

FRIENDS AND NEIGHBORS OF
ROBIN VOS, A WISCONSIN
CAMPAIGN COMMITTEE, et al.,

Plaintiffs,

v.

Case No. 14-CV-1932

WISCONSIN GOVERNMENT
ACCOUNTABILITY BOARD,
et al.,

Defendants.

CONSOLIDATED MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO
DISMISS AND IN OPPOSITION TO PLAINTIFFS' MOTION FOR TEMPORARY
RESTRAINING ORDER AND/OR TEMPORARY INJUNCTION

INTRODUCTION

This case involves a request for declaratory and injunctive relief that would amount to an extraordinary judicial intervention in the preparation and circulation of ballots for the upcoming November 4, 2014, General Election (hereinafter "the Election"). The relief being requested by the plaintiffs is contrary to the procedure prescribed by the statutes (Wis. Stat. § 5.06) and is barred by the Wisconsin Court of Appeals' holding in *Kuechmann v. La Crosse School District*, 170 Wis. 2d 218, 487 N.W.2d 639 (Ct. App. 1992). This matter is, therefore, appropriate for dismissal without consideration of the need to review plaintiffs' request for injunctive relief.

The plaintiffs are the campaign committee for Wisconsin State Representative Robin Vos and the campaign committee for Wisconsin State Senator Scott Fitzgerald (hereinafter,

collectively, “the Committees”). The defendants are the Wisconsin Government Accountability Board, its individual members, and its executive director (hereinafter, collectively, “the GAB”).

The Committees challenge the legality of the omission of certain lines and shading from template ballot forms for the Election produced by the GAB. First, they allege that the omission of a line or comparable demarcation separating the title of each office on the ballot from the name of the first candidate for that office is likely to confuse some voters into mistakenly thinking the first candidate is the only candidate for that office, resulting in an unfair electoral advantage for the first candidate. Second, the Committees allege that the omission of shading to highlight the title of each separate office on the ballot is likely to confuse some voters into missing where one race ends and another begins, resulting in an inadvertent failure by the voter to vote in the race further down the ballot. These two forms of voter confusion, according to the Committees, will impair the voting rights of confused voters, in violation of the Wisconsin and United States Constitutions, and are contrary to an alleged statutory requirement that all ballots must minimize the possibility of disenfranchisement of electors through voter confusion. *See* Wis. Stat. § 5.91.

Based on the above allegations, the Committees ask the Court to: (1) declare that the challenged template ballot forms are unlawful; (2) declare that it is permissible for Wisconsin’s county clerks to distribute ballots for the Election that do not conform to the template forms; (3) enjoin GAB from either requiring the use of ballots that follow the template forms or refusing to approve ballots prepared by the county clerks that do not follow those forms; (4) order GAB to prescribe new template ballot forms that incorporate a ballot design format used in earlier elections; and (5) order GAB to immediately inform municipal clerks throughout the state that all ballots must follow the ballot design format used in earlier elections.

The Committees commenced this action on September 17, 2014, by filing a Verified Complaint and simultaneously filed a Motion for Temporary Restraining Order and/or Temporary Injunction (“the Injunction Motion”) seeking temporary relief equivalent to the relief requested in the Verified Complaint. On September 19, 2014, the Court scheduled a hearing on the Injunction Motion for September 24, 2014. On September 22, 2014, the GAB filed a Motion to Dismiss, seeking dismissal of this action on the ground that the Court lacks competency to proceed with respect to the Committees’ claims and that the Committees lack standing to assert the voting rights of individual voters. In the alternative, the GAB seeks dismissal of the Committees’ claims as to all but four Wisconsin counties on the ground that the Committees lack standing to assert those claims as to any other counties. With regard to any claims that are not dismissed, the Committees’ request for injunctive relief should be denied. The GAB submits this memorandum in support of its Motion to Dismiss and in opposition to the Committees’ Injunction Motion.

ARGUMENT

I. THIS ACTION MUST BE DISMISSED BECAUSE THE COURT LACKS COMPETENCY TO PROCEED.

A. The Committees Have Failed to Follow the Statutory Requirements for Raising a Complaint Regarding Ballot Preparation.

The Legislature has prescribed specific procedures for raising claims such as those raised by the Committees in this matter. The Committees failed to follow those exclusive procedures, and the Court thus lacks competency to proceed with the action. Any claim that a decision or action of an election official is contrary to law with respect to election-related matters, including ballot preparation, must be brought by first filing a sworn complaint with the GAB:

Whenever any elector of a jurisdiction or district served by an election official believes that a decision or action of the official or the failure of the official to act with respect to any matter concerning nominations, qualifications of candidates, voting qualifications, including residence, ward division and numbering, recall, *ballot preparation*, election administration or conduct of elections is contrary to law, or the official has abused the discretion vested in him or her by law with respect to any such matter, the elector may file a written sworn complaint with the board requesting that the official be required to conform his or her conduct to the law, be restrained from taking any action inconsistent with the law or be required to correct any action or decision inconsistent with the law or any abuse of the discretion vested in him or her by law. The complaint shall set forth such facts as are within the knowledge of the complainant to show probable cause to believe that a violation of law or abuse of discretion has occurred or will occur. The complaint may be accompanied by relevant supporting documents. The board may conduct a hearing on the matter in the manner prescribed for treatment of contested cases under ch. 227 if it believes such action to be appropriate.

Wis. Stat. § 5.06(1). The statute goes on to say that no person “may commence an action or proceeding to test the validity of any decision, action or failure to act on the part of any election official with respect to any matter specified in sub. (1) without first filing a complaint under sub. (1), nor prior to disposition of the complaint by the board.” Wis. Stat. § 5.06(2) (rest omitted). In addition, any such complaint must be filed no “later than 10 days after the complainant knew or should have known that a violation of law or abuse of discretion occurred or was proposed to occur.” Wis. Stat. § 5.06(3).¹

Any party aggrieved by a decision issued by the GAB in response to such a complaint may, within 30 days, appeal that decision to the circuit court. Wis. Stat. § 5.06(8).

In this matter, the Committees did not file a complaint with the GAB, as required by Wis. Stat. § 5.06. They are thus barred from bringing any action or proceeding challenging the validity of either the GAB’s or any county clerk’s actions with respect to ballot preparation. The

¹Here, the ballot template to which the Committees object has been available on the GAB’s website since July 17, 2014.

Wisconsin Court of Appeals has held that a plaintiff's failure to follow this statutory procedure deprives a circuit court of competency² to hear a plaintiff's action commenced in circuit court. See *Kuechmann v. La Crosse Sch. Dist.*, 170 Wis. 2d 218, 487 N.W.2d 639 (Ct. App. 1992). In *Kuechmann*, the plaintiffs were two school board members who filed a complaint with the State Elections Board (the precursor to the GAB) regarding alleged deficiencies in recall petitions filed against them. The plaintiffs in that matter did not, however, wait for the Elections Board to act and filed an action in the circuit court seeking declaratory and injunctive relief two days before the Elections Board's final decision in the matter. The Court of Appeals held that the plaintiffs' failure to comply with the statutory procedures deprived the circuit court of jurisdiction (*i.e.*, competency) to hear the matter and dismissed the plaintiffs' complaint.

The *Kuechmann* Court noted that the plaintiffs "[r]ather than seek sec. 5.06, Stats., review of the board's decision, [] brought an original action for declaratory relief, injunctive relief and prohibition." *Kuechmann*, 170 Wis. 2d at 224. The present case is in precisely the same posture, and the holding in *Kuechmann* is directly on point and its language is unequivocal:

[1] Plaintiffs' failure to comply with sec. 5.06(2), Stats., and failure to seek judicial review under sec. 5.06(8) and (9), Stats., deprived the circuit court of jurisdiction. The Elections Board is an administrative agency. For many years, the law of this state has been that if "a statute relating to an administrative agency provides a direct method of judicial review of agency action, such method of review is generally regarded as exclusive, especially where the statutory remedy is plain, speedy, and adequate." *Underwood v. Karns*, 21 Wis.2d 175, 179-80, 124 N.W.2d 116, 118-19 (1963). "Where a specified method of review is prescribed by the legislature, that method is exclusive." *Graney v. Board of Regents*, 92 Wis.2d 745, 755, 286 N.W.2d 138, 144 (Ct.App.1979), and cases cited. If the statutorily prescribed procedure for review is not followed, the circuit

²The *Kuechmann* case, decided in 1992, uses the old terminology of "jurisdiction" rather than "competency." Failure to comply with a statutory mandate pertaining to exercise of a court's subject matter jurisdiction is now articulated as the court's loss of competency to exercise its jurisdiction to proceed rather than the less-nuanced former articulation as loss of jurisdiction. *Vill. of Trempealeau v. Mikrut*, 2004 WI 79, ¶¶ 8-10 & n.3, 273 Wis. 2d 76, 681 N.W.2d 190.

court lacks jurisdiction to issue an injunction. *Jackson County Iron Co. v. Musolf*, 134 Wis.2d 95, 101, 396 N.W.2d 323, 325 (1986).

[2] No room exists for an argument that the remedy of judicial review afforded under sec. 5.06, Stats., is inadequate. When the legislature prescribes the method to review alleged deficiencies in election procedure, the legislature must deem that procedure to provide an adequate review. For a court to suggest that the statutorily mandated review in sec. 5.06(9), Stats., is somehow inadequate would defy the legislature's decision to the contrary. The summary procedure mandated in the statute evinces the legislature's knowledge that a speedy review of the board's decision is necessary. *The legislature having decreed that deficiencies in an election will be judicially reviewed as in sec. 5.06(8) and (9), Stats., the circuit court cannot employ some other method of review, such as an independent action for declaratory relief, prohibition or injunction.*

Kuechmann, 170 Wis. 2d at 224-25 (emphasis added). Because the Committees in this matter failed to avail themselves of the statutorily-prescribed process, this Court lacks competency to proceed on their claims for injunctive and declaratory relief, and this matter must be dismissed.

B. The Committees Have Failed to Avail Themselves of the Only Alternative Complaint Procedure Provided by the Statutes.

The only alternative procedure for raising a claim regarding any election official's alleged failure to comply with the law regarding the conduct of elections is the "Petition for enforcement" procedure under Wis. Stat. § 5.08.³ Under that provision, in addition to or in lieu of filing a complaint with the GAB, a person can file a verified petition regarding the alleged violations with the district attorney in the county in which the alleged violation of law occurs. The district attorney may then commence an action or can dismiss the petition. If the district attorney dismisses the petition or fails to act on it within 15 days, the petitioner can file the petition with the attorney general, who may then choose whether or not to commence an action.

³While the Committees' Verified Complaint references this statute section, they never filed such a petition with any district attorney.

The Committees, however, did not avail themselves of this procedure, which is their only alternative method of seeking relief.

C. For the Reasons Stated Above, This Action Must Be Dismissed In Its Entirety.

The Committees failed to comply with the statutory procedures for raising a complaint regarding alleged deficiencies in ballot preparation. Under the black-letter law of the statutes, as well as the unequivocal holding of the Court of Appeals in *Kuechmann*, their failure to follow the statutory procedures deprives this Court of competency and this matter must be dismissed. In addition, the Committees have not filed a petition with any district attorney, which is their only alternative method of seeking relief.

II. THIS CASE SHOULD BE DISMISSED IN WHOLE OR IN PART BECAUSE THE COMMITTEES LACK STANDING.

A. The Committees Lack Standing to Assert the Rights of Individual Voters.

A party has standing to seek declaratory relief only if the party has a legally protectable interest in the controversy. See *Loy v. Bunderson*, 107 Wis. 2d 400, 410, 320 N.W.2d 175 (1982). To establish standing, a plaintiff must show that he has suffered or is threatened with an injury. See *Norquist v. Zeuske*, 211 Wis. 2d 241, 247-48, 564 N.W.2d 748 (1997). In addition, “[a]bstract injury is not enough. The plaintiff must show that he ‘has sustained or is immediately in danger of sustaining some direct injury’ as the result of the challenged official conduct and the injury or threat of injury must be both ‘real and immediate,’ not ‘conjectural’ or ‘hypothetical.’” *Fox v. DHSS*, 112 Wis. 2d 514, 525, 334 N.W.2d 532 (1983) (quoting *Los Angeles v. Lyons*, 461 U.S. 95, 101-02 (1983)).

In the present case, the Committees have not alleged a concrete, redressable injury in fact. The Committees are organizations that run political campaigns for their candidates. Their interest is in helping those candidates win their respective races. The Committees have alleged that ballots based on the challenged templates create a general, systemic possibility of voter confusion, but they have not elucidated how *they* are threatened with irreparable harm. For example, they do not allege that the use of ballots following the challenged template creates any realistic possibility of preventing their candidates from winning their respective election races. *Cf. Samuel v. Virgin Islands Jt. Bd. of Elections*, No. 2012-94, 2013 WL 106686, at *8 (D.V.I. Jan 6, 2013). The speculative possibility of voter confusion that the Committees have alleged is not an injury to the Committees' own interests, absent some showing that any such confusion is likely to affect their candidates more than their opponents. The Committees have not alleged any such differential impact on their candidates.

Any potential harm caused by the template ballot forms would be incurred not by the Committees, but by the individual voters who might be confused by the ballots. The Committees have not shown, however, that they have standing to sue based on the rights of individual voters. In general, a party has standing to assert only his or her own rights and not the rights of a third party. *See Mast v. Olsen*, 89 Wis. 2d 12, 16, 278 N.W.2d 205 (1979). The Committees have supplied no legal authority to support the novel proposition that a political campaign organization may bring a lawsuit for the purpose of challenging alleged violations of someone else's voting rights—especially where, as here there is no evidence of any established relationship between the campaign organizations and the individual voters whose rights are allegedly threatened.

An organization may sometimes be able to establish associational standing to litigate on behalf of the interests of its individual members, but to do so the organization must assert the rights of at least one member who would otherwise have standing to sue in his own right. *See Hope, Inc. v. Cnty. of DuPage, Ill.*, 738 F.2d 797, 814 (7th Cir. 1984). In the present case, the Committees have not alleged associational standing, nor have they submitted any declarations from allegedly aggrieved members or even identified a single member who is threatened with any injury sufficient to give that individual standing.

Although the Committees have cited no case in which a campaign organization has been found to have standing to assert the voting rights of individual voters, there is a case holding the opposite. In *Somers v. South Carolina State Election Commission*, 871 F.Supp.2d 490 (D.S.C. 2012), a candidate for a state senate seat brought an action alleging a violation of the federal Uniformed and Overseas Citizens Absentee Voter Act (“UOCAVA”). The court found that allegations that some voters might be injured by the alleged statutory violation were insufficient to establish an injury in fact to the interests of the plaintiff as a candidate, in the absence of any showing that the candidate had a close relationship to any such voter or that such a voter wished himself to challenge the alleged violation but was unable to do so. *Id.* 871 F. Supp. 2d 490 at*4-*5. The candidate therefore lacked standing to assert the interests of individual voters. *Id.* 871 F. Supp. 2d 490 at*4-*5. The reasoning of *Somers* is persuasive and should be followed here. The Committees have neither alleged any injury in fact to themselves nor a basis for allowing them to assert the voting rights of individual voters.

B. Even If the Committees Have Standing to Assert the Rights of Individual Voters, They Lack standing to Assert Their Claims as to All But Four Wisconsin Counties.

In the alternative, if the Court should find that the Committees can assert the voting rights of individual voters, they still lack standing to claim the sweeping injunctive relief they have requested.

The two plaintiff Committees in this case seek the re-election of State Representative Robin Vos and State Senator Scott Fitzgerald, respectively. Representative Vos is running only in the 63rd Assembly District, which includes approximately half of Racine County and a very small portion of Walworth County. *See Wisconsin Blue Book* 60 (2013-2014). His election, therefore, can only possibly be affected by the ballots in those two counties. Senator Fitzgerald is running only in the 13th Senate district, which includes portions of Columbia, Dane, Dodge, Jefferson, Washington, and Waukesha Counties. His election, therefore, can only possibly be elected by the ballots in those six counties. Considered together, the Committees have alleged possible harm only with regard to those eight counties and they thus lack standing to assert claims seeking relief with regard to any of the other 64 counties in Wisconsin.

Furthermore, the Committees cannot establish that each of their candidates is threatened with all of the harms alleged in the Verified Complaint.

For example, with regard to Representative Vos, the actual ballots that have been created by the county clerks in Racine and Walworth Counties include a line separating the title of each office on the ballot from the name of the first candidate for that office. (*See* Defs'. Ex. A-1 and A-2.) Representative Vos, therefore, cannot claim to be injured by the absence of any such line. At most, he can claim potential injury from the absence of shading to highlight the title of his Assembly race on the ballots for each of those two counties. His campaign committee, however, has no standing to assert any other potential injury.

With regard to Senator Fitzgerald, the actual ballots that have been created by the county clerks in Dane, Dodge, Washington, and Waukesha Counties all include a line or shading separating the title of each office on the ballot from the name of the first candidate for that office, while such a line is absent from the ballots for Columbia and Jefferson Counties. (*See* Defs'. Exs. B-1 through B-6.) Senator Fitzgerald, therefore, can at most claim potential injury from the absence of such a line on the Columbia and Jefferson County ballots, but cannot claim to be injured by the absence of such a line from the ballots in the other four counties in the 13th Senate District.

Moreover, while five of the six counties in the 13th Senate District (all except Dane County) lack shading to highlight offices lower on the ballot, the absence of such shading does not create a risk that voters will overlook Senator Fitzgerald's race. This is because, in all five of those counties, the ballots include shading to highlight the heading for the "Legislative" section of the ballot. Because each ballot can contain at most one Senate race and that race will always come first in the Legislative section of the ballot, the location of Senator Fitzgerald's race on all ballots will always be clearly demarcated by the shading for the Legislative section of the ballot. The lack of shading for individual offices in five of the six counties in the 13th Senate District, therefore, does not threaten to confuse voters into overlooking Senator Fitzgerald's race.

For these reasons, even if it is found that the Committees can assert the voting rights of individual voters, the Court still should conclude that the Committees lack standing to assert relief based on any claims except: (1) the claim that the ballots for Racine and Walworth Counties lack shading to highlight the title of Representative Vos' Assembly race; and (2) the claim that the ballots for Columbia and Jefferson Counties lack a line separating the title of Senator Fitzgerald's office from the name of the first candidate for that office. The Committees

have not established any potential injury resulting from the ballots in any of Wisconsin's other 68 counties and they therefore lack standing to assert any claims related to those ballots.

III. WITH REGARD TO ANY CLAIMS THAT ARE NOT DISMISSED,
THE COMMITTEES HAVE NOT SATISFIED THE REQUIREMENTS
FOR OBTAINING A PRELIMINARY INJUNCTION

A. Criteria for Granting or Denying Preliminary Injunctive Relief.

The basic statutory provision governing temporary injunctions in Wisconsin is Wis. Stat.

§ 813.02(1)(a). It provides:

When it appears from a party's pleading that the party is entitled to judgment and any part thereof consists in restraining some act, the commission or continuance of which during the litigation would injure the party, or when during the litigation it shall appear that a party is doing or threatens or is about to do, or is procuring or suffering some act to be done in violation of the rights of another party and tending to render the judgment ineffectual, a temporary injunction may be granted to restrain such act.

Under this statute, a party may obtain only injunctive relief to which the party would be entitled if the party prevailed on the merits of its claims. *Browne v. Milwaukee Bd. of Sch. Dirs.*, 83 Wis. 2d 316, 337-38, 265 N.W.2d 559 (1978).

A temporary injunction is an extraordinary remedy that is not to be issued lightly and the cause for granting one must be substantial. *See Werner v. A. L. Grootemaat & Sons, Inc.*, 80 Wis. 2d 513, 520, 259 N.W.2d 310 (1977); *Fromm & Sichel, Inc. v. Ray's Brookfield, Inc.*, 33 Wis. 2d 98, 103, 146 N.W.2d 447 (1966); *W. Supply Co., v. T. V. Appliance Mart, Inc.*, 146 Wis. 2d 216, 224-25, 430 N.W.2d 720 (Ct. App. 1988). Four factors must be satisfied before a court may issue a temporary injunction:

- First, the temporary injunction must be necessary to preserve the *status quo* of the parties. *Werner*, 80 Wis. 2d at 520. The purpose of a temporary injunction is to "maintain the *status quo*, not to change the position of the parties or compel the doing of acts which constitute all or part of the ultimate relief sought." *Codept, Inc. v. More-Way N. Corp.*, 23 Wis. 2d 165, 173, 127 N.W.2d 29 (1964).

- Second, the moving party must show a reasonable probability of ultimate success on the merits. *Werner*, 80 Wis. 2d at 520. The moving party must present sufficient evidence to support the conclusion that it has a reasonable probability of ultimate success. *See Sch. Dist. of Slinger v. Wis. Interscholastic Athletic Ass'n*, 210 Wis. 2d 365, 374-75, 563 N.W.2d 585 (Ct. App. 1997).
- Third, the moving party must show a lack of adequate remedy at law. *Werner*, 80 Wis. 2d at 520.
- Fourth, the moving party must show that it will suffer irreparable harm if the temporary injunction is not issued. *Id.*

A court may not issue a temporary injunction unless the moving party carries the burden of establishing each of the factors set forth above. *Id.* at 519-20; *Fox Valley Harvestore, Inc., v. A. O. Smith Harvestore Prods., Inc.*, 545 F.2d 1096, 1097 (7th Cir. 1976).

The granting or refusal of a temporary injunction, being in the nature of equitable relief, is entrusted to the discretion of the Court. *Werner*, 80 Wis. 2d at 519; *State v. Seigel*, 163 Wis. 2d 871, 889, 472 N.W.2d 584 (Ct. App. 1991). Even if the statutory requirements for an injunction have been met, granting the injunction is not mandatory. *Werner*, 80 Wis. 2d at 524. Because an injunction is an extraordinary equitable remedy, courts should exercise their discretion to deny an injunction where the inconveniences and hardships that would result from granting the injunction outweigh its benefits. *See Kuntz v. Werner Flying Serv., Inc.*, 257 Wis. 405, 410, 43 N.W. 476 (1950). Accordingly, in addition to the factors described above, a court faced with a temporary injunction motion also must balance the harm to the plaintiffs against the harm the injunction would cause to the defendants and to the public interest before an injunction can be granted. *Fox Valley Harvestore*, 545 F.2d at 1097, *Dillingham Constr., Inc. v. Milwaukee Metro. Sewerage Dist.*, 629 F. Supp. 406 (E.D. Wis. 1986); *Kealey Pharmacy & Home Care Serv., Inc. v. Walgreen Co.*, 539 F. Supp. 1357, 1370

(W.D. Wis. 1982), *aff'd*, 761 F.2d 345 (7th Cir. 1985) (a court must determine whether the public interest will be disserved if an injunction is issued). The moving party must satisfy the court that, on balance, equity favors issuing the injunction. *W. Supply Co.*, 146 Wis. 2d at 224-25.

Procedurally, a temporary injunction generally may only be granted after the enjoined party has been given notice and an opportunity to be heard. *See* Wis. Stat. § 813.05(1); *see also* Wis. Stat. § 813.025(2). The Wisconsin Statutes do not prescribe specific methods for hearing a temporary injunction motion, but simply provide that a court may enter an injunction when the movant's right to such an order is established by the complaint, answer, or affidavits. Wis. Stat. § 813.04. Upon taking action, the court must file written findings of fact and conclusions of law that constitute the grounds for its action. Wis. Stat. § 805.17(2); *Pure Milk Prods. Coop. v. Nat'l Farmers Org.*, 64 Wis. 2d 241, 262, 219 N.W.2d 564 (1974).

The preliminary injunction requested by the Committees should be denied because the Committees have not met four of the required standards for obtaining such an injunction. First, they have failed to establish that they will suffer irreparable harm if a preliminary injunction is not granted. Second, they have not shown a reasonable likelihood of ultimately prevailing on the merits of this litigation. Third, the requested preliminary injunction would disrupt rather than preserve the *status quo*. Finally, the balance of harms to the Committees and to the public weighs against granting the requested injunction.

B. The Committees Have Failed to Establish That They Will Suffer
Irreparable Harm If a Preliminary Injunction Is Not Granted.

Injunctions do not issue for insubstantial or inconsequential injuries. *Fromm & Sichel*, 33 Wis. 2d at 103. In order to obtain a preliminary injunction, the moving party must establish that it will be irreparably harmed if the injunction is not granted. *Bubolz v. Dane Cnty.*, 159 Wis.

2d 284, 296, 464 N.W.2d 67 (Ct. App. 1990); *Pure Milk Prods. Coop. v. Nat'l Farmers Org.*, 90 Wis. 2d 781, 800, 280 N.W.2d 691 (1979). The standard for determining whether the claimed harm suffices to warrant entry of a preliminary injunction is whether the moving party can show that, without the temporary relief, a permanent injunction would be rendered futile. *Werner*, 80 Wis. 2d at 520. In the present case, the Committees' request for a preliminary injunction should be denied because the Committees have failed to establish that they will suffer irreparable harm in the absence of such an injunction.

It has already been shown in Section II above that the Committees have failed to establish sufficient threatened injury to themselves to give them standing to assert their claims. It follows, for the same reasons, that the Committees likewise have not established a threat of irreparable harm to themselves. Their claim of irreparable harm is conclusory, speculative, and unsupported by any evidence from which the Court might determine either the existence or the scope of any possible impact on them caused by the template ballot forms. The Committees have presented no factual evidence regarding harm to them if a preliminary injunction is denied and their bare assertions are insufficient to establish irreparable harm that would warrant issuance of a preliminary injunction.

C. The Committees Have Not Shown A Reasonable Likelihood of Success on the Merits.

The Injunction Motion also should be denied because the Committees have failed to show a reasonable likelihood of success on the merits of this litigation. As noted above, the Committees have raised two primary complaints regarding the GAB ballot template: (1) that the lack of a line between the title of each office listed and the first candidate for that office will favor the first-listed candidate, by confusing voters into thinking that there is only one candidate listed for that office; and (2) that the lack of shading in the title of each elective office will make

it harder for voters to identify down-ballot races and that this will lead to substantial undervoting for those down-ballot races. The Committees seek declaratory relief that these alleged flaws in the ballot design violate the language of Wis. Stat. § 5.91(12) requiring that ballots must “minimize the possibility of disenfranchisement of electors”.

1. Background information on ballot design.

The Committees challenge certain formatting of the ballot template developed by the GAB for the Election. Their Verified Complaint appears to rest on an assumption that all counties were required to produce exact replicas of the GAB template. This assumption is wrong in several respects.

First, it is important to understand how ballot design works with respect to the GAB and Wisconsin’s 72 county clerks. Each county is responsible for printing its own ballots. Prior to an election, the GAB produces a template for the counties to use in designing their ballots pursuant to the GAB’s authority under Wis. Stat. § 7.08, which states, in part, that the GAB form “shall be substantially followed” by the counties. Wis. Stat. § 7.08(1)(a). The GAB template for the Election was posted on the GAB’s website and was also made available to all county clerks on July 17, 2014. The memo to the county clerks regarding the ballot form can be seen at: <http://gab.wi.gov/node/3274>.⁴ Three forms of the GAB ballot were posted at that time and can be seen at: <http://gab.wi.gov/forms/gab-203ms>.⁵ It is worth noting that while the two Word templates that were posted did not include a line between the title of the office and the first candidate listed, the actual sample ballot that was developed by a printer and posted on the

⁴A copy of the memo is also attached hereto as Defendants’ Exhibit C.

⁵ Also attached hereto as Defendants’ Exhibits D-1, D-2, and D-3.

GAB's website as a PDF *did* include such a dividing line. (See GAB-203ms - Example of November 2014 OS Arrow Ballot Layout.pdf) (Defs'. Ex. D-3.)

The template is developed as a Word document for the counties and their printers to use. Counties then work with their printers to develop an actual ballot and submit a sample to the GAB. GAB staff then works with the county clerks to resolve any issues regarding design, layout, listing of candidates, etc. The final ballot forms developed by each county often have variations in shading, justification, use of bold face type, the use of bold or double dividing lines, etc., but as long as they "substantially follow[]" the GAB design they are not prohibited by the GAB. In fact, there are no known instances where the GAB prevented a county from using its final ballot design based on formatting disputes between the county and the GAB.

The sample ballots⁶ for the Election can be seen at the following location: <http://gab.wi.gov/node/3382>. A review of these ballots shows that most do not conform exactly to the GAB template at issue here. In fact, only the following 16 counties use the exact GAB format with respect to the two formatting issues raised by the Committees:⁷ Adams, Ashland, Bayfield, Clark, Columbia, Crawford, Douglas, Jefferson, Lafayette, Langlade, Manitowoc, Marathon, Sawyer, Taylor, Vernon, and Washburn.

Twenty-four (24) counties include a line separator between the office sought and the first candidate's name. Those counties are: Calumet, Chippewa, Dodge, Door, Eau Claire, Fond du Lac, Green, Kenosha, Lincoln, Menominee, Outagamie, Ozaukee, Portage, Racine, Rock, Sauk, Sheboygan, St. Croix, Vilas, Walworth, Washington, Waukesha, Winnebago, and Wood.

⁶As of this writing, the link includes sample ballots for 69 of the 72 Wisconsin counties. The missing samples are for the counties of Buffalo, Iron, and Juneau.

⁷A spreadsheet showing the various iterations of the ballot designs is attached hereto as Defendants' Exhibit E.

Thirteen of those 24 counties also have a bold or double line separating each office within a category (*i.e.*, Statewide, Congressional, Legislative, County).

Another 14 counties modify the general GAB format by including a bold or double line to separate each office within a category. Those counties are: Burnett, Florence, Forest, Green Lake, Iowa, Marinette, Marquette, Pepin, Pierce, Polk, Price, Richland, Rusk, and Waushara.

Twelve counties use an offset justification format style as a visual cue to distinguish individual races and to separate the title of the office from the first candidate listed. The ballots use left-justification for the office title, and place the candidates' names in a right-justified position in the column. Those counties are: Barron, Dunn, Grant, Jackson, Kewaunee, Milwaukee, Monroe, Oconto, Oneida, Shawano, Trempealeau, and Waupaca. In addition, ten of those counties also use a bold or double line to separate each office within a category.

Finally, three counties use shading and/or a line separator to separate the office title from the candidates' names, and also use shading to highlight the title of each individual office. Those counties are: Brown, Dane, and La Crosse.

As previously noted, both counties in Representative Vos's district use a line to separate the title of the office from the first-listed candidate. (Defs.' Exs. A-1 and A-2). Walworth County also uses a bold or double line to separate each office within a category. (Defs'. Ex. A-2).

With regard to the six counties in Senator Fitzgerald's district, Columbia and Jefferson counties follow the GAB template. (Defs'. Exs. B-1 and B-2). Dodge, Washington, and Waukesha counties use a separator between the title of the office and the first listed candidate. (Defs'. Exs. B-3, B-4, and B-5). Dodge and Washington counties also use a bold or double line to separate each office within a category, although this feature is irrelevant to Senator Fitzgerald,

as the Senate race is the first race listed under the shaded heading “Legislative.” Dane county’s ballots incorporate all the design features favored by the Committees. (Defs.’ Ex. B-6).

2. The Committees have not presented sufficient evidence in support of their claims.

In order to prevail, a plaintiff must present sufficient evidence to permit the conclusion that plaintiff has a reasonable probability of success. *See School Dist. of Slinger*, 210 Wis. 2d at 374-375. Here, the Committees have failed to make such a showing. First, the Committees claim that the lack of a line between the offices for which they are running and the first candidate will favor the Committees’ candidates’ opponents. The Committees’ belief that voters will somehow be confused into thinking they only have one choice to vote for rests on the speculative presumption that voters will not look beyond the first name and will ignore or somehow miss the rest of the names listed under that office. Aside from this assertion, the Committees have offered no evidence of such an effect. Because they have offered nothing other than speculation, they have not met their burden of proof for obtaining injunctive relief.

Moreover, with respect to the counties in which Representative Vos is running (Racine and Walworth), all ballots will have such a line, rendering this claim moot with respect to him. (Defs’. Exs. A-1 and A-2.). “[A] case is moot when a determination is sought upon some matter which, when rendered, cannot have any practical legal effect upon a then existing controversy . . . It is generally thought to be in the interest of judicial economy to avoid litigating issues that will not affect real parties to an existing controversy. . . .” *See School Dist. of Slinger*, 210 Wis. 2d at 374-375. . (quoting *Matter of G.S.*, 118 Wis. 2d 803, 805, 348 N.W.2d 181 (1984)). Even if the Court was convinced that such a line is required in order to conform to the statutes, such a line already exists at least with respect to the ballots on which Representative Vos is listed and

there is no relief a Court could order for him.⁸ (*See also Maher v. F.D.I.C.*, 441 F.3d 522, 525 (7th Cir. 2006) (“This court has stated that ‘[a] case is moot if there is no possible relief which the court could order that would benefit the party seeking it’”(quoting *In re Envirodyne Indus.*, 29 F.3d 301, 303 (7th Cir. 1994))).

The Committees also claim that the absence of shading of the title of each individual office on the ballot will result in excessive undervotes for down-ballot races. The only evidence cited in support of this allegation is a single comparison of two Florida counties contained in a Brennan Center report (Pls’ Ex. E, at 40.) The report compared a county’s ballot with no shading of the headings for individual races with a nearby county’s ballot that included such shading, and concluded that there was a 0.3% difference in the residual vote totals. The Committees’ claim on this issue is flawed in several respects.

First, according to the Brennan Center report, the category of “residual” votes includes both undervotes and overvotes. (Pls’ Ex. E, at 19). Therefore, the numbers on pages 40 of the Brennan Center report are not necessarily an accurate count of undervotes, but rather could also include some overvotes. The data cited by the Committees is not, therefore, reasonably probative of their undervote allegations.

Second, the Brennan Center report also notes that residual vote rates are significantly affected by community demographics:

Significantly, several studies indicate that residual vote rates are higher in low-income and minority communities and among the elderly, and, in addition, that improvements in voting equipment and ballot design produce substantial drops in residual vote rates in such communities.

⁸Senator Fitzgerald’s Senate District includes portions of six counties, four of which incorporate the separator line into their ballots, as noted previously in this brief.

(*Id.*) The data on page 40, however, make no reference to the demographics of the counties that are being compared. It is, therefore, possible that the 0.3% difference in residual votes in the compared counties could be due to demographic factors, rather than ballot design.

Third and more generally, based on the extremely limited data presented on page 40 and the complete lack of any indication of attempts to control for variables other than ballot design that might affect residual vote counts, it is impossible to conclude that those data support the Committees' assertion that lack of shading of office titles causes undervoting in down ballot races.

Fourth, the Committees present no evidence as to whether this single illustrative example constitutes proof of a statistically significant variance in residual vote totals. In fact, this small variance of only three-tenths of one percent (*i.e.*, three votes out of every thousand) doesn't seem to even meet the Brennan Center's standard of "unusually high residual vote rates" that might indicate an issue regarding ballot design. (*See* Pls' Ex. D, at 13; Ex. E, at 19.)

Finally, it should be noted that the Brennan Center authors concede that their residual vote counts are presented only for instructional purposes and are not sufficient to establish that the ballot designs examined by the authors actually disenfranchised voters:

We have used residual vote rates for instructional purposes. We do not claim that the poor designs we examine disenfranchised all of the voters who did not record a vote for a particular contest. For the most part, we compare rates in a single county with an obvious ballot design flaw to rates statewide, or from one county to another (where one county ballot has obvious flaws and the other does not). The variances may be attributable to ballot design; they may also be attributed to different demographics from one location to the next, or local interest in a political contest. In most cases, the differences are probably attributable to a combination of these factors.

(Pls'. Ex. E, at 19).

Another point that should be noted is that even if one assumes *arguendo* the lack of shading does cause some undervoting for down-ballot races, that does not necessarily constitute harm to the Committees, absent evidence that any undervoting would be more likely to affect the Committees' candidates than their opponents. The Committees have offered no such evidence.

In addition, this claim is moot with respect to Senator Fitzgerald for reasons similar to those cited above with respect to Representative Vos. All ballots in Senator Fitzgerald's Senate district include shading for the "Legislative" portion of the ballot. (Defs' Exs. B-1 through B-6.) The State Senate race is the first race listed under that shading, so there can be no claim that voters will somehow miss that race on the ballot because it is not sufficiently set apart. Again, with respect to this claim, there is no relief the Court could grant to Senator Fitzgerald, so his claim is moot on this issue.

The Committees have presented no evidence in support of their claim that the GAB template's lack of a line between the office sought and the first candidate listed will affect the Committees' vote totals. Nor have they provided sufficient evidence that the lack of shading of the titles of individual races will lead to significant undervotes for the Committees' races; or will harm the Committees. The Committees' request for injunctive relief should be denied.

3. The Committees' claim that the GAB ballot form violates the law is without merit.

The Committees' complaint regarding the ballot design process is grounded in false factual premises. The Committees paint a picture of a rigid GAB ballot form which is unlawful under the statutes, and to which all counties must strictly adhere. As noted above, very few of the counties' ballots directly mirror the GAB template, although all ballots "substantially follow" the GAB layout, as required by Wis. Stat. § 7.08(1)(a). The Committees assert, however, that

the GAB template is unlawful in that it does not minimize the risk of voter confusion, due to the two alleged design flaws, and that it therefore violates the requirements of Wis. Stat. § 5.91(12).

Courts have historically been loath to intervene in subjective micromanagement issues such as ballot design, preferring instead to defer to the discretion of the appropriate agencies:

Based upon the present record, none of the plaintiffs' enumerated defects, even considered collectively, deprived the voters of a clear and meaningful choice to either vote for or against the proposition at issue in this case. . . . As this court noted in *Behrman v. Whiteside School District No. 115*, 143 Ill.App.3d 154, 159, 97 Ill.Dec. 362, 492 N.E.2d 1021 (1986), “ ‘a literal compliance with prescribed forms [will] not be required if it appears that the spirit of the law has not been violated and the result of the election has been fairly ascertained. [citation.]’ ” We agree with the Board that, while reasonable people may hold different opinions on how the ballot form and layout could be designed, there is nothing that obligates the Board to create a “perfect” ballot. The ballot need only “substantially comply” with the statutory ballot requirements. In this case, the ballot substantially complied with the statute and “we see no reason to go beyond the statutory requirements”

Brooks v. Bd. of Election Comm'rs of Chic., 778 N.E.2d 173, 178-179, (Ill. App. Ct. 2002). *See also Hendon v. N.C. State Bd. of Elections*, 710 F.2d 177, 182 (4th Cir. 1983) (failure of ballots to fully comply with statutory requirements did not violate due process where there was no indication that failure was other than simple negligence by election officials and the ballots sufficiently complied with state law to that voters should not have been confused or deceived).

In addition, Wisconsin courts have consistently taken the position that statutory provisions regarding elections are directory as opposed to mandatory:

A statute which “merely provides that certain things shall be done in a given manner and time without declaring that conformity to such provisions is essential to the validity of the election” should be construed as directory.

Matter of Hayden, 105 Wis. 2d 468, 483, 313 N.W.2d 869, (Ct. App. 1981) (internal citations omitted). *See also Clapp v. Joint Sch. Dist. No. 1 of Hammond & Roberts*, 21 Wis. 2d 473, 479-480, 124 N.W.2d 678 (1963)(“Many of the statutory provisions relating to elections are directory

and substantial compliance therewith is sufficient.”)(citing *State ex rel. Graves v. Wiegand*, 212 Wis. 286, 249 N.W. 537 (1933); *Schmidt v. W. Bend Bd. of Canvassers*, 18 Wis.2d 316, 118 N.W. 2d 154 (1962)).

The Committees have cited no legal precedent in support of their bald assertion that the GAB ballot design should be declared unlawful based on speculative allegations that two changes in the ballot design would “minimize” voter confusion. The Committees’ assertion that the ballot form violates the law is without merit and should be rejected.

4. There is no precedent for the action the Committees are asking the Court to take, and doing so could have serious adverse consequences, from both a practical and policy standpoint.

The Committees are essentially asking the Court to take the unprecedented step of engaging in the micro-management of ballot design. Aside from the legal and procedural problems with the Committees’ claims (*i.e.*, failure to follow the statutorily-prescribed process in Wis. Stat. § 5.06), the precedent that the Committees are asking the Court to establish is stunning in its breadth. The Committees’ claims are grounded in their assertion that the statutory requirement under Wis. Stat. § 5.91(12) that ballots must be designed to “minimize the possibility of disenfranchisement of electors” renders such designs subject to second-guessing by the courts on issues as subtle as shading patterns and the absence of certain lines. Such an approach could open a Pandora’s Box of a non-stop march to the courthouse steps by every group or individual who thinks they have a better ballot design. Suppose the Court grants the Committees’ requests to mandate certain shading patterns. What’s to stop the next litigant from asking the court to add colors to the ballot (*see* Pls’. Ex. C, at 7.21, 7.23, 7.33) as recommended by the U.S. Elections Assistance Commission (EAC), or to use a different font (*see* Pls’. Ex. D, at 11) as recommended by the Brennan Center, or to mandate that all headings be left-justified

(*id.*), or to require that all electronic ballots use a “fill-the-oval” format instead of a “complete-the-arrow” format (Pls’ Ex. E at 43). All of the afore-mentioned tweaks to a ballot have been cited as making ballots more user-friendly and effective. Each new litigant could now offer their additional enhancements to even further “minimize” the chance of confusion. In fact, as noted by the EAC, the ideal would be to have *a separate ballot for every single race*:

Ideally, each contest would have a separate page with the title of each contest top-aligned to be most user friendly.

(Pls’ Ex. C, at 7.30). Because such an approach would arguably further “minimize” confusion is that to be the required standard?

Indeed, a review of the materials submitted by the Committees (Pls’ Exs. C, D, and E) reveals a plethora of theories about every aspect of ballot design including: layout, font size, shading, the use of left/right/center justification, the use of colors, the use of bolding or double lines, the use of columns, whether votes for a candidate should be made to the right or to the left of the candidate’s name, the use of ovals versus arrows, etc. The prospect of making the courts dive into a clearly subjective ballot design process presents serious practical and policy concerns by: (1) essentially removing all oversight from the agency and handing it to the courts; (2) raising the specter of state elections where perhaps 72 different judges design 72 different ballot forms; and (3) throwing the courtroom doors wide open for an endless stream of litigation over whose design is best at “minimizing” potential voter confusion. Such an approach is without precedent, and the Committees’ attempts to have the courts micro-manage ballot design should be rejected.

For all of the above reasons, the Committees do not have a reasonable likelihood of prevailing on the merits of their claims in this litigation and their temporary injunction request, therefore, should be denied.

D. The requested preliminary injunction is not necessary to preserve the *status quo*.

Temporary injunctions may not be issued unless they are necessary to preserve the *status quo*. *Werner*, 80 Wis. 2d at 520. It is an erroneous exercise of discretion for a court to issue a temporary injunction that alters the *status quo*. The function of a temporary injunction is not to change the position of the parties or compel the doing of acts that constitute all or part of the ultimate relief sought. *Sch. Dist. of Slinger*, 210 Wis. 2d at 374. Here, the Committees have failed to meet their burden of establishing that the requested preliminary injunction is necessary to preserve the *status quo*.

The current *status quo* in this case is as follows: (1) pursuant to Wis. Stat. § 7.10(2) and (3), all ballots for the Election have already been produced by all 72 Wisconsin county clerks and have already been distributed to Wisconsin's 1,852 municipal clerks as of September 17, 2014; (2) pursuant to Wis. Stat. § 7.15(1)(cm), municipal clerks have already sent absentee ballots to all voters who requested an absentee ballot on or before September 18, 2014, and are continuing, on an ongoing basis, to send absentee ballots to any voters who request such a ballot after that date; (3) because absentee ballots have already been distributed to voters, an indeterminate number of such ballots undoubtedly have already been completed and sent back to municipal clerks.

Because absentee voting has already begun, the *status quo* that existed before ballots were produced and distributed cannot be restored. *See Sw. Voter Registration Educ. Project v. Shelley*, 344 F.3d 914, 919 (9th Cir. 2003). The pending Injunction Motion, if granted, would alter, rather than preserve, the current *status quo* and would provide the ultimate relief that the Committees seek in this proceeding. In both respects, the requested injunction would violate the principles set forth in *Werner* and *Slinger*. The Committees' request for a preliminary

injunction, therefore, should be denied as an inappropriate attempt to upset the *status quo* during the pendency of this lawsuit.

The Committees may nonetheless suggest, in reply to this argument, that the requested preliminary injunction will preserve the *status quo* that existed prior to July 17, 2014, when the GAB published the new template ballot forms on its website, or the *status quo* that existed prior to the time when some county clerks produced ballots for the Election that followed the new template forms, in whole or in part. Restoring a past state of affairs, however, is not preserving the *status quo*, it is changing it. If the Committees wanted to preserve any such past state of affairs, then they needed to seek relief as soon as possible after the new template ballot forms were published⁹ and, in any event, before the county clerks had actually printed and started distributing the ballots for the Election. Having failed to do so, the Committees cannot now claim that they are trying to preserve the current *status quo*. This timing problem is of the Committees' own making. An injury caused by a plaintiff's own action or inaction is not sufficient to support a preliminary injunction. *See Second City Music, Inc. v. City of Chic., Ill.*, 333 F.3d 846, 850 (7th Cir. 2003) (“[S]elf-inflicted wounds are not irreparable injury.”).

For all of these reasons, the Court should conclude that the Committees have failed to meet their burden of establishing that the requested preliminary injunction is necessary to preserve the *status quo* and that this constitutes another sufficient reason for denying the requested injunction.

⁹And, as noted above, they needed to initiate a request for such relief by first filing a complaint with the GAB, as required under Wis. Stat. § 5.06.

E. The balance of harms weighs against granting the requested injunction.

An injunction is an extraordinary equitable remedy. Accordingly, a party seeking a preliminary injunction must satisfy the court that, on balance, equity favors issuing the injunction. *W. Supply Co.*, 146 Wis. 2d at 224-25. Courts should decline to issue an injunction where the inconveniences and hardships that would result from granting the injunction outweigh its benefits. *Kuntz*, 257 Wis. at 410. A court considering an injunction request, therefore, must balance the harm to the moving party against the harm the injunction would cause to the opposing parties and to the public. *See Dillingham Constr.*, 629 F. Supp. at 408. This balancing analysis creates a continuum under which a lesser showing of likelihood of success on the merits requires a greater showing that the public interest and balance of harms favors the party seeking injunctive relief. *Sw. Voter Registration Educ. Project*, 344 F.3d at 918.

Here, the Committees have a particularly heavy burden because the requested injunctive relief would disrupt absentee voting that has already begun and would interfere with in-person voting that is imminent. A court “should consider the proximity of a forthcoming election and the mechanics and complexities of state election laws” when deciding whether a preliminary injunction is appropriate. *Miller v. Bd. of Comm’rs*, 45 F. Supp. 2d 1369, 1372 (M.D. Ga. 1998) (quoting *Reynolds v. Sims*, 377 U.S. 533, 585 (1964)). Injunctive relief that would interfere with an impending election is even more extraordinary than other injunctions and interference with an election after absentee voting has begun has been found by at least one court to be unprecedented. *Sw. Voter Registration Educ. Project*, 344 F.3d at 919.

In addition to interfering with absentee voting that has already begun, the requested injunctive relief would also impose substantial economic and practical burdens on the ongoing preparations for in-person voting on November 4, 2014. The public interest would be harmed by

the disorder, confusion, and inefficiencies—both economic and practical—that would result from the requested injunction. It is certain that, if ballots are required to be reprinted and redistributed, the state will suffer material hardship by virtue of the resources already invested in printing and distributing the existing ballots. *Cf. id.* Moreover, because this case concerns a statewide election, the harms that would be caused by the requested injunction fall not only upon the GAB, but also upon all of Wisconsin’s county clerks and, more generally, upon all citizens of the state. *Cf. id.* These substantial harms to the public outweigh any small and speculative benefit that an injunction might provide to the Committees.

Finally, the requested injunction would also interfere with the ability of Wisconsin election officials to comply with their responsibilities under the federal UOCAVA. That federal law provides that, if a military or overseas voter submits a valid request for an absentee ballot at least 45 days before an election for federal office, then the State is required to transmit an absentee ballot to that voter not later than 45 days before that election. 42 U.S.C. § 19073ff-1(a)(8)(A). The November 4, 2014, election at issue here includes races for the United States House of Representatives. Therefore, pursuant to 42 U.S.C. § 19073ff-1(a)(8)(A), absentee ballots for that election that were validly requested by a military or overseas voter on or before September 20, 2014, were required to be transmitted to the voter no later than that date. If this Court were to order that ballots be reprinted and redistributed, any such amended ballots would necessarily have to be re-sent to military and overseas voters after the federal 45-day deadline. Alternatively, if the Court were to order that reprinted ballots must be sent to all voters except military and overseas voters, that would have the effect of singling out military and overseas voters to use a ballot that had been deemed unacceptable for other voters. There is simply no

way to both provide the injunctive relief requested by the Committees and satisfy the requirements of UOCAVA.

In light of the public resources that have already been invested in printing and distributing ballots and the confusions and inefficiencies that would result from last-minute judicial intervention, the balance of harms favors denial of the requested injunction.

F. The Requested Injunction Is Barred by the Doctrine of Laches.

It is settled law that the timeliness of a suit in equity, such as this one, is measured by the doctrine of laches. The laches doctrine embodies the “recognition that a party ought not to be heard when he has not asserted his right for unreasonable length of time or that he was lacking in diligence in discovering and asserting his right in such a manner so as to place the other party at a disadvantage.” *Flejter v. Estate of Flejter*, 2001 WI App 26, ¶ 40, 240 Wis. 2d 401, 623 N.W.2d 552 (quoting *Bade v. Badger Mut. Ins. Co.*, 31 Wis. 2d 38, 47, 147 N.W.2d 218 (1966)). This accurately describes the situation here.

There are three elements necessary to a finding of laches: “(1) unreasonable delay; (2) knowledge of and acquiescence in the course of events; and (3) prejudice to the party asserting laches.” *Flejter*, 240 Wis. 2d 401, ¶ 41. The Wisconsin Supreme Court has recognized that

[t]here is no fixed rule as to the lapse of time necessary to bar a suitor in a court of equity. Each case must stand upon its own particular facts. Great lapse of time, if reasonably excused and without damage to the defendant, has been ignored; while slight delay, accompanied by circumstances of negligence, apparent acquiescence, or change of defendant’s position, has been held sufficient.

Id. (quoting *Likens v. Likens*, 136 Wis. 2d 321, 327, 117 N.W.2d 799 (1908)). Here, it is clear that after July 17, 2014, when the GAB published the template forms on its website, there was a substantial change in circumstances when the ballots for the election were actually printed and distributed by county clerks and absentee ballots were sent to voters by municipal clerks. In

light of that prejudice to the public interest, the Committees' failure to seek relief before the ballots were printed and distributed is sufficiently unreasonable to support a laches defense.

G. If a Preliminary Injunction Is Granted, the Committees Should Be Required to Post a Security Bond.

Under Wis. Stat. § 813.06, a court that grants an injunction must require the party requesting the injunction to post a bond providing security for any damages that the enjoined parties may sustain by reason of the injunction, if there is an eventual determination that the requesting party was not entitled to the injunction. If this Court issues any injunction that requires that any ballots be reprinted or redistributed, the named defendants and/or some or all Wisconsin county clerks may sustain economic loss for the costs of reprinting and redistributing such ballots. Pursuant to Wis. Stat. § 813.06, if an injunction is granted, the Committees must be required to post a bond providing security sufficient to cover all such costs should there be an ultimate determination that the injunction was not warranted.

CONCLUSION

The GAB respectfully asks that this matter be dismissed in its entirety on the ground that the Court lacks competency to proceed. In the alternative the GAB asks that the Committees' claims be dismissed as to all counties except Racine, Walworth, Columbia, and Jefferson. With regard to any claims that are not dismissed, the GAB respectfully asks that temporary injunctive relief be denied. If an injunction is granted, the Committees must be required to post a bond as required by Wis. Stat. § 813.06.

— Dated this 22nd day of September 2014.

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Official Ballot for Partisan Office and Referendum
November 4, 2014

S01

Notice to voters: This ballot may be invalid unless Initialed by 2 election inspectors.
If cast as an absentee ballot, the ballot must bear the initials of the municipal clerk or deputy clerk.

IMPORTANT: USE ONLY A #2 PENCIL OR THE MARKING PEN PROVIDED. DO NOT USE RED INK!

Instructions to voters	Congressional	Referendum
If you make a mistake on your ballot or have a question, see an election inspector. (Absentee voters: Contact your municipal clerk.) Connect only 1 arrow in each contest. - To vote for a name on the ballot, complete the arrow next to the name like this - To vote for a name that is not on the ballot, write the name on the line marked "write-in," and complete the arrow next to the name like this	Representative in Congress District 1 Vote for 1 Rob Zerbán (Democratic) Paul Ryan (Republican) write-in:	To vote in favor of a question, complete the arrow next to 'YES,' like this To vote against a question, complete the arrow next to 'NO,' like this
Statewide Governor/Lieutenant Governor Vote for 1 You may connect only 1 arrow for the office of Governor/Lieutenant Governor. Mary Burke/John Lehman (Democratic) Scott Walker/Rebecca Kleefisch (Republican) Dennis Fehr/No Candidate (Peoples Party) Robert Burke/Joseph M. Brost (Libertarian) write-in: (Governor) write-in: (Lieutenant Governor) Attorney General Vote for 1 Susan V. Happ (Democratic) Brad Schimel (Republican) Thomas A. Nelson, Sr. (Libertarian) write-in: Secretary of State Vote for 1 Doug La Follette (Democratic) Julian Bradley (Republican) Jerry Broitzman (Constitution) Andy Craig (Libertarian) write-in: State Treasurer Vote for 1 David L. Sartori (Democratic) Matt Adamczyk (Republican) Andrew Zuelke (Constitution) Ron Hardy (Wisconsin Green Party) Jerry Shidell (Libertarian) write-in: Continue voting at top of next column	Legislative State Senator District 21 Vote for 1 Randy Bryce (Democratic) Van Wanggaard (Republican) write-in: Representative to the Assembly District 63 Vote for 1 Andy Mitchell (Democratic) Robin J. Vos (Republican) write-in: County Sheriff Vote for 1 Christopher Schmaling (Republican) write-in: Clerk of Circuit Court Vote for 1 Rose Lee (Republican) write-in: Continue voting at top of next column	State QUESTION 1: "Creation of a Transportation Fund. Shall section 9 (2) of article IV and section 11 of article VIII of the constitution be created to require that revenues generated by use of the state transportation system be deposited into a transportation fund administered by a department of transportation for the exclusive purpose of funding Wisconsin's transportation systems and to prohibit any transfers or lapses from this fund?" YES NO Official Ballot for Partisan Office and Referendum November 4, 2014 for T. of Burlington, W 1-7 & 11 T. of Dover, W 1-8 T. of Yorkville, W 1-5 V. of Rochester, W 1-6 V. of Union Grove, W 1-7 C. of Burlington, W 1-8 Ballot Issued by (Initials of election inspectors) Absentee ballot issued by (Initials of municipal clerk or deputy clerk) (If issued by SVDs, both SVDs must initial.) Certification of Voter Assistance I certify that I marked this ballot at the request and direction of a voter, who is authorized to receive assistance. (signature of assistor) For Official Use Only Inspectors: Identify ballots required to be remade. Reason for remaking ballot: <input type="checkbox"/> Overvoted <input type="checkbox"/> Damaged <input type="checkbox"/> Other Original Ballot No. or Duplicate Ballot No. _____

PENGAD 800-631-9989
DEFENDANT'S EXHIBIT
A-1
Racine County

Official Ballot for Partisan Office and Referendum

November 4, 2014

Notice to voters: This ballot may be invalid unless initialed by 2 election inspectors. If cast as an absentee ballot, the ballot must bear the initials of the municipal clerk or deputy clerk.

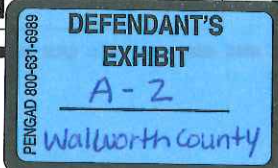
Important: Use a #2 pencil or the marking pen provided. Do not use Red Ink!

Instructions to Voters	Statewide (Cont.)	Congressional
<p>If you make a mistake on your ballot or have a question, see an election inspector. (Absentee voters: Contact your municipal clerk.)</p> <p>Fill in only 1 oval in each contest.</p> <p>-To vote for a name on the ballot, fill in the oval next to the name like this <input type="radio"/>.</p> <p>-To vote for a name that is not on the ballot, write the name on the line marked "Write-in," and fill in the oval next to the name like this <input type="radio"/>.</p>	<p>Secretary of State Vote for 1</p> <p><input type="radio"/> Doug La Follette (Democratic)</p> <p><input type="radio"/> Julian Bradley (Republican)</p> <p><input type="radio"/> Jerry Broitzman (Constitution)</p> <p><input type="radio"/> Andy Craig (Libertarian)</p> <p><input type="radio"/> Write-in</p> <p>State Treasurer Vote for 1</p> <p><input type="radio"/> David L. Martori (Democratic)</p> <p><input type="radio"/> Matt Adamczyk (Republican)</p> <p><input type="radio"/> Andrew Zuelke (Constitution)</p> <p><input type="radio"/> Ron Hardy (Wisconsin Green Party)</p> <p><input type="radio"/> Jerry Shidell (Libertarian)</p> <p><input type="radio"/> Write-in</p>	<p>Representative in Congress District 1 Vote for 1</p> <p><input type="radio"/> Bob Zerban (Democratic)</p> <p><input type="radio"/> Paul Ryan (Republican)</p> <p><input type="radio"/> Write-in</p> <p>Legislative</p> <p>State Senator District 11 Vote for 1</p> <p><input type="radio"/> Dan Kilkenny (Democratic)</p> <p><input type="radio"/> Steve Nass (Republican)</p> <p><input type="radio"/> Write-in</p> <p>Representative to the Assembly District 32 Vote for 1</p> <p><input type="radio"/> Alan Kupsik (Democratic)</p> <p><input type="radio"/> Tyler August (Republican)</p> <p><input type="radio"/> Write-in</p>
<p>Statewide</p> <p>Governor/Lieutenant Governor Vote for 1</p> <p>You may fill in only 1 oval for the office of Governor/Lieutenant Governor.</p> <p><input type="radio"/> Mary Burke/John Lehman (Democratic)</p> <p><input type="radio"/> Scott Walker/Rebecca Kleefisch (Republican)</p> <p><input type="radio"/> Dennis Fehr/No Candidate (Peoples Party)</p> <p><input type="radio"/> Robert Burke/Joseph M. Brost (Libertarian)</p> <p><input type="radio"/> Write-in Governor/Lt Governor</p> <p>Attorney General Vote for 1</p> <p><input type="radio"/> Susan V. Happ (Democratic)</p> <p><input type="radio"/> Brad Schimel (Republican)</p> <p><input type="radio"/> Thomas A. Nelson, Sr. (Libertarian)</p> <p><input type="radio"/> Write-in</p>	<p>Continue voting at top of next column.</p>	<p>Turn ballot over to continue voting.</p>

Continue voting at top of next column.

Page 1 of 2-sided ballot

Ballot continues on other side



County

Sheriff
Vote for 1

☐ Kurt Picknell
(Republican)

☐

Write-in

Clerk of Circuit Court
Vote for 1

☐ Sheila T. Reiff
(Republican)

☐

Write-in

Referendum

To vote in favor of a question, fill in the oval next to "YES" like this ☒. To vote against the question, fill in the oval next to "NO" like this ☐.

State

Question 1: "Creation of a Transportation Fund. Shall section 9 (2) of article IV and section 11 of article VIII of the constitution be created to require that revenues generated by use of the state transportation system be deposited into a transportation fund administered by a department of transportation for the exclusive purpose of funding Wisconsin's transportation systems and to prohibit any transfers or lapses from this fund?"

☐ YES

☐ NO

Official Ballot
for Partisan Office and Referendum

November 4, 2014

for
TOWN OF LAFAYETTE W1-3
Walworth County, WI

Ballot issued by

(initials of inspectors)

Absentee ballot issued by

(initials of municipal or deputy clerk)
(If issued by SVDs, both SVDs must initial.)

Certification of Voter Assistance

I certify that I marked this ballot at the request and direction of a voter, who is authorized to receive assistance.

(signature of assistor)

For Official Use Only

Inspectors: Identify ballots required to be remade.

Reason for remaking ballot:

____ Overvoted
____ Damaged
____ Other

Original Ballot No. or Duplicate Ballot No.

Official Ballot for Partisan Office and Referendum November 4, 2014

A	Columbia County	B	State of Wisconsin	C	November 4, 2014
<p>Notice to voters: This ballot may be invalid unless initiated by 2 election inspectors. If cast as an absentee ballot, the ballot must bear the initials of the municipal clerk or deputy clerk.</p>					
Instructions to Voters		Statewide (Cont.)		Referendum	
<p>If you make a mistake on your ballot or have a question, see an election inspector. (Absentee voters: Contact your municipal clerk.)</p> <p>Fill in only 1 oval in each contest.</p> <p>-To vote for a name on the ballot, fill in the oval next to the name like this <input type="radio"/>.</p> <p>-To vote for a name that is not on the ballot, write in the name on the line marked "write-in", and fill in the oval like this <input type="radio"/>.</p>		<p>State Treasurer Vote for 1</p> <p><input type="radio"/> David L. Sartori (Democratic)</p> <p><input type="radio"/> Matt Adamczyk (Republican)</p> <p><input type="radio"/> Andrew Zuelke (Constitution)</p> <p><input type="radio"/> Ron Hardy (Wisconsin Green Party)</p> <p><input type="radio"/> Jerry Shidell (Libertarian)</p> <p><input type="radio"/> write-in:</p>		<p>To vote in favor of a question, fill in the oval next to 'YES', like this <input type="radio"/>.</p> <p>To vote against a question, fill in the oval next to 'NO', like this <input type="radio"/>.</p>	
Statewide		Congressional		State	
<p>Governor/Lieutenant Governor Vote for 1 You may fill in only 1 oval for the office of Governor/Lieutenant Governor.</p> <p><input type="radio"/> Mary Burke/John Lehman (Democratic)</p> <p><input type="radio"/> Scott Walker/Rebecca Kleefisch (Republican)</p> <p><input type="radio"/> Dennis Fehr/No Candidate (Peoples Party)</p>		<p>Representative in Congress District 6 Vote for 1</p> <p><input type="radio"/> Mark L. Harris (Democratic)</p> <p><input type="radio"/> Glenn Grothman (Republican)</p> <p><input type="radio"/> Gus Fahrendorf (Libertarian)</p> <p><input type="radio"/> write-in:</p>		<p>Question 1: "Creation of a Transportation Fund. Shall section 9 (2) of article IV and section 14 of article VIII of the constitution be created to require that revenues generated by use of the state transportation system be deposited into a transportation fund administered by a department of transportation for the exclusive purpose of funding Wisconsin's transportation systems and to prohibit any transfers or lapses from this fund?"</p> <p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>	
Attorney General Vote for 1		Legislative		Official Ballot for Partisan Office and Referendum November 4, 2014	
<p><input type="radio"/> Robert Burke/Joseph M. Brost (Libertarian)</p> <p><input type="radio"/> write-in: (Governor)</p> <p><input type="radio"/> write-in: (Lieutenant Governor)</p>		<p>Representative to the Assembly District 42 Vote for 1</p> <p><input type="radio"/> George Ferriter (Democratic)</p> <p><input type="radio"/> Keith Ripp (Republican)</p> <p><input type="radio"/> write-in:</p>		<p>for</p> <p>Town of Arlington</p>	
Sheriff Vote for 1		County		Ballot issued by	
<p><input type="radio"/> Susan V. Happ (Democratic)</p> <p><input type="radio"/> Brad Schimel (Republican)</p> <p><input type="radio"/> Thomas A. Nelson, Sr. (Libertarian)</p> <p><input type="radio"/> write-in:</p>		<p><input type="radio"/> Jesse C. Weaver (Democratic)</p> <p><input type="radio"/> Dennis Richards (Republican)</p> <p><input type="radio"/> write-in:</p>		<p>(Initials of inspectors)</p>	
Secretary of State Vote for 1		Clerk of Circuit Court Vote for 1		Absentee ballot issued by	
<p><input type="radio"/> Doug La Follette (Democratic)</p> <p><input type="radio"/> Julian Bradley (Republican)</p> <p><input type="radio"/> Jerry Broitzman (Constitution)</p> <p><input type="radio"/> Andy Craig (Libertarian)</p> <p><input type="radio"/> write-in:</p>		<p><input type="radio"/> Susan Raimel (Republican)</p> <p><input type="radio"/> write-in:</p>		<p>(Initials of municipal clerk or deputy clerk) (If issued by SVDs, both SVDs must initial.)</p>	
				Certification of Voter Assistance	
				<p>I certify that I marked this ballot at the request and direction of a voter, who is authorized to receive assistance.</p> <p>(signature of assistor)</p>	
				For Official Use Only	
				<p>Inspectors: Identify ballots required to be remade.</p>	
				<p>Reason for remaking ballot:</p> <p><input type="checkbox"/> Overvoted</p> <p><input type="checkbox"/> Damaged</p> <p><input type="checkbox"/> Other</p>	
				<p>Original Ballot No. or Duplicate Ballot No.</p>	
Town of Arlington				Typ:01 Seq:0001 Spl:01	

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**DEFENDANT'S
EXHIBIT**

B-1

Columbia County

**Official Ballot for Partisan Office and Referendum
November 4, 2014**

Instructions to Voters		Statewide (Cont.)	Referendum
<p>Notice to voters: This ballot may be invalid unless initialed by 2 election inspectors. If cast as an absentee ballot, the ballot must bear the initials of the municipal clerk or deputy clerk.</p> <p>If you make a mistake on your ballot or have a question, see an election inspector. (Absentee voters: Contact your municipal clerk.)</p> <p>Fill in only 1 oval in each contest.</p> <p>- To vote for a name on the ballot, fill in the oval next to the name like this <input type="radio"/>.</p> <p>- To vote for a name that is not on the ballot, write the name on the line marked "write-in," and fill in the oval next to the name like this <input type="radio"/>.</p>		<p>State Treasurer Vote for 1</p> <p><input type="radio"/> David L. Sartori (Democratic)</p> <p><input type="radio"/> Matt Adamczyk (Republican)</p> <p><input type="radio"/> Andrew Zuelke (Constitution)</p> <p><input type="radio"/> Ron Hardy (Wisconsin Green Party)</p> <p><input type="radio"/> Jerry Shidell (Libertarian)</p> <p><input type="radio"/> write-in:</p>	<p>To vote in favor of a question, fill in the oval next to 'YES,' like this <input type="radio"/>. To vote against a question, fill in the oval next to 'NO,' like this <input type="radio"/>.</p> <p>State</p> <p>QUESTION 1: "Creation of a Transportation Fund." Shall section 9 (2) of article IV and section 11 of article VIII of the constitution be created to require that revenues generated by use of the state transportation system be deposited into a transportation fund administered by a department of transportation for the exclusive purpose of funding Wisconsin's transportation systems and to prohibit any transfers or lapses from this fund?"</p> <p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>
<p>Statewide</p> <p>Governor/Lieutenant Governor Vote for 1 You may fill in only 1 oval for the office of Governor/Lieutenant Governor.</p> <p><input type="radio"/> Mary Burke/John Lehman (Democratic)</p> <p><input type="radio"/> Scott Walker/Rebecca Kleefisch (Republican)</p> <p><input type="radio"/> Dennis Fehr/No Candidate (Peoples Party)</p> <p><input type="radio"/> Robert Burke/Joseph M. Brost (Libertarian)</p> <p><input type="radio"/> write-in: (Governor)</p> <p><input type="radio"/> write-in: (Lieutenant Governor)</p>		<p>Congressional</p> <p>Representative In Congress District 2 Vote for 1</p> <p><input type="radio"/> Mark Pocan (Democratic)</p> <p><input type="radio"/> Peter Theron (Republican)</p> <p><input type="radio"/> write-in:</p>	<p>County</p> <p>Question 1: "Should the State of Wisconsin increase the minimum wage to \$10.10 per hour?"</p> <p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p> <p>Question 2: "Shall the next Governor and State Legislature accept available federal funds for BadgerCare to ensure that thousands of Wisconsin citizens have access to quality and affordable health coverage?"</p> <p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>
<p>Attorney General Vote for 1</p> <p><input type="radio"/> Susan V. Happ (Democratic)</p> <p><input type="radio"/> Brad Schmel (Republican)</p> <p><input type="radio"/> Thomas A. Nelson, Sr. (Libertarian)</p> <p><input type="radio"/> write-in:</p>		<p>Legislative</p> <p>State Senator District 15 Vote for 1</p> <p><input type="radio"/> Janis Ringhand (Democratic)</p> <p><input type="radio"/> Brian Fitzgerald (Republican)</p> <p><input type="radio"/> write-in:</p>	<p>Official Ballot for Partisan Office and Referendum November 4, 2014</p> <p>for</p> <p>(municipality and ward #(s))</p> <p>Ballot issued by</p> <p>(initials of inspectors)</p> <p>Absentee ballot issued by</p> <p>(initials of municipal clerk or deputy clerk) (if issued by SVDs, both SVDs must initial.)</p> <p>Certification of Voter Assistance</p> <p>I certify that I marked this ballot at the request and direction of a voter, who is authorized under the law to receive assistance.</p> <p>(signature of assistor)</p>
<p>Secretary of State Vote for 1</p> <p><input type="radio"/> Doug La Follette (Democratic)</p> <p><input type="radio"/> Julian Bradley (Republican)</p> <p><input type="radio"/> Jerry Broitzman (Constitution)</p> <p><input type="radio"/> Andy Craig (Libertarian)</p> <p><input type="radio"/> write-in:</p>		<p>County</p> <p>Sheriff Vote for 1</p> <p><input type="radio"/> David J. Mahoney (Democratic)</p> <p><input type="radio"/> write-in:</p>	<p>For Official Use Only</p> <p>Inspectors: Identify ballots required to be remade.</p> <p>Reason for remarking ballot:</p> <p><input type="checkbox"/> Overvoted</p> <p><input type="checkbox"/> Damaged</p> <p><input type="checkbox"/> Other</p> <p>Original Ballot No. or Duplicate Ballot No. _____</p>
<p>Continue voting at top of next column.</p>		<p>Continue voting at top of next column.</p>	<p>Typ:01 Seq:0001 Sp:01</p>

DEFENDANT'S EXHIBIT
B-2
Dane County

Official Ballot for Partisan Office and Referendum

November 4, 2014

Notice to voters: This ballot may be invalid unless initialed by 2 election inspectors. If cast as an absentee ballot, the ballot must bear the initials of the municipal clerk or deputy clerk.

Important: Use a #2 pencil or the marking pen provided. Do not use Red Ink!

Instructions to Voters	Statewide (Cont.)	Congressional
If you make a mistake on your ballot or have a question, see an election inspector. (Absentee voters: Contact your municipal clerk.) Fill in only 1 oval in each contest. - To vote for a name on the ballot, fill in the oval next to the name like this <input type="radio"/> . - To vote for a name that is not on the ballot, write the name on the line marked "Write-in," and fill in the oval next to the name like this <input type="radio"/> .	Secretary of State Vote for 1 <input type="radio"/> Doug La Follette (Democratic) <input type="radio"/> Julian Bradley (Republican) <input type="radio"/> Jerry Broitzman (Constitution) <input type="radio"/> Andy Craig (Libertarian) <input type="radio"/> Write-in	Representative in Congress District 5 Vote for 1 <input type="radio"/> Chris Rockwood (Democratic) <input type="radio"/> F. James Sensenbrenner, Jr. (Republican) <input type="radio"/> Write-in
Statewide		Legislative
Governor/Lieutenant Governor Vote for 1 You may <u>fill in only 1 oval</u> for the office of Governor/Lieutenant Governor. <input type="radio"/> Mary Burke/John Lehman (Democratic) <input type="radio"/> Scott Walker/Rebecca Kleefisch (Republican) <input type="radio"/> Dennis Fehr/No Candidate (Peoples Party) <input type="radio"/> Robert Burke/Joseph M. Brost (Libertarian) <input type="radio"/> Write-in Governor/Lt. Governor	State Treasurer Vote for 1 <input type="radio"/> David L. Sartori (Democratic) <input type="radio"/> Matt Adamczyk (Republican) <input type="radio"/> Andrew Zuelke (Constitution) <input type="radio"/> Ron Hardy (Wisconsin Green Party) <input type="radio"/> Jerry Shidell (Libertarian) <input type="radio"/> Write-in	State Senator District 13 Vote for 1 <input type="radio"/> Michelle Zahn (Democratic) <input type="radio"/> Scott L. Fitzgerald (Republican) <input type="radio"/> Write-in
Attorney General Vote for 1 <input type="radio"/> Susan V. Happ (Democratic) <input type="radio"/> Brad Schimel (Republican) <input type="radio"/> Thomas A. Nelson, Sr. (Libertarian) <input type="radio"/> Write-in	Continue voting at top of next column.	Representative to the Assembly District 37 Vote for 1 <input type="radio"/> Mary I. Arnold (Democratic) <input type="radio"/> John Jagler (Republican) <input type="radio"/> Write-in

Turn ballot over to continue voting.

Continue voting at top of next column.

Page 1 of 2-sided ballot

Ballot continues on other side

County

Sheriff
Vote for 1

☐ Dale Schmidt
(Republican)

☐

Write-in

Clerk of Circuit Court
Vote for 1

☐ Lynn M. Hron
(Republican)

☐

Write-in

Referendum

To vote in favor of a question, fill in the oval next to "YES" like this ☒. To vote against the question, fill in the oval next to "NO" like this ☐.

State

Question 1: "Creation of a Transportation Fund. Shall section 9 (2) of article IV and section 11 of article VIII of the constitution be created to require that revenues generated by use of the state transportation system be deposited into a transportation fund administered by a department of transportation for the exclusive purpose of funding Wisconsin's transportation systems and to prohibit any transfers or lapses from this fund?"

☐ YES

☐ NO

Official Ballot
for Partisan Office and Referendum

November 4, 2014

for
City of Watertown W7 Ald D5
Dodge County, WI

Ballot issued by

(initials of inspectors)

Absentee ballot issued by

(initials of municipal or deputy clerk)
(If issued by SVDs, both SVDs must initial.)

Certification of Voter Assistance

I certify that I marked this ballot at the request and direction of a voter, who is authorized to receive assistance.

(signature of assistor)

For Official Use Only

Inspectors: Identify ballots required to be remade.

Reason for remaking ballot:

____ Overvoted

____ Damaged

____ Other

Original Ballot No. or Duplicate Ballot No.

**Official Ballot for Partisan Office
and Referendum
November 4, 2014**

1

Notice to voters: This ballot may be invalid unless initiated by 2 election inspectors. If cast as an absentee ballot, the ballot must bear the initials of the municipal or deputy clerk.

Instructions to Voters	Statewide (Cont.)	Referendum	
<p>If you make a mistake on your ballot or have a question, see an election inspector. (Absentee voters: Contact your municipal clerk.)</p> <p>Fill in only 1 oval in each contest.</p> <p>To vote for a name on the ballot, fill in the oval next to the name like this <input type="radio"/></p> <p>To vote for a name that is not on the ballot, write the name on the line marked "write-in," and fill in the oval next to the name like this <input type="radio"/></p>	<p>State Treasurer Vote for 1</p> <p><input type="radio"/> David L. Sartori Democratic</p> <p><input type="radio"/> Matt Adamczyk Republican</p> <p><input type="radio"/> Andrew Zuelke Constitution</p> <p><input type="radio"/> Ron Hardy Wisconsin Green Party</p> <p><input type="radio"/> Jerry Shidell Libertarian</p> <p><input type="radio"/> write-in</p>	<p>To vote in favor of a question, fill in the oval next to 'YES', like this <input type="radio"/></p> <p>To vote against a question, fill in the oval next to 'NO', like this <input type="radio"/></p>	
		State	
		<p>Question 1: "Creation of a Transportation Fund. Shall section 9 (2) of article IV and section 11 of article VIII of the constitution be created to require that revenues generated by use of the state transportation system be deposited into a transportation fund administered by a department of transportation for the exclusive purpose of funding Wisconsin's transportation systems and to prohibit any transfers or lapses from this fund?"</p> <p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>	
	<p>Statewide</p> <p>Governor/ Lieutenant Governor Vote for 1 You may fill in only 1 oval for the office of Governor/Lieutenant Governor.</p> <p><input type="radio"/> Mary Burke/ John Lehman Democratic</p> <p><input type="radio"/> Scott Walker/ Rebecca Kleefisch Republican</p> <p><input type="radio"/> Dennis Fehr/ No Candidate Peoples Party</p> <p><input type="radio"/> Robert Burke/ Joseph M. Brost Libertarian</p> <p><input type="radio"/> write-in (Governor)</p> <p><input type="radio"/> write-in (Lt. Governor)</p>	<p>Congressional</p> <p>Representative in Congress District 5 Vote for 1</p> <p><input type="radio"/> Chris Rockwood Democratic</p> <p><input type="radio"/> F. James Sensenbrenner, Jr. Republican</p> <p><input type="radio"/> write-in</p>	County
		<p>Legislative</p> <p>State Senator District 13 Vote for 1</p> <p><input type="radio"/> Michelle Zahn Democratic</p> <p><input type="radio"/> Scott L. Fitzgerald Republican</p> <p><input type="radio"/> write-in</p>	<p>Question 1: Shall the State of Wisconsin accept available Federal Medicaid funds to provide access to BadgerCare to Wisconsin residents up to 133% of the Federal Poverty Level?</p> <p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>
<p>Attorney General Vote for 1</p> <p><input type="radio"/> Susan V. Happ Democratic</p> <p><input type="radio"/> Brad Schmel Republican</p> <p><input type="radio"/> Thomas A. Nelson, Sr. Libertarian</p> <p><input type="radio"/> write-in</p>	<p>Representative to the Assembly District 38 Vote for 1</p> <p><input type="radio"/> Tom Chojnacki Democratic</p> <p><input type="radio"/> Joel Kleefisch Republican</p> <p><input type="radio"/> write-in</p>		
<p>Secretary of State Vote for 1</p> <p><input type="radio"/> Doug La Follette Democratic</p> <p><input type="radio"/> Julian Bradley Republican</p> <p><input type="radio"/> Jerry Broitzman Constitution</p> <p><input type="radio"/> Andy Craig Libertarian</p> <p><input type="radio"/> write-in</p>	<p>Sheriff Vote for 1</p> <p><input type="radio"/> Paul Milbrath Republican</p> <p><input type="radio"/> write-in</p>		
	<p>Clerk of Circuit Court Vote for 1</p> <p><input type="radio"/> Carla J. Robinson Republican</p> <p><input type="radio"/> write-in</p>		
Continue voting at top of next column.	Continue voting at top of next column.		

Page 1 of 2-sided ballot.

Ballot continues on other side.

Typ:01 Seq:0001 Sp:01

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**DEFENDANT'S
EXHIBIT**
B-4
Jefferson
County

Official Ballot
for
Partisan Office
and Referendum
November 4, 2014
for
Jefferson County

T. AZTALAN WARDS 1,2
T. CONCORD WARDS 1-3
T. FARMINGTON WARDS 1-2
T. LAKE MILLS WARDS 1-3
T. MILFORD WARDS 1-2
T. WATERLOO WARD 1
T. WATERTOWN WARDS 1-2
V. CAMBRIDGE WARD 1
V. JOHNSON CREEK WARDS 1-3
V. LAC LA BELLE WARD 2
C. LAKE MILLS WARDS 1-8

Ballot issued by

(initials of election inspectors)

Absentee ballot issued by

(initials of municipal clerk or deputy clerk)
(if issued by SVD, both SVDs must initial.)

Certification of Voter Assistance

I certify that I marked this ballot at the
request and direction of a voter, who is
authorized to receive assistance.

(signature of assistor)

For Official Use Only

Inspectors: Identify ballots
required to be remade.

Reason for remaking ballot:

☐ Overvoted

☐ Damaged

☐ Other

Original Ballot No. or Duplicate Ballot No.

Official Ballot for Partisan Office and Referendum

November 4, 2014

Notice to voters: This ballot may be invalid unless initialed by 2 election inspectors. If cast as an absentee ballot, the ballot must bear the initials of the municipal clerk or deputy clerk.

Important: Use a #2 pencil or the marking pen provided. Do not use Red Ink!

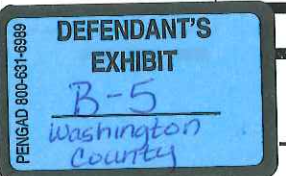
Instructions to Voters	Statewide (Cont.)	Congressional
<p>If you make a mistake on your ballot or have a question, see an election inspector. (Absentee voters: Contact your municipal clerk.)</p> <p>Fill in only 1 oval in each contest. -To vote for a name on the ballot, fill in the oval next to the name like this <input type="radio"/>. -To vote for a name that is not on the ballot, write the name on the line marked "Write-in," and fill in the oval next to the name like this <input type="radio"/>.</p>	<p>Secretary of State Vote for 1</p> <p><input type="radio"/> Doug La Follette (Democratic)</p> <p><input type="radio"/> Julian Bradley (Republican)</p> <p><input type="radio"/> Jerry Broitzman (Constitution)</p> <p><input type="radio"/> Andy Craig (Libertarian)</p> <p><input type="radio"/></p> <p style="text-align: center;">Write-in</p>	<p>Representative in Congress District 5 Vote for 1</p> <p><input type="radio"/> Chris Rockwood (Democratic)</p> <p><input type="radio"/> F. James Sensenbrenner, Jr. (Republican)</p> <p><input type="radio"/></p> <p style="text-align: center;">Write-in</p>
<p style="text-align: center;">Statewide</p> <p>Governor/Lieutenant Governor Vote for 1 You may <u>fill in only 1 oval</u> for the office of Governor/Lieutenant Governor.</p> <p><input type="radio"/> Mary Burke/John Lehman (Democratic)</p> <p><input type="radio"/> Scott Walker/Rebecca Kleefisch (Republican)</p> <p><input type="radio"/> Dennis Fehr/No Candidate (Peoples Party)</p> <p><input type="radio"/> Robert Burke/Joseph M. Brost (Libertarian)</p> <p><input type="radio"/></p> <p style="text-align: center;">Write-in Governor/Lt. Governor</p>	<p>State Treasurer Vote for 1</p> <p><input type="radio"/> David L. Sartori (Democratic)</p> <p><input type="radio"/> Matt Adamczyk (Republican)</p> <p><input type="radio"/> Andrew Zuelke (Constitution)</p> <p><input type="radio"/> Ron Hardy (Wisconsin Green Party)</p> <p><input type="radio"/> Jerry Shidell (Libertarian)</p> <p><input type="radio"/></p> <p style="text-align: center;">Write-in</p>	<p style="text-align: center;">Legislative</p> <p>Representative to the Assembly District 59 Vote for 1</p> <p><input type="radio"/> Jesse Kremer (Republican)</p> <p><input type="radio"/></p> <p style="text-align: center;">Write-in</p>
<p>Attorney General Vote for 1</p> <p><input type="radio"/> Susan V. Happ (Democratic)</p> <p><input type="radio"/> Brad Schimel (Republican)</p> <p><input type="radio"/> Thomas A. Nelson, Sr. (Libertarian)</p> <p><input type="radio"/></p> <p style="text-align: center;">Write-in</p>	<p style="text-align: center;">County</p> <p>Sheriff Vote for 1</p> <p><input type="radio"/> Dale K. Schmidt (Republican)</p> <p><input type="radio"/></p> <p style="text-align: center;">Write-in</p>	<p>Clerk of Circuit Court Vote for 1</p> <p><input type="radio"/> Theresa M. Russell (Republican)</p> <p><input type="radio"/></p> <p style="text-align: center;">Write-in</p>

Turn ballot over to continue voting.

Continue voting at top of next column.

Page 1 of 2-sided ballot

Ballot continues on other side



Referendum

To vote in favor of a question, fill in the oval next to "YES" like this ☒. To vote against the question, fill in the oval next to "NO" like this ☐.

State

Question 1: "Creation of a Transportation Fund. Shall section 9 (2) of article IV and section 11 of article VIII of the constitution be created to require that revenues generated by use of the state transportation system be deposited into a transportation fund administered by a department of transportation for the exclusive purpose of funding Wisconsin's transportation systems and to prohibit any transfers or lapses from this fund?"

☐ YES

☐ NO

Official Ballot for Partisan Office and Referendum

November 4, 2014

for
City of Hartford D1 W3-5
Washington County, WI

Ballot issued by

(initials of inspectors)

Absentee ballot issued by

(initials of municipal or deputy clerk)
(If issued by SVDs, both SVDs must initial.)

Certification of Voter Assistance

I certify that I marked this ballot at the request and direction of a voter, who is authorized to receive assistance.

(signature of assistor)

For Official Use Only

Inspectors: Identify ballots required to be remade.

Reason for remaking ballot:

☐ Overvoted
☐ Damaged
☐ Other

Original Ballot No. or Duplicate Ballot No.

Official Ballot for Partisan Office and Referendum
November 4, 2014

S01

Notice to voters: This ballot may be invalid unless initialed by 2 election inspectors.
If cast as an absentee ballot, the ballot must bear the initials of the municipal clerk or deputy clerk.

IMPORTANT: USE BLUE OR BLACK INK ONLY.

Instructions to Voters

If you make a mistake on your ballot or have a question, see an election inspector. (Absentee voters: Contact your municipal clerk.)

Connect only 1 arrow in each contest.

- To vote for a name on the ballot, complete the arrow next to the name like this →.
- To vote for a name that is not on the ballot, write the name on the line(s) marked "write-in," and complete the arrow next to the name like this →.

Statewide

Governor/Lieutenant Governor
Vote for 1

You may connect only 1 arrow for the office of Governor/Lieutenant Governor.

Mary Burke/John Lehman
(Democratic)

Scott Walker/Rebecca Kleefisch
(Republican)

Dennis Fehr/
No Candidate
(Peoples Party)

Robert Burke/Joseph M. Brost
(Libertarian)

write-in: /

write-in: (Governor)

write-in: (Lieutenant Governor)

Attorney General
Vote for 1

Susan V. Happ
(Democratic)

Brad Schimel
(Republican)

Thomas A. Nelson, Sr.
(Libertarian)

write-in: /

Secretary of State
Vote for 1

Doug La Follette
(Democratic)

Julian Bradley
(Republican)

Jerry Broitzman
(Constitution)

Andy Craig
(Libertarian)

write-in: /

State Treasurer
Vote for 1

David L. Sartori
(Democratic)

Matt Adamczyk
(Republican)

Andrew Zuelke
(Constitution)

Ron Hardy
(Wisconsin Green Party)

Jerry Shidell
(Libertarian)

write-in: /

Continue voting at top of next column.

Congressional

Representative in Congress
District 5
Vote for 1

Chris Rockwood
(Democratic)

F. James Sensenbrenner, Jr.
(Republican)

write-in: /

Legislative

Representative to the Assembly
District 22
Vote for 1

Jessie Read
(Democratic)

Janel Brandtjen
(Republican)

write-in: /

County

Sheriff
Vote for 1

Eric Soverson
(Republican)

write-in: /

Clerk of Circuit Court
Vote for 1

Kathleen A. Madden
(Republican)

write-in: /

Referendum

To vote in favor of a question, complete the arrow next to 'YES,' like this →.

To vote against a question, complete the arrow next to 'NO,' like this →.

State

QUESTION 1: "Creation of a Transportation Fund. Shall section 9 (2) of article IV and section 11 of article VIII of the constitution be created to require that revenues generated by use of the state transportation system be deposited into a transportation fund administered by a department of transportation for the exclusive purpose of funding Wisconsin's transportation systems and to prohibit any transfers or lapses from this fund?"

YES

NO

Official Ballot for Partisan
Office and Referendum
November 4, 2014
for

Village of Menomonee Falls
Ward 1

Ballot issued by

(Initials of inspectors)

Absentee ballot issued by

(Initials of municipal clerk or deputy clerk)
(If issued by SVDs, both SVDs must initial.)

Certification of Voter Assistance
I certify that I marked this ballot at the request and direction of a voter, who is authorized to receive assistance.

(Signature of assistor)

For Official Use Only

Inspectors: Identify ballots required to be remade.

Reason for remaking ballot:

- ☐ Overvoted
- ☐ Damaged
- ☐ Other

Original Ballot No. or Duplicate Ballot No.

DEFENDANT'S
EXHIBIT

B-6
Waukesha
County

PENGAD 800-631-6989



Government Accountability Board

STATE OF WISCONSIN

Voters

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Upcoming Events

GAB October 2014 Meeting

October 28, 2014 - 9:00am

Thanksgiving -- Agency Closed

November 27, 2014 - 7:45am

GAB December 2014 Meeting

December 16, 2014 - 9:00am

[More ...](#)

Welcome to our website

We hope you find our website easy to use and navigate.

Click here for more information about the site.

Home

Ballots with Constitutional Amendment Available/N

Posted in Clerks

Priority: Timely Attention Required

Date: July 17, 2014

To: Wisconsin County Clerks

Milwaukee County Election Commission

From: David Buerger, Elections Specialist

Diane Lowe, Lead Elections Specialist

Attachment

[New Ballot Review Procedure and November Ballots.pdf](#)

Ballots that Include the Statewide Constitutional Am

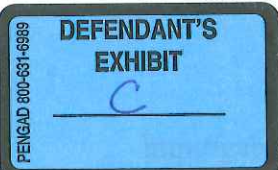
Sample paper and optical scan ballots for the General Election **Amendment** are now available on the G.A.B. website, <http://www.gab.wisconsin.gov>, **election ballot series is GAB-203.**

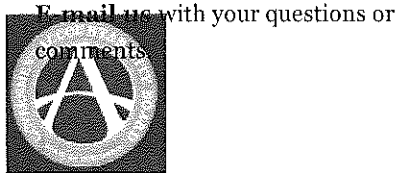
- To access the paper, hand-count ballot, which include click on "GAB-203."
- To access sample arrow and oval optical scan ballots, amendment, click on "GAB-203ms."
- To access the paper "Federal office-only" ballot and in
- To access the optical scan "Federal office-only" ballot,

Streamlined Ballot Review Process

You may have heard that Jason Fischer has decided to move on August 1, 2014. Therefore, David and Diane will be the only staff with us to streamline this process in order to approve your ballot as possible. Please read and follow the pointers below:

- Please send **only one** representative example of your
- Please indicate on your ballot **the name of the commission**
- **Do not** send more than one ballot.
- **Do not** send various ballot styles (*If your county uses each*).
- **Do not** send a pdf of more than one ballot.
- **Choose only one** method of transmission. Either:





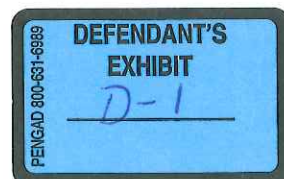
- o FAX your ballot to 608-267-0500. (If you FAX y
- o E-Mail your ballot to gabhelpdesk@wi.gov. (
- **Do not** E-MAIL your ballot to individual elections sp
- If you've made the changes indicated by staff review, I

Thank you for your anticipated cooperation. If you have ques
gabhelpdesk@wi.gov or 608-261-2028.

Official Ballot for Partisan Office and Referendum November 4, 2014

Notice to voters: This ballot may be invalid unless initialed by 2 election inspectors. If cast as an absentee ballot, the ballot must bear the initials of the municipal clerk or deputy clerk.

Instructions to Voters	Statewide (Cont.)	Congressional
<p>If you make a mistake on your ballot or have a question, see an election inspector. (Absentee voters: Contact your municipal clerk.)</p> <p>Connect only 1 arrow in each contest.</p> <p>-To vote for a name on the ballot, complete the arrow next to the name like this .</p> <p>-To vote for a name that is not on the ballot, write the name on the line(s) marked "write-in," and complete the arrow next to the name like this .</p>	<p>Attorney General Vote for 1</p> <p style="text-align: right;">Candidate (Democratic)</p> <p style="text-align: right;">Candidate (Republican)</p> <p style="text-align: right;">Thomas A. Nelson, Sr. (Libertarian)</p> <p>write-in: </p> <p>Secretary of State Vote for 1</p> <p style="text-align: right;">Candidate (Democratic)</p> <p style="text-align: right;">Candidate (Republican)</p> <p style="text-align: right;">Candidate (Constitution)</p> <p style="text-align: right;">Andy Craig (Libertarian)</p> <p>write-in: </p> <p>State Treasurer Vote for 1</p> <p style="text-align: right;">Candidate (Democratic)</p> <p style="text-align: right;">Candidate (Republican)</p> <p style="text-align: right;">Candidate (Constitution)</p> <p style="text-align: right;">Ron Hardy (Wisconsin Green Party)</p> <p style="text-align: right;">Jerry Shidell (Libertarian)</p> <p>write-in: </p> <p>Continue voting at top of next column.</p>	<p>Representative in Congress District _ Vote for 1</p> <p style="text-align: right;">Candidate (Democratic)</p> <p style="text-align: right;">Candidate (Republican)</p> <p style="text-align: right;">Candidate (Independent)</p> <p>write-in: </p> <p style="text-align: center; background-color: #d3d3d3;">Legislative</p> <p>State Senator, District _ Vote for 1</p> <p style="text-align: right;">Candidate (Democratic)</p> <p style="text-align: right;">Candidate (Republican)</p> <p style="text-align: right;">Candidate (Independent)</p> <p>write-in: </p> <p>Representative to the Assembly District _ Vote for 1</p> <p style="text-align: right;">Candidate (Democratic)</p> <p style="text-align: right;">Candidate (Republican)</p> <p style="text-align: right;">Candidate (Independent)</p> <p>write-in: </p> <p>Turn ballot over to continue voting.</p>
Statewide		
<p>Governor/ Lieutenant Governor Vote for 1</p> <p>You may <u>connect only 1 arrow</u> for the office of Governor/Lieutenant Governor.</p> <p style="text-align: right;">Candidate/ Candidate (Democratic)</p> <p style="text-align: right;">Candidate/ Candidate (Republican)</p> <p style="text-align: right;">Dennis Fehr/ No Candidate (Peoples Party)</p> <p style="text-align: right;">Robert Burke/ Joseph M. Brost (Libertarian)</p> <p>write-in: _____ / (Governor)</p> <p>write-in: _____ (Lieutenant Governor)</p> <p>Continue voting at top of next column.</p>		
Page 1 of 2-sided ballot	Ballot continues on other side.	



County	Referendum	Official Ballot
Sheriff Vote for 1 <div style="text-align: right; margin-right: 50px;"> Candidate ← (Democratic) </div>	To vote in favor of a question, complete the arrow next to 'YES,' Like this ←. To vote against a question, complete the arrow next to 'NO,' like this ←.	for Partisan Office and Referendum November 4, 2014 for _____ (municipality and ward #(s))
<div style="text-align: right; margin-right: 50px;"> Candidate ← (Constitution) </div>	<div style="text-align: center;">State</div> QUESTION 1: "Creation of a Transportation Fund. Shall	
write-in: ←	section 9 (2) of article IV and section 11 of article VIII of the constitution be created to require that revenues generated by use of the state transportation system be deposited into a transportation fund administered by a department of transportation for the exclusive purpose of funding Wisconsin's transportation systems and to prohibit any transfers or lapses from this fund?" <div style="text-align: right; margin-right: 50px;"> YES ← NO ← </div>	
Coroner Vote for 1 <div style="text-align: right; margin-right: 50px;"> Candidate ← (Democratic) </div>		
<div style="text-align: right; margin-right: 50px;"> Candidate ← (Republican) </div>		
<div style="text-align: right; margin-right: 50px;"> Candidate ← (Independent) </div>		
write-in: ←		Ballot issued by _____ (initials of inspectors)
Clerk of Circuit Court Vote for 1 <div style="text-align: right; margin-right: 50px;"> Candidate ← (Democratic) </div>		Absentee ballot issued by _____ (initials of municipal or deputy clerk) (If issued by SVDs, both SVDs must initial.)
<div style="text-align: right; margin-right: 50px;"> Candidate ← (Republican) </div>		Certification of Voter Assistance I certify that I marked this ballot at the request and direction of a voter, who is authorized to receive assistance. _____ (signature of assistor)
write-in: ←	<div style="text-align: center;">County</div> QUESTION 1: Shall... <div style="text-align: right; margin-right: 50px;"> YES ← NO ← </div>	<div style="text-align: center;">For Official Use Only</div> Inspectors: Identify ballots required to be remade.
	<div style="text-align: center;">Municipal</div> QUESTION 1: Shall... <div style="text-align: right; margin-right: 50px;"> YES ← NO ← </div>	Reason for remaking ballot: <div style="margin-left: 40px;"> <input type="checkbox"/> Overvoted <input type="checkbox"/> Damaged <input type="checkbox"/> Other </div>
		Original Ballot No. or Duplicate Ballot No. _____ _____

Page 2 of 2-sided ballot

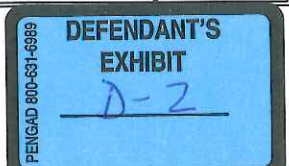
Ballot begins on other side.



**Official Ballot for Partisan Office
and Referendum
November 4, 2014**

Notice to voters: This ballot may be invalid unless initialed by 2 election inspectors. If cast as an absentee ballot, the ballot must bear the initials of the municipal clerk or deputy clerk.

Instructions to Voters	Statewide (Cont.)	Congressional
<p>If you make a mistake on your ballot or have a question, see an election inspector. (Absentee voters: Contact your municipal clerk.)</p> <p>Fill in only 1 oval in each contest.</p> <p>-To vote for a name on the ballot, fill in the oval next to the name like this .</p> <p>-To vote for a name that is not on the ballot, write the name on the line marked "write-in," and fill in the oval next to the name like this .</p>	<p>Attorney General Vote for 1</p> <p><input type="radio"/> Candidate (Democratic)</p> <p><input type="radio"/> Candidate (Republican)</p> <p><input type="radio"/> Thomas A. Nelson, Sr. (Libertarian)</p> <p><input type="radio"/> write-in: _____</p> <p>Secretary of State Vote for 1</p> <p><input type="radio"/> Candidate (Democratic)</p> <p><input type="radio"/> Candidate (Republican)</p> <p><input type="radio"/> Candidate (Constitution)</p> <p><input type="radio"/> Andy Craig (Libertarian)</p> <p><input type="radio"/> write-in: _____</p> <p>State Treasurer Vote for 1</p> <p><input type="radio"/> Candidate (Democratic)</p> <p><input type="radio"/> Candidate (Republican)</p> <p><input type="radio"/> Candidate (Constitution)</p> <p><input type="radio"/> Ron Hardy (Wisconsin Green Party)</p> <p><input type="radio"/> Jerry Shidell (Libertarian)</p> <p><input type="radio"/> write-in: _____</p> <p>Continue voting at top of next column.</p>	<p>Representative in Congress District _ Vote for 1</p> <p><input type="radio"/> Candidate (Democratic)</p> <p><input type="radio"/> Candidate (Republican)</p> <p><input type="radio"/> Candidate (Independent)</p> <p><input type="radio"/> write-in: _____</p> <p style="text-align: center;">Legislative</p> <p>State Senator, District _ Vote for 1</p> <p><input type="radio"/> Candidate (Democratic)</p> <p><input type="radio"/> Candidate (Republican)</p> <p><input type="radio"/> Candidate (Independent)</p> <p><input type="radio"/> write-in: _____</p> <p>Representative to the Assembly District _ Vote for 1</p> <p><input type="radio"/> Candidate (Democratic)</p> <p><input type="radio"/> Candidate (Republican)</p> <p><input type="radio"/> Candidate (Independent)</p> <p><input type="radio"/> write-in: _____</p> <p>Turn ballot over to continue voting.</p>
Statewide		
<p>Governor/ Lieutenant Governor Vote for 1 <i>You may <u>fill in only 1 oval</u> for the office of Governor/Lieutenant Governor.</i></p> <p><input type="radio"/> Candidate/ Candidate (Democratic)</p> <p><input type="radio"/> Candidate/ Candidate (Republican)</p> <p><input type="radio"/> Dennis Fehr/ No Candidate (Peoples Party)</p> <p><input type="radio"/> Robert Burke/ Joseph M. Brost (Libertarian)</p> <p><input type="radio"/> write-in: _____ / (Governor)</p> <p>write-in: _____ (Lieutenant Governor)</p> <p>Continue voting at top of next column.</p>		
Page 1 of 2-sided ballot	Ballot continues on other side. ➡	



County	Referendum	
Sheriff Vote for 1 <input type="radio"/> Candidate (Democratic)	To vote in favor of a question, fill in the the oval next to 'YES,' like this <input checked="" type="radio"/> . To vote against a question, fill in the oval next to 'NO,' like this <input checked="" type="radio"/> .	Official Ballot for Partisan Office and Referendum November 4, 2014 for _____ (municipality and ward #(s)) Ballot issued by _____ _____ (initials of inspectors) Absentee ballot issued by _____ _____ (initials of municipal or deputy clerk) (If issued by SVDs, both SVDs must initial.) Certification of Voter Assistance I certify that I marked this ballot at the request and direction of a voter, who is authorized to receive assistance. _____ (signature of assistor) For Official Use Only <i>Inspectors: Identify ballots required to be remade.</i> Reason for remaking ballot: <input type="checkbox"/> Overvoted <input type="checkbox"/> Damaged <input type="checkbox"/> Other Original Ballot No. or Duplicate Ballot No. _____ _____
<input type="radio"/> Candidate (Constitution)	State QUESTION 1: "Creation of a Transportation Fund. Shall section	
<input type="radio"/> write-in:	9 (2) of article IV and section 11 of article VIII of the constitution be created to require that revenues generated by use of the state transportation system be deposited into a transportation fund administered by a department of transportation for the exclusive purpose of funding Wisconsin's transportation systems and to prohibit any transfers or lapses from this fund?"	
Coroner Vote for 1 <input type="radio"/> Candidate (Democratic)	<input type="radio"/> YES <input type="radio"/> NO	
<input type="radio"/> Candidate (Republican)	County QUESTION 1: Shall...	
<input type="radio"/> Candidate (Independent)	<input type="radio"/> YES <input type="radio"/> NO	
<input type="radio"/> write-in:	Municipal QUESTION 1: Shall...	
	<input type="radio"/> YES <input type="radio"/> NO	
	<input type="radio"/> YES <input type="radio"/> NO	

Page 2 of 2-sided ballot

Ballot begins on other side.

Official Ballot for Partisan Office and Referendum
November 4, 2014

S01

Notice to voters: This ballot may be invalid unless initiated by 2 election inspectors.
If cast as an absentee ballot, the ballot must bear the initials of the municipal clerk or deputy clerk.

IMPORTANT: USE ONLY A #2 PENCIL OR THE MARKING PEN PROVIDED. DO NOT USE RED INK!

Instructions to voters

If you make a mistake on your ballot or have a question, see an election inspector. (Absentee voters: Contact your municipal clerk.)
Connect only 1 arrow in each contest.
- To vote for a name on the ballot, complete the arrow next to the name like this →.
- To vote for a name that is not on the ballot, write the name on the line marked "write-in," and complete the arrow next to the name like this →.

Statewide

Governor/Lieutenant Governor
Vote for 1

You may connect only 1 arrow for the office of Governor/Lieutenant Governor.

Candidate/

Candidate

(Democratic)

Candidate/

Candidate

(Republican)

Dennis Fehr/

No Candidate

(Peoples Party)

Robert Burke/

Joseph M. Brost

(Libertarian)

write-in:

(Governor)

write-in:

(Lieutenant Governor)

Attorney General

Vote for 1

Candidate

(Democratic)

Candidate

(Republican)

Thomas A. Nelson, Sr.

(Peoples Party)

write-in:

Secretary of State

Vote for 1

Candidate

(Democratic)

Candidate

(Republican)

Candidate

(Constitution)

Andy Craig

(Libertarian)

write-in:

State Treasurer

Vote for 1

Candidate

(Democratic)

Candidate

(Republican)

Candidate

(Constitution)

Ron Hardy

(Wisconsin Green Party)

Jerry Shidell

(Libertarian)

write-in:

Continue voting at top of

next column

Congressional

Representative in Congress
District XX
Vote for 1

Candidate

(Democratic)

Candidate

(Republican)

Candidate

(Independent)

write-in:

Legislative

State Senator
District XX
Vote for 1

Candidate

(Democratic)

Candidate

(Republican)

Candidate

(Independent)

write-in:

Representative to the Assembly

District XX

Vote for 1

Candidate

(Democratic)

Candidate

(Republican)

Candidate

(Independent)

write-in:

County

Sheriff

Vote for 1

Candidate

(Democratic)

Candidate

(Constitution)

write-in:

Coroner

Vote for 1

Candidate

(Democratic)

Candidate

(Republican)

write-in:

Clerk of Circuit Court

Vote for 1

Candidate

(Democratic)

Candidate

(Republican)

write-in:

Continue voting at top of

next column

Referendum

To vote in favor of a question, complete the arrow next to 'YES,' like this →.
To vote against a question, complete the arrow next to 'NO,' like this →.

Statewide

Question 1: "Creation of a Transportation Fund. Shall section 9 (2) of article IV and section 11 of article VIII of the constitution be created to require that revenues generated by use of the state transportation system be deposited into a transportation fund administered by a department of transportation for the exclusive purpose of funding Wisconsin's transportation systems and to prohibit any transfers or lapses from this fund?"

YES

NO

County

Question 1: "XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX"

YES

NO

Question 2: "XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX"

YES

NO

Municipal

Question 1: "XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX"

YES

NO

Official Ballot for Partisan
Office and Referendum

November 4, 2014
for

Municipality, Ward 1
Municipality, Ward 2
Municipality, Ward 3
Municipality, Ward 4
Municipality, Ward 5
Municipality, Ward 6
Municipality, Ward 7
Municipality, Ward 8
Municipality, Ward 9
Municipality, Ward 10
Municipality, Ward 11
Municipality, Ward 12

Ballot issued by

(Initials of election inspectors)

Absentee ballot issued by

(Initials of municipal clerk or deputy clerk)
(If issued by SVDs, both SVDs must initial.)

Certification of Voter Assistance
I certify that I marked this ballot at the request and direction of a voter, who is authorized to receive assistance.

(Signature of assistor)

For Official Use Only

Inspectors: Identify ballots required to be remade.

Reason for remaking ballot:

☐ Overvoted

☐ Damaged

☐ Other

Original Ballot No. or Duplicate Ballot No.

PENGAD 800-631-6989

DEFENDANT'S
EXHIBIT

D-3

Comparison of Ballot Format - Wisconsin Counties

GAB basic recommended format (16)	GAB format plus bold/double line separating offices (14)	Line separator between office and 1st candidate (24)	Line separator and/or shading (3)	Offset - Office is left-justified and candidates are right-justified (12)	Missing (3)
Adams	Burnett*	Calumet*	Brown	Barron	Buffalo
Ashland	Florence*	Chippewa	Dane	Dunn*	Iron
Bayfield	Forest*	Dodge*	La Crosse	Grant*	Juneau
Clark	Green Lake*	Door*		Jackson*	
Columbia	Iowa*	Eau Claire		Kewaunee*	
Crawford	Marinette*	Fond du Lac		Milwaukee	
Douglas	Marquette*	Green*		Monroe*	
Jefferson	Pepin*	Kenosha*		Oconto*	
Lafayette	Pierce*	Lincoln		Oneida*	
Langlade	Polk*	Menominee		Shawano*	
Manitowoc	Price*	Outagamie*		Trempeleau*	
Marathon	Richland*	Ozaukee*		Waupaca*	
Sawyer	Rusk*	Portage			
Taylor	Waushara*	Racine			
Vernon		Rock			
Washburn		Sauk*			
		Sheboygan			
		St. Croix*			
		Vilas*			
		Walworth*			
		Washington*			
		Waukesha			
		Winnebago*			
		Wood			

*Indicates that offices within a category are separated by a bold or double line.

