

DEMOCRATIC NATIONAL COMMITTEE,
et. al.

Case No. 2024 CV ____

Petitioners,

v.

Heather Boehm, in her official capacity as the
Clerk of the City of Walworth

Respondents.

**PETITIONERS' MOTION FOR AN ORDER EXTENDING
POLLING HOURS, AN *EX PARTE* TEMPORARY RESTRAINING ORDER
AND/OR AN ORDER FOR PRELIMINARY INJUNCTION**

The Democratic National Committee and Evelyn Schmidt (collectively, "Petitioners") seek an emergency order to compel Respondents to extend voting hours at Whitewater – Armory and University of Wisconsin Whitewater – University Center until 10 p.m. to remedy the harm to Petitioners' constitutional and statutory right to vote stemming from polling place delays caused, upon information and belief, by inadequate staffing and insufficient numbers of BadgerBooks due to unprecedented turnout.

This delay threatens to deprive Petitioners of their ability to vote in today's election. The relief Petitioners seek is straightforward and is narrowly tailored to vindicate provisions of the Wisconsin Constitution and statutory election law, which guarantee that "[e]very United States citizen age 18 or older who is a resident of an election district in this state is a qualified elector of that district." Wis. Const. Art. III, § 1. The Wisconsin Supreme Court has long held this right to vote is a "sacred" fundamental interest. *See Dells v. Kennedy*, 6 N.W. 246, 247 (1880). Given that today is Election Day, issuance of an *ex parte* temporary restraining order ("TRO") and/or a

preliminary injunction is necessary before 8:00 p.m. today, when polling locations are scheduled to close. Absent such relief, Petitioners will have no other remedy at law to protect their constitutional right to vote.

INTRODUCTION

This evening extremely long lines, lasting several hours, deprived waiting electors of the opportunity to exercise their right to vote. Wisconsin requires polling precincts to remain open on Election Day from 7:00 a.m. to 8:00 p.m., a period of 13 hours. Wis. Stat. § 6.78. In Wisconsin, election administration is “highly decentralized.” *Priorities USA v. Wis. Elections Comm’n*, 8 N.W.3d 429, 436 (Wis. 2024) (citing *State ex rel. Zignego v. WEC*, 957 N.W.2d 208 (Wis 2021)). “Rather than a top-down arrangement with a central state entity or official controlling local actors, Wisconsin gives some power to its state election agency,” the Wisconsin Election Commission (the “Commission”) “and places significant responsibility on a small army of local election officials.” *Id.*; see also Wis. Stat. § 7.15(1) (providing “[e]ach municipal clerk has charge and supervision of elections and registration in the municipality” and listing duties the clerk “shall perform,” which includes “any others which may be necessary to properly conduct elections or registration”). Here, counsel for Petitioners attempted to reach the City Clerk to inform her of this issue impacting voters’ ability to vote, but were unable to locate an after-hours method of communication. However, upon information and belief, the City Clerk refused to seek an order to extend the hours for voting, requiring Petitioners to seek emergency relief from this Court.

FACTUAL BACKGROUND

Declarant submitted by detail individual accounts of eligible electors being delayed from voting polls due to administration inefficiencies. See **Ex. A (Affidavit of Evelyn Schmidt)**. Many electors throughout the City of Whitewater have had similar experiences, which has resulted in a

significant disruption to polling precinct operations. Upon information and belief, the following polling precincts have experienced significant delays

- City of Whitewater, Armory
- University of Wisconsin Whitewater – University Center

Electors will be disenfranchised absent an extension of polling hours until 10 p.m. The additional two hours sought represents the amount of time that electors would have been able to cast their ballots at the polling precinct, had the above delays not occurred. Electors are guaranteed the opportunity to exercise their right to vote within a 13-hour period under § 6.78. If voting hours are not extended, Petitioners' ability to cast their ballots will be unreasonably burdened or denied.

ARGUMENT

Circuit courts in this state have the authority to grant temporary injunctions. *See Wolfe v. Wis. State Assembly*, 2022 Wisc. Cir. LEXIS 1, *6 (Cir. Ct. Dane Cnty. Jan. 10, 2022) (citing Wis. Stat. § 813.02). In considering a party's request for a temporary restraining order or preliminary injunction, this Court must evaluate whether "1) the movant is likely to suffer irreparable harm if a preliminary injunction is not issued; 2) the movant has no other adequate remedy at law; 3) a preliminary injunction is necessary to preserve the status quo; and 4) the movant has a reasonable probability of success on the merits." *Id.* (citing *Werner v. A.L. Grootemaat & Sons, Inc.*, 259 N.W.2d 310, 313–14 (1977)). These factors, especially when considered together, weigh heavily in favor of granting Petitioners' request for emergency relief and extending the polling hours at beyond 8:00 p.m.

I. Petitioners And City of Whitewater Electors Will Suffer Irreparable Injury If the Injunction Is Not Granted

In the absence of a preliminary injunction, Petitioners and the electors of City of Whitewater will suffer irreparable harm. As an initial matter, denying eligible electors access to

their poll precincts during the 13 hour-period from 7:00 a.m. to 8:00 p.m. violates § 6.78(1m). That this injury is, by definition, irreparable, is beyond dispute. *See Milwaukee Branch of the NAACP v. Walker*, 2012 Wisc. Cir. LEXIS 194, *21 (Cir. Ct. Dane Cnty. Mar. 12, 2012) (finding irreparable harm where new voter identification requirements, if implemented, would “likely exclude from the election process a significant portion of Wisconsin voters who are qualified under our constitution to participate in this process”).

The Wisconsin Supreme Court has emphasized that eligible electors have a constitutionally protected right to vote and have that vote counted. *See League of Women Electors v. Walker*, 357 Wis. 2d 360, 372 (2014) (concluding that voting was a right, not a privilege, which was guaranteed by Article III § 1 of the Wisconsin Constitution) (citing *McGrael v. Phelps*, 128 N.W. 1041 (1910)). Indeed, in *In re Petition of Maribeth Witzel-Behl*, the Dane County Circuit Court extended polling hours at a polling precinct on the campus of the University of Wisconsin after incorrect polling location information and directions were disseminated to potential electors. *See Order, In re Petition of Maribeth-Witzel-Behl*, No. 2024CV000976, slip op. at 2 (Wis. Cir. Ct. Dane Cnty. Apr. 2, 2024). Absent an injunction, electors of the City of Whitewater will not be able to cast ballots for the amount of time provided by statute. Therefore, Petitioners are without an adequate remedy at law and will suffer irreparable harm unless the Court grants relief. *See One Wis. Inst. Inc. v. Thomsen*, 2016 U.S. Dist. LEXIS 107177, at *12–13 (W.D. Wis. Aug. 11, 2016) (finding a stay of a previously issued injunction “would irreparably injure plaintiffs and the public by abridging voters’ constitutional rights” and “imped[ing] Wisconsin citizens from voting”).

II. Probability of Success on the Merits and the Necessity of An Injunction to Maintain the Status Quo

Courts have found that a Petitioner who shows an impairment on the right to vote has demonstrated “a very substantial likelihood of success on the merits.” *See, e.g., Milwaukee Branch*

of the NAACP v. Walker, 2012 Wisc. Cir. LEXIS 194, *19 (“The history of the Wisconsin Supreme Court’s effort to carefully preserve the broad constitutional right to vote is particularly clear.”). As noted above, the additional two sought reflects the amount of time that eligible electors would have had had to cast their ballots during the 13-hours permitted under Wisconsin law absent the delays described above and in the affidavit. Thus, granting the injunction and extending the polling hours maintains the status quo for electors exercising their right to vote at the polls.

CONCLUSION & RELIEF REQUESTED

For the aforementioned reasons, Petitioners have demonstrated through the allegations and affidavits attached that the applicable factors weigh in favor of granting Petitioners’ request for immediate relief.

WHEREFORE, Petitioners respectfully request this Court grant the following immediate injunctive relief to provide an equitable remedy to prevent the infliction of irreparable harm on Petitioners:

- Enter a temporary restraining order and/or preliminary injunction directing Heather Boehm to extend the polling location hours from 8:00 p.m. to 10 p.m. at City of Whitewater, Armory and University of Wisconsin Whitewater – University Center.
- Order that all voters City of Whitewater, Armory and University of Wisconsin Whitewater - University Center, in line at as of 10 p.m. shall cast their ballots in the same manner as those cast during regular polling hours in compliance with Wis. Stat. § 6.78(1m).
- Order that the ballots of electors arriving between 8:00 p.m. and the extended closing of 10 p.m. shall be marked as ballots cast pursuant to Wis. Stat. § 6.96.

A. Grant Petitioners any such further relief as the Court deems equitable and just under the circumstances.

Dated: November 5, 2024,

Respectfully submitted,

PINES BACH, LLP

Electronically signed by Eduardo E. Castro

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