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July 21, 2026

VIA E-MAIL
elections@wi.govWisconsin Elections Commission
201 W. Washington Ave.
Madison, WI 53703Re: Request to Immediately Withdraw July 10, 2026
Updated Ballot Spoiling Guidance

Dear Chair Millis and Members of the Wisconsin Elections Commission:

On behalf of the Democratic Party of Wisconsin, I respectfully request that the Wisconsin Elections Commission ("Commission" or "WEC") promptly rescind the Updated Ballot Spoiling Guidance issued on July 10, 2026 and remove any social media posts¹ or media statements which informed absentee voters that they may not spoil their ballots after the ballots have been returned to their clerks.

The Democratic Party of Wisconsin has an interest in ensuring that its voters have a valid voice in the primary elections. The ability of voters to spoil their ballots after they have been submitted to their clerks will advance this interest. And, the ability to obtain new ballots protects the voters' right to meaningfully participate in the democratic process.

The July 10 Guidance will disenfranchise some gubernatorial voters in violation of state and federal constitutional principles and is inconsistent with Wisconsin Statutes. Additionally, the guidance improperly changes election rules in the middle of an

¹ A WEC Facebook post created on July 17, 2026 at 12:59 PM informs voters: "Have you already returned your absentee ballot and your chosen candidate drops out of the race? There are no 'do-overs' in this scenario to spoil your ballot."

election cycle, between the June 25, 2026, date by which clerks could begin sending absentee ballots for the August 11, 2026, primary election. This is inconsistent with the principles set forth in *Purcell v. Gonzalez*, 549 US 1 (2006) – principles which protect against voter confusion and disenfranchisement.

Permitting Voters to Spoil their Ballots after they have been Submitted to Clerks is Consistent with Wisconsin Statutes

The Commission's July 10 guidance is at odds with its prior guidance, interpretations it has offered to the courts, and most importantly, the underlying statutes.

The Commission's interpretation that voters had the ability to spoil absentee ballots had remained substantially unchanged since the Government Accountability Board published guidance in 2014. This long-held interpretation was included in the 2022 Election Administration Manual.

In light of questions which arose in 2020 and 2022, WEC issued additional guidance documents reiterating its interpretation of the Statutes which permit voters to spoil their ballots. This guidance stated, *inter alia*,

Many voters are contacting the Wisconsin Elections Commission regarding spoiling their absentee ballot. Issues include damaged ballots, making an error when voting the ballot (such as filling in the wrong circle or voting for too many candidates), or voters changing their mind after returning their absentee ballots. **Absentee voters can request to spoil their absentee ballot and have another ballot issued as long as the appropriate deadline to request the new absentee ballot has not passed. In addition, voters can request to have their returned absentee ballot spoiled and instead vote in person, either during the in-person absentee period or at their polling place on election day, but they must request their ballot be spoiled by the appropriate deadlines.** Once that deadline has passed, a returned absentee ballot cannot be changed, and the voter cannot be issued another ballot on Election Day.

Wisconsin Elections Commission, Spoiling Absentee Guidance for the 2022 Partisan Primary (August 1, 2022) (emphasis added).

On September 23, 2022, voter Nancy Kormanik challenged the validity of this 2022 Guidance, arguing that ballots could not be spoiled after absentee voters returned the ballots to the clerks. In defending the 2022 Guidance on ballot spoiling, WEC argued to the circuit court that the "contention that an elector cannot spoil a ballot if she voted for

the wrong candidate **has no basis in the law**” and should be disregarded by the Court. *Kormanik v. WEC*, Waukesha County Circuit Court Case No. 2022CV1395, WEC Brief in Opposition to Plaintiff’s Motion for Temporary Restraining Order and Injunction, pp. 18-19.

The Commission continued this argument to the Wisconsin Court of Appeals, interpreting relevant statutes to state:

[T]he Commission guidance conformed with state election law. **Wisconsin law permits absentee voters to return a “spoiled” ballot to the local clerk and receive a replacement, so long as it is done by applicable statutory deadlines. A spoiled ballot does not mean a damaged ballot but can include a vote for the wrong candidate.**

Kormanik v. WEC, Case No. 2024AP0408, Wisconsin Election Commission Brief, p. 9; *see also* pp. 26-30. The Commission elaborated:

The spoiling may be the result of an elector’s choosing a candidate she does not intend to vote for, choosing no candidates when she intended to choose one or some, choosing a candidate who an elector confuses with another person, or choosing a candidate who the elector misunderstood was still in (or would stay in) the race but had already withdrawn (or later withdraws).

WEC Brief at p. 28.

The Commission’s current interpretation that a voter may only spoil the absentee ballot before it is returned to the clerk is not only inconsistent with its prior positions, but also with Wisconsin Statutes.

Section 6.86(5) of the statutes provides in full:

Whenever an elector returns a spoiled or damaged absentee ballot to the municipal clerk, or an elector’s agent under sub. (3) returns a spoiled or damaged ballot to the clerk on behalf of an elector, and the clerk believes that the ballot was issued to or on behalf of the elector who is returning it, the clerk shall issue a new ballot to the elector or elector’s agent, and shall destroy the spoiled or damaged ballot. Any request for a replacement ballot under this subsection must be made within the applicable time limits under subs. (1) and (3) (c).

Section 6.86(5) plainly authorizes a voter – or a clerk at the voter’s direction – to spoil a ballot before or after the ballot is returned to the clerk.

Although “spoiled” is not defined in this statutory provision, closely related statutes support the interpretation that spoiling occurs through an elector’s accident or mistake. Section 6.80(2)(c) provides insight into the meaning of “spoiled” in section 6.86(5). Section 6.80(2)(c), which governs the mechanics of voting on election day, refers to “any elector who, *by accident or mistake, spoils or erroneously prepares a ballot.*” Wis. Stat. § 6.80(2)(c).

Spoiling a ballot by “accident or mistake” could include a voter choosing multiple candidates when only one is allowed or voting for both Republicans and Democrats in a primary – errors on the face of the ballot. A “spoiled” ballot may also contain an error that does not appear on the face of the ballot. As WEC itself argued in the Kormanik litigation, the spoiling may be the result of a voter choosing a candidate that he or she did not intend to vote for, choosing no candidates when she intended to choose one, choosing a candidate who an elector confuses with another person, or choosing a candidate who the voter misunderstood would still be in the race for the entire election cycle.

The sole directive with respect to the timing of spoiling can be found in the final sentence of section 6.86(5), which provides: “Any request for a replacement ballot under this subsection must be made within the time limits under subs. (1) and (3) (c).” Those time limits provide that mailed requests must be received “no later than 5 p.m. on the 5th day immediately preceding the election,” while in-person requests must be made “no earlier than 14 days preceding the election and no later than the Sunday preceding the election.” Wis. Stat. §§ 6.86(1)(b); *see also* § 6.86(3)(c) (providing additional deadlines for requests made by hospitalized voters).

The only interpretation of the statute that gives effect to every word is WEC’s long-standing interpretation, which properly interpreted the second sentence of section 6.86(5) as a grant of authority to spoil a voter’s previously returned ballot upon that voter’s request by the statutory deadlines set forth above. The language about “applicable time limits” in the second sentence underscores this point.

The Commission’s July 10 Guidance creates inconsistent standards for voters based solely on when they decided to return their ballots. As such, it violates the Equal Protection Clauses of the Wisconsin and United States Constitutions. The Commission’s new interpretation results in one standard which was applied to absentee voters who previously submitted their ballots and may have requested that their ballots be spoiled,

and another standard that will be applied to voters who might now wish to spoil their ballots. Additionally, the July 10 Guidance creates a distinction between absentee voters and in-person voters – permitting only the latter to spoil their ballots. Such arbitrary distinctions violate the principles of Equal Protection.

Ultimately, in *Kormanik*, the court of appeals reversed the circuit court decision in favor of the plaintiff, concluding that the circuit court lacked competency to proceed because *Kormanik* had not properly served the Legislature. Because of this reversal, there is no court order that either compels the Commission to alter its long-held interpretation on ballot spoiling nor supports the Commission's new prohibition.

The Wisconsin Legislature has not amended the relevant statutes in a manner which would trigger or support WEC's change in interpretation.²

It has long been understood that absentee voters could spoil their ballots and request a replacement ballot, so long as the request was made consistent with statutory deadlines. WEC's July 10 Guidance creates a prohibition that is not consistent with the statutes. If not rescinded, the Guidance will preclude some Wisconsin voters from being able to cast a meaningful vote in the gubernatorial primary. It is also ill-timed, in the middle of an election cycle.

Updating the Guidance After Voting has begun Violates the Principles Set Forth in *Purcell v. Gonzalez*

In *Purcell v. Gonzalez*, 549 US 1, 5 (2006), the U.S. Supreme Court stated: "Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase." *Id.* at 4-5. It is not just the courts that can confuse or disenfranchise voters. When the Commission issues conflicting guidance during an election, there is risk of voter confusion. And when those changes limit the ability of voters to correct their ballots, there is the potential for disenfranchisement.

In litigation, the Commission has relied on *Purcell v. Gonzalez* to argue that election rules should not be changed close to or during an election. The Commission should heed its own admonishment and during the pendency of an election, it should exercise extreme caution in changing its interpretation of statutes or practices which have long been the norm.

² Notably, the Wisconsin Legislature did not intervene in *Kormanik* or take a position on WEC's prior interpretation on ballot spoiling.

Adherence to the *Purcell* principle calls for the Commission to rescind the July 10 Guidance and public statements informing absentee voters they cannot spoil their ballots once the ballot has been returned.

This advice concerning absentee ballots was made, inexplicably, during the middle of an election cycle in which absentee ballots have already been available for request and return. If the Commission wishes to make such a significant policy change, it should follow through with rulemaking which is in progress, implementing any changes after the 2026 election has been completed.

For these reasons, the Democratic Party of Wisconsin respectfully asks that the Commission take immediate action and rescind the July 10 Guidance and withdraw or update any public statements informing absentee voters that they may not request a new ballot.

Sincerely,

PINES BACH LLP



Diane M. Welsh

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cc: Meagan Wolfe, Administrator *via email*
Angela Sharpe, Chief Legal Counsel *via email*