed and faxed ballots did not pose any difficulties for election officials. See Decl. of Neil Albrecht at ¶¶47-48 (“The Election Commission had no problems with these email kits. Returning the ballots was simple, and I am unaware of any instance in which a voter forwarded his or her ballot to another voter. Although the emailed ballot cannot be inserted directly into the tabulator after election officials receive it, it is simple to reconstruct these ballots and was not burdensome to do so. It certainly is much less work than working with a voter to attempt—sometimes unsuccessfully—to figure out a way to get a ballot to a remote location and back by mail in time for the ballot to be counted.”).

**REPLY: Plaintiffs fail to properly create a dispute.** First, Plaintiffs do not rebut the proposed finding that fax and email transmission of absentee ballots caused many ballots to be disqualified because of certification problems. Second, Plaintiffs' propositions are not responsive to the proposed finding and address different issues, which is not the proper way to respond to a proposed finding. Third, Mr. Albrecht only has personal knowledge regarding Milwaukee.

44. Voters also forwarded their electronic ballots to others, resulting in non-compliant ballots being received by municipal clerks. (Declaration of Constance McHugh, Jan. 5, 2016, ¶ 23.)

Plaintiffs' Response: DISPUTED. Emailed and faxed ballots did not pose any difficulties for election officials, and election officials are unaware of any instance in which a voter forwarded his or her ballot to another voter. See Decl. of Neil Albrecht at ¶¶47-48 (“The Election Commission had no problems with these email kits. Returning the ballots was simple, and I am unaware of any instance in which a voter forwarded his or her ballot to another voter. Although the emailed ballot cannot be inserted directly into the tabulator after election officials receive it, it is simple to reconstruct these ballots and was not burdensome to do so. It certainly is much less work than working with a voter to attempt—sometimes unsuccessfully—to figure out a way to get a ballot to a remote location and back by mail in time for the ballot to be counted.”).

**REPLY: Plaintiffs fail to properly create a dispute.** First, Plaintiffs do not rebut the proposed finding that voters forwarded their electronic ballots to others, resulting in non-compliant ballots being received by municipal clerks. Second, Plaintiffs' propositions are not responsive to the proposed finding and address different issues, which is not the proper way to respond to a proposed finding. Third, Mr. Albrecht only has personal knowledge regarding Milwaukee.

45. Clerks reported that the change to in-person or mail delivery of absentee ballots has not resulted in ongoing problems and that voters are now aware of the change and have adjusted to the current process. (Declaration of Diane Hermann-Brown, Jan. 8, 2016, ¶ 34.)

Plaintiffs' Response: DISPUTED. Emailed and faxed ballots did not pose any difficulties for election officials. See Decl. of Neil Albrecht at ¶¶47-48 (“The Election Commission had no problems with these email kits. Returning the ballots was simple, and I am unaware of any instance in which a voter forwarded his or her ballot to another voter. Although the emailed ballot cannot be inserted directly into the tabulator after election officials receive it, it is simple to reconstruct these ballots and was not burdensome to do so. It certainly is much less work than working with a voter to attempt—sometimes

unsuccessfully—to figure out a way to get a ballot to a remote location and back by mail in time for the ballot to be counted.”). In addition, the change has harmed at least two voters who would have otherwise cast ballots, and increased costs for local election officials. *See* Decl. of Maribeth Witzel-Behl at ¶¶ 27-28. Further, as voters in Milwaukee and Madison, among other areas, have encountered significant challenges as a result of the challenged laws, the change to in-person or mail delivery of absentee ballots has contributed to a cumulative negative effect on voters. *See* Dkt. No. 72 (Burden Rpt.), at 3-5; Decl. of Maribeth Witzel-Behl at ¶¶ 4, 9, 30-31.

In addition, many voters have been unable to vote as a result of this law. Dkt. No. 95 (Lowe Dep.), at 199:10 - 24; Dkt. No. 94 (Kennedy Dep.), at 189:12 - 190:3; Decl. of Neil Albrecht at ¶49 (“Since the change in the law that prevents Milwaukee from emailing absentee ballots to any voters who are not permanent overseas or military voters, there have been several instances in which the Election Commission has not been able to get a ballot to a voter temporarily residing overseas in time.”).

**REPLY: Plaintiffs fail to properly create a dispute.** First, Plaintiffs do not rebut the substance of the proposed finding. Second, Plaintiffs’ propositions are not responsive to the proposed finding and address different issues, which is not the proper way to respond to a proposed finding. Third, Mr. Albrecht and Ms. Witzel-Behl have only personal knowledge regarding Milwaukee and Madison, respectively. Fourth, Dr. Burden’s report cannot support Plaintiffs’ propositions because he has no personal knowledge regarding the logistics of the election process for municipal clerks, as he does not administer elections. Fifth, Plaintiffs’ proposition that “many voters have been unable to vote as a result of this law” is not supported by the evidence cited.

46. Asking local election officials to determine whether a particular ballot contains a “mistake” is an unworkable task, which would be piled on top of the already hectic schedule of an election. (Declaration of Constance McHugh, Jan. 5, 2016, ¶ 25.)

Plaintiffs’ Response: DISPUTED. The statute permits clerks to send ballots back when mistakes are made, such as when a certification is incorrect or when the ballot is damaged, an indication by the

Legislature that the task is not unworkable. *See* 2011 Wis. Act 227, § 4.

**REPLY: Plaintiffs fail to properly create a dispute.** First, Plaintiffs' do not rebut the substance of the proposed finding. Second, Plaintiffs' commentary is not properly part of a response to a proposed finding and purports to state a legal conclusion.

47. If an absentee ballot is rejected because of an error, that voter would have to come in to the municipal clerk's office because there would not be time to mail the ballot, get it fixed, and then mail the ballot back. (Declaration of Susan Westerbeke, Jan. 5, 2016, ¶ 31.)

Plaintiffs' Response: DISPUTED. If a voter sends in a ballot and realizes he or she overvoted, the voter can no longer get the ballot back. *See* Dkt. No. 92 (GAB Dep.), at 8-10.

**REPLY: Plaintiffs fail to properly create a dispute.** First, Plaintiffs' do not rebut the substance of the proposed finding. Second, Plaintiffs' additional proposition is not supported by the evidence cited.

48. A voter can complete the voter registration form electronically on the website <http://myvote.wi.gov>, print the completed form, and then mail it to the appropriate municipal clerk's office, which the website provides when the individual enters his or her address. (Declaration of Michael Haas, Jan. 7, 2016, ¶ 5.)

Plaintiffs' Response: The Proposed Finding of Fact makes several assumptions that are not substantiated about the access all voters enjoy to technology. To the extent the Proposed Finding of Fact is appropriately limited to voters that have access to printers and computers connected to the internet and knowledge of technology, it is UNDISPUTED.

**REPLY: Plaintiffs fail to properly create a dispute.** First, the proposed finding makes no reference to voters' access to technology. Second, the proposed finding is supported by the evidence cited. Third, Plaintiffs' commentary is not properly part of a response to a proposed finding. Fourth, Plaintiffs do not actually seem to dispute the proposed finding.

49. In August 2012, the Government Accountability Board authorized the use of electronic versions of the documents accepted as proof of residence. (Declaration of Michael Haas, Jan. 7, 2016, ¶ 6 & Ex. J.)

**Undisputed.**

50. The elimination of statewide special registration deputies was a change that local election officials requested. (Declaration of Diane Hermann-Brown, Jan. 8, 2016, ¶ 24; Declaration of Tim McCumber, Jan. 6, 2016, ¶ 16; Declaration of Constance McHugh, Jan. 5, 2016, ¶ 26.)

Plaintiffs' Response: To the extent the declarations recite the views of other election officials that are not presenting their own personal views, the statements should be disregarded as hearsay. *See, e.g.*, Decl. of Diane Hermann-Brown at ¶ 24 (“The removal of statewide SRDs is a change municipal clerks wanted and requested.”). Further, the Proposed Finding of Fact is DISPUTED in that several local election officials support the role of statewide special registration deputies. *See, e.g.*, Decl. of Neil Albrecht at ¶ 31 (“Having statewide special registration deputies (“SRDs”) was both a practical and a productive mechanism for registering difficult-to-reach populations through an efficient registration process . . . SRDs do the very important work of getting Wisconsinites registered to vote.”); Decl. of Maribeth Witzel-Behl at ¶ 23 (“requirement that special registration deputies (SRDs) be appointed at high schools was not burdensome to the Clerk’s Office.”); *id.* at ¶ 24 (“the elimination of statewide SRDs has created problems . . .”).

**REPLY: Plaintiffs fail to properly create a dispute.** First, the proposed finding is supported by the evidence cited and is based upon the declarants’ personal knowledge. Second, the proposed finding is not rebutted by the evidence cited. Third, Mr. Albrecht and Ms. Witzel-Behl only have personal knowledge regarding Milwaukee and Madison, respectively.

51. Statewide special registration deputies would make mistakes and often showed inconsistency with voter registration forms. (Declaration of Diane Hermann-Brown, Jan. 8, 2016, ¶ 25; Declaration of Constance McHugh, Jan. 5, 2016, ¶ 19.)



Plaintiffs' Response: DISPUTED. The appointment of statewide special registration deputies was a “practical and a productive mechanism for registering difficult-to-reach populations,” Decl. of Neil Albrecht at ¶ 31, and their appointment was “not burdensome” to clerks’ offices, Decl. of Maribeth Witzel-Behl at ¶ 23.

**REPLY: Plaintiffs fail to properly create a dispute.** First, Plaintiffs’ response does not address the substance of the proposed finding, which addresses that statewide special registration deputies “would make mistakes and often showed inconsistency with voter registration forms.” Second, the proposed finding is supported by the evidence cited, which has not been rebutted. Third, Plaintiffs’ additional propositions are inappropriate in a proposed finding and are not supported by the evidence cited. Fourth, Mr. Albrecht and Ms. Witzel-Behl only have personal knowledge regarding Milwaukee and Madison, respectively.

52. Statewide special registration deputies could be difficult for local election officials to track down to try to fix errors. (Declaration of Tim McCumber, Jan. 6, 2016, ¶ 17.)

Plaintiffs' Response: DISPUTED. This Proposed Finding of Fact makes statements about “local election officials” beyond those substantiated by the declaration of the Town Clerk for the Town of Merrimac County. Also DISPUTED to the extent that election officials find statewide special registration deputies to have been a “practical and a productive mechanism for registering difficult-to-reach populations.” Decl. of Neil Albrecht at ¶ 31. To the extent this Finding of Fact is limited to the views of Mr. McCumber, UNDISPUTED.

**REPLY: Plaintiffs fail to properly create a dispute.** First, Plaintiffs’ response does not address the substance of the proposed finding, which addresses the fact that statewide special registration deputies “could be difficult for local election officials to track down to try to fix errors.” Second, the proposed finding is supported by the evidence cited, which has not been rebutted. Third, Plaintiffs’ additional propositions are inappropriate in a proposed finding and are not supported by the evidence cited. Fourth, Mr. Albrecht only have personal knowledge regarding

Milwaukee. Fourth, Plaintiffs do not seem to actually dispute the substance of the proposed finding.

53. Some voters became upset when they thought they had been registered by a statewide special registration deputy, when in fact they were not registered. (Declaration of Susan Westerbeke, Jan. 5, 2016, ¶ 24.)

### **Undisputed.**

54. Returning to local control over the accuracy and consistency of the voter registration process improves accountability and is supported by local election officials. (Declaration of Diane Hermann-Brown, Jan. 8, 2016, ¶ 27.)

Plaintiffs' Response: The Proposed Finding of Fact is vague, states a conclusion, and lacks substantiation. It is unclear what is meant by the term "accountability." Further, to the extent the Declaration recites the statements of non-testifying election officials, the statement is hearsay. *See* Declaration of Diane Hermann-Brown, Jan. 8, 2016, ¶ 27 ("is a change that I and other clerks support"). Further, the Proposed Finding of Fact is DISPUTED in that other local election officers support the role of statewide special registration deputies and do not believe that returning to local control enhances accuracy and consistency. *See* Decl. of Neil Albrecht at ¶ 31; Decl. of Maribeth Witzel-Behl at ¶ 23.

**REPLY: Plaintiffs fail to properly create a dispute.** First, Plaintiffs' commentary is not properly part of response to a proposed finding and should be disregarded. Second, Plaintiffs' do not respond to the substance of the proposed finding. Third, the proposed finding is supported by the evidence cited, which has not been rebutted. Fourth, Mr. Albrecht and Ms. Witzel-Behl only have personal knowledge regarding Milwaukee and Madison, respectively.

55. The old system of having special registration deputies at high schools created extra work without much benefit. (Declaration of Susan Westerbeke, Jan. 5, 2016, ¶ 20.)

Plaintiffs' Response: DISPUTED. The City Clerk for the City of Madison, Wisconsin found the system of special registration deputies

was “not burdensome to the Clerk’s Office.” Decl. of Maribeth Witzel-Behl at ¶ 23.

**REPLY: Plaintiffs fail to properly create a dispute.** First, Plaintiffs do not respond to the substance of the proposed finding, which is that the “old system of having special registration deputies at high schools create extra work without much benefit.” Second, the proposed finding is supported by the evidence cited, which has not been rebutted. Third, Ms. Witzel only has personal knowledge regarding Madison. Fourth, Plaintiffs’ additional propositions are not supported by the evidence cited.

56. Elderly election observers might have difficulty hearing or seeing if they are six feet away from voter registration tables, which could result in more interruptions and questions from the observers for election officials, the chief election inspector, or the municipal clerk. (Declaration of Susan Westerbeke, Jan. 5, 2016, ¶ 27.)

Plaintiffs’ Response: The Proposed Finding of Fact hinges on a chain of speculative inferences that is unsupported by the Declarant’s personal knowledge or experience. The Proposed Finding of Fact depends on poll monitors being elderly people, being hard of hearing, asking more questions as a result of being hard of hearing, and as a result interfering more with the administration of elections. Furthermore, the Proposed Finding of Fact is DISPUTED in that multiple Declarants contend that placing election observers closer to voters has increased voter interference and harassment, and is unnecessary. See Decl. of Anita Johnson at ¶ 17; Decl. of Linea Sundstrom at ¶¶ 18-20; Decl. of Andrea Kaminski at ¶¶ 17-20, Ex. E.

**REPLY: Plaintiffs fail to properly create a dispute.** First, Plaintiffs do not respond to the substance of the proposed finding. Second, the proposed finding is supported by the evidence cited, which has not been rebutted. Third, Plaintiffs’ commentary is not properly part of a response to a proposed finding. Fourth, Plaintiffs’ additional propositions are irrelevant and are not supported by the evidence cited.

57. Not all polling places have the space to move election observers further away from voters. (Declaration of Susan Westerbeke, Jan. 5, 2016, ¶ 28.)

Plaintiffs' Response: The Proposed Finding of Fact and Declaration upon which it is based do not substantiate the conclusion with facts or personal knowledge of the Declarant, and should be disregarded. Further, the Proposed Finding of Fact is DISPUTED in that close proximity of election observers is unnecessary to accomplish the purpose of election monitoring. *See, e.g.,* Decl. of Andrea Kaminski at ¶¶ 17-20, Ex. E.

**REPLY: Plaintiffs fail to properly create a dispute.** First, Plaintiffs do not respond to the substance of the proposed finding. Second, Plaintiffs' commentary is not properly part of a response to a proposed finding. Third, Plaintiffs' additional propositions are irrelevant and are not supported by the evidence cited. Fourth, the proposed finding is supported by the evidence cited, which has not been rebutted.

58. Some voters find straight-ticket voting confusing. (Declaration of Susan Westerbeke, Jan. 5, 2016, ¶ 29.)

Plaintiffs' Response: DISPUTED. Many voters have voted straight-ticket in the past and believe that the elimination of straight-ticket voting has caused confusion among voters and negatively impacted language minorities. Decl. of Anita Johnson at ¶ 18. The elimination of straight-ticket voting slows down the voting process for those wishing to cast such votes. Decl. of Scott Trindl at ¶ 18; Decl. of Renee Gagner at ¶ 16; Decl. of Cody Nelson at ¶ 12.

**REPLY: Plaintiffs fail to properly create a dispute.** First, Plaintiffs do not respond to the substance of the proposed finding. Second, the proposed finding is supported by the evidence cited, which has not been rebutted. Third, Plaintiffs' additional propositions regarding "language minorities" and "slow[ing] down the voting process" are not related to the substance of the proposed finding and are not supported by the evidence cited.

59. Eliminating the straight-ticket option decreases the possibility of voters marking the straight-ticket box on the ballot and then proceeding to vote for candidates on the remainder of the ballot anyway. (Declaration of Susan Westerbeke, Jan. 5, 2016, ¶ 29.)

Plaintiffs' Response: DISPUTED. Many voters have voted straight-ticket in the past and believe that the elimination of straight-ticket voting has caused confusion among voters and negatively impacted language minorities. Decl. of Anita Johnson at ¶ 18. The elimination of straight-ticket voting slows down the voting process for those wishing to cast such votes. Decl. of Scott Trindl at ¶ 18; Decl. of Renee Gagner at ¶ 16; Decl. of Cody Nelson at ¶ 12.

**REPLY: Plaintiffs fail to properly create a dispute.** First, Plaintiffs do not respond to the substance of the proposed finding. Second, the proposed finding is supported by the evidence cited, which has not been rebutted. Third, Plaintiffs' additional propositions regarding "language minorities" and "slow[ing] down the voting process" are not related to the substance of the proposed finding and are not supported by the evidence cited.

60. Most voters take up a new residence by the first of the month. (Declaration of Diane Hermann-Brown, Jan. 8, 2016, ¶ 32.)

Plaintiffs' Response: The Declaration provides no basis for the notion that "most people move on the first of the month." Declaration of Diane Hermann-Brown, Jan. 8, 2016, ¶ 32. Further, the Declaration's statement is not based on personal knowledge. Last, the Proposed Finding of Fact is DISPUTED, in that people move at various times of the month. See Decl. of Anita Johnson at ¶¶ 9, 14, 16; Decl. of Scott Trindl at ¶ 13; Decl. of Linea Sundstrom at ¶ 7; Decl. of Cody Nelson at ¶ 4.

**REPLY: Plaintiffs fail to properly create a dispute.** First, Plaintiffs misquote the proposed finding. Second, the proposed finding is supported by the evidence cited, which has not been rebutted. Third, Plaintiffs' additional propositions are irrelevant and are not supported by the evidence cited.

Dated this 11th day of February, 2016.

Respectfully submitted,

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