

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

SARI RATNER JUDGE
2520 Norwood Place
Madison, WI 53726

MIRIAM RATNER
6205 Mineral Point Road
Apt. 421
Madison, WI 53705

Case No. _____
Case Code 30701

MOLLY LUBIN
503 Sheldon Street
Madison, WI 53711

JUDY REED
4001 Hiawatha Drive
Madison, WI 53711

ELANA MATTHEWS
4714 Tokay Boulevard
Madison, WI 53711

Plaintiffs,

v.

BOARD OF CANVASSERS FOR THE CITY OF MADISON
210 Martin Luther King, Jr. Blvd
Madison, WI 53703

Defendant.

COMPLAINT

Plaintiffs, by and through their attorneys, Stafford Rosenbaum LLP, for their
Complaint against Defendant, allege and state as follows:

This action seeks judicial confirmation that the City of Madison’s “Democracy in the Park” event allowing voters to return their absentee ballots at secure locations within the City’s parks was and is lawful, and that all ballots returned by voters, or that will be returned by voters at future similar events, are not *per se* invalid simply because they were returned by voters through the Democracy in the Park event.

INTRODUCTION

The power of Wisconsin’s citizens to select their representatives through voting is a fundamental constitutional right and a foundation of our democratic institutions. The outbreak of a global pandemic, COVID-19, has made exercising that right potentially perilous, and even deadly. As a result, in the two elections conducted so far in 2020 under the shadow of the COVID-19 pandemic, Wisconsin voters have availed themselves of Wisconsin’s generous statutory alternatives to voting in person in unprecedented numbers, and have overwhelmingly voted by absentee ballot instead of voting in-person on Election Day. In Wisconsin’s April 2020 presidential primary, over seventy percent of all votes cast (approximately 1,138,491 votes) were absentee.¹ In the August 11 presidential primary, approximately seventy-five percent of all votes cast were absentee.² By contrast, over the prior decade, Wisconsin averaged less than six percent of all votes being cast by absentee ballot.³ The imminent November presidential election will almost certainly include more total votes, more absentee ballots, and a similarly astronomical absentee voting percentage

¹ See <https://elections.wi.gov/node/6908> and click “April 2020 Absentee Voting Report.pdf” (last accessed September 28, 2020).

² See <https://elections.wi.gov/node/7127> and click “Election Statistics Report 2020 Partisan Primary Election” (last accessed September 29, 2020).

³ See Wisconsin Elections Commission, *April 7, 2020 Absentee Voting Report*, at 6 (May 15, 2020).

as the April election.⁴ As of September 28, 2020, municipal clerks have already sent out more than 1.1 million absentee ballots, of which nearly 240,000 have already been submitted.⁵ Adding to the challenge of administering an election amidst a global pandemic are the widely reported issues that have caused the United States Postal Service to warn that it will likely be unable to keep up with mail demands, leading to lost and delayed mailings.⁶

In the face of a global pandemic, an unprecedented volume of mail-in absentee ballot requests, and a struggling postal system, Wisconsin municipalities have sought creative solutions to ensure that all eligible citizens who want to vote have meaningful opportunities to do so. In response to requests from local voters for options to return their absentee ballots in person the City of Madison (“City”) announced in late August that it would hold an event called “Democracy in the Park” on September 26 and October 3, where voters could submit absentee ballots to poll workers, throughout the City’s 206 parks.⁷

On September 25, 2020, the eve of the first of the two planned events, legal counsel for Wisconsin’s legislative leadership sent a letter to City of Madison Clerk Maribeth Witzel-Behl, addressing what counsel called “the imminent, illegal collection of absentee ballots that your office intends to perform tomorrow through your so-called “Democracy

⁴ See <https://elections.wi.gov/node/6908> and click “April 2020 Absentee Voting Report.pdf” (last accessed September 28, 2020).

⁵ See https://madison.com/wsj/news/local/govt-and-politics/in-first-visit-to-madison-jill-biden-pushes-voters-to-do-more-in-the-democratic/article_348f52c0-be11-5a74-a1ee-6c6a606568b7.html (last accessed September 28, 2020).

⁶ See <https://www.npr.org/2020/09/01/908395806/postal-service-watchdog-outlines-concerns-surrounding-election-readiness> (last accessed September 28, 2020).

⁷ See <https://cityofmadison.com/news/democracy-in-the-park-event-planned-for-september-26-october-3> (last accessed September 28, 2020).

in the Park” campaign.”⁸ In the same letter, counsel asserted that “given the apparent unlawfulness of the absentee-ballot-collection efforts of your ‘Democracy in the Park’ campaign, there is a grave risk that all ballots you collect through this campaign will be challenged in court and ultimately invalidated. ... We urge you in the strongest possible terms to abandon this unlawful effort immediately, in order to avoid the threat of invalidated ballots and needless litigation.” Despite the threat of litigation, the event was held and reportedly was a tremendous success, with more than 10,000 absentee ballots returned safely.⁹

Plaintiffs are individual City residents and registered Wisconsin voters who requested and received absentee ballots before September 26, 2020, and either submitted their absentee ballots at the September 26 Democracy in the Park event, or were planning to do so at either that or the October 3 event, but did not or will not do so. Given the threat of litigation to invalidate all absentee ballots returned by voters through the Democracy in the Park event stated in the September 25, 2020 letter to Clerk Witzel-Behl, those Plaintiffs who submitted their absentee ballots at the September 26 event have significant concerns that their absentee ballots will be challenged in court and potentially could be invalidated. And those Plaintiffs who have not yet submitted their absentee ballots at a Democracy in the Park event have been intimidated by the threat of litigation in counsel’s September 25

⁸ See Poland Aff., Ex. 1.

⁹ See https://madison.com/ct/news/local/govt-and-politics/madison-voters-drop-off-over-10-000-absentee-ballots-during-democracy-in-the-park-event/article_8b8e1204-4a69-5135-908e-081777a44795.html#tracking-source=home-top-story (last accessed September 28, 2020).

letter and either did not or will not submit their absentee ballots at the Democracy in the Park events due to the threat of a lawsuit to invalidate and therefore negate their votes.

Plaintiffs' request of the Court is therefore simple: In light of the real and imminent threat by Wisconsin's legislative leadership, made through its regular retained outside counsel, that they will sue to invalidate Plaintiffs' (and others') absentee ballots for the November 3, 2020 general election simply because those absentee ballots were returned by voters to the City of Madison Clerk's office at the Democracy in the Park events, Plaintiffs ask this Court to issue a declaration that the return of absentee ballots to the City of Madison Clerk's office at the Democracy in the Park events accords with Wisconsin election law, and that their absentee ballots are not unlawful, illegally cast, or subject to being invalidated under Wisconsin law merely because they were returned by voters at the Democracy in the Park events.

PARTIES

1. Plaintiff Sari Ratner Judge is a natural person and registered voter who intends to submit her absentee ballot at an October 3, Democracy in the Park event, and currently resides at 2520 Norwood Place, Madison, WI 53726.

2. Plaintiff Miriam Ratner is a natural person and registered voter who intends to have her absentee ballot submitted at an October 3, 2020 Democracy in the Park event, and currently resides at 6205 Mineral Point Road, Apt. 421, Madison, WI 53705.

3. Plaintiff Molly Lubin is a natural person and registered voter who submitted her absentee ballot at Democracy in the Park event on September 26, 2020, and currently resides at 503 Sheldon Street, Madison, WI 53711.

4. Plaintiff Judy Reed is a natural person and registered voter who submitted her absentee ballot at a Democracy in the Park event on September 26, 2020, and currently resides at 4001 Hiawatha Drive, Madison, WI 53711.

5. Plaintiff Elana Matthews is a natural person and registered voter who submitted an absentee ballot at a Democracy in the Park event on September 26, 2020, and currently resides at 4714 Tokay Boulevard, Madison, WI 53711.

6. Defendant the Board of Canvassers for the City of Madison is a duly created municipal board of canvassers for the City of Madison pursuant to Wis. Stat. § 7.53, and located at 210 Martin Luther King Jr. Blvd., Madison, WI 53703.

JURISDICTION AND VENUE

7. This Court has jurisdiction over the subject matter of this dispute pursuant to Article VII, Section 8 of the Wisconsin Constitution and Wis. Stat. § 753.03, which provide for subject matter jurisdiction over all civil matters within this state. Wis. Stat. § 806.04, the Declaratory Judgment Act, specifically grants this court jurisdiction to declare rights, status, and other legal relations between parties.

8. Defendant is responsible for canvassing election ballots cast within the City of Madison and is subject to this Court's jurisdiction. *See* Wis. Stat. § 7.53(2). Defendant is subject to this Court's jurisdiction because it is a duly created subsidiary of the City of Madison, a municipal corporation located in Dane County. Wis. Stat. §§ 66.0213(1) and 801.05; *See also City of Madison v. Hyland, Hall & Co.*, 73 Wis. 2d 364, 3701-371, 243 N.W.2d 422, 426 (1976).

9. Venue is proper in Dane County because it is the county where the claims arose. Wis. Stat. § 801.50(2)(a).

RELEVANT LEGAL AUTHORITY

10. Wis. Stat. § 6.87 controls absentee voting procedures, and also provides that voters can mail ballots or deliver them in-person to the voter's municipal clerk.

RELEVANT FACTS

The Need for Increased Absentee Ballot Return Options

11. It is widely known that COVID-19, a highly infectious disease, has been declared a global pandemic, and that the disease can lead to serious health complications.¹⁰ Since March of 2020, Wisconsin has seen increasing COVID-19 infections, and September of 2020 has produced exponential growth in cases throughout Wisconsin.¹¹

12. The COVID-19 pandemic has led to a large increase in absentee voting. In the April 2020 presidential primary election, over seventy percent of votes cast were absentee ballots, a percentage exceeding absentee voting in previous elections by more than an order of magnitude. It has been widely reported that the November presidential election will similarly see a high percentage of absentee voters.¹² By September 17, 2020, the date on which Wisconsin municipal clerks were required to begin sending out requested absentee ballots of the November election, *see* Wis. Stat. § 7.15(1)(cm), more than 1

¹⁰ *See* <https://www.npr.org/sections/goatsandsoda/2020/03/11/814474930/coronavirus-covid-19-is-now-officially-a-pandemic-who-says> (last accessed September 28, 2020).

¹¹ *See* <https://www.dhs.wisconsin.gov/covid-19/cases.htm> (last accessed September 28, 2020).

¹² *See* https://madison.com/wsj/news/local/govt-and-politics/in-first-visit-to-madison-jill-biden-pushes-voters-to-do-more-in-the-democratic/article_348f52c0-be11-5a74-a1ee-6c6a606568b7.html (last accessed September 28, 2020).

million absentee ballots had already been requested.¹³ Under Wisconsin law, voters may continue requesting mail-in absentee ballots until Thursday, October 29, 2020. *See Wis. Stat. § 6.86(1)(b).*

13. Wisconsin's 1,850 municipal clerks rely upon the United States Postal Service to deliver mail-in absentee ballots to election those voters who request them.¹⁴ And many voters rely upon the Postal Service to return their mail-in absentee ballot to their municipal clerk. Wisconsin law facilitates this reliance by requiring that municipal clerks pre-pay return postage for mail-in absentee ballots. *See Wis. Stat. § 6.87(3)(a).*

14. In recent months, it has been widely reported that the Postal Service will not be able to efficiently process and deliver the avalanche of mail-in absentee ballots anticipated for the November election. The Postal Service has advised most states, including Wisconsin, that it expects unreasonably long delays and other difficulties to affect election-related mail.¹⁵

15. The City of Madison has already received over 80,000 absentee ballot requests.¹⁶ Many City residents reportedly have contacted the City Clerk's Office to ask about in-person options for returning their mail-in absentee ballot.¹⁷

¹³ *Id.*

¹⁴ *See* <https://elections.wi.gov/voters/absentee> (last accessed September 28, 2020).

¹⁵ *See* https://madison.com/wsj/news/local/govt-and-politics/wisconsin-officials-press-usps-for-assurances-on-election-related-mail/article_990d728f-1e86-55cb-bb9f-1cf01cf05310.html (last accessed September 30, 2020).

¹⁶ *See* https://madison.com/ct/news/local/govt-and-politics/voting-absentee-in-the-nov-3-election-here-s-what-you-need-to-know/article_f1a2ac2c-0044-5d1f-a956-60186125554e.html (last accessed September 28, 2020)

¹⁷ *See* <https://cityofmadison.com/news/democracy-in-the-park-event-planned-for-september-26-october-3> (last accessed September 28, 2020).

Democracy in the Park

16. In late August, the City of Madison announced that it had organized a “Democracy in the Park” event for late September and early October to provide a safe and easy option for Madison voters to return their absentee ballots. Instead of voting at an enclosed, indoor polling place, or risking the loss of a ballot in the mail, voters could submit absentee ballots to poll workers stationed in more than 200 City parks. On August 31, 2020, the City formally noticed that it would hold Democracy in the Park events.¹⁸

17. The City’s plan included stationing poll workers in 206 parks across Madison to accept delivery of mail-in absentee ballots from voters who already requested and received their ballots.¹⁹ Poll workers wore high-visibility vests and were posted next to “Vote” signs placed in every City park. Poll workers wore facial masks to reduce the risk of spreading COVID-19.²⁰

18. The City held a Democracy in the Park event from 9:00 a.m. to 3:00 p.m. on Saturday, September 26, 2020. Approximately 10,813 voters submitted their mail-in absentee ballots to poll workers during this Democracy in the Park event.²¹

19. The City has announced plans to hold an additional Democracy in the Park event from 9:00 a.m. to 3:00 p.m. on Saturday, October 3, 2020.²²

¹⁸ *Id.*

¹⁹ See <https://cityofmadison.com/news/democracy-in-the-park-event-planned-for-september-26-october-3> (last accessed September 29, 2020).

²⁰ *Id.*

²¹ See https://madison.com/ws/news/local/govt-and-politics/city-clerk-more-than-10-000-ballots-collected-during-democracy-in-the-park/article_aff6c990-93ea-53c9-86a0-58d799384071.html (last accessed September 30, 2020).

²² See <https://www.cityofmadison.com/news/democracy-in-the-park-event-planned-for-september-26-october-3> (last accessed September 29, 2020).

Security of Ballots Returned by Voters at Democracy in the Park

20. The 1,850 municipal clerks for Wisconsin's cities, villages, and towns are responsible for administering elections in their respective jurisdictions. State law imposes numerous requirements governing the administration of elections and receiving absentee ballots. *See* Wis. Stat. §§ 6.86-6.88.

21. The City instituted security protocols to ensure the Democracy in the Park event complied with all relevant ballot-security requirements. Sworn, trained poll workers were present to accept ballots in every park.²³ The poll workers in each park had a designated secure bag, provided by the City Clerk's office, in which to place all ballots submitted.²⁴ Poll workers maintained a chain-of-custody log to ensure all ballots were accounted for at all times.²⁵ The poll workers in the parks accepted completed mail-in absentee ballots; poll workers neither issued new ballots in the parks, nor accepted written applications for mail-in absentee ballots.²⁶

22. The City provided explicit instructions to its election officials for maintaining ballot security. The City provided seals to ensure no ballots could be accessed or tampered with.²⁷ Every election official must take an oath of office prior to working the events.²⁸ The City also provided instructions for handling numerous circumstances, including: someone submitting an absentee ballot in an envelope bearing valid voter and

²³ *See* Affidavit of Sari Ratner Judge ("Judge Aff."), Ex. 1.

²⁴ *Id.*

²⁵ *See* Poland Aff., Ex. 2.

²⁶ *Id.*

²⁷ Judge Aff., Ex. 1

²⁸ *Id.*

witness signatures; a voter who brought their blank absentee ballot to the park absentee ballot return site; a voter who brought a completed absentee ballot in a sealed absentee ballot envelope that was missing a witness signature; and a voter who brought an already-completed absentee ballot in an unsealed absentee ballot envelope that was missing a witness signature.²⁹

23. The City has asserted that the procedures used by the City Clerk during the Democracy in the Park event are equivalent to the procedures used to secure all absentee ballots.³⁰

24. The City also ensured that election observers from both the Republican and Democratic parties had the opportunity to observe the absentee ballot return sites at every park during the Democracy in the Park event.³¹

25. Absentee ballots returned by voters at the parks during the Democracy in the Park event will be scanned via the barcode on the absentee ballot envelope so that voters can verify via the MyVote.wi.gov web portal that their ballots have been received, logged, and securely stored in the City Clerk's office until they can be counted on Election Day.³²

The Legislature's Threat to Invalidate Ballots

26. On Friday, September 25, 2020—nearly four weeks after the City announced its Democracy in the Park event and less than 24 hours before the event was to begin—

²⁹ See Judge Aff. Ex. 1.

³⁰ See Poland Aff. Ex. 2.

³¹ *Id.*

³² See https://madison.com/ct/news/local/govt-and-politics/madison-voters-drop-off-over-10-000-absentee-ballots-during-democracy-in-the-park-event/article_8b8e1204-4a69-5135-908e-081777a44795.html (last accessed September 28, 2020).

counsel for Assembly Speaker Robin Vos and State Senate Majority Leader Scott Fitzgerald sent a letter (hereinafter the “Letter”) to City Clerk Maribeth Witzel-Behl with the following subject line: “The City of Madison’s ‘Democracy in the Park’ Campaign’s Illegal Collection of Absentee Ballots.”³³

27. The Letter alleged broadly, without citation or explanation, that the City’s Democracy in the Park event was not compliant with Wisconsin law such that “there is a grave risk that all ballots you [the City] collect through this campaign will be challenged in court and ultimately invalidated.” The Letter urged the City to cancel the events “in order to avoid the threat of invalidated ballots and needless litigation.”³⁴

28. The following morning, the day of the September 26 Democracy in the Park event, Madison City Attorney Michael Haas responded to the Letter, explaining why absentee ballots returned at Democracy in the Park would not be invalid solely because they were submitted at that event.³⁵

HARMS TO PLAINTIFFS

29. Plaintiff Sari Ratner Judge (“Judge”) is a registered Madison voter who requested and received an absentee ballot for the November 3 general election. In March 2020, Plaintiff Judge used the MyVote website to request absentee ballots for all three elections in 2020 (the April 7 Spring Election, the August 11 Partisan Primary, and the November 3 General Election) because she was concerned about being exposed to COVID-19; she is employed by the University of Wisconsin-Madison in a position where she

³³ See Poland Aff., Ex. 1.

³⁴ See *id.*

³⁵ See Poland Aff., Ex. 2.

interacts with students, and, from what she observed and learned at the time, she believed that COVID-19 would endure through the entire year. Plaintiff Judge is concerned that her vote will not be received if her absentee ballot is mailed because of the United States Postal Service's struggles.

30. When Plaintiff Judge learned of the Democracy in the Park event, she believed it would be a perfect opportunity for her to deliver her absentee ballot safely, conveniently, and on time. Before the Letter in which legislative leaders threatened to take legal action challenging all absentee ballots returned by voters at the Democracy in the Park events, Plaintiff Judge intended to submit her absentee ballot at one of the City's Democracy in the Park events.

31. In light of the threatening letter submitted by the state legislators, Plaintiff Judge did not submit her ballot during the September 26, 2020 event, and is concerned that if she submits her ballot during the planned October 3, 2020 event, the ballot might be invalidated by a future lawsuit such as threatened in the Letter.

32. Plaintiff Judge therefore seeks an order from this Court declaring that the return of her absentee ballot at the October 3 Democracy in the Park event was not unlawful under Wisconsin law, and that the return of her absentee ballot at the event does not invalidate her ballot.

33. Plaintiff Miriam Ratner ("Ratner") is a Madison registered voter who resides at Oakwood Village, a continuing care facility. Ratner has voted via absentee ballot for years because she has physical mobility issues that make it impossible for her to stand for extended periods of time. Ratner voted by mailing an absentee ballot in the 2020 spring

election and August 2020 partisan primary because she had a broken leg at the time, and the COVID-19 pandemic resulted in severe access restrictions placed on her care facility.

34. Ratner requested and received her absentee ballot for the November 2020 general election, but is now concerned that mail delivery of her completed absentee ballot is insecure and may not be delivered to the City Clerk's office in time to be counted. Instead, Ratner intends to have her daughter, Plaintiff Judge, deliver Ratner's ballot at a Democracy in the Park event on Saturday, October 3, 2020. However, after learning of legislators threatening to invalidate ballots submitted at Democracy in the Park, Ratner is concerned that her vote may be invalidated if she submits her ballot at a Democracy in the Park event.

35. Therefore, Plaintiff Ratner seeks an order from this Court declaring that the return of her absentee ballot at the October 3 Democracy in the Park event is not unlawful under Wisconsin law, and that the return of her absentee ballot at the event does not invalidate her ballot.

36. Plaintiff Molly Lubin ("Lubin") is a Madison registered voter and practicing psychiatrist. Lubin voted by absentee ballot in the spring 2020 election to reduce her risk of contracting COVID-19.

37. Although Lubin was comfortable returning her ballot by mail in the 2020 spring election, concerns with the United States Postal Service have consequently led her to believe that sending her ballot by mail will be insecure and not delivered in time for her vote to count. Additionally, Lubin is still concerned about the risk of COVID-19. Lubin also has a hearing disability, and she relies upon lip reading to effectively communicate.

Voting in-person in crowded spaces makes it difficult to hear and understand poll worker instructions, especially in light of the fact that poll workers now wear masks.

38. Lubin was delighted to learn that Madison planned a Democracy in the Park event that would allow her to safely and securely deliver her absentee ballot. On September 26, Lubin attended a Democracy in the Park event at Hillington Green Park and delivered her absentee ballot to a registered election official.

39. Given that legislators have threatened litigation to invalidate ballots submitted at Democracy in the Park events, Lubin now fears that her vote will not be counted. Therefore, Plaintiff Lubin seeks an order from this Court declaring that the return of her absentee ballot at the September 26, 2020 Democracy in the Park event is not unlawful under Wisconsin law, and that the return of her absentee ballot at the event does not invalidate her ballot.

40. Plaintiff Judy Reed (“Reed”) is a registered voter who has resided in Madison since 1974. Reed has voted in-person or by in-person absentee since November of 2010. However, Reed is 78 years old, and is at a heightened risk of adverse health effects from COVID-19. Consequently, Reed voted in the 2020 spring election and August partisan primary via mailed absentee ballot to avoid her crowded polling place.

41. Reed requested and received an absentee ballot for the November 2020 general election, but is concerned that problems with the United States Postal Service may result her vote not counting due to untimely delivery of her ballot.

42. After learning of Madison’s Democracy in the Park event, Plaintiff Reed determined that was the best option to deliver her ballot because it would be outdoors, less

crowded, would guarantee delivery of her ballot, and it was one block from her home. Reed attended a Democracy in the Park event on September 26, 2020 at Hiawatha Circle Park in Madison, Wisconsin, and delivered her absentee ballot to a registered poll worker.

43. Now that state legislators have threatened litigation to invalidate Reed's ballot, she is concerned that her submitted ballot will be invalidated and not counted. Therefore, Plaintiff Reed seeks an order from this Court declaring that the return of her absentee ballot at the September 26, 2020 Democracy in the Park event is not unlawful under Wisconsin law, and that the return of her absentee ballot at the event does not invalidate her ballot.

44. Plaintiff Elana Matthews ("Matthews") is a Madison registered voter who has voted in Madison since approximately 2003. Matthews usually votes in-person on Election Day. However, due to fear of being exposed to COVID-19, Matthews voted via mailed absentee ballot in the 2020 spring election. Matthews's concerns with COVID-19 continue, and she requested and received an absentee ballot for the November 2020 election to avoid in-person voting at the likely higher voter turnout general election.

45. After learning about the Democracy in the Park event, Matthews decided to utilize the alternative ballot submittal option. Matthews believed the risk of COVID-19 exposure was lower at the Democracy in the Park event, and she was unsure if she could trust the postal service to deliver her ballot in time to be counted.

46. On September 26, 2020, Matthews attended a Democracy in the Park event at Oak Park Heights Park where she subsequently delivered her ballot to a registered poll worker.

47. With legislators now threatening litigation to invalidate her ballot, Plaintiff Matthews fears that her returned ballot may be invalidated and not counted. Therefore, Plaintiff Matthews seeks an order from this Court declaring that the return of her absentee ballot at the September 26, 2020 Democracy in the Park event is not unlawful under Wisconsin law, and that the return of her absentee ballot at the event does not invalidate her ballot.

CAUSE OF ACTION
Declaratory Judgment and Injunctive Relief against Defendants

48. Plaintiffs restate and re-allege paragraphs 1 through 47 above as if fully set forth herein.

49. Wis. Stat. § 806.04 authorizes entry of an order declaring the legal rights of plaintiffs, even before a harm has taken place.

50. Wis. Stat. § 806.04 is liberally construed and administered to achieve its remedial purpose. *Olson v. Town of Cottage Grove*, 2008 WI 51, ¶42, 309 Wis. 2d 365, 749 N.W.2d 211. The statute’s purpose is “to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations.” Wis. Stat. § 806.04(12). Indeed, “declaratory relief is appropriate wherever it will serve a useful purpose.” *Lister v. Bd. of Regents of Univ. Wisconsin Sys.*, 72 Wis. 2d 282, 307, 240 N.W.2d 610 (1976). A plaintiff “need not actually suffer an injury before availing himself of the Act.” *Olson*, 2008 WI 51, ¶43. In furtherance of that purpose, a party “may seek a construction of a statute” prior to an adverse result. *State ex rel. Lynch v. Conta*, 71 Wis. 2d 662, 674, 239 N.W.2d 313 (1976).

51. Plaintiffs seek a declaration interpreting Wis. Stat. § 6.87(4)(b)1 and applying it to the City’s Democracy in the Park event.

52. Wis. Stat. § 6.87(4)(b)1 requires that an elector must either mail their absentee ballot to the clerk, or deliver the ballot in-person to the elector’s municipal clerk. The Wisconsin Elections Commission issued guidance interpreting this provision as allowing the use of “drop boxes” as a method of personal delivery. *See* Wisconsin Elections Commission Administrator Meagan Wolfe, *Absentee Ballot Drop Box Information* (August 19, 2020).³⁶ One of the drop box options is a staffed, outdoor drop off location. *Id.* at 2. At this type of site, election officials accept the ballot from the voter and deposits the ballot in a ballot box. *Id.* To maintain ballot security, the Elections Commission recommends using tamper evident seals on the ballot box, and implementing a chain of custody log. *Id.* at 3-4.

53. City election officials staffed the absentee ballot return sites during the Democracy in the Park event to receive absentee ballots returned by voters on September 26, 2020. *See, e.g.* Poland Aff., Ex. 2. The City used a chain of custody log and tamper-evident seals to secure ballot boxes. Poland Aff., Ex. 2.

54. It is the City of Madison’s stated intent that election officials will staff absentee ballot drop off sites during the Democracy in the Park event on October 3, 2020. The City will use chain of custody logs and tamper evident seals to secure ballot boxes. Judge Aff., Ex. 1; Poland Aff., Ex. 2.

³⁶ *See* <https://elections.wi.gov/node/7036> and click on the attachment “Drop Box Final.pdf” (last accessed September 30, 2020).

55. Since the City has complied with all legal requirements to use drop boxes the sites are secure and valid locations at which voters may submit their mail-in absentee ballots.

56. The threatening letter sent by the highest ranking members of Wisconsin's Legislature has created a controversy ripe for judicial determination because it unequivocally demonstrates the Legislature will pursue litigation to invalidate any ballots cast during the Democracy in the Park events.

57. The threat of invalidating ballots already cast affects the rights of those Plaintiffs who have already cast a ballot during the Democracy in the Park events.

58. The threat of invalidating ballots has caused some Plaintiffs to refrain from submitting their ballots at the Democracy in the Park event.

59. The right to vote absentee is a clear legal right and protectable interest. *See* Wis. Const. art. III, § 1; Wis. Stat. §§ 6.84-6.88. Therefore, declaratory judgment and injunctive relief to protect that right is necessary.

WHEREFORE, for the foregoing reasons, Plaintiffs respectfully request this Court grant the following relief:

- A. Enter an order, pursuant to Wis. Stat. § 806.04, declaring that the Democracy in the Park events provide valid absentee ballot submittal locations;
- B. Enter an order, pursuant to Wis. Stat. § 806.04, declaring that all lawfully completed ballots submitted at the September 26, 2020 Democracy in the park event are not *per se* invalid because they were submitted at a Democracy in the Park event;

- C. Enter an order, pursuant to Wis. Stat. § 806.04, declaring that all lawfully completed ballots that will be returned by voters at the October 3, 2020 Democracy in the park event are not *per se* invalid because they were submitted at a Democracy in the Park event;
- D. Order any other relief as the Court deems just and equitable.

Dated: September 30, 2020

Electronically signed by Atty. Douglas M. Poland

Douglas M. Poland (State Bar No. 1055189)

Jeffrey A. Mandell (State Bar No. 1100406)

Rick A. Manthe (State Bar No. 1099199)

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