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September 9, 2020

**VIA HAND DELIVERY AND ELECTRONIC MAIL**

Wisconsin Supreme Court  
Office of the Clerk  
110 E. Main Street  
P.O. Box 1688  
Madison, WI 53701

RE: *Hawkins v. Wisconsin Election Commission*, Case No. 2020AP1488-OA

Dear Clerk:

Petitioners Howie Hawkins and Angela Walker respectfully request leave to submit this letter and affidavit to the Court to address claims made by the Wisconsin Elections Commission in its submission, specifically that ballots are already being mailed to voters. Simply put, the WEC has not submitted any evidence to support that claim.

First, at no point in the Affidavit of Meagan Wolfe, the Administrator of the Wisconsin Elections Commission (WEC), does Ms. Wolfe actually represent that ballots have been mailed to voters. The only information Ms. Wolfe provides is WEC data regarding “Ballots Sent,” which Ms. Wolfe acknowledges would include ballots for which mailing labels have been printed but which have not actually been mailed yet. Indeed, Ms. Wolfe expressly states that “[b]allots in this “Ballots Sent” category *could be mailed* to voters at any time once municipalities receive them.” Ms. Wolfe speculates that “the figure also surely includes some ballots that have actually been mailed,” but presents no actual evidence to support that assertion. Ms. Wolfe does not identify, for example, any municipalities that have actually received ballots from county clerks, let alone municipalities that have sent ballots to voters. And, as set forth below, none of the affidavits submitted by county clerks on behalf of the WEC’s submission make such a claim.

For example, the affidavit of Scott McDonnell, the Dane County Clerk, does not claim that ballots have been sent to voters. Mr. McDonnell states that 95% of Dane County’s ballots have been printed as of September 8, but he does not represent that those ballots have been distributed to municipal clerks or sent to voters. Indeed, Mr. McDonnell’s stated concern is with meeting the deadlines for sending the ballots to municipal clerks, not that ballots have already been sent to voters.

Similarly, Lori O'Bright, the Outagamie County Clerk, also does not claim that ballots have been sent to voters. Ms. O'Bright avers that "[o]nce ballots are sent to the municipalities, they will begin to send those ballots to absentee voters quickly to meet state and federal deadlines," but at no point does she claim that ballots have been sent to the municipalities. Again, Outagamie County's stated concern is meeting the deadline for sending ballots to municipalities, not that ballots have been sent to voters.

Finally, George Christenson, the Milwaukee County Clerk, similarly makes no claim that ballots have actually been sent to voters. Mr. Christenson simply avers that Milwaukee County has submitted its order to its printer and that "[o]nce ballots are sent to municipal clerks, they will begin to send those ballots to absentee voters quickly to meet state and federal deadlines." Indeed, Mr. Christenson acknowledges that Milwaukee County is still in the printing phase, by raising concerns about its ability to meet state and federal deadlines if it is required to print a new a ballot.

Surely, if ballots were actually already being sent to voters, these clerks would have stated as much. In short, there is simply no actual evidence that ballots have been sent to voters. The WEC's representations are nothing more than unsupported speculation in an attempt to avoid judicial review of a blatantly illegal refusal by the WEC to place on the ballot candidates who met all necessary statutory requirements.

Indeed, the Petitioners respectfully request that the Court consider the attached affidavit of Jefferson County.<sup>1</sup> This affidavit makes clear that if this Court takes prompt action there is every reason to believe that county clerks will be able to meet their statutory deadlines if this Court issues a decision in favor of the Petitioners.

Thank you for your time and attention to this matter.

Very truly yours,

von BRIESEN & ROPER, s.c.



Jacob J. Curtis

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<sup>1</sup> Due to the exigencies of this matter, the attached affidavit is a true and correct copy. At the Court's request, Petitioners will provide a true and correct original of this affidavit within two business days.

### **LIST OF SERVICE**

One (1) copy of this letter; and one (1) copy of the attached affidavit have been served upon the following via e-mail, pursuant to agreement:

**Attorney Nathan W. Judnic (nathan.judnic@wisconsin.gov)**

Accepting service on behalf of the Wisconsin Elections Commission and the individual Commissioners in their official capacities

**Attorney Jeffrey Mandell (jmandell@staffordlaw.com)**

Accepting service on behalf of Respondent Mr. Allen Arntsen

**Assistant Attorney General Colin T. Roth (rothct@doj.state.wi.us)**

Accepting service on behalf of the Wisconsin Department of Justice