

STATE OF WISCONSIN  
IN SUPREME COURT

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Case No. 2020AP1488-OA

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HOWIE HAWKINS and ANGELA WALKER,

Petitioners,

v.

WISCONSIN ELECTIONS COMMISSION,  
ANN S. JACOBS in her official capacity as  
Chair of the Wisconsin Elections Commission,  
MARK L. THOMSEN in his official capacity as  
Vice-Chair of the Wisconsin Elections  
Commission, MARGE BOSTELMANN in her  
official capacity as Secretary of the Wisconsin  
Elections Commission, JULIE M. GLANCEY in  
her official capacity as a Commissioner on the  
Wisconsin Elections Commission, DEAN  
KNUDSON in his official capacity as a  
Commissioner on the Wisconsin Elections  
Commission, ROBERT F. SPINDELL, JR. in  
his official capacity as a Commissioner on the  
Wisconsin Elections Commission, and ALLEN  
ARNTSEN,

Respondents.

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**CERTIFICATE OF SERVICE**

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I hereby certify that 9 copies of the Motion to Strike  
Petitioners' September 9, 2020, Letter Reply Brief and  
Supplemental Affidavit were faxed to the Wisconsin Supreme  
Court Clerks Office, fax number (608) 276-0640.

I further certify that a copy of this motion will be served via email upon Andrew Phillips ([aphillips@vonbriesen.com](mailto:aphillips@vonbriesen.com)), Jeffrey Mandell ([JMandell@staffordlaw.com](mailto:JMandell@staffordlaw.com)), Doug Poland ([dpoland@staffordlaw.com](mailto:dpoland@staffordlaw.com)), and Jacob Curtis ([jcurtis@vonbriesen.com](mailto:jcurtis@vonbriesen.com)).

Dated this 9th day of September 2020.

Respectfully submitted,

JOSHUA L. KAUL  
Attorney General of Wisconsin

STEVEN C. KILPATRICK  
Assistant Attorney General  
State Bar #1025452

*Colin Roth*

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COLIN T. ROTH  
Assistant Attorney General  
State Bar #1103985

Attorneys for Respondents Wisconsin  
Elections Commission, Ann Jacobs,  
Mark Thomsen, Marge Bostlemann,  
Julie Glancey, Dean Knudson, and  
Robert Spindell

Wisconsin Department of Justice  
Post Office Box 7857  
Madison, Wisconsin 53707-7857  
(608) 266-1792 (SCK)  
(608) 264-6219 (CTR)  
(608) 294-2907 (Fax)  
kilpatricksc@doj.state.wi.us  
rothct@doj.state.wi.us

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her official capacity as a Commissioner on the  
Wisconsin Elections Commission, DEAN  
KNUDSON in his official capacity as a  
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Commission, ROBERT F. SPINDELL, JR. in  
his official capacity as a Commissioner on the  
Wisconsin Elections Commission, and ALLEN  
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Respondents.

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**MOTION TO STRIKE PETITIONERS'  
SEPTEMBER 9, 2020, LETTER REPLY BRIEF AND  
SUPPLEMENTAL AFFIDAVIT**

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Respondents Wisconsin Election Commission and Commissioners move this Court, pursuant to Wis. Stat. § 809.14(1), for an order striking the letter reply brief filed by Petitioners on September 9, 2020, and the accompanying affidavit of Audrey McGraw. The grounds for this motion are as follows:

1. Wisconsin Stat. § 809.70 does not contemplate reply briefs in support of a petition for an original action. Petitioners did, however, request a departure from that default by asking this Court for leave to file a reply brief in support of their petition by 5 p.m. on Wednesday, September 9, 2020. (Pet. ¶ 6.)

2. This Court did not grant Petitioners' request for a reply brief. Instead, in a September 3, 2020, order, it acknowledged the filing of their petition and ordered Respondents to file a response by 4:00 p.m. on September 8, 2020.

3. Despite the denial of Petitioners' request for leave to file a reply brief, they filed a letter with this Court the morning of September 9, 2020, that amounts to an improper reply brief. The "letter" contains both argument regarding Respondents' September 8 response brief and an accompanying affidavit with new evidence offered for the first time.

4. Because this Court did not permit a reply, Petitioners' letter reply brief and accompanying affidavit are procedurally improper and should be stricken for that reason alone.

5. Petitioners' reply filings are procedurally improper also because they offer new evidence for the first time that Respondents have had no chance to address. In Petitioners' reply filings, they offer an affidavit from Audrey McGraw, the Clerk of Jefferson County, regarding that county's purported ability to reprint ballots in time to meet the September 16, 2020, deadline to distribute ballots to municipal clerks. Petitioners could have included such evidence with their petition and given Respondents a chance to address it, but they failed to do so. This attempt to file new evidence with an unauthorized reply brief that Respondents

have no opportunity to counter is improper and provides another reason to strike both filings.

6. Moreover, the assertion in the McGraw affidavit on which Petitioners' reply brief relies should be stricken because it lacks the proper evidentiary foundation. Wisconsin Stat. § 906.02 provides that "[a] witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." McGraw's assertion that "on information and belief, all counties would be able to meet the statutory deadline of September 16, 2020" does not meet this personal knowledge requirement. (McGraw Aff. ¶ 7; Pet. Sept. 9, 2020, Letter Reply Br. at 2.)

7. Simply put, Jefferson County's clerk has no personal knowledge of whether Wisconsin's 71 other counties could meet the September 16 statutory deadline if they all had to restart the entire printing process now. To the contrary, clerks from three counties—including Wisconsin's two most populous—have explained why their counties could *not* start reprinting ballots now and still meet the September 16 deadline. (McDonell Aff. ¶¶ 2–6; O'Bright Aff. ¶¶ 2–10; Christenson Aff. ¶¶ 2–6.) Even if this Court were to consider Petitioners' reply filings, it should strike and disregard this portion of the McGraw affidavit and the argument relying on it in Petitioners' letter reply brief.

8. And McGraw's assertions regarding Jefferson County itself, even if true, miss the point. Petitioners have no basis to dispute that many counties (including Wisconsin's two most populous) could *not* meet the statutory deadline. So, if the relief Petitioners seek were granted, some—and probably almost all—Wisconsin counties could not comply with their statutory obligations to provide ballots to municipalities by September 16.

9. Respondents therefore respectfully request that this Court strike Petitioners' reply letter brief dated September 9, 2020, and the accompanying affidavit of Audrey McGraw.

10. Undersigned counsel is authorized to represent that Respondent Allen Arntsen joins this motion to strike.

Dated this 9th day of September 2020.

Respectfully submitted,

JOSHUA L. KAUL  
Attorney General of Wisconsin



STEVEN C. KILPATRICK  
Assistant Attorney General  
State Bar #1025452

COLIN T. ROTH  
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