

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN**

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DEMOCRATIC NATIONAL COMMITTEE, *et al.*,

Plaintiffs,

v.

Case No. 20-cv-249-wmc

DEAN KNUDSON, *et al.*,

Defendants,

and

REPUBLICAN NATIONAL COMMITTEE, *et al.*,

Intervening Defendants.

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SYLVIA GEAR, *et al.*,

Plaintiffs,

v.

Case No. 20-cv-278-wmc

MARGE BOSTELMANN, *et al.*,

Defendants.

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REVEREND GREG LEWIS, *et al.*,

Plaintiffs,

v.

Case No. 20-cv-284-wmc

MARGE BOSTELMANN, *et al.*,

Defendants.

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**THE CITY OF MILWAUKEE'S  
AMICUS CURIAE BRIEF**

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## INTRODUCTION

As amicus curiae, the City of Milwaukee (“City”) is obligated to provide unique information or insight that will assist this Court in assessing the difficult questions before it. *See, e.g., Nat’l Org. for Women, Inc. v. Scheidler*, 223 F.3d 615, 616-17 (7th Cir. 2000). Because it is Wisconsin’s largest and most diverse municipality, and thus faces the challenges of the COVID-19 crisis on a greater scale than does any other Wisconsin community, the City is in a position to do just that. The City’s purpose in filing this brief is to emphasize how dramatically the current public health emergency has affected, and will continue to affect, the City’s voting operations and, in turn, the City’s voters. Though the City respects the sanctity of Wisconsin’s elections laws, it respectfully encourages this Court to recognize the practical realities of the COVID-19 pandemic and to temporarily modify those elections laws in the interest of safeguarding that most sacred of rights: the right to vote.

## FACTS

### A. City of Milwaukee Demographics

1. The City has approximately 592,000 residents, of whom 439,000 are of voting age and 298,000 are currently registered voters. (Albrecht Decl., ¶ 3).
2. Approximately 40% of City residents are African-American. (Albrecht Decl., ¶ 4).
3. Approximately 17% of City residents are Hispanic/Latino. (Albrecht Decl., ¶ 5).
4. Approximately 28% of City residents live in poverty, compared to a state average of 13%. (Albrecht Decl., ¶ 6).
5. Approximately 40% of African-American City residents and 35% of Hispanic/Latino City residents live in poverty. (Albrecht Decl., ¶ 7).

6. The City has greater concentrations of low-income voters and voters of color than any other Wisconsin municipalities. (Albrecht Decl., ¶ 8).

**B. City of Milwaukee Elections**

7. The City has 327 electoral wards and 180 polling stations. (Albrecht Decl., ¶ 9).

8. In the 2016 spring presidential primary, the Milwaukee Election Commission documented 167,765 total ballots cast and processed 14,321 by-mail absentee ballots. (Albrecht Decl., ¶ 10).

9. In the 2012 spring presidential primary election, the Milwaukee Election Commission documented 84,641 total ballots cast and processed 5,690 by-mail absentee ballots. (Albrecht Decl., ¶ 11).

10. In preparation for the April 7, 2020 election, the City of Milwaukee's Election Commission requires 300 staff members to assist in the processing of absentee ballots at central count (a centralized location used for the processing of absentee ballots) and 1,500 for polling location operations across the city. (Albrecht Decl., ¶ 12).

11. An estimated 50% of the city's election workers are over the age of 60, with approximately 33% over the age of 70. (Albrecht Decl., ¶ 13).

12. In Milwaukee, same-day registrants at our polling locations constitute approximately 20% (or 1 in 5) of total turnout in any given Spring Election. Due to a wide range of factors, including the recognized transiency of people in poverty, those same-day registrants are disproportionately African-American and Hispanic residents. (Albrecht Decl., ¶ 14).

**C. COVID-19 in Milwaukee**

13. Effective March 25, 2020, the City of Milwaukee's Commissioner of Health issued a citywide "Stay at Home" order restricting public activities and gatherings, closing non-

essential businesses, and taking other precautionary steps due to the public health emergency associated with the COVID-19 pandemic. (Available at: [https://city.milwaukee.gov/ImageLibrary/Groups/healthAuthors/COVID-19/CADB01-267644-v1-Signed\\_Stay\\_At\\_Home\\_Order\\_3\\_23\\_20.pdf](https://city.milwaukee.gov/ImageLibrary/Groups/healthAuthors/COVID-19/CADB01-267644-v1-Signed_Stay_At_Home_Order_3_23_20.pdf).)

14. Effective March 25, 2020, the Secretary of the State of Wisconsin's Department of Health Services issued a statewide "Safer at Home" order restricting public activities and gatherings, closing non-essential businesses, and taking other precautionary steps due to the public health emergency associated with the COVID-19 pandemic. (Available at: <https://evers.wi.gov/Documents/COVID19/EMO12-SaferAtHome.pdf>.)

15. Milwaukee County public health officials are maintaining a "Milwaukee County COVID-19 Dashboard" website that is updated twice daily with the latest COVID-19 statistics for the County. The site tracks total cases and breaks down the effect of COVID-19 by demographic categories, including age and location. As of the morning of March 30, 2020, 498 of the confirmed 627 COVID-19 cases in Milwaukee County occurred in the City of Milwaukee. Of those 627 cases, at least 271 individuals are African-American. The "heat map" of cases for Milwaukee County reflects a concentration of cases on the City of Milwaukee's north and northwest sides. (Available at: <https://mcoem.maps.arcgis.com/apps/opsdashboard/index.html#/018eedbe075046779b8062b5fe1055bf>.)

16. Thus far, the COVID-19 crisis in Milwaukee County is disproportionately affecting the City of Milwaukee's African-American residents. Of the ten COVID-19 deaths in Milwaukee County, no fewer than eight have been African-American residents of the City's northwest side. (See "COVID-19 Deaths Concentrated In Milwaukee's African-American

Community,” March 27, 2020, Corrinne Hess, Wisconsin Public Radio; available at: <https://www.wpr.org/covid-19-deaths-concentrated-milwaukeees-african-american-community>).

**D. Effect of COVID-19 on City of Milwaukee Election Operations**

17. Due to the public health emergency, trained staff numbers are decreasing daily to fewer than 400 election poll workers (without confirmations from all) and fewer than 50 central count workers. (Albrecht Decl., ¶ 15).

18. The City of Milwaukee’s Election Commission has received 700 notices that previously trained elections staff members are unavailable to work the election. (Albrecht Decl., ¶ 16).

19. Out of concern for a population identified as “high risk”, the city has also discouraged the participation of election workers over the age of 70. (Albrecht Decl., ¶ 17).

20. Recruitment efforts to attract additional workers have been unsuccessful, particularly given the release of “stay at home” guidelines from the Mayor and Governor. In-person training of new poll workers and central count staff is also growing increasingly difficult to perform while still practicing social distancing. (Albrecht Decl., ¶ 18).

21. Given its inability to train new poll workers, it is virtually certain that the City will lack sufficient poll workers to staff polling locations across the city, and will likewise lack the requisite number of staff members to process absentee ballots at the central count location. (Albrecht Decl., ¶ 19).

22. As of March 30, 2020, the City of Milwaukee’s Election Commission has processed approximately 66,850 requests for an absentee ballot. The Election Commission Executive Director estimates that the City will continue to receive approximately 5,000 absentee ballot requests per day until the last day such requests may be received, Thursday, April 2.

Assuming there is a 5% drop-off in ballots mailed and ballots returned, that would be an additional 38,000 absentee ballots processed, for an estimated total of 90,000 absentee ballots returned and cast for this Spring Election. (Albrecht Decl., ¶ 20).

23. Assuming it is impossible to conduct an in-person election at City polling locations on April 7, such a turnout would then be approximately 70,000 votes less than the ordinary turnout for a Spring Election or an approximately 44% voter turnout reduction that from originally anticipated. (Albrecht Decl., ¶ 21).

24. Election Commission staff is fielding hundreds of calls and emails per day from residents with questions about absentee voting. Based on these calls, it is clear that many residents have limited to no exposure to the concept or process involved with absentee voting. Many, particularly seniors and people in poverty (disproportionately represented by African-American and Hispanic voters) do not have access to the internet. The ability to request an absentee ballot is mainly Internet-based. During the COVID-19 crisis, it is almost entirely internet-based. (Albrecht Decl., ¶ 22).

25. The City of Milwaukee is currently operating a downtown “drive through voting” location to facilitate safe in-person absentee registration and voting; however, such an approach is not a viable option for the City to handle in-person voting should the April 7 election proceed as planned. (Albrecht Decl., ¶ 23).

26. The City of Milwaukee is subject to Section 203 of the Voting Rights Act and is being monitored by the United States Department of Justice for compliance. For this reason, the City must provide bilingual poll workers at certain targeted wards. (Albrecht Decl., ¶ 24).

27. The City has reviewed and considered the use of “voting centers” that combine several aldermanic districts at one site, but does not consider such an approach a safe or practical

approach to conducting in-person voting on election day. (Albrecht Decl., ¶ 25).

28. At present rate, the City of Milwaukee anticipates over 90,000 absentee ballots for processing on Election Day. In 2016, the city processed 62,000 in a process that was fully staffed and took from 8 a.m. until 2:30 a.m. the next day. Due to home confinement and contagion-related precautions, the city's central count processing of absentee ballots will have approximately 50% of the staffing employed in 2016. Given these considerations—an increase in the number of ballots to be processed and a decrease in the number of available staff—the Election Commission expects that it will take three full days to process all absentee ballots. (Albrecht Decl., ¶ 26).

### ANALYSIS

The City wishes to bring three points to this Court's attention. First, the City emphasizes the extent to which the COVID-19 crisis jeopardizes the democratic process in Milwaukee for the April 7 election, particularly among the elderly, people of color, and the poor. Second, the City affirms that reasonable modifications to the election process by the Court will permit the City to ensure safe voting while maintaining continuity of government operations beyond April 7. Third, the City respectfully notes that it is well within this Court's discretion to impose such reasonable modifications to the election process.

#### **I. City of Milwaukee Voter Turnout Will Be Significantly Depressed if the April 7 Election Proceeds as Currently Planned.**

##### **A. The City Cannot Meet its Obligation to Safely Conduct In-Person Registration and Voting on April 7, 2020.**

The COVID-19 health crisis has already decimated the City's election operations and will assuredly continue to do so through April 7. Trained poll workers and trained "central count" workers who have (understandably) declined to fulfill their roles due to COVID-19 already

number in the hundreds, with more withdrawing every day. Approximately half of all such election workers are over age 60, and approximately one-third are over age 70, thus rendering them higher risk for serious COVID-19 illness. As of this writing, the City has lost approximately two-thirds of its poll workers and approximately five-sixths of its central count workers, the latter of whom are responsible for tallying absentee ballots. Efforts to recruit and train replacement election workers have been unavailing due COVID-19 concerns. The City has also been denied access to approximately 25 of its planned polling locations, with more such losses nearly certain to occur before the currently scheduled election day.

Another strain on the City's election infrastructure is the fact that the City is subject to Section 203 of the Voting Rights Act and is being monitored by the United States Department of Justice for compliance. The City is therefore required to provide bilingual poll workers at certain targeted wards, a requirement that further impedes Milwaukee's efforts to adequately recruit, train, and distribute poll workers for the April 7 election.

Given the above facts, it is clear that the City cannot hope to appropriately staff polling locations to permit safe and efficient in-person registration and voting. This is particularly true in light of the statewide "Safer at Home" order issued by the Secretary of the Wisconsin Department of Health Services, as well as the similar order issued by the Milwaukee Health Commissioner, both of which require citizens to avoid congregating in groups and to observe medically-recommended social distancing protocols. Not only are these requirements limiting the availability of poll workers, but they impose an additional safety burden on polling locations. While it is likely that polling locations will be less crowded, extra precautions must still be taken to ensure that eligible voters who do wish to register and vote in-person are following all COVID-19 related precautions. The typical scenes of lines outside polling places and closely

packed voting booths simply cannot occur in the midst of a global pandemic. If anything, monitoring polling places—even if they are less crowded—would seem to require more elections personnel, not the skeleton crews currently available to the City.<sup>1</sup>

If citizens head to the polls to register and vote in-person, as they normally would do, they imperil their health and the health of those around them. If many stay home and/or vote by mail, understaffed (if less crowded) polling sites still present an increased danger to public welfare because enforcement of social distancing protocols will be practically impossible. These equally untenable options illustrate why asking the City to conduct a robust—or even adequate— in-person voting operation on April 7 is as unrealistic as it is unsafe.

B. Absent Measures to Mitigate In-Person Voting Problems on April 7, City Voter Turnout Will be Suppressed.

If the City is compelled to proceed with in-person voting on April 7 and the election process remains unchanged, people who would otherwise vote will be unable to do so. Statistics regarding the City election personnel who have already abandoned their plans to work the election offer but a small preview of the extent to which voters will stay away from polling locations on April 7 for health and safety reasons. And for those voters—especially the elderly and the medically-compromised—who have no choice but to avoid public places as much as possible, the only alternative is to vote absentee.

Unfortunately, registering and voting remotely presents its own problems, particularly to the City's most vulnerable residents. Since the outbreak of the COVID-19 crisis, the City's Election Commission has fielded thousands of inquiries from prospective voters with limited understanding of the absentee voting process. Further, many of the city's senior citizens and

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<sup>1</sup> The City notes that, after closing its early in-person voting locations due to COVID-19 concerns, it is now operating a “drive thru” early voting location in downtown Milwaukee. While some City residents have certainly taken advantage of this safer voting option, it is not a viable option for all voters and is certainly not an adequate substitute for in-person voting at polling places located near voters' homes.

impoverished persons, the latter of whom are disproportionately African-American and Hispanic/Latino, lack internet access. Without internet access, and without the capacity to safely register and/or vote in-person, these individuals will be unable to avail themselves of the online voting resources that are essentially their only remaining option during this public health emergency. Indeed, the City's Election Commission Executive Director states that COVID-19 has rendered the absentee ballot process "almost entirely internet-based." The "digital divide" that separates older and low-income City residents from other prospective voters will thus reduce those groups' participation in the April 7 election and will ensure that the 44% turnout reduction predicted by the Election Commissioner will disparately impact the poor, the elderly and people of color.

Data collected thus far on the COVID-19 outbreak in Milwaukee County indicates that the disease is primarily affecting City residents—especially City residents of color. As of the morning of March 30, 2020, the "Milwaukee County COVID-19 Dashboard" reflects that City residents account for 498 of the 627 confirmed cases in the county, and that those cases are concentrated on the City's north and northwest sides. At least 271 of the 627 confirmed individuals with COVID 19 are African-American, a number that almost certainly understates the real total, given that 185 cases report no information regarding race/ethnicity. At least eight of the ten confirmed deaths to date in the County have been African-Americans residing in the City of Milwaukee. These devastating facts only reinforce the imminent threat that COVID-19 represents to the voting rights of the City's poor and minority residents should the current election process remain unaltered.

**II. The City of Milwaukee Can Meet its Voting Obligations and Continue Governmental Operations if the April 7 Election is Modified or Delayed.**

**A. The City Can Ensure Voters' Rights if Voting Procedures are Modified.**

The City respectfully suggests that the following changes to standard registration and voting procedures will allow it (and other Wisconsin communities) to conduct a safe and inclusive election in which everyone who is eligible to vote gets a chance to vote.

**1. The Court Should Modify the April 7 Election.**

Wis. Stat. § 5.02(21) provides that the spring election shall take place on the first Tuesday in April. As discussed above, the COVID-19 crisis has rendered the City completely unable to safely staff and supervise in-person polling places on the statutorily-prescribed election date. The City of Milwaukee is hardly alone in this regard. The Wisconsin Election Commission ("WEC") has recently highlighted multiple statewide impediments to conducting in-person voting on April 7:

- In a March 23, 2020 press release entitled "Wisconsin Needs Poll Workers!" WEC noted that "Wisconsin has approximately 30,000 poll workers, known as election inspectors, who serve at polling places. A significant number of them are in their 60s and 70s, and may have other health conditions."
- In a March 20, 2020 letter to Governor Evers, Meagan Wolfe, WEC Administrator/Chief Election Official to Governor Evers requested "immediate action to support the upcoming April 7, 2020 statewide election and presidential preference primary," noting that "[a]s of today, local election officials do not have access to the people or supplies needed." Noting the shortage of poll workers and hand sanitizer and other cleaning products, Ms. Wolfe added: "This leaves voters, clerks, and poll workers to make difficult choices. Voters should not have to choose between voting

or staying healthy. Poll workers should not have to choose between voting or staying healthy. Poll workers should not have to choose between serving their community and staying healthy. Our local election officials should not have to choose between facilitating democracy or staying healthy.”

- In the same March 20 correspondence to Governor Evers, Ms. Wolfe stated: "Local election officials around the state have expressed that they have exhausted their lists of backup poll workers; many poll workers have already conveyed that they will be unable to serve. Clerks are also concerned that poll workers who are currently scheduled will become unavailable on Election Day.”

In fashioning an appropriate remedy, this Court should accept the reality that conducting an in-person election on April 7, whether in the City or elsewhere, forces an impossible choice on many election workers and prospective voters. It should therefore modify the April 7 election in favor of the alternative approach further outlined below.

**2. The Court Should Permit a Primarily Absentee Election and Expand the Time Frames for Voter Registration, Ballot Requests and Receipt, and Ballot Counting.**

Absentee voting is an appealing alternative to in-person voting for many residents during a typical election. There is no reason that it cannot become the primary voting method for this decidedly atypical election. However, if Wisconsin’s 2020 spring election is to be conducted primarily by mail—with the exception of some in-person early voting occurring prior to April 7—the normal deadlines applicable to voter registration and to receipt and tallying of absentee votes must be modified.

First, the Court should extend deadlines for request and receipt of absentee ballots. Pursuant to Wis. Stat. § 6.87(6), in a normal City election absentee ballots must be received at the central count location by 8:00 p.m. on election day to be counted. The City has already

received far more requests for absentee ballots than it normally would, and it is attempting to respond to those requests with a substantially reduced workforce. An extension of the absentee ballot due date to June 2, 2020 would take into account the staffing shortages confronting the City and other municipalities. It would also ensure that City voters with limited mobility due to the COVID-19 crisis, or with a lack of internet accessibility, have adequate opportunity to request, receive, and submit their ballots.

Extension of the absentee voting period also necessitates an expansion of the period in which voters may request an absentee ballot online or by mail. The current deadlines should therefore be changed to May 28, 2020, for most voters and May 29, 2020, for indefinitely confined voters. These revised deadlines align with the June 2, 2020, final date for receipt of absentee ballots just as they would otherwise correspond with the normal election date per Wis. Stat. § 6.86.

Second, the Court should extend voter registration deadlines in accordance with the expansion of the absentee voting window. As of this writing, online voter registration concludes on March 30, 2020, pursuant to this Court's order. In-person registration in conjunction with in-person absentee voting is set to conclude at 5:00 p.m. on April 5, the Sunday before the election, pursuant to Wis. Stat. § 6.86(1)(b). Additionally, in a standard election prospective voters would have the opportunity to register at a polling place on election day.

The City proposes that online and in-person registration be extended to June 1, 2020. As with an extension of the ballot submission deadline, affording voters additional time in which to register safely is warranted, particularly given that approximately 20% of spring election voters in the City typically register in person at their polling locations on election day. Deprivation of the right to register to vote is no less egregious an infringement than is deprivation of the right to

vote itself.

Third, the Court should permit municipalities to commence counting absentee ballots on May 30, 2020—three days before they are due. At present rate, the City of Milwaukee anticipates over 90,000 absentee ballots for processing on Election Day. In 2016, the city processed 62,000 in a process that was fully staffed and took from 8 a.m. until 2:30 a.m. the next day. Due to home confinement and contagion-related precautions, the city's central count processing of absentee ballots will have approximately 50% of the staffing employed in 2016. Given these considerations, an increase in the number of ballots to be processed and a decrease in the number of available staff, the Election Commission expects that it will take three full days to process all absentee ballots.

While ballots are not normally counted until the day of the election pursuant to Wis. Stat. § 7.52(1)(a), conversion to a primarily absentee election in response to the COVID-19 crisis will make processing of absentee ballots by reduced election workforces a challenging task. Such early vote counting should certainly be accompanied by strict safeguards to mitigate concerns about possible early disclosure of election results. But these concerns, valid as they are, need not stand in the way of giving municipalities enough time to tally the high volume of absentee ballots.

**3. The Court Should Ease, But Not Eliminate, Witnessing Requirements for Absentee Voting.**

Wisconsin law requires absentee voters to include a witness' written acknowledgment with an absentee ballot. The requirement that an absentee ballot be witnessed by an adult United States citizen is in Wis. Stat. § 6.87(4)(b)1. The City appreciates that safeguards are necessary to ensure the integrity of the voting process, whether voting occurs in person or by mail. Nevertheless, the thrust of the City's entire amicus submission is that the statutory election rules

do not exist in a vacuum and can be reasonably and necessarily modified to protect voters' rights during an emergency situation like the COVID-19 pandemic.

With that principle in mind, the City proposes that individuals who are unable to obtain an in-person witness signature due to self-isolation, quarantine, or social distancing practices related to COVID-19 be permitted to call the appropriate municipal election official(s) to explain their situation. In such scenarios, the appropriate official may, at her or his discretion, decide that sufficient indicia of reliability have been presented to permit the ballot's submission without a witness signature. In such instances, election officials should maintain records of all discretionary decisions and their supporting reasoning.

B. City Government Can Continue to Function Legally and Effectively if Election Results are Delayed Beyond April 7.

The City acknowledges concerns that delaying and/or modifying the election process in response to the COVID-19 emergency may interfere with the continuity of municipal government. While the City cannot speak for other municipalities, it notes that, per Section 2-03 of the Milwaukee City Charter, elected City officers "shall hold their respective offices for a term of 4 years and until their successors shall be elected and qualified." That is, the City's government will continue to function under its current elected officials until an election occurs. There can be no doubt that extending the standard four year terms of elected City officials by approximately eight weeks is an undesirable consequence of the City's proposal to protect voters' rights during this unprecedented public health crisis. The City nevertheless asks this Court to conclude that a modified election accessible to all eligible voters is preferable to a timely, standard election that excludes so many from the democratic process.

### **CONCLUSION**

As amicus curiae, the City of Milwaukee respectfully asks the Court to consider the facts

and suggestions raised herein when rendering its decision in this matter.

Dated at Milwaukee, Wisconsin this 30<sup>th</sup> day of March, 2020.

Respectfully submitted,

GRANT F. LANGLEY  
City Attorney

/s/Adam B. Stephens  
ADAM B. STEPHENS  
Deputy City Attorney  
State Bar No. 1033108  
City of Milwaukee, Wisconsin  
200 East Wells Street #800  
Milwaukee, WI 53202  
asteph@milwaukee.gov  
414-286-2601

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