

FILED
08-18-2026
CLERK OF WISCONSIN
SUPREME COURT

STATE OF WISCONSIN
SUPREME COURT

Appeal No. 2024-AP-2484

DEMOCRATIC NATIONAL COMMITTEE,
Petitioner-Respondent,

v.

HEATHER BOEHM,
Clerk of the City of Whitewater,
Respondent,

and

REPUBLICAN NATIONAL COMMITTEE,
Intervenor-Appellant

BRIEF OF *AMICUS CURIAE* LYDIA MCCOMAS
CLERK OF THE CITY OF MADISON

Stacie H. Rosenzweig, SBN 1062123
Halling & Cayo SC
320 E. Buffalo Street, Suite 700
Milwaukee, WI 53202
414.755.5040 (direct)
shr@hallingcayo.com

Alex M. Goldstein**
Graham Provost*
PUBLIC RIGHTS PROJECT
490 43rd Street, Unit #115
Oakland, CA 94609
alex.goldstein@publicrightsproject.org
graham.provost@publicrightsrproject.org
* Pro Hac Vice
** Pro Hac Vice Pending

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STATEMENT OF INTEREST

Amicus curiae is a municipal clerk from the City of Madison, Wisconsin.¹ With regard to elections, the primary duty of county and municipal clerks is to ensure that all eligible citizens in their jurisdictions can exercise the right to vote. Under state law, municipal clerks have “charge and supervision of elections and registration” and are given broad duties including “any [duties] which may be necessary to properly conduct elections[.]” Wis. Stat. § 7.15(1). County clerks also play a crucial role in conducting elections, including preparing and providing ballots and election supplies for all “national, state and county elections[.]” Wis. Stat. §§ 7.10(1)–(2). *Amicus* is similarly duty bound under the National Voter Registration Act (“NVRA”) to “promote the exercise of” the “fundamental right” to vote. 52 U.S.C. § 20501(a).

When exigent circumstances on Election Day interfere with the ability of voters to cast their ballots, Wisconsin clerks rely on the circuit courts to extend voting hours. Although it is possible for private parties to request an extension of voting hours—as occurred in this case—the majority of such requests come from clerks. The Wisconsin Elections Commission (“WEC”) has explicitly advised clerks that requesting extensions is their responsibility.²

¹ No counsel for a party authored this brief in whole or part, and no party or counsel for a party made a monetary contribution intended to fund its preparation or submission. No person other than *amicus* or *amicus*’ counsel made a monetary contribution to the preparation or submission of this brief.

² “When a polling location is closed for a significant period of time, especially during the afternoon or evening hours, the municipal clerk should consider whether electors will have adequate opportunity to return to the polls and vote. If an extension of voting hours is necessary, it is the responsibility of the municipality to seek a court order authorizing

The named respondent clerk in this matter declined to file a response brief at the Court of Appeals, meaning that only political parties have filed merits briefing in this matter. *Amicus* believes that the court will benefit from the perspective of a government official tasked with the nonpartisan administration of elections, particularly given clerks' historical, central role in requesting voting hour extensions. *Amicus* also has a strong interest in the outcome of this case because she relies on state courts to extend voting hours to ensure that voters have appropriate access to the polls on election day, even if voting is delayed due to emergencies or technical issues. Maintaining that authority for the courts is in the interest of the fair administration of elections in Wisconsin.

SUMMARY OF ARGUMENT

Wisconsin state courts have the inherent jurisdiction and authority to extend voting hours to protect the fundamental constitutional right to vote. Nothing in Wisconsin Statutes suggests otherwise. Longstanding WEC guidance advises clerks to seek extension of voting hours through the circuit courts and those courts have consistently determined that they have jurisdiction to grant such requests.

Circuit courts are also the most effective fora for extending voting hours. While there are only four federal courthouses in the state—in Eau Claire, Green Bay, Madison, and Milwaukee—there are circuit courts in every county. Each of these circuit courts has a “duty judge” assigned to handle urgent matters, ensuring that the courts are responsive to requests

an extension.” *Court Document Templates for Extension of Polling Hours*, WEC, Oct. 12, 2018, available at https://elections.wi.gov/sites/default/files/legacy/memo/20/clerk_comm_re_voting_hours_extension_10_12_18_pdf_49772.pdf (hereinafter “Court Document Templates”).

to extend voting hours, even after regular court hours. Moreover, circuit court judges are familiar with the communities in their counties, enabling them to more effectively and responsively address exigent circumstances on Election Day. Without access to the state courts, clerks, including *amicus*, could not as effectively ensure their voters' constitutional right to vote.

Because the Court of Appeals erred in holding that circuit courts do not have the lawful authority to extend polling hours, this court should grant the petition for review and reverse.

ARGUMENT

I. Circuit Courts Have the Inherent Jurisdiction and Authority to Issue Orders to Extend Voting Hours.

The Wisconsin Supreme Court has long recognized the fundamental nature of the right to vote. *See, e.g., State ex rel. McGrael v. Phelps*, 144 Wis. 1, 15, (1910). And Wisconsin courts have the authority to exercise their equitable authority to remedy “the invasion of legally protected rights.” *Breier v. E.C.*, 130 Wis. 2d 376, 389, 387 N.W.2d 72 (1986). As Petitioner-Respondent explains in its Petition for Expedited Review, nothing in Wisconsin statutes prevent circuit courts from exercising their inherent authority to extend polling hours where necessary to vindicate this right. Common practice of the circuit courts, WEC, and local election officials supports this understanding.

In 2018, WEC reviewed the historical practice of circuit courts and provided clerks with guidance for seeking to extend polling hours where necessary. As WEC explained: “While [section 6.96] refers to a federal court order, Wisconsin circuit courts have regularly determined that they also

have inherent jurisdiction and authority to issue such orders.”³ WEC “collected pleadings used by several municipalities in prior cases and created templates that can be used to initiate and facilitate court action to extend polling hours.”⁴ This guidance from WEC has informed and is consistent with *amicus*’ understanding of the proper and regularly followed procedures for extending polling hours. WEC reissued this guidance ahead of the November 2024 election,⁵ and the Wisconsin League of Municipalities distributed this guidance, again reflecting localities’ understanding that clerks should file in circuit courts to extend polling hours.

At the Court of Appeals, intervenors suggested that Wisconsin circuit courts have rarely granted extensions of polling hours, but this is inconsistent with *amicus*’ experience. Although it is unusual for any particular municipality to require extended voting hours, it is relatively common that, across Wisconsin’s thousands of polling locations, some locations require an extension. Intervenors themselves cite two such examples: one stemming from a bomb threat in Madison⁶ and another from workers at the University of Wisconsin, Madison incorrectly turning voters away from a polling site.⁷ Another occurred in April 2025 when the Marathon County Clerk requested, and the court granted, a one-hour extension of voting hours after technology issues caused significant delays

³ *Court Document Templates* at 1.

⁴ *Id.*

⁵ *General Reminders for the Nov. 5, 2024 General Election*, WEC, Oct. 23, 2024, <https://elections.wi.gov/memo/general-reminders-nov-5-2024-general-election>.

⁶ Lynn Heidmann, *Bomb Threat Interferes with City Polling Place*, *Badger Herald* (Nov. 8, 2006), <https://badgerherald.com/news/2006/11/08/bomb-threat-interfer/>.

⁷ Brianna Davis, *Voting was Extended by 90 Minutes at Memorial Union. Here’s Why*, *Badger Herald* (Apr. 3, 2024), <https://badgerherald.com/news/campus/2024/04/03/voting-was-extended-by-90-minutes-at-memorial-union-heres-why/>.

and long lines that led some voters to leave without casting a ballot.⁸ *Amicus* is aware of extensions granted for various other reasons including equipment failure, severe weather, and even the relocation of a polling place after shots were reportedly fired in a nearby dispute over tree removal.⁹

In severe cases, such as this one, long lines — particularly when caused by administrative problems — can interfere with the fundamental right to vote. *Compare* Trial Tr. 3:10–11, Nov. 5, 2024 (noting observed delays at the Whitewater polling location of up to five hours) *with* *League of Women Voters of Ohio v. Brunner*, 548 F.3d 463, 477–78 (6th Cir. 2008) *and* *Ury v. Santee*, 303 F. Supp. 119, 126 (N.D. Ill. 1969) (holding that barriers including two to four hour wait times could establish deprivation of right to vote). In less severe cases, *amicus* has seen circuit courts deny requested extensions, not for lack of jurisdiction, but because the courts found such extensions unnecessary to protect the fundamental right to vote, usually because the interruption in voting was brief and/or early in the day.¹⁰

Recent Wisconsin circuit court activity confirms the understanding that circuit courts can extend polling hours via injunctive relief under state

⁸ *Kronenwetter Extending Polling Hours After Earlier Technical Issues*, WSAW-TV (Apr. 1, 2025), available at: <https://www.wsaw.com/2025/04/01/kronenwetter-extending-polling-hours-after-earlier-technical-issues/>.

⁹ Sierra Rehm, *Incident in Village of Brooklyn Began because of Dispute over Tree Removal*, WKOW (Feb. 21, 2023), https://www.wkow.com/news/state/incident-in-village-of-brooklyn-began-because-of-dispute-over-tree-removal/article_f18cc7a0-b1f5-11ed-b357-9b932a55ea8f.html.

¹⁰ See, e.g., *Wisconsin University of Wisconsin-Stout Poll Hours Extension Request*, Democracy Docket (Nov. 5, 2024), <https://www.democracymarket.com/cases/wisconsin-university-of-wisconsin-stout-poll-hours-extension-request/>; *Wisconsin Winnebago County Poll Hours Extension Request*, Democracy Docket (Nov. 5, 2024), <https://www.democracymarket.com/cases/wisconsin-winnebago-county-poll-hours-extension-request/#:~:text=Lawsuit%20filed%20by%20the%20Democratic,in%20the%20November%202024%20general>.

law. For example, the Winnebago County Circuit Court held an open meeting on May 9, 2025, to standardize how requests to extend polling hours are made to circuit courts. *See* Ex. A. The circuit court invited the Winnebago County Clerk, all 22 municipal clerks in Winnebago County, the Winnebago County Sheriff and Corporation Counsel, and the local political parties, indicating that the circuit court understands that it is the proper forum to hear extension requests from these parties. Ex. A at 1. The court attached a letter to its invitation explaining its legal reasoning behind holding the meeting. The letter confirms “Circuit Courts have limited jurisdiction over Election Day activities . . . [including] extending polling hours.” Ex. A at 2 (citing Wis. Stat. § 6.78). It continues to explain “circuit courts have the ability to expand [polling] hours if critical need is shown Wisconsin Courts have granted injunctions extending polling hours when a demonstrated clear and present need exists in response to unforeseen and accidental occurrences” (emphasis in original). *Id.* In doing so, “the Court is thus preserving the constitutional and statutory right of citizens to vote in the face of unforeseen disruption. The Court is essentially using its equitable powers to enforce Wis. Stat. § 6.78 in the face of circumstances that warrant an injunction (irreparable harm, immediate need).” *Id.* The Winnebago County Circuit Court’s meaning is plain: there is a well-understood practice of Wisconsin circuit orders extending polling hours upon demonstration of need, to the degree that circuit courts work with interested parties in advance of elections to facilitate the filing and consideration of such requests.

The initiative of the Winnebago County Circuit Court to establish local procedures to consider requests to extend polling hours is also likely to be replicated in courts throughout Wisconsin. The Circuit Court’s

memorandum prefaces its proposed procedures by noting that “The Fourth Judicial Circuit has asked Presiding Judges of each county to formulate a protocol for their respective jurisdictions outlining a process to field potential Election Day challenges.” Ex. A at 2. Common understanding of the circuit courts as well as WEC guidance thus reinforce circuit courts’ inherent authority to extend polling hours. Across numerous cases, circuit courts have used this authority appropriately – granting extensions where necessary to vindicate the fundamental right to vote and denying extension requests when unnecessary to protect that right.

II. Wisconsin Circuit Courts Are Familiar with Their Communities and Easily Accessible by Wisconsin Clerks and Voters, and Therefore Are the Most Practical Judicial Fora to Extend Voting Hours.

Clerks rely on circuit courts – rather than federal courts – to extend polling hours for good reason: they are accessible, responsive, and knowledgeable about local conditions, allowing them to provide more timely and effective relief. While there are only four federal district courthouses in Wisconsin, nearly every county has a circuit court (six smaller counties’ circuit courts are paired), and the circuit court judges must reside within the county or counties.

As discussed, polling hours may need to be extended based on a variety of circumstances. As WEC has described it, “[t]here are possible situations that could require a municipality to seek an extension of the time set for polling places to be open. For example, an emergency situation, inclement weather or flooding that obstructs traffic or access to the polling place, or a power outage could cause a polling place to close for a period of time.” Court Document Templates at 1. For many of these circumstances, a

judge based in the community is particularly well suited to quickly evaluate a request for an extension and to provide appropriate relief. Here, for instance, the circuit court did not grant Plaintiff's initial request to keep polls open for two hours, instead ordering that they remain open for just 43 minutes, a decision that reflected the court's familiarity with the locality's needs.

Relatedly, decisions about whether to extend polling hours must be made quickly in order to communicate the extension to election inspectors, staff, voters, the parties, and the media. *See Court Document Templates*. Circuit courts are by far the best venue for receiving such timely decisions. Not only does every county have a circuit court, but each circuit court assigns a "duty judge" to handle urgent matters outside of regular business hours, ensuring that clerks have a judicial point of contact to address exigent circumstances. This is especially important because most petitions to extend polling hours are filed late in the day, even if voting was interrupted earlier in the day. Election officials must respond to and address immediate emergency situations, communicate with other officials and the public, and then assess whether voting has been sufficiently impacted to warrant seeking a court order.

When such circumstances interfere with voters' ability to cast their ballots, a clerk can appear in person if necessary before the circuit court in a matter of minutes rather than the hours it would likely take to physically commute to a federal courthouse or even to navigate federal court procedures and coordinate virtual proceedings with a federal district court, if even possible within the timeframe required on Election Day. Moreover, clerks and voters are more accustomed to working with their local circuit court than with the federal district courts. Most clerks and even many

municipal attorneys generally avoid interacting with the federal courts because of logistical barriers including differing filing rules and procedures, and separate admissions requirements.

Amicus Lydia McComas is the current City of Madison clerk, and has been serving in that role since September 2025. She is versed in the processes required to seek court orders to extend voting hours, and is familiar with the City of Madison's long involvement in the process since 2008 and as recently as April of 2024.

In those cases, the major political parties have typically been notified and invited to participate in the court proceedings. In some cases, the political parties have stipulated to the length of an extension. *Amicus* is not aware of any other case in which any party has argued that only federal courts have the authority to extend polling hours. *Amicus* is not aware of a single instance in which a municipality or other party has petitioned a federal court to extend polling hours.

Finally, although Wis. Stat. § 6.96 provides procedures for voting "after the closing time provided" under state law pursuant to a federal court order, this statute does not infringe on circuit courts' inherent equitable authority. In addition to the many benefits of seeking relief at a local circuit court, federal jurisdiction is regularly unavailable "if, for example, there is not a federal election candidate on the ballot." *Democratic National Committee v. Heather Boehm Clerk of the City of Whitewater and Republican National Committee*, Appeal No. 2024AP2484, (Wis. Ct. App. July 29, 2026) (recommended for publication) (J. Neubauer concurrence, ¶ 94). While the instant case concerns a presidential election, Wisconsin regularly holds elections in which no federal candidates appear on the ballot. Spring non-partisan elections typically involve only state and local race (primaries,

when needed, and general elections are held each February and April, respectively), while special and recall elections may be held at any time. The Court of Appeals' decision would leave municipalities with no recourse to protect election administration and voters' fundamental rights when exigencies arise during non-federal elections.

Given these realities, a ruling that clerks cannot seek extension of voting hours in the circuit courts could effectively preclude clerks from obtaining timely extensions necessary to protect the fundamental right to vote of their residents.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for review, reverse the Court of Appeals' order below and allow circuit courts to vindicate the fundamental right to vote by, where necessary, granting requests for extension of polling hours.

RESPECTFULLY SUBMITTED this 18th Day of August, 2026.

Electronically signed by Stacie H. Rosenzweig

Stacie H. Rosenzweig, SBN 1062123

Halling & Cayo SC

320 E. Buffalo Street, Suite 700

Milwaukee, WI 53202

414.755.5040 (direct)

shr@hallingcayo.com

Alex M. Goldstein**

Graham Provost*

PUBLIC RIGHTS PROJECT

490 43rd Street, Unit #115

Oakland, CA 94609

alex.goldstein@publicrightsrproject.org
graham.provost@publicrightsrproject.org

*Pro Hac Vice

**Pro Hac Vice application forthcoming

CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b), (bm), and (c) for a brief produced with a proportional serif font. The length of this brief is 2653 words.

Electronically signed by Stacie H. Rosenzweig

Stacie H. Rosenzweig, SBN 1062123

Halling & Cayo SC

320 E. Buffalo Street, Suite 700

Milwaukee, WI 53202

414.755.5040 (direct)

shr@hallincayo.com

EXHIBIT

A

Erica Roberts
Judicial Associate-Lead
(920) 236-4811

Suzanne Savage
Court Assistant
(920) 236-4805



Winnebago County Courthouse
415 Jackson Street
P.O. Box 2808
Oshkosh, WI 54901-2808

Fax(920)236-4892

Greta Pedersen
Court Reporter
(920) 236-4806

WINNEBAGO COUNTY CIRCUIT COURT
Branch I

MICHAEL D. RUST
Circuit Court Judge

TO: Winnebago County Sheriff's Department
Winnebago County Corporation Counsel
Winnebago County Clerk
Winnebago County Clerk of Courts
Municipal Clerks of Winnebago County (including Cities of Menasha, Neenah, Omro, Oshkosh, Appleton, Towns of Algoma, Black Wolf, Clayton, Neenah, Nekimi, Nepeuskun, Omro, Oshkosh, Poygan, Rushford, Utica, Vinland, Winchester, Winneconne, Wolf River, and Villages of Fox Crossing, and Winneconne)
Democratic Party of Winnebago County
Republican Party of Winnebago County

CC: Winnebago County Circuit Court Judges
4th Judicial District Court Administrator Jon Bellows
4th Judicial District Chief Judge Guy Dutcher

FROM: Honorable Michael D. Rust, Winnebago County Circuit Court, Branch I

RE: Meeting regarding proposed after-hours Election Day protocol, May 9, 2025, at 11:00 am

On May 9, 2025, at 11:00 am, in the Branch 1 Courtroom of the Winnebago County Courthouse, there will be an open meeting regarding a proposed procedure to address after-hours Election Day legal issues.

Attached is a brief letter of explanation as well as the current proposed procedure. The expectation for this meeting is a general conversation about the proposed procedures to allow for any modifications of this procedure prior to consideration and possible ratification by the Winnebago County Judges. Once approved by the Winnebago County Judges, the procedure will be widely disseminated.

Municipal Clerks are encouraged to share this document with counsel and counsel are likewise welcome to attend this open meeting.

Winnebago County Election Day Protocol - Challenges to Polling Hours

Proposed Procedure

The Fourth Judicial Circuit has asked Presiding Judges of each county to formulate a protocol for their respective jurisdictions outlining a process to field potential Election Day challenges. Judge Jorgenson has assigned this duty to Judge Rust, Branch 1.

Circuit Courts have limited jurisdiction over Election Day activities. In general, their jurisdiction is limited to extending polling hours, or approving changes of venue for polling locations in case of emergency or disaster. See \<Vis. Stat. § 6.78.

Wisconsin has witnessed an increase in filings made by political parties seeking to keep polling places open beyond the standard 13-hour timeframe. Wis. Stat. § 6.78 requires that polls remain open for expressly 13 hours (between 7 am and 8 pm) on Election Day.

Circuit courts have the ability to expand those hours if critical need is shown. Although case law is nebulous, Wisconsin Courts have granted *injunctions* extending polling hours when a demonstrated clear and present need exists in response to unforeseen and accidental occurrences. The Court is thus preserving the constitutional and statutory right of citizens to vote in the face of unforeseen disruption. The Court is essentially using its equitable powers to enforce Wis. Stat. § 6.78 in the face of circumstances that warrant an injunction (irreparable harm, immediate need).

If a disruption and challenge takes place during regular court hours, regular court procedures would apply. In the event of an after-hours challenge, specialized procedures are necessary. Such an after-hours challenge was submitted in Winnebago County for the November 2024 election (i.e. 24CV1040).

While these types of challenges are most common in large, federal elections, they may appear during any election. In 2022 there were 3 election days (spring, fall primary, fall); in 2023 there were 2 election days (spring primary, spring); in 2024 there were 4 election days (spring primary, spring, fall primary, fall); in 2025 there are 2 election days (spring primary, spring).

Having an appropriate response requires understanding the general process for challenging polling hours and locations as well as identifying those likely to be impacted.

To address any after-hours Election Day challenges in a fair and efficient manner, Winnebago County should adopt the following procedure:

- a) On or about January 1 of each year, the Clerk of Court shall open an electronic "GF" file, specifically for election issues during that calendar year. This will allow a Petitioner to file its request for hearing and injunction, even after-hours.
- b) The Circuit Court, County Clerk, and Sheriff should prepare for State and Federal elections in advance of Election Day.
 - a, The County Clerk should maintain a list of contact information for all Municipal Clerks and/ or Attorneys for the Municipality to address Election Day challenges. This list should be provided to the Clerk of Court prior to each Election Day and updated as necessary.
- c) On Election Day, the Intake Judge, Court Reporter, and Clerk of Court (or designee, including CA or JA - hereinafter any reference to Clerk of Court includes designee) should anticipate being on call after traditional court hours and remain within traveling distance of the Courthouse.
- cl) Petitioner (whether Political Party, Municipality, or other) would need to call the Winnebago County Sheriff non-emergency line if they chose to file a challenge. Upon receiving such a call, the Sheriff's Department would immediately contact the Intake Judge. The Intake Judge shall contact the Court Reporter and the Clerk of Court.
 - a. The reasons supporting the Sheriff being the initial point of contact for such calls are numerous. The Sheriff's Department has well known contact data that can be easily found, the Department takes phone calls 24/7, the Department has contact information for the Intake Judge and the Department will be responsible for opening and securing the courthouse for any hearing.
- e) The Clerk of Court will notify the Municipal Clerk (if they are not the Petitioner) that a challenge to polling hours has been filed. This will ensure their awareness that a possible modification of polling hours may be forthcoming.
- f) The Petitioner would then file their request for injunction, with supporting affidavits, together with their request for remedy. In the event that the Petitioner is a Political Party, the adverse Political Party shall be contacted and invited to attend such hearing by the Clerk of Court.
 - a. It shall be the responsibility of the Political Parties to contact the Clerk of Courts to provide contact information for any Election Day issues.
- g) The Intake Judge, Court Reporter, and Clerk of Courts would then schedule an immediate virtual hearing (i.e. Zoom) to take testimony and/ or argument on the petition, if necessary.

- a. These petitions are often filed for *ex parte* review. In the event that there is no need for a hearing, none needs to be held. (E.g. a request for extension of polling hours due to equipment failure that is supported by all parties.)
- h) The Sheriff will open the courthouse to the public to ensure the proceeding is conducted in open court. The Court Reporter must appear in person.
 - a. Court Reporters are not allowed to act remotely for hearings, per the Director of State Courts (Court Reporter Employee Manual, Section 6.6 - Inclement Weather, Building Emergencies, and Special Events: "1. Court Reporters are not eligible to work from home under any circumstances." It is recommended that a petition for approval to appear remotely form be submitted by the Court Reporter in advance of Election Day to the Director of State Courts Office. In the unlikely event of a natural disaster requiring the extension of polling hours, such preapproval would allow the hearing to continue remotely without delay. In person appearance by the Court Reporter is still required unless safety is an issue.
- i) The Court may take testimony and render its decision.
- j) Once an order is issued, the Sheriff will serve the polling location and Municipal Clerk with a copy of the order denying/ approving the injunction.
 - a. This will not be left to the Petitioner or Respondent as Political Parties, as the same could foster confusion and potential suspicion regarding the authenticity of any such order.