

FILED  
07-20-2023  
CIRCUIT COURT  
DANE COUNTY, WI  
2023CV000279  
Honorable Rhonda L.  
Lanford  
Branch 16

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY  
BRANCH 16

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EXPO WISCONSIN, INC.  
17 Applegate Court, Suite 202  
Madison, WI 53713

and

WISDOM, INC.  
d/b/a WISDOM WISCONSIN  
2821 Vel Phillips Avenue, Suite 115  
Milwaukee, WI 53212

Plaintiffs,

v.

Case No. 23-cv-279  
Code: 30701  
Declaratory Judgment

WISCONSIN ELECTIONS COMMISSION,  
DON MILLIS, ROBERT F. SPINDELL, JR., MARK L.  
THOMSEN, ANN S. JACOBS, MARGE  
BOSTELMANN, and JOSEPH J.  
CZARNEZKI in their official capacities  
as members of the Wisconsin Elections  
Commission, MEAGAN WOLFE, in her  
official capacity as the Administrator of the  
Wisconsin Elections Commission,  
201 W. Washington Ave.  
Second Floor  
Madison, WI 53703

Defendants.

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**AMENDED SUMMONS**

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THE STATE OF WISCONSIN

To each person named above as a Defendant:

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

Within 45 days of receiving this Amended Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Amended Complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The Answer must be sent or delivered to the Court, whose address is Clerk of Circuit Court, Dane County Circuit Court, 215 S. Hamilton Street, Madison, WI 53703; to Law Forward, Inc., 222 West Washington Avenue, Suite 250, Madison, Wisconsin, 53703 and to Stafford Rosenbaum LLP, 222 West Washington Avenue, Suite 900, Madison, Wisconsin 53701. You may have an attorney help or represent you.

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

**DATED:** July 20, 2023

Respectfully submitted,

By: /s/Daniel S. Lenz

Daniel S. Lenz, SBN 1082058

Scott B. Thompson, SBN 1098161

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**FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE  
RELIEF**

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Plaintiffs EXPO Wisconsin, Inc. (“EXPO”) and WISDOM, Inc. (“WISDOM”) (collectively, “Plaintiffs”) seek declaratory and injunctive relief and allege as follows:

### **NATURE OF ACTION**

1. The Wisconsin State Legislature initiated a referenda process through its passage of 2023 Enrolled Joint Resolution 2 and 2023 Enrolled Joint Resolution 4 (collectively, the “Resolutions”).

2. The Resolutions were not timely filed with the appropriate officials or agencies, an error that should have precluded the associated referenda questions from the ballot in this year’s Spring Election.

3. Nevertheless, the Resolutions were included on the Spring Election ballot.

4. A majority of the voters voted in favor of the ballot questions.

5. Plaintiffs seek an order from this Court declaring that:

a. The relevant referenda should not have been included on the April 4, 2023 Spring Election Ballot,

b. The results of the April 4, 2023 election with respect to these referenda are invalid,

c. The Constitution has not been amended as contemplated by Enrolled Joint Resolution 2, and

d. Enrolled Joint Resolution 4 should not have been included on the ballot.

6. Wisconsin law prescribes a clear deadline by which “all proposed constitutional amendments and any other measure or question that is to be submitted

to the vote of the people” must be “filed with the official or agency responsible for preparing the ballots.” Wis. Stat. § 8.37. That deadline is “no later than 70 days prior to the election at which the amendment, measure or question will appear on the ballot.” *Id.*

7. For any amendment, measure, or question to appear on the ballot for the April 4, 2023 Spring Election, the question must have been “filed with the official or agency responsible for preparing the ballots” by January 24, 2023. Wis. Stat. § 8.37.<sup>1</sup>

8. In Wisconsin, the “official or agency responsible for preparing the ballots” are County Clerks, constitutional officers who are statutorily charged with preparing and distributing ballots. Wis. Stat. §§ 7.10(1)(a), (2), (3). (In Milwaukee County, that responsibility is vested in the Milwaukee County Board of Election Commissioners (“MCBEC”), chaired by the Milwaukee County Clerk. Wis. Stat. §§ 7.20(1), 7.21(1).)

9. While the Legislature may have filed the Resolutions with the Wisconsin Elections Commission (WEC) before the 70–day deadline, the Resolutions were not filed with the county clerks or MCBEC, who are the actual filing officers, until January 26, 2023.

10. It follows that the Resolutions were not timely filed and therefore did not qualify for inclusion on the ballot for the April 4, 2023 Spring Election.

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<sup>1</sup> Seventy days before April 4, 2023 was January 24, 2023. However, in calculating the deadline, the first day of the period is excluded. Wis. Stat. § 990.001(4)(a).

11. Nonetheless, on January 26, 2023 Defendants issued a memorandum to all county clerks and MCBEAC regarding “Certification of Referendum Question and Type A Notice of Referendum for the April 4, 2023 Spring Election” (the “Memorandum”).

12. The Memorandum asserted that the Resolutions qualified for the April 4, 2023 Spring Election ballot and should be included as the county clerks prepared ballots for that election. Attached to the Memorandum, WEC provided several documents, including a Certification of Referendum Question, a draft Type A Notice of Referendum Election, and an Appendix A.

13. On April 4, 2023, the referenda appeared on ballots for Wisconsin voters. Both referenda passed, in the sense of receiving a majority of votes cast. Because it was unlawful for the referenda to appear on the ballots in the first place, the passage of the referenda should be declared invalid by this Court.

### **JURISDICTION & VENUE**

14. This Court has jurisdiction over the subject matter of this dispute pursuant to Article VII, Section 8 of the Wisconsin Constitution and Wis. Stat. § 753.03, which provide for subject matter jurisdiction over all civil matters within this State.

15. This Court has jurisdiction to grant declaratory relief pursuant to Wis. Stat. § 806.04.

16. This Court has personal jurisdiction over Defendant Wisconsin Elections Commission, Defendants Don Millis, Robert F. Spindell, Jr., Mark Thomsen, Ann S. Jacobs, Marge Bostelmann, and Joseph J. Czarnezki, in their official capacities as members of the Wisconsin Elections Commission, and Defendant Meagan Wolfe, in her official capacity as Administrator of the Wisconsin Elections Commission. WEC is a state agency organized under the laws of the State of Wisconsin. WEC, its Commissioners, and its Administrator perform their work and have their principal place of business in Madison, Wisconsin.

17. Venue is appropriate in Dane County, under Wis. Stat. § 801.50, because Defendants are located in and do substantial business in Dane County.

18. Venue is also appropriate in Dane County, under Wis. Stat. § 227.40(1) because Plaintiff EXPO's principal place of business is located in Dane County.

### **PARTIES**

19. Plaintiff EXPO is a nonpartisan, nonprofit, non-stock corporation organized under the laws of the State of Wisconsin with its principal place of business located at 17 Applegate Court, Suite 202, Madison, Wisconsin 53713.

20. Formed in 2014 and incorporated in 2019, EXPO stands for EX-Incarcerated People Organizing. EXPO works to end mass incarceration, eliminate all forms of structural discrimination against individuals who were formerly incarcerated, and restore formerly incarcerated people to full participation in the life of their communities. EXPO's mission statement reads: "Led by people who are

directly impacted, EXPO is committed to correcting the narrative within all systems that support mass incarceration and excessive supervision. We are dedicated to creating just systems with policies that build healthy families and safe communities.” Formerly incarcerated people lead the organization. EXPO is an affiliate of WISDOM.

21. EXPO has seven chapters across the state and holds regular chapter and statewide meetings. EXPO has over 150 sustaining volunteers who support the organization’s work.

22. EXPO has been directly involved in the issues the Resolutions address, particularly the proposed amendment contained in 2023 Enrolled Joint Resolution 2. As a leading organization working as and on behalf of individuals who were formerly incarcerated, EXPO has explained the damage that expanded pretrial detention could cause to the lives of the over 65,000 Wisconsinites with a prior conviction history, including individuals who may be primary caregivers for children and others.

23. EXPO’s Executive Director, Jerome Dillard, testified twice before the Legislature in opposition to the Resolution and has spoken publicly about the amendment. EXPO conducted a digital media campaign encouraging individuals to contact their legislators. At monthly or bi-monthly chapter meetings, as well as during EXPO’s monthly statewide meeting, the organization disseminated information regarding the status and impact of the proposed amendment. In performing this work, EXPO has incurred additional expenses and spent considerable time and resources.

24. EXPO has also engaged with the proposed advisory referendum, including by providing education regarding the referendum through digital organizing and meetings.

25. Plaintiff WISDOM is a nonpartisan, nonprofit, non-stock corporation organized under the laws of the State of Wisconsin with its principal place of business located at 2821 Vel Phillips Avenue, Suite 115, Milwaukee, Wisconsin 53212.

26. WISDOM is a statewide network, comprised mainly of faith-based organizations and congregations. WISDOM has 13 affiliate organizations, including EXPO. WISDOM's network includes approximately 160 congregations representing 19 religious denominations, plus approximately 300 additional individual members.

27. Since its founding in 2000, WISDOM has worked on behalf of criminal law reform in Wisconsin and to end mass incarceration, expand funding to community-based alternatives, and advocate for treatment-based alternatives and diversions. As part of its commitment to racial and economic justice, WISDOM also performs advocacy in the areas of immigration and immigrant rights, public transportation, environmental justice, and racial equity, and fostering civil engagement.

28. WISDOM has been directly involved in the issues the Resolutions address and has spent considerable time and resources opposing the Resolutions. For example, in April 2022, WISDOM convened a group of approximately 60 advocates in Green Bay for a Transformational Justice Group, which determined its first priority

would be opposition to to the proposed constitution amendment. WISDOM testified in opposition to the amendment. The organization has kept its members apprised of the status of the amendment through its contact list of over 12,000 individuals and encouraged those members to engage with and oppose the amendment's passage, including by contacting their legislators.

29. As part of its commitment to racial and economic justice, WISDOM is also opposed to the advisory referendum question contained in 2023 Enrolled Joint Resolution 4. WISDOM has historically opposed similar efforts by the Legislature to restrict or deny public benefits to qualified individuals.

30. Over the past 20 years, there have been periodic efforts, often embedded in state budget proposals, to require increased work requirements for people receiving public benefits. WISDOM and its affiliates have consistently voiced opposition to such efforts.

31. Defendant WEC is a state agency created under the laws of Wisconsin and comprised of six appointed members.

32. Defendant WEC has "the responsibility for the administration of chs. 5 to 10 and 12 [of the Wisconsin statutes] and other laws relating to elections and election campaigns other than laws relating to campaign financing." Wis. Stat. § 5.05(1).

33. Defendant WEC is tasked with enforcing Wisconsin's election laws.

34. WEC has an important role in creating ballot *forms*, including by certifying referenda, which WEC performed in this instance. However, WEC is not the “official or agency responsible for preparing the ballots.” Wis. Stat. § 8.37.

35. Defendants Don Millis, Robert F. Spindell, Jr., Mark L. Thomsen, Ann S. Jacobs, Marge Bostelmann, and Joseph J. Czarnezki are sued in their official capacities as the members of the Wisconsin Elections Commission.

36. Defendant Meagan Wolfe is sued in her official capacity as the Administrator of the Wisconsin Elections Commission. As Administrator of the Wisconsin Elections Commission, Defendant Wolfe serves as “the chief election officer of this state.” Wis. Stat. § 5.05(3g).

## FACTUAL ALLEGATIONS

### *a. Referendum Procedure in Wisconsin*

37. One way the Wisconsin Constitution provides for amendments is as follows: An amendment may be introduced in either house of the Legislature. If the proposed amendment passes both houses, it is referred to the next Legislature. If it passes again, it is “the duty of the legislature to submit such proposed amendment or amendments to the people in such manner and at such time as the legislature shall prescribe[.]” If a majority of the voters approve the proposed amendment, it becomes part of the Constitution. Wis. Const. art. XII, § 1.

38. Wisconsin law also permits the Legislature to submit statewide advisory referenda to the voters. Wis. Stat. § 13.175.

39. The Legislature prescribed the following process for putting before the voters any proposed constitutional amendment or an advisory referendum:

**Filing of referenda petitions or questions.** Unless otherwise required by law, all proposed constitutional amendments and any other measure or question that is to be submitted to a vote of the people, or any petitions requesting that a measure or question be submitted to a vote of the people, if applicable, shall be filed with the official or agency responsible for preparing the ballots for the election no later than 70 days prior to the election at which the amendment, measure or question will appear on the ballot. No later than the end of the next business day after a proposed measure is filed with a school district clerk under this section, the clerk shall file a copy of the measure or question with the clerk of each county having territory within the school district.

Wis. Stat. § 8.37.

40. The statutes also prescribe WEC's role in this process.

41. Specifically, for a spring election, WEC is required to send type A and C notices to the county clerks and MCBEC, certifying each referendum question that will appear on the ballot. WEC must complete this step "as soon as possible, but no later than the first Tuesday in March." Wis. Stat. § 10.06(1)(e).

42. When there is more than one referendum, WEC also numbers the questions in chronological sequence. Wis. Stat. § 5.64(2)(c). And WEC has the statutory duty to prescribe ballot *forms*. Wis. Stat. § 70.8(1).

***b. The Resolutions***

43. On February 15, 2022, the 2021-2022 Wisconsin State Assembly adopted 2021 Assembly Joint Resolution 107, a proposal to amend Sections 6, 8(2), and 8(3) of Article I of the Wisconsin Constitution.

44. On February 22, 2022, the 2021-2022 Wisconsin State Senate concurred.

This resolution was enrolled as 2021 Enrolled Joint Resolution 6.<sup>2</sup>

45. By majority vote, the 2023-2024 Wisconsin State Senate approved this proposed amendment, by 2023 Senate Joint Resolution 2, again on January 17, 2023.

46. The 2023-2024 Wisconsin Assembly concurred on January 19, 2023. The proposed amendment was enrolled as 2023 Enrolled Joint Resolution 2.<sup>3</sup>

47. 2023 Enrolled Joint Resolution 2 proposed to amend provisions of the Wisconsin Constitution related to the conditions in which a court may impose monetary conditions on pretrial release of persons accused of crimes.<sup>4</sup>

48. 2023 Enrolled Joint Resolution 2 provided that the following questions were to be submitted to the voters on the ballot for the April 4, 2023 Spring Election:

**Question 1:** Conditions of release before conviction. Shall section 8 (2) of article I of the constitution be amended to allow a court to impose on an accused person being released before conviction conditions that are designed to protect the community from serious harm?

**Question 2:** Cash bail before conviction. Shall section 8 (2) of article I of the constitution be amended to allow a court to impose cash bail on a person accused of a violent crime based on the totality of the circumstances, including the accused's previous convictions for a violent crime, the probability that the accused will fail to appear, the need to protect the community from serious harm and prevent witness intimidation, and potential affirmative defenses?"

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<sup>2</sup> <https://docs.legis.wisconsin.gov/2021/proposals/ajr107>.

<sup>3</sup> <https://docs.legis.wisconsin.gov/2023/proposals/sjr2>.

<sup>4</sup> <https://docs.legis.wisconsin.gov/2023/related/enrolled/sjr2>

49. On January 17, 2023, the Wisconsin State Senate adopted 2023 Senate Joint Resolution 4. The Wisconsin State Assembly concurred on January 19, 2023. The resolution was enrolled as 2023 Enrolled Joint Resolution 4.<sup>5</sup>

50. 2023 Enrolled Joint Resolution 4 provided for an advisory referendum regarding public benefits and provided that the following question was to be submitted to the voters on the ballot for the April 4, 2023 Spring Election: “Shall able-bodied, childless adults be required to look for work in order to receive taxpayer-funded welfare benefits?”<sup>6</sup>

51. The Legislature transmitted both 2023 Enrolled Resolution 2 and 2023 Enrolled Resolution 4 to Defendant WEC on January 19, 2023.

52. The Legislature did not file 2023 Enrolled Joint Resolution 2 or 2023 Enrolled Joint Resolution 4 with the county clerks or MCBEC.

***c. WEC’s Actions***

53. After receiving the Resolutions, on January 26, 2023, WEC issued the Memorandum and its attachments to the county clerks and MCBEC.<sup>7</sup>

54. The Memorandum attached a Certification of Referendum Question, a draft Type A Notice of Referendum Election, and an Appendix A. A true and correct copy of the Memorandum and attachments is attached as Exhibit 1.

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<sup>5</sup> [https://docs.legis.wisconsin.gov/2023/proposals/reg/sen/joint\\_resolution/sjr4](https://docs.legis.wisconsin.gov/2023/proposals/reg/sen/joint_resolution/sjr4).

<sup>6</sup> <https://docs.legis.wisconsin.gov/2023/related/enrolled/sjr4>.

<sup>7</sup> <https://elections.wi.gov/memo/certification-referendum-question-and-type-notice-referendum-april-4-2023-spring-election>.

55. The Certification of Referendum Question attached to the Memorandum, signed by Defendant Wolfe, certified that the referendum questions from the Resolutions “shall be submitted to the voters at the Spring Election to be held in the several cities, villages, towns, wards, and elections districts of the State of Wisconsin on April 4, 2023.”

56. The Type A Notice of Referendum Election attached to the Memorandum was intended for use by the county clerks and MCBEC.

57. The Memorandum stated that the Type A Notice of Referendum Election had to be published, as provided in Wis. Stat. § 10.06(2)(f), on March 7, 2023, the fourth Tuesday preceding the Spring Election.

58. Appendix A to the Memorandum outlines Defendant WEC’s understanding “that the Wisconsin Elections Commission is the only filing officer for state-level referenda questions and the statutory ballot ordering requirements for state-level referenda fall to the Commission alone.”

59. Appendix A recognizes that the filing of referenda is governed by, and must be undertaken in compliance with, Wis. Stat. § 8.37.

60. Appendix A notes that, “The phrase ‘the official or agency responsible for preparing the ballots’ may cause confusion because of overlapping ballot preparation responsibilities and the fact that most of the printing and distribution work lies with the county clerks.”

61. It nonetheless concludes that, “[t]hough both county clerks and the Commission have responsibilities for preparing state-level ballots, the Commission’s responsibilities must precede the counties’ for the process to function coherently” due to Defendant WEC’s responsibilities to certify referenda questions and provide various notices, and due to the requirement in Wis. Stat. § 5.64(2)(c) that Defendant WEC number the questions in chronological sequence.

62. Defendant WEC’s assertion in Appendix A that it (WEC) is the filing officer for state-level referenda contradicts Wisconsin law.

63. As Appendix A acknowledges, the county clerks and MCBEC prepare the ballots for state-wide elections.

64. Wis. Stat. § 7.10 requires the county clerks (and MCBEC, through the operation of Wis. Stat. §§ 7.20 and 7.21) to prepare the ballots: “PREPARING BALLOTS. The county clerk *shall prepare copy for the official ballots* immediately upon receipt of the certified list of candidates’ names from the commission.” Wis. Stat. § 7.10(2) (emphasis added). “The official and sample ballots shall be prepared in substantially the same form as those prescribed by the commission under s. 7.08 (1) (a).” Wis. Stat. § 7.10(1)(a).

65. The county clerks and MCBEC bear statutory responsibility to “provide ballots for all national, state and county offices, including metropolitan sewerage commission elections under s. 200.09 (11) (am), for municipal judges elected under s.

755.01 (4) *and for state and county referenda.*” Wis. Stat. § 7.10(1)(a) (emphasis added).

66. It is similarly the duty of the county clerks and MCBEC—and not of Defendant WEC—to distribute ballots to the municipal clerks in time for elections. Wis. Stat. § 7.10(3).

67. It is, therefore, the county clerk (or, in Milwaukee County, MCBEC) who is the official “responsible for preparing the ballots” as described in Wis. Stat. § 8.37.

68. Pursuant to these statutes, it is the county clerks and MCBEC who prepare the ballots for state-wide referenda, based on forms received from Defendant WEC.

69. The county clerks and MCBEC are therefore the appropriate officials and agency, respectively, with which “all proposed constitutional amendments and any other measure or question that is to be submitted to the vote of a people” must be filed. Wis. Stat. § 8.37.

70. The Resolutions were not filed with the county clerks and MCBEC prior to the deadline established in Wis. Stat. § 8.37.

71. Because the Resolutions were not timely filed, they did not meet the legal requirements for inclusion on the ballot for the April 4, 2023 Spring Election.

***d. Plaintiffs’ work leading up to and during the April 4, 2023 election***

72. Plaintiffs WISDOM and EXPO advocated strenuously against the referenda.

73. In the lead-up to the election, WISDOM reached out to approximately 100,000 individuals through door-to-door canvassing.

74. WISDOM also sent out approximately 80,000 emails and engaged in social media outreach to contact approximately 10,000 individuals.

75. WISDOM also held approximately 200 events in anticipation of the election, with participation totaling 8,000 people.

76. In total, WISDOM reached approximately 200,000 people in anticipation of the April 4, 2023 Spring Election.

77. Approximately one-third of WISDOM's outreach was focused specifically on educating individuals and voters about the referenda.

78. Due to the short time between the enrollment of the Resolutions and their inclusion on the April 4, 2023 ballot, WISDOM was only able to reach a small percentage of the number of people it would have otherwise contacted about the Resolutions.

79. When WISDOM was able to contact individuals and voters and provide information about the Resolutions, it had a significant impact.

80. As a result of the unlawful inclusion of the referenda on the April 4, 2023 ballot, WISDOM was deprived of additional opportunity to organize against the Resolutions.

81. Similarly, EXPO spent considerable time and resources organizing against the Resolutions in the lead-up to the election.

82. Between February 20 and April 4, 2023, EXPO held two in-person events and four virtual events in opposition to the Resolutions, each of which was attended by approximately 40–45 individuals.

83. EXPO also held four virtual events and weekly internal strategy sessions to oppose the Resolutions.

84. During this period, four EXPO organizers spent three days per week canvassing in opposition to the Resolutions.

85. EXPO also sent an average of three email messages per week to its distribution list about the Resolutions.

86. As a result of the need to focus on the Resolutions during the shortened timeframe before the April 4, 2023 Spring Election, EXPO was forced to divert resources from other campaigns on which it works, including efforts to restore voting rights, address Wisconsin's extended supervision system, and advocate for safe, dignified housing for the population EXPO serves.

87. On April 4, 2023, the spring election was held in Wisconsin. Both referenda received a majority of the votes cast.

88. Because the referenda were included on the ballot before they lawfully should have been, some people within the population EXPO serves were unable to vote against it because their voting rights had not yet been restored.

89. Approximately 225 individuals within the population EXPO serves were not able to vote in the April 4, 2023 Spring Election but will have their voting rights

restored before the next statewide election. Each and every one of those individuals suffered an intrusion on their constitutional right to vote when the Resolutions were included on a ballot for which the Resolutions did not lawfully qualify.

90. The passage of the constitutional amendment referendum on cash bail created by Enrolled Joint Resolution 2 permanently harmed the interests of EXPO and WISDOM and the communities on whose behalf they advocate by expanding the ability of circuit court judges to rely on past convictions in setting cash bail.

91. As a result of the Resolutions, individuals in the community on whose behalf EXPO advocates have been subject to increased pretrial detention.

92. The passage of the advisory referendum on work requirements for welfare permanently harmed the interests of EXPO and WISDOM, both of which opposed the referendum.

## **CLAIMS FOR RELIEF**

### **COUNT ONE**

#### **(Wis. Stat. § 227.40(1) Declaratory Judgment as to Defendant WEC's Memorandum and Accompanying Documents)**

93. All preceding paragraphs are reincorporated and realleged here.

94. Pursuant to Wis. Stat. § 227.40(1), a plaintiff may seek declaratory judgment to determine the validity of an agency rule or guidance document.

95. The Memorandum and its attachments are guidance documents within the definition of Wis. Stat. § 227.01(3m) as they are formal and official documents

and communications from Defendant WEC and Defendant Wolfe that explain their implementation of Wis. Stat. § 8.37.

96. Because the Memorandum and its attachments state that Defendant WEC, rather than the county clerks and MCBEC, are the filing officers for purposes of Wis. Stat. § 8.37, those documents are contrary to Wisconsin law and are, therefore, invalid.

97. Wis. Stat. § 8.37 required the Resolutions to be filed with the county clerks and MCBEC no later than January 25, 2023.

98. Neither the Legislature nor any other person or entity timely filed the Resolutions with any or all of “the official[s] or agenc[ies] responsible for preparing the ballots for the election” prior to the expiration of the 70-day deadline.

99. The conclusion expressed in the Memorandum and its attachments that the Resolutions qualified for inclusion on the April 4, 2023 Spring Election ballot is contrary to Wisconsin law. It follows that the Memorandum and its attachments were invalid.

100. Therefore, Plaintiffs are entitled to a declaratory judgment pursuant to Wis. Stat. §§ 227.40(1) and (4)(a) declaring the Memorandum and its attachments invalid.

**COUNT TWO****(Wis. Stat. § 806.04 Declaratory Judgment that the Referenda did not Qualify for Inclusion on the Spring 2023 Ballot)**

101. All preceding paragraphs are reincorporated and realleged here.

102. “Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” Wis. Stat. § 806.04(1). This jurisdiction exists “to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations ... .” Wis. Stat. § 806.04(12).

103. Wis. Stat. § 806.04 is “remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations; and is to be liberally construed and administered.” Wis. Stat. § 806.04(12).

104. Because the Resolutions were not filed with “the official or agency responsible for preparing the ballots for the election” prior to the expiration of the 70-day deadline, and because of the unlawful guidance proffered in the Memorandum and attachments, there now exists uncertainty as to whether the Resolutions were properly included on the April 4, 2023 Spring Election ballot, notwithstanding the clear and express requirements of Wisconsin law.

105. Therefore, pursuant to Wis. Stat. § 806.04, Plaintiffs are entitled to a declaration that the Resolutions did not qualify for inclusion on the April 4, 2023 Spring Election.

### COUNT THREE

**(Wis. Stat. § 806.04 and Wis. Const. Art. XII § 1 Declaratory Judgment that the Results of the April 4, 2023 Election with Respect to the Referenda are Invalid)**

106. All preceding paragraphs are reincorporated and realleged here.

107. For an amendment to the Wisconsin Constitution to be effective, it must be submitted “to the people in such manner and at such time as the legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors voting thereon, such amendment or amendments shall become part of the constitution[.]” Wis. Art. XII § 1.

108. Because the Resolutions were not timely filed with the filing officers—the county clerks—prior to the statutory deadline, they were not submitted “to the people in such manner and at such time as the legislature shall prescribe” and therefore were not properly submitted to the people as required by Article XII § 1.

109. As a result, the Constitution was not amended as authorized by Article XII.

110. Pursuant to Wis. Stat. § 806.04, Plaintiffs are entitled to a declaration that because the Resolutions did not qualify for inclusion on the April 4, 2023 Spring Election, the results of that election with respect to the Resolutions are invalid under Article XII § 1 of the Wisconsin Constitution, such that Enrolled Joint Resolution 2 did not amend the Wisconsin Constitution.

## PRAYER FOR RELIEF

Plaintiffs EXPO and WISDOM respectfully request that this Court enter an order granting Plaintiffs the following relief:

- (a) A declaratory judgment pursuant to Wis. Stat. §§ 227.40(1) and (4)(a) declaring that the Memorandum and its attachments are invalid because they erroneously assert that Defendant WEC is the appropriate filing official or agency for purposes of Wis. Stat. § 8.37.
- (b) A declaratory judgment pursuant to Wis. Stat. § 806.04 declaring that the Resolutions did not qualify for inclusion on the April 4, 2023 Spring Election;
- (c) A declaratory judgment pursuant to Wis. Stat. § 806.04 declaring that the results of the election as to the Resolutions are not valid, and the Constitution has not been amended as proposed in Enrolled Joint Resolution 2.
- (d) Such other or further relief as this Court deems just and proper.

**DATED:** July 20, 2023

Respectfully submitted,

By: /s/Daniel S. Lenz  
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