



You are hereby notified that the Plaintiffs named above have filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within 45 days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The Answer must be sent or delivered to the Court, whose address is Clerk of Circuit Court, Dane County Circuit Court, 215 S. Hamilton Street, Madison, WI 53703; to Law Forward, Inc., 222 West Washington Avenue, Suite 250, Madison, Wisconsin, 53703 and to Stafford Rosenbaum LLP, 222 West Washington Avenue, Suite 900, Madison, Wisconsin 53701. You may have an attorney help or represent you.

If you do not provide a proper answer within 45 days, the Court may grant Judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A Judgment may be enforced as provided by law. A Judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

**DATED:** January 31, 2023

Respectfully submitted,

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Plaintiffs EXPO Wisconsin, Inc. (“EXPO”) and WISDOM, Inc. (“WISDOM”) (collectively, “Plaintiffs”) seek declaratory and injunctive relief and allege as follows:

### **NATURE OF ACTION**

1. Two recent joint resolutions of the Wisconsin State Legislature—2023 Enrolled Joint Resolution 2 and 2023 Enrolled Joint Resolution 4 (collectively, the “Resolutions”)—require the input of the voters in statewide referenda. Neither Resolution, however, was timely filed with the appropriate officials or agencies such that it may appear on the ballot for the April 4, 2023 Spring Election.

2. Because neither the Legislature nor any other entity timely filed the Resolutions as required by Wisconsin law, Plaintiffs bring this action for declaratory and injunctive relief pursuant to Wis. Stat. §§ 227.40(1) and 806.04 against Defendant Wisconsin Elections Commission, Defendants Don Millis, Julie M. Glancey, Robert F. Spindell, Jr., Mark Thomsen, Ann S. Jacobs, and Marge Bostelmann, in their official capacity as members of the Wisconsin Elections Commission, and Defendant Meagan Wolfe, in her official capacity as Administrator of the Wisconsin Elections Commission (collectively, “Defendants”). Plaintiffs seek a declaration from this Court that certain guidance documents Defendants issued related to the Resolutions are contrary to Wisconsin law and, therefore, invalid. Plaintiffs further seek injunctive relief requiring Defendants to issue corrective information and refrain from re-issuing any such incorrect guidance related to the Resolutions.

3. Wisconsin law prescribes a clear deadline by which “all proposed constitutional amendments and any other measure or question that is to be submitted to the vote of the people” must be “filed with the official or agency responsible for preparing the ballots.” Wis. Stat. § 8.37. That deadline is “no later than 70 days prior to the election at which the amendment, measure or question will appear on the ballot.” *Id.*

4. For any amendment, measure, or question to appear on the ballot for the April 4, 2023 Spring Election, that deadline passed on January 25, 2023.<sup>1</sup>

5. Defendant Wisconsin Elections Commission (“WEC” or the “Commission”) has an important role in creating ballot *forms*, including by certifying referenda, which WEC performed in this instance. However, WEC is not the “official or agency responsible for preparing the ballots.” Wis. Stat. § 8.37. Wisconsin law clearly vests that responsibility in the county clerks, constitutional officers who are charged under statute with preparing and distributing ballots. Wis. Stat. §§ 7.10(1)(a), (2), (3). (In Milwaukee County, that responsibility is vested in the Milwaukee County Board of Election Commissioners (“MCBEC”), chaired by the Milwaukee County Clerk. Wis. Stat. §§ 7.20(1), 7.21(1).)

6. While the Legislature may have filed the Resolutions with the Wisconsin Elections Commission before the 70–day deadline, the Resolutions were

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<sup>1</sup> Seventy days before April 4, 2023 was January 24, 2023. However, in calculating the deadline, the first day of the period is excluded. Wis. Stat. § 990.001(4)(a).

not filed with the county clerks or MCBEC, who are the actual filing officers, until January 26, 2023.

7. It follows that the Resolutions were not timely filed and therefore that they do not qualify for inclusion on the ballot for the April 4, 2023 Spring Election.

8. Nonetheless, on January 26, 2023—after the statutory deadline for filing any amendment, measure, or question “with the official or agency responsible for preparing the ballots,” Wis. Stat. § 8.37—Defendants issued a memorandum to all county clerks and MCBEC regarding “Certification of Referendum Question and Type A Notice of Referendum for the April 4, 2023 Spring Election” (the “Memorandum”). The Memorandum asserts that the Resolutions had qualified for the April 4, 2023 Spring Election ballot and should be included as the county clerks prepared ballots for that election. Attached to the Memorandum, WEC provided several attachments, including a Certification of Referendum Question, a draft Type A Notice of Referendum Election, and an Appendix A.

9. Because the Memorandum and its attachments are contrary to Wisconsin law and, therefore, invalid, Plaintiffs are entitled to declaratory relief pursuant to Wis. Stat. §§ 227.40(1) and (4)(a) and injunctive relief requiring Defendants to immediately rescind the Memorandum and accompanying documents.

10. Additionally, Plaintiffs are entitled to a declaration pursuant to Wis. Stat. § 806.04 that the Resolutions do not qualify for the April 4, 2023 Spring Election

ballot and an injunction ordering Defendants to take reasonable steps to ensure that the Resolutions do not appear on the ballot for the April 4, 2023 Spring Election.

### **JURISDICTION & VENUE**

11. 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.

12. This Court has jurisdiction to grant relief related to the Memorandum pursuant to Wis. Stat. § 227.40(1).

13. This Court has jurisdiction to grant declaratory relief pursuant to Wis. Stat. § 806.04.

14. This Court has personal jurisdiction over Defendant Wisconsin Elections Commission, Defendants Don Millis, Julie M. Glancey, Robert F. Spindell, Jr., Mark Thomsen, Ann S. Jacobs, and Marge Bostelmann, in their official capacity as members of the Wisconsin Elections Commission, and Defendant Meagan Wolfe, in her official capacity as Administrator of the Wisconsin Elections Commission. WEC is a state agency organized under the laws of the State of Wisconsin. WEC, its Commissioners, and its Administrator perform their work and have their principal place of business in Madison, Wisconsin.

15. Venue is appropriate in Dane County, under Wis. Stat. § 801.50, because Defendants are located in and do substantial business in Dane County.

16. Venue is also appropriate in Dane County, under Wis. Stat. § 227.40(1) because Plaintiff EXPO's principal place of business is located in Dane County.

### **PARTIES**

17. Plaintiff EXPO is a nonpartisan, nonprofit, non-stock corporation organized under the laws of the State of Wisconsin with its principal place of business located at 17 Applegate Court, Suite 202, Madison, Wisconsin 53713.

18. Formed in 2014 and incorporated in 2019, EXPO stands for EX-Incarcerated People Organizing. EXPO works to end mass incarceration, eliminate all forms of structural discrimination against individuals who were formerly incarcerated, and restore formerly incarcerated people to full participation in the life of their communities. EXPO's mission statement reads: "Led by people who are directly impacted, EXPO is committed to correcting the narrative within all systems that support mass incarceration and excessive supervision. We are dedicated to creating just systems with policies that build healthy families and safe communities." Formerly incarcerated people lead the organization. EXPO is an affiliate of WISDOM.

19. EXPO has seven chapters across the state and holds regular chapter and statewide meetings. EXPO has over 150 sustaining volunteers who support the organization's work.

20. EXPO has been directly involved in the issues the Resolutions address, particularly the proposed amendment contained in 2023 Enrolled Joint Resolution 2. As a leading organization working as and on behalf of individuals who were formerly

incarcerated, EXPO has explained the damage that expanded pretrial detention could cause to the lives of the over 65,000 Wisconsinites with a prior conviction history, including individuals who may be primary caregivers for children and others.

21. EXPO's Executive Director, Jerome Dillard, testified before the Legislature twice in opposition to the Resolution and has spoken publicly about the amendment. EXPO conducted a digital media campaign encouraging individuals to contact their legislators. At monthly or bi-monthly chapter meetings, as well as during EXPO's monthly statewide meeting, the organization disseminated information regarding the status and impact of the proposed amendment. In performing this work, EXPO has incurred additional expenses and spent considerable time and resources.

22. EXPO has also engaged with the proposed advisory referendum, including by providing education regarding the referendum through digital organizing and meetings.

23. Plaintiff WISDOM is a nonpartisan, nonprofit, non-stock corporation organized under the laws of the State of Wisconsin with its principal place of business located at 2821 Vel Phillips Avenue, Suite 115, Milwaukee, Wisconsin 53212.

24. WISDOM is a statewide network, comprised mainly of faith-based organizations and congregations. WISDOM has 13 affiliate organizations, including EXPO. WISDOM's network includes approximately 160 congregations representing 19 religious denominations, plus approximately 300 additional individual members.

25. Since its founding in 2000, WISDOM has worked on behalf of criminal law reform in Wisconsin and to end mass incarceration, expand funding to community-based alternatives, and advocate for treatment-based alternatives and diversions. As part of its commitment to racial and economic justice, WISDOM also performs advocacy in the areas of immigration and immigrant rights, public transportation, environmental justice, and racial equity, and fostering civil engagement.

26. WISDOM has been directly involved in the issues the Resolutions address and has spent considerable time and resources opposing the Resolutions. For example, in April 2022, WISDOM convened a group of approximately 60 advocates in Green Bay for a Transformational Justice Group, which determined its first priority would be opposition to what is now 2023 Enrolled Joint Resolution 2. WISDOM testified in opposition to the amendment. The organization has kept its members apprised of the status of the amendment through its contact list of over 12,000 individuals and encouraged those members to engage with and oppose the amendment's passage, including by contacting their legislators.

27. As part of its commitment to racial and economic justice, WISDOM is also opposed to the advisory referendum question contained in 2023 Enrolled Joint Resolution 4. WISDOM has historically opposed similar efforts by the Legislature to restrict or deny public benefits to qualified individuals.

28. Over the past 20 years, there have been periodic efforts, often embedded in state budget proposals, to require increased work requirements for people receiving public benefits. WISDOM and its affiliates have consistently voiced opposition to such efforts.

29. Defendant WEC is a state agency created under the laws of Wisconsin and comprised of six appointed members.

30. Defendant WEC has “the responsibility for the administration of chs. 5 to 10 and 12 [of the Wisconsin statutes] and other laws relating to elections and election campaigns[.]” Wis. Stat. § 5.05(1).

31. Defendant WEC is tasked with enforcing Wisconsin’s election laws.

32. Defendants Don Millis, Julie M. Glancey, Robert F. Spindell, Jr., Mark L. Thomsen, Ann S. Jacobs, and Marge Bostelmann, are sued in their official capacities as the members of the Wisconsin Elections Commission.

33. Defendant Meagan Wolfe is sued in her official capacity as the Administrator of the Wisconsin Elections Commission. As Administrator of the Wisconsin Elections Commission, Defendant Wolfe serves as “the chief election officer of this state.” Wis. Stat. § 5.05(3g).

## **FACTUAL ALLEGATIONS**

### ***a. Referendum Procedure in Wisconsin***

34. One way the Wisconsin Constitution provides for amendments is as follows: An amendment may be introduced in either house of the Legislature. If the

proposed amendment passes both houses, it is referred to the next Legislature. If it passes again, it is “the duty of the legislature to submit such proposed amendment or amendments to the people in such manner and at such time as the legislature shall prescribe[.]” If a majority of the voters approve the proposed amendment, it becomes part of the Constitution. Wis. Const. art. XII, § 1.

35. Wisconsin law also permits the Legislature to submit statewide advisory referenda to the voters. Wis. Stat. § 13.175.

36. The Legislature prescribed the following process for putting before the voters any proposed constitutional amendment or an advisory referendum:

**Filing of referenda petitions or questions.** Unless otherwise required by law, all proposed constitutional amendments and any other measure or question that is to be submitted to a vote of the people, or any petitions requesting that a measure or question be submitted to a vote of the people, if applicable, shall be filed with the official or agency responsible for preparing the ballots for the election no later than 70 days prior to the election at which the amendment, measure or question will appear on the ballot. No later than the end of the next business day after a proposed measure is filed with a school district clerk under this section, the clerk shall file a copy of the measure or question with the clerk of each county having territory within the school district.

Wis. Stat. § 8.37.

37. The statutes also prescribe WEC’s role in this process.

38. Specifically, for a spring election, WEC is required to send type A and C notices to the county clerks and MCBEC, certifying each referendum question that will appear on the ballot. WEC must complete this step “as soon as possible, but no later than the first Tuesday in March.” Wis. Stat. § 10.06(1)(e).

39. When there is more than one referendum, WEC also numbers the questions in chronological sequence. Wis. Stat. § 5.64(2)(c). And WEC has the statutory duty to prescribe ballot *forms*. Wis. Stat. § 70.8(1).

***b. The Resolutions***

40. On February 15, 2022, the 2021-2022 Wisconsin State Assembly adopted 2021 Assembly Joint Resolution 107, a proposal to amend Sections 6, 8(2), and 8(3) of Article I of the Wisconsin Constitution. On February 22, 2022, the 2021-2022 Wisconsin State Senate concurred. This resolution was enrolled as 2021 Enrolled Joint Resolution 6.<sup>2</sup>

41. By majority vote, the 2023-2024 Wisconsin State Senate approved this proposed amendment, by 2023 Senate Joint Resolution 2, again on January 17, 2023. The 2023-2024 Wisconsin Assembly concurred on January 19, 2023. The proposed amendment was enrolled as 2023 Enrolled Joint Resolution 2.<sup>3</sup>

42. 2023 Enrolled Joint Resolution 2 proposes to amend provisions of the Wisconsin Constitution related to the conditions in which a court may impose monetary conditions on pretrial release of persons accused of crimes.<sup>4</sup>

43. 2023 Enrolled Joint Resolution 2 provides that the following questions are to be submitted to the voters on the ballot for the April 4, 2023 Spring Election:

**Question 1:** “Conditions of release before conviction. Shall section 8 (2) of article I of the constitution be amended to allow a court to impose on

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<sup>2</sup> <https://docs.legis.wisconsin.gov/2021/proposals/ajr107>.

<sup>3</sup> <https://docs.legis.wisconsin.gov/2023/proposals/sjr2>.

<sup>4</sup> <https://docs.legis.wisconsin.gov/2023/related/enrolled/sjr2>

an accused person being released before conviction conditions that are designed to protect the community from serious harm?”

**Question 2:** “Cash bail before conviction. Shall section 8 (2) of article I of the constitution be amended to allow a court to impose cash bail on a person accused of a violent crime based on the totality of the circumstances, including the accused’s previous convictions for a violent crime, the probability that the accused will fail to appear, the need to protect the community from serious harm and prevent witness intimidation, and potential affirmative defenses?”

44. On January 17, 2023, the Wisconsin State Senate adopted 2023 Senate Joint Resolution 4. The Wisconsin State Assembly concurred on January 19, 2023. The resolution was enrolled as 2023 Enrolled Joint Resolution 4.<sup>5</sup>

45. 2023 Enrolled Joint Resolution 4 provides for an advisory referendum regarding public benefits and provides that the following question is to be submitted to the voters on the ballot for the April 4, 2023 Spring Election: “Shall able-bodied, childless adults be required to look for work in order to receive taxpayer-funded welfare benefits?”<sup>6</sup>

46. Upon information and belief, the Legislature transmitted both 2023 Enrolled Resolution 2 and 2023 Enrolled Resolution 4 to Defendant WEC on January 19, 2023.

47. The Legislature did not file 2023 Enrolled Joint Resolution 2 or 2023 Enrolled Joint Resolution 4 with the county clerks or the Milwaukee County Elections Commission.

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<sup>5</sup> [https://docs.legis.wisconsin.gov/2023/proposals/reg/sen/joint\\_resolution/sjr4](https://docs.legis.wisconsin.gov/2023/proposals/reg/sen/joint_resolution/sjr4).

<sup>6</sup> <https://docs.legis.wisconsin.gov/2023/related/enrolled/sjr4>.

**c. WEC's Actions**

48. After receiving the Resolutions, on January 26, 2023, WEC issued the Memorandum and its attachments to the county clerks and MCBEC.<sup>7</sup>

49. The Memorandum attached a Certification of Referendum Question, a draft Type A Notice of Referendum Election, and an Appendix A. A true and correct copy of the Memorandum and attachments is attached as Exhibit 1.

50. The Certification of Referendum Question attached to the Memorandum, signed by Defendant Wolfe, certified that the referendum questions from the Resolutions “shall be submitted to the voters at the Spring Election to be held in the several cities, villages, towns, wards, and elections districts of the State of Wisconsin on April 4, 2023.”

51. The Type A Notice of Referendum Election attached to the Memorandum is intended for use by the county clerks and MCBEC. The Memorandum states that the Type A Notice of Referendum Election must be published, as provided in Wis. Stat. § 10.06(2)(f), on March 7, 2023, the fourth Tuesday preceding the Spring Election.

52. Appendix A to the Memorandum outlines Defendant WEC's understanding “that the Wisconsin Elections Commission is the only filing officer for state-level referenda questions and the statutory ballot ordering requirements for state-level referenda fall to the Commission alone.”

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<sup>7</sup> <https://elections.wi.gov/memo/certification-referendum-question-and-type-notice-referendum-april-4-2023-spring-election>.

53. Appendix A recognizes that the filing of referenda is governed by, and must be undertaken in compliance with, Wis. Stat. § 8.37.

54. Appendix A notes that, “The phrase ‘the official or agency responsible for preparing the ballots’ may cause confusion because of overlapping ballot preparation responsibilities and the fact that most of the printing and distribution work lies with the county clerks.”

55. It nonetheless concludes that, “[t]hough both county clerks and the Commission have responsibilities for preparing state-level ballots, the Commission’s responsibilities must precede the counties’ for the process to function coherently” due to Defendant WEC’s responsibilities to certify referenda questions and provide various notices, and due to the requirement in Wis. Stat. § 5.64(2)(c) that Defendant WEC number the questions in chronological sequence.

56. Defendant WEC’s assertion in Appendix A that it is the filing officer for state-level referenda contradicts Wisconsin law.

57. Wisconsin has a “highly decentralized system for election administration.” *State ex rel. Zignego v. Wis. Elections Comm’n*, 2021 WI 32, ¶13, 396 Wis. 2d 391, 957 N.W.2d 208.

58. As Appendix A acknowledges, the county clerks and MCBEC prepare the ballots for state-wide elections.

59. Wis. Stat. § 7.10(2) requires the county clerks (and MCBEC, through the operation of Wis. Stat. §§ 7.20 and 7.21) to prepare the ballots: “PREPARING

BALLOTS. The county clerk *shall prepare a copy for the official ballots* immediately upon receipt of the certified list of candidates' names from the commission. The official and sample ballots shall be prepared in substantially the same form as those prescribed by the commission under s. 7.08 (1) (a).” (emphasis added).

60. The county clerks and MCBEC bear statutory responsibility to “provide ballots for all national, state and county offices, including metropolitan sewerage commission elections under s. 200.09 (11) (am), for municipal judges elected under s. 755.01 (4) *and for state and county referenda.*” Wis. Stat. § 7.10(1)(a) (emphasis added).

61. It is similarly the duty of the county clerks and MCBEC—and not of Defendant WEC—to distribute ballots to the municipal clerks in time for elections. Wis. Stat. § 7.10(3).

62. It is, therefore, the county clerk (or, in Milwaukee County, MCBEC) who is the official “responsible for preparing the ballots” as described in Wis. Stat. § 8.37.

63. Pursuant to these statutes, it is the county clerks and MCBEC who prepare the ballots for state-wide referenda, based on forms received from Defendant WEC.

64. The county clerks and MCBEC are therefore the appropriate officials and agency, respectively, with which “all proposed constitutional amendments and any other measure or question that is to be submitted to the vote of a people” must be filed. Wis. Stat. § 8.37.

65. The Resolutions were not filed with the county clerks and MCBEC prior to the deadline established in Wis. Stat. § 8.37.

66. Because the Resolutions were not timely filed, they do not qualify for inclusion on the ballot for the April 4, 2023 Spring Election. *Teigen v. Wis. Elections Comm'n*, 2022 WI 64, ¶52, 403 Wis. 2d 607, 976 N.W.2d 519, *reconsideration denied*, 2022 WI 104 (“WEC must follow Wisconsin statutes. Good intentions never override the law.”).

## CLAIMS FOR RELIEF

### COUNT ONE

#### **(Wis. Stat. § 227.40(1) Declaratory Judgment as to Defendant WEC’s Memorandum and Accompanying Documents)**

67. All preceding paragraphs are reincorporated and realleged here.

68. Pursuant to Wis. Stat. § 227.40(1), a plaintiff may seek declaratory judgment to determine the validity of an agency rule or guidance document.

69. The Memorandum and its attachments are guidance documents within the definition of Wis. Stat. § 227.01(3m) as they are formal and official documents and communications from Defendant WEC and Defendant Wolfe that explain their implementation of Wis. Stat. § 8.37.

70. Because the Memorandum and its attachments state that Defendant WEC, rather than the county clerks and MCBEC, are the filing officers for purposes of Wis. Stat. § 8.37, those documents are contrary to Wisconsin law and are, therefore, invalid.

71. Wis. Stat. § 8.37 required the Resolutions to be filed with the county clerks and MCBEC no later than January 25, 2023.

72. Neither the Legislature nor any other person or entity timely filed the Resolutions with any or all of “the official[s] or agenc[ies] responsible for preparing the ballots for the election” prior to the expiration of the 70–day deadline.

73. The conclusion expressed in the Memorandum and its attachments that the Resolutions qualify for inclusion on the April 4, 2023 Spring Election ballot is contrary to Wisconsin law. It follows that the Memorandum and its attachments are invalid.

74. Therefore, Plaintiffs are entitled to a declaratory judgment pursuant to Wis. Stat. §§ 227.40(1) and (4)(a) declaring the Memorandum and its attachments invalid as well as to temporary and permanent injunctive relief requiring Defendant WEC to rescind the documents and instruct Wisconsin’s county clerks and MCBEC that the Resolutions are not to be included on the ballot for the April 4, 2023 Spring Election.

## **COUNT TWO**

**(Wis. Stat. § 806.04 Declaratory Judgment as to the Meaning of “Missing” In  
Wis. Stat. § 6.87(6d))**

75. All preceding paragraphs are reincorporated and realleged here.

76. “Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” Wis. Stat. § 806.04(1). This jurisdiction exists “to settle and to

afford relief from uncertainty and insecurity with respect to rights, status and other legal relations ....” Wis. Stat. § 806.04(12).

77. Wis. Stat. § 806.04 is “remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations; and is to be liberally construed and administered.” Wis. Stat. § 806.04(12).

78. Because the Resolutions were not filed with “the official or agency responsible for preparing the ballots for the election” prior to the expiration of the 70–day deadline, and because of the unlawful guidance proffered in the Memorandum and attachments, there now exists uncertainty as to whether the Resolutions will be included on the ballot for the April 4, 2023 Spring Election, notwithstanding the clear and express requirements of Wisconsin law that the Resolutions cannot be included on the ballot for that election.

79. Therefore, pursuant to Wis. Stat. § 806.04, Plaintiffs are entitled to a declaration that the Resolutions do not qualify for inclusion on the April 4, 2023 Spring Election.

80. Plaintiffs are also entitled to temporary and permanent injunctive relief requiring Defendant WEC to instruct Wisconsin’s county clerks and MCBEC that the Resolutions are not to be included on the ballot for the April 4, 2023 Spring Election and that neither Defendant WEC nor Defendant Millis, in his official capacity as Chair of the Wisconsin Elections Commission, may include votes for or against the Resolutions in the statewide canvass for the April 4, 2023 Spring Election.

### PRAYER FOR RELIEF

Plaintiffs EXPO and WISDOM respectfully request that this Court enter an order granting Plaintiffs the following relief:

- (a) A declaratory judgment pursuant to Wis. Stat. §§ 227.40(1) and (4)(a) declaring that the Memorandum and its attachments are invalid because they erroneously assert that Defendant WEC is the appropriate filing official or agency for purposes of Wis. Stat. § 8.37 and that the Resolutions qualify for inclusion on the April 4, 2023 Spring Election;
- (b) Temporary and permanent injunctions requiring Defendant WEC, Defendants Millis, Glancey, Spindell, Thomsen, Jacobs, and Bostelmann, in their official capacity as members of the Wisconsin Elections Commission, and Defendant Wolfe, in her official capacity as Administrator of the Wisconsin Elections Commission, to rescind the Memorandum and attachments and to instruct Wisconsin's county clerks and MCBEC that the Resolutions are not to be included on the ballot for the April 4, 2023 Spring Election.
- (c) A declaratory judgment pursuant to Wis. Stat. § 806.04 declaring that the Resolutions do not qualify for inclusion on the April 4, 2023 Spring Election
- (d) Temporary and permanent injunctive relief requiring Defendant WEC, Defendants Millis, Glancey, Spindell, Thomsen, Jacobs, and Bostelmann, in their official capacity as members of the Wisconsin Elections Commission, and Defendant Wolfe, in her official capacity as Administrator of the Wisconsin

Elections Commission, to instruct Wisconsin's county clerks and MCBEC that the Resolutions are not to be included on the ballot for the April 4, 2023 Spring Election.

- (e) Temporary and permanent injunctive relief prohibiting Defendant WEC and Defendant Millis, in his official capacity as Chair of the Wisconsin Elections Commission, from including votes for or against the Resolutions in the statewide canvass for the April 4, 2023 Spring Election.
- (f) Such other or further relief as this Court deems just and proper.

**DATED:** January 31, 2023

Respectfully submitted,

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# EXHIBIT 1



# Wisconsin Elections Commission

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## MEMORANDUM

**TO:** Wisconsin County Clerks  
Milwaukee County Election Commission

**DATE:** January 26, 2023

**SUBJECT:** Certification of Referendum Question and Type A Notice of Referendum for the April 4, 2023, Spring Election

Attached below are the Certification of Referendum Question and the Type A Notice of Referendum Election, and a discussion on referenda timeline in Appendix A. The Certification of Referendum Question is not required to be published, but the Type A Notice does require publication. The referendum is the result of 2023 Enrolled Joint Resolution 2 and 2023 Enrolled Joint Resolution 4, which can be found on the Wisconsin Elections Commission website at:

<https://elections.wi.gov/memo/certification-referendum-question-and-type-notice-referendum-april-4-2023-spring-election>.

The Type A Notice of Referendum must be published on March 7, 2023, the fourth Tuesday preceding the Spring Election. Whenever a weekly newspaper is used for publication, the notice appears in the newspaper's closest preceding issue. The notice must also include any county referendum question that will be on the Spring Election ballot.

The Type C Notice of Referendum, which includes the Attorney General's explanation of a "yes" or "no" vote, will be forwarded to you as soon as we have received the explanation language from the Office of the Attorney General. The Type C Notice must be published on April 3, 2023, the same time as the Types B and D Notices, and must also be posted at polling places.

If you have any questions, please contact the Help Desk at 608-261-2028 or [elections@wi.gov](mailto:elections@wi.gov).

Attachments:

Appendix A discussing referendum timelines  
Type A Notice for Referenda  
Certification of Referendum Ballot Questions

*Wisconsin Elections Commissioners*

Don M. Millis, chair | Marge Bostelmann | Julie M. Glancey | Ann S. Jacobs | Robert Spindell | Mark L. Thomsen

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Administrator  
Meagan Wolfe

## Appendix A

This appendix addresses inquiries that the Wisconsin Elections Commission has received concerning where state-level referenda are required to be filed 70 days before Spring Election.

Overall, our understanding is that the Wisconsin Elections Commission is the only filing officer for state-level referenda questions and the statutory ballot ordering requirements for state-level referenda fall to the Commission alone. The Commission is separately required by statute to certify all state-level referenda questions to county clerks. Numerous statutes are implicated in the process of filing state-level referenda questions and preparing ballots, which allow for possible disagreements over interpretation. The following explanation is intended to clarify why, for state-level referenda questions, Commission staff believe that the 70-day filing requirement applies only to the Commission and not to county clerks.

The filing of referenda petitions and questions is governed by Wis. Stat. § 8.37, which states in full that:

Unless otherwise required by law, all proposed constitutional amendments and any other measure or question that is to be submitted to a vote of the people, or any petitions requesting that a measure or question be submitted to a vote of the people, if applicable, shall be filed with the official or agency responsible for preparing the ballots for the election no later than 70 days prior to the election at which the amendment, measure or question will appear on the ballot. No later than the end of the next business day after a proposed measure is filed with a school district clerk under this section, the clerk shall file a copy of the measure or question with the clerk of each county having territory within the school district.

This statute covers the filing of all referenda questions in Wisconsin, notably including those that require filing officers to review large numbers of signatures before any referenda can appear on a ballot, which is not relevant to state level referenda. There are two areas here that may cause confusion.

The phrase “the official or agency responsible for preparing the ballots” may cause confusion because of overlapping ballot preparation responsibilities and the fact that most of the printing and distribution work lies with the county clerks. Starting with the singular words “official or agency,” there is clearly one entity that is responsible for receiving any individual referenda filing. “Official” references each individual clerk who is a filing officer, including county, municipal, school district, and other special purpose district clerks. “Agency” references the Wisconsin Elections Commission and the Milwaukee City and County Election Commissions. State-level referenda questions are filed with the agency of the Wisconsin Elections Commission, which is the entity responsible for preparing the form of “referendum ballots” for each state-level referendum election.

Though both county clerks and the Commission have responsibilities for preparing state-level ballots, the Commission’s responsibilities must precede the counties’ for the process to function coherently. Once the Commission certifies the referenda questions to the counties with the Type A and C notices, the county responsibilities begin. Wis. Stat. § 5.60(7) governs referendum ballots and states that “[e]xcept as authorized in s. 5.655, there shall be a separate ballot setting forth all propositions requiring a vote in the form and manner provided by s. 5.64.” Wis. Stat. § 5.64(2)(am) explains in part that “[t]here shall be a separate ballot when any proposed constitutional amendment or any other measure or question is submitted to a vote of the people, except as authorized in s. 5.655.” Wis. Stat. § 5.64(2)(c) goes on to explain, in relevant part, that:

## Appendix A

Except as authorized in s. 5.655, all referenda shall appear on a separate ballot, but more than one referendum question may appear on the same referendum ballot whenever the questions are numbered and all electors voting the ballot are entitled to vote upon all questions appearing thereon. When more than one state referendum is placed on the same ballot, the commission shall number the questions in chronological sequence. If the legislature submits questions on different dates, the commission shall number the questions sequentially based on the date on which the questions are submitted by the legislature. Except as authorized in s. 5.655, state and county referenda shall appear on a separate ballot from municipal or special district referenda.

Wisconsin broadly uses consolidated ballots under Wis. Stat. § 5.655, but, as shown in the quote directly above, it is still the Commission's responsibility to prepare and number the questions appearing on the state-level referendum "ballot" that all voters will receive, albeit on a combined ballot along with local contests and referenda applicable to local jurisdictions. For referenda questions for the Spring Election, Wis. Stat. § 10.06(1)(e) states in relevant part that "[w]hen there is a referendum, the Commission shall send Type A and C notices certifying each question to the county clerks as soon as possible, but no later than the first Tuesday in March." Wis. Stats. §§ 7.08(2)(a) and 7.10(2) explain certified lists and together show that the Commission must certify all state-level elections to the county clerks. These two statutes refer only to "candidates" and not to referenda, but Wis. Stat. § 10.06(1)(e) makes clear that the Commission also certifies referenda questions to county clerks, rather than each county clerk receiving and preparing state-level referenda questions individually, which could result in issues such as state-level questions appearing in a different order in different counties.

The Commission needs to receive an explanatory statement from the Attorney General, who is required by Wis. Stat. § 10.01(2)(c) to prepare the statement, before it can send the Type C notice to the county clerks. The county clerks would then include the text on the combined ballots for the April 4 Spring Election once the Spring Primary election in February determines which candidates will advance to the Spring Election.

A second source of confusion is the last sentence of Wis. Stat. § 8.37, which requires school district clerks to file the referenda with all county clerks with territory in the district the day after the school district clerks receives the filing. Since no similar language requires the Wisconsin Elections Commission (or municipal clerks) to file the text with the county clerks before the date provided in Wis. Stat. § 10.06(1)(e), a one-day turnaround cannot be assumed to apply. However, the Wisconsin Elections Commission's website may have created a misunderstanding on this point. Instead of specifically referencing school district clerks, the Commission's online calendar says that January 25 of this year is the "[d]eadline for [the] filing officer to file a copy of the referendum question intended for the Spring Election with the county clerk." It then references Wis. Stat. § 8.37 and states "next business day after receipt by filing officer." Since the next business day requirement only applies to school district clerks, the Commission will correct its calendar.

Commission staff hope that this explanation, though long, clarifies the Commission's understanding of filing and certifying state-level referenda questions for the Spring Election.

**TYPE A NOTICE  
OF  
REFERENDUM ELECTION**

**April 4, 2023**

NOTICE IS HEREBY GIVEN, that at an election to be held in the several towns, villages, cities, wards, and election districts of the State of Wisconsin, on Tuesday, April 4, 2023, the following questions will be submitted to a vote of the people pursuant to law:

**QUESTION 1: “Conditions of release before conviction.** Shall section 8 (2) of article I of the constitution be amended to allow a court to impose on an accused person being released before conviction conditions that are designed to protect the community from serious harm?”

**QUESTION 2: “Cash bail before conviction.** Shall section 8 (2) of article I of the constitution be amended to allow a court to impose cash bail on a person accused of a violent crime based on the totality of the circumstances, including the accused’s previous convictions for a violent crime, the probability that the accused will fail to appear, the need to protect the community from serious harm and prevent witness intimidation, and potential affirmative defenses?”

**QUESTION 3: “Shall able-bodied, childless adults be required to look for work in order to receive taxpayer-funded welfare benefits?”**

This referendum ballot is a result of 2023 Enrolled Joint Resolution 2 and 2023 Enrolled Joint Resolution 4, a copy of which can be viewed or downloaded from the Wisconsin Elections Commission website at <https://elections.wi.gov/memo/certification-referendum-question-and-type-notice-referendum-april-4-2023-spring-election> and also on the Legislature’s website at [https://docs.legis.wisconsin.gov/2023/proposals/reg/sen/joint\\_resolution](https://docs.legis.wisconsin.gov/2023/proposals/reg/sen/joint_resolution).

A copy also can be obtained from the office of the county clerk, or the Legislative Documents Room at 1 East Main Street, Madison, Wisconsin.

DONE in the \_\_\_\_\_ of \_\_\_\_\_,

this \_\_\_\_ day of \_\_\_\_\_, 2023.

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(Signature of County Clerk)

# STATE OF WISCONSIN



WISCONSIN ELECTIONS COMMISSION

## CERTIFICATION OF REFERENDUM QUESTIONS

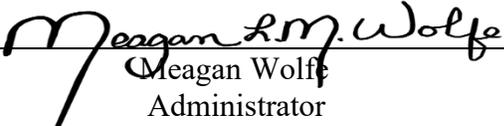
**2023 SPRING ELECTION**

**APRIL 4, 2023**

TO ALL COUNTY CLERKS AND THE MILWAUKEE COUNTY ELECTION COMMISSION:

I, Meagan Wolfe, Administrator of the Elections Commission of the State of Wisconsin, certify that the referendum questions set out in the accompanying Type A Notice shall be submitted to the voters at the Spring Election to be held in the several cities, villages, towns, wards, and election districts of the State of Wisconsin on April 4, 2023. The questions shall be printed in the exact language as prescribed in the Type A Notice.

DONE in the City of Madison, this 26<sup>th</sup> day of  
January 2023.

  
Meagan Wolfe  
Administrator