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No. 2024AP164
Appeal from Dane County Circuit Court, No. 2023CV1900,
The Honorable Ann Peacock, Presiding

PRIORITIES USA;
WISCONSIN ALLIANCE FOR RETIRED AMERICANS;
AND WILLIAM FRANKS, JR.,
PLAINTIFFS-APPELLANTS-PETITIONERS,
v.
THE WISCONSIN ELECTIONS COMMISSION,
DEFENDANT-APPELLEE-RESPONDENT,

THE WISCONSIN STATE LEGISLATURE,
INTERVENOR-DEFENDANT-APPELLEE-RESPONDENT

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STATEMENT OF INTEREST

Amicus Common Cause Wisconsin is the Wisconsin office and operation of the national non-profit organization, Common Cause, that advocates for accountable government through promoting voting rights and redistricting reform.

Amicus works with voters and government officials to ensure that all Wisconsinites have full and equal access to the right to vote. This includes working to provide voters across Wisconsin with voting methods that enable them to access the ballot regardless of their geographic location, race, disability, or income level. Drop boxes are a key means by which *amicus* can ensure that voters in Wisconsin are able to fully exercise their voting rights and hold their government accountable. *Amicus* therefore has a strong interest in ensuring that drop boxes are once again a viable tool for Wisconsinites to ensure their votes are counted.

INTRODUCTION

Drop boxes provide a low-cost, high-security method for increasing Wisconsinites' participation in our democracy. Before *Teigen v. Wisconsin Elections Commission*, 2022 WI 64, 403 Wis. 2d 607, 976 N.W.2d 519, voters across Wisconsin used drop boxes to return their absentee ballots. By eliminating drop boxes, *Teigen* forces voters to choose less convenient and reliable voting methods and will reduce the number of citizens voting in Wisconsin's elections. Overruling *Teigen*'s ban on drop boxes is necessary to prevent this arbitrary undermining of the right to vote.

Drop boxes expand voting access in three ways. *First*, drop boxes remove geographic barriers to voting. Drop boxes in rural and urban

areas ensure those voters do not have to travel long distances or navigate inconvenient commutes to vote. *Second*, drop boxes would increase voter participation among disabled, racial minority, and low-income voters by providing them with a more accessible means by which to cast their ballots. *Third*, drop boxes would decrease dependence on an increasingly delay-plagued postal system.

This Court should overrule *Teigen* to ensure that all Wisconsin voters are able to exercise the political rights guaranteed to them under the Wisconsin Constitution.

ARGUMENT

I. Drop Boxes Remove Geographic Barriers to Voting

Drop boxes lift the burdens on voting faced by rural and urban Wisconsin residents.

Rural areas. Drop boxes are especially beneficial to voters in sparsely-populated rural Wisconsin because the boxes decrease the distance voters must travel to vote.[1] Many of Wisconsin's rural counties cover over 1,000 square miles, but only have, on average, one polling place every 34 miles.[2] Compare that to the average for suburban areas: one polling place every 13 miles.[3] Providing drop boxes in rural counties removes the obstacle posed by long distances to a polling place. Studies confirm that drop boxes would increase the participation rate of rural Wisconsinites: A mere 0.245-mile increase in the distance of a voting location *decreases* the number of ballots cast by between two to five

[1] *See* Secure Democracy USA, The Forgotten Voters: How Current Threats to Voting Hurt Rural Americans 3–4 (2002).
[2] *See Erin Gottsacker, What Changing Election Regulations Mean For Wisconsin's Rural Voters*, WXPR (July 11, 2022), https://www.wxpr.org/election/2022-07-11/what-changing-election-regulations-mean-for-wisconsins-rural-voters.
[3] *See id.*

percent overall,[4] whereas the odds that an individual will vote *increase* by 0.64 percent for each mile that the distance to a drop box is shortened.[5]

Take as an example one of Wisconsin's least densely populated counties. Ashland County's 16,000 residents are spread over more than 1,000 square miles;[6] just 16 municipal clerks' offices in the county accept in-person absentee ballots.[7] That means there is only one in-person return site for every 65 square miles of land in Ashland County. In similar areas across Wisconsin, voters will have to travel much greater distances to exercise their voting rights than urban or suburban Wisconsinites. And, as discussed below, voting by mail is not an effective alternative; voters committing their ballots to the United States Postal Service risk having their votes go uncounted. *See infra* Section III. Rural Wisconsinites should not be required to bear the burden of traveling for extended periods of time to have their voices heard.

Drop boxes correct that problem, ensuring that rural Wisconsin voters are not required to travel long distances or spend the additional time and money necessary to do so, simply to participate in elections. Municipal officials could place drop boxes throughout lightly populated counties, more numerous and strategically located than existing clerks' offices. In Arizona's rural Navajo County, for example, officials have

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[4] Enrico Cantoni, A Precinct Too Far: Turnout and Voting Costs, 12 Am. Econ. J.: Applied Econ. 65–85 (Jan. 2020), https://www.aeaweb.org/articles?id=10.1257/app.20180306.

[5] *See* William McGuire et al., *Does Distance Matter? Evaluating the Impact of Drop Boxes on Voter Turnout*, 101 Soc. Sci. Q. 1789 (2020).

[6] *See* U.S. Census Bureau, *Ashland Cnty., Wis.* (last visited May 7, 2024), https://data.census.gov/profile/Ashland_County,_Wisconsin?g=050XX00US55003.

[7] *See* Ashland Cnty., Wis.: Officers of Townships, Village and Cities (Apr. 2024), https://ashlandcountywi.gov/vertical/sites/%7B215E4EAC-21AA-4D0B-8377-85A847C0D0ED%7D/uploads/2023-2025_Municipal_Listing.pdf.

placed drop boxes in less-central areas to make voting more accessible.[8] Incorporating drop boxes into lightly-populated areas would place rural Wisconsinites on equal footing with their fellow citizens in more densely populated parts of the state, ensuring equal democratic participation.

Urban areas. While rural voters are often required to travel long distances to place their votes, urban voters, too, face difficulties that drop boxes could alleviate. Some of Wisconsin's major cities contain hundreds of thousands of people but only a single location for voters to hand-return absentee ballots. This increases the cost of participating in elections and decreases engagement. Placing drop boxes in these cities would decrease inconvenience to residents.

Two of Wisconsin's biggest cities are telling examples. Milwaukee has a population of over 550,000 people,[9] yet only allows voters to drop off absentee ballots at a single location: City Hall (open only until 4:30 p.m.), before Election Day, and the Central Processing Center, on Election Day.[10] This means that every in-person absentee ballot from a city of over 500,000 people must be dropped off at a single location. These drop-off sites, in Juneau Town and Harbor View, would be inconvenient for Milwaukee residents living outside downtown. The same situation exists in Green Bay, a city of over 100,000,[11] where voters can only drop off absentee ballots downtown at City Hall, no matter if they live in

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[8] *See* Rachel Leingang, *Ballot Dop Boxes Remain Popular, Despite Attacks And Misinformation*, Ariz. Mirror (Sept. 23, 2022), https://azmirror.com/2022/09/23/ballot-drop-boxes-remain-popular-despite-attacks-and-misinformation/.

[9] *See Quickfacts: Milwaukee City, Wisconsin*, U.S. Census Bureau (last visited May 7, 2024), https://www.census.gov/quickfacts/fact/table/milwaukeecitywisconsin/PST045223.

[10] *See* City of Milwaukee, *Voting by Absentee Ballot* (2024), https://city.milwaukee.gov/election/Voter-Info/VotingbyAbsenteeBallot.

[11] *See Quickfacts: Green Bay City, Wisconsin*, (last visited May 7, 2024), https://www.census.gov/quickfacts/fact/table/greenbaycitywisconsin/PST045223.

neighborhoods far from that area.[12] Compare these cities with Madison, a city of over 270,000,[13] which offers voters more than 30 drop-off sites, many of them open until 7 p.m. or later.[14] These differences have real consequences: turnout in Madison was nearly 18 percentage points higher than in Milwaukee in 2022.[15] Urban Wisconsinites should not face such stark differences in the accessibility of their absentee ballot return options.

Drop boxes would reduce this disparity among cities and ensure that urban voters do not have to make inconvenient commutes and waste precious time to participate in our democracy.

II. Drop Boxes Increase Voter Participation by Disabled, Racial Minority, and Low-Income Voters

Drop boxes are especially important for Wisconsin's disabled, racial minority, and low-income voters, increasing their access to exercise their franchise, and in doing so, making Wisconsin's democracy more representative of its population.

Voters with disabilities. Disabled citizens vote at lower rates compared to the general population,[16] with physical impediments to accessing polling locations precluding many disabled individuals from

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[12] *See* U.S. Census Bureau, *FAQS*, *City of Green Bay* (last visited May 7, 2024), https://greenbaywi.gov/Faq.aspx?QID=469.

[13] *See* U.S. Census Bureau, *Quickfacts: Madison City, Wisconsin* (last visited May 7, 2024), https://www.census.gov/quickfacts/fact/table/madisoncitywisconsin/LND110210.

[14] *See* City of Madison, *Ballot Drop-Off Sites* (2024), https://www.cityofmadison.com/clerk/elections-voting/voting/vote-absentee/ballot-drop-off-sites.

[15] *See* City of Milwaukee, *November 8th General Election* (last visited May 7, 2024), https://city.milwaukee.gov/election/ElectionInformation/ElectionResults/2022/November-8; Dane Cnty., Wisconsin, *2022 General Election* (2024), https://elections.countyofdane.com/Election-Result/145.

[16] Schur et al., *Report to the U.S. Election Assistance Commission, Voting Experiences Since HAVA: Perspectives of People with Disabilities* 8 (Apr. 2024), https://www.eac.gov/sites/default/files/2024-04/EAC_2024_Rutgers_Report_PDF.pdf

voting.[17] The general confusion and often chaotic atmosphere that can surround physical polling sites further hinders those with disabilities from voting.[18]

A federal court in Wisconsin has already recognized that *Tiegen*'s drop box ban makes it much more difficult for disabled individuals to vote. That court applied the Voting Rights Act to conclude that "disabled voters who need assistance in returning an absentee ballot are entitled to ask a person of their choosing for that assistance."[19] But requiring disabled individuals to rely on another person for assistance when casting ballots deprives them of the independence and privacy other Wisconsin voters enjoy. Providing disabled voters with secure and accessible drop boxes enhances their opportunities to vote on terms similar to those other Wisconsin voters enjoy.

Racial minority voters. Social science research makes clear that drop boxes decrease disparities that result in lower voter participation among certain racial minority groups. For one thing, minority voters spend a longer time waiting to vote, increasing their relative cost of voting.[20] Laws restricting drop-box use increase congestion at in-person polling places, exacerbating the already disproportionately long voting lines that minority voters face.[21]

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[17] *See id.* at 8–9.
[18] *Id.* at 13.
[19] *Carey v. Wisconsin Elections Comm'n*, 624 F. Supp. 3d 1020, 1024 (2022).
[20] *See generally* Stephen Pettigrew, *The Downstream Consequences Of Long Waits: How Lines At The Precinct Depress Future Turnout*, 71 Electoral Stud. 102 (June 2021), https://doi.org/10.1016/j.electstud.2020.102188; David Cottrell, Michael C. Herron, & Daniel A. Smith, *Voting Lines, Equal Treatment, and Early Voting Check-In Times in Florida*, 21 State Pol. & Pol'y Quarterly 109 (2021), https://doi.org/10.1177/1532440020943884; see *also* Expert Report of Michael C. Herron, Ph.D. 108–09, *Fla. State Conf. of NAACP, Inc. v. Lee*, 566 F. Supp. 3d 1262 (N.D. Fla. 2021) (Doc. No. 458) [hereinafter Expert Report] (collecting sources).
[21] *See* Expert Report, *supra* note 20, at 113.

Laws and policies—like drop boxes—that decrease barriers to voting reduce the racial gap in voting.[22] In Florida, for example, Black voters use drop boxes at a higher rate than the general population.[23] As a result, a federal court concluded that the enactment of drop-box restrictions could plausibly "den[y] Black and Latino voters meaningful access to the political process."[24]

Drop boxes also provide one of the most effective methods for Wisconsin's Native voters to exercise their voting rights. Native communities have consistently reported a lack of access to in-person voting services.[25] Menominee County, which is majority Native, had only a 55 percent turnout rate in 2020, the lowest in Wisconsin.[26] The county offers just one drop-off site, open only until 4:00 p.m.[27] Traveling long distances takes a much greater commitment of time and resources from Native individuals than is required of other Wisconsinites. Studies of Native voters in other states make clear that this obstacle hinders the ability and probability that individuals will choose to vote.[28] And Native

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[22] *See generally* Michael Barber & John B. Holbein, *400 Million Voting Records Show Profound Racial and Geographic Disparities In Voter Turnout in The United States*, 17 PLoS One 6 (2022), https://doi.org/10.1371/journal.pone.0268134.
[23] *See* Expert Report, *supra* note 20, at 36.
[24] *Lee*, 566 F. Supp. 3d at 1292.
[25] *See* Native American Rights Fund, Obstacles at Every Turn: Barriers to Political Participation Faced by Native American Voters 90–92, (2020), https://vote.narf.org/wp-content/uploads/2020/06/obstacles_at_every_turn.pdf.
[26] *See* Sarah Volpenhein, *Wisconsin tribal communities make final push to get out the Native American vote*, MILWAUKEE J. SENTINEL (Nov. 5, 2022), https://www.jsonline.com/story/news/2022/11/05/wisconsin-tribal-leaders-make-final-push-to-get-native-americans-to-vote/69622574007/.
[27] Menominee Cnty., Wis., *Voting by Absentee Ballot*, (2024), https://www.co.menominee.wi.us/i/f/Type%20E%20Notice%204-2-2024.pdf.
[28] *See* Native American Voting Rights Coalition, Voting Barriers Encountered by Native Americans in Arizona, New Mexico, Nevada, and South Dakota 7 (2018), https://www.narf.org/wordpress/wp-content/uploads/2018/01/2017NAVRCsurvey-summary.pdf.

voters who are able to travel the long distances to their polling places will continue to face disproportionate challenges once they arrive to vote, including an increased police presence near polling locations, which further depresses turnout.[29] Drop boxes would mitigate these problems by offering Native communities a quicker, less expensive, more convenient, and secure method of voting.[30]

Low-income voters. Like disabled and minority citizens, low-income Wisconsinites are underrepresented in the states' voting population.[31] Studies show that low-income individuals typically have less time in the day for discretionary tasks.[32] This means that lower income citizens have less time to vote. The "reneging" effect—where a voter in a line departs without casting a ballot—disproportionately affects low-income voters, who already face time pressures in other parts

[29] Obstacles at Every Turn, *supra* note 25, at 45.

[30] *See* S.D. Advisory Comm. to the U.S. Comm'n on C.R., Voting Rights and Access in South Dakota 25 (2023), https://www.usccr.gov/files/2023-07/south-dakota-advisory-committee-report_voting-rights.pdf (noting that voters on reservations in South Dakota often rely on the post office to submit absentee ballots, causing backlog given the dearth of post offices and limited hours); Sue Halpern, *The Political Attack on the Native American Vote*, New Yorker (Nov. 4, 2022), https://www.newyorker.com/news/dispatch/the-political-attack-on-the-native-american-vote (noting similar problems with accessing the post office in the Navajo Nation); Report of the Interagency Steering Group on Native American Voting Rights 28 (2022), https://www.whitehouse.gov/wp-content/uploads/2022/03/Tribal-Voting-Report-FINAL.pdf (recommending drop boxes in locations accessible to Native voters).

[31] *See* Univ. of Wis. Population Health Inst., 2021 Wisconsin Population Health and Equity Report Card 18 (2021), https://uwphi.pophealth.wisc.edu/wp-content/uploads/sites/316/2022/03/2021WIPopHealthEquityReportCard_FINAL.pdf; see also Benjamin Spears, Project Vote, Wisconsin Votes: Civic Engagement in the Badger State 2002-2006 7 (2008), https://www.projectvote.org/wp-content/uploads/2008/07/Wisconsin_Votes_Final.pdf.

[32] *See generally* Andrew S. Harvey & Arun K. Mukhopadhyay, *When Twenty-Four Hours is Not Enough: Time Poverty of Working Parents*, 82 Soc. Indicators Rsch. 57 (2007), https://doi.org/10.1007/s11205-006-9002-5.

of their life.[33] Low-income individuals who have the time to vote face the additional hurdle of finding a way to get to the polls. Household access to a car has a large and consistently positive effect on voter turnout.[34] But low-income Wisconsinites are less likely to be able to afford cars. The impact a drop-box ban has on voting access can be seen in Georgia, which passed laws restricting drop-box access in 2021. Nearly half of voters in areas with low vehicle ownership in Georgia faced longer travel times to a drop box after the restrictions were put in place.[35]

Drop boxes would help correct the underrepresentation of low-income voters in American elections by making it faster and less expensive to access a ballot box.

III. Drop Boxes Provide a Secure Alternative to an Unreliable Postal System

Mail-in absentee voting cannot replace the utility of drop boxes in Wisconsin's election administration. United States Postal Service delays have plagued previous Wisconsin election cycles. Drop boxes bypass the uncertainty and arbitrariness that come from reliance on an increasingly unreliable postal system.

In recent years, the Postal Service has been unreliable in delivering ballots. In 2020, Wisconsin experienced widespread issues

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[33] *See generally* Robert M. Stein et al., *Waiting to Vote in the 2016 Presidential Election: Evidence from a Multi-country Study*, 73 Pol. Rsch. Q. 439, 440 (2020), https://doi.org/10.1177/1065912919832374.

[34] *See* Justin de Benedictis-Kessner & Maxwell Palmer, *Driving Turnout: The Effect of Car Ownership on Electoral Participation*, Pol. Sci. Rsch. & Methods (2021), https://maxwellpalmer.com/research/jdbk_mp_driving_turnout.pdf.

[35] Stephen Fowler, Sam Gringlas, & Huo Jingnan, *A New Georgia Voting Law Reduced Ballot Drop Box Access In Places That Used Them Most*, NPR (July 27, 2022), https://www.npr.org/2022/07/27/1112487312/georgia-voting-law-ballot-drop-box-access.

with mail ballot processing and delivery.[36] Recognizing these and other issues, a federal district court temporarily extended the return time for ballots, which usually expires at 8 p.m. on election day. Wis. Stat. § 6.87(6).[37] That election made clear that Wisconsinites who rely on the postal service risk throwing their votes into a maelstrom of mismanagement.

Postal issues persist as Wisconsin approaches the 2024 election cycle. Senator Tammy Baldwin recently sent a letter to the Postmaster General outlining the postal service's "record of significant delays of delivering mail in Wisconsin" and expressing concern that new changes in how mail is collected and delivered in Wisconsin will "exacerbate delivery issues in the state."[38] This followed reports of slowdowns in mail delivery across the country.[39] These issues, both past and present, have caused some voters to distrust voting by mail.[40] Wisconsinites continue to face the prospect that their votes will be forfeited by the Postal Service's failures.

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[36] *See, e.g.*, Alison Durkee, *Wisconsin Postal Service Facilities Violating Federal Court Orders, Not Reconnecting Sorting Machines, Lawmaker Says*, Forbes (Oct. 23, 2020), https://www.forbes.com/sites/alisondurkee/2020/10/23/wisconsin-postal-service-facilities-violating-federal-court-orders-not-reconnecting-sorting-machines-tammy-baldwin-says-dejoy/?sh=7f9ea0d55547.

[37] This decision was later overturned by the Seventh Circuit, and that decision was upheld by the Supreme Court. *See* Robert Barnes, *Supreme Court Rejects Request to Extend Wisconsin's Deadline for Counting Mail-In Ballots*, Wash. Post (Oct. 26, 2020), https://www.washingtonpost.com/politics/courts_law/supreme-court-wisconsin-mail-ballots/2020/10/26/70fa459e-12fc-11eb-ad6f-36c93e6e94fb_story.html.

[38] Letter from Sen. Tammy Baldwin to Postmaster Gen. Louis DeJoy (Feb. 12, 2024), https://www.21cpw.com/wp-content/uploads/2024/02/DFA-Mail-Procedure-Change-Baldwin_FINAL.pdf.

[39] *See, e.g.*, Eric Katz, *As USPS Institutes Network Reforms, Mail Delivery Hits a 3-Year Low*, Gov't. Exec. (Feb. 22, 2024), https://www.govexec.com/management/2024/02/usps-institutes-network-reforms-mail-delivery-hits-three-year-low/394388/.

[40] *See* Schur et al., *supra* note 16, at 17–18.

Drop boxes would give absentee voters an accessible way to bypass the postal system. With a drop box, absentee voters could return their ballots directly, ensuring the ballots are received by the deadline and counted. Drop boxes would have the additional benefit of decreasing the number of ballots sent by mail, lessening the burden on the postal system and the potential for ballots to be returned after the deadline.

Nor is there any cause for concern that drop boxes are less secure than sending ballots by mail. The federal government describes drop boxes as a "secure and convenient means for voters to return their mail ballot."[41] The Election Assistance Commission provides a "Quick Start Guide" for the many states and municipalities across the country that offer drop boxes, which includes security guidance like employing bipartisan collection teams, coordinating with local law enforcement, and "rigorous" chain of custody procedures.[42] Past experiences using drop boxes for major elections confirms that these security guidelines are effective; in the 2020 election, when drop boxes enjoyed an explosion of popularity, there were no associated security issues.[43]

Drop boxes, then, would ensure that absentee voting is a reliable avenue for Wisconsinites to exercise their franchise.

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[41] Joint COVID Working Grp., Elections Infrastructure Gov't Coordinating Council, Cybersecurity & Infrastructure Sec. Agency, Ballot Drop Box 1, https://www.eac.gov/sites/default/files/electionofficials/vbm/Ballot_Drop_Box.pdf.

[42] *See* Elections Assistance Comm'n, Quick Start Guide: Ballot Drop Boxes (2022), https://www.eac.gov/sites/default/files/electionofficials/QuickStartGuides/Ballot_Drop_Boxes_EAC_Quick_Start_Guide_508.pdf.

[43] *See, e.g.*, Anthony Izaguirre & Christina A. Cassidy, *No Major Problems With Ballot Drop Boxes in 2020, AP Finds*, Associated Press, July 17, 2022, https://apnews.com/article/voting-rights-2022-midterm-elections-covid-health-wisconsin-c61fa93a12a1a51d6d9f4e0a21fa3b75.

CONCLUSION

For these reasons, the court should rule that Wis. Stat. § 6.87 permits the use of drop boxes in Wisconsin elections.

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wisconsin Statutes Sections 809.19 (8) (b), (bm), and (c) for a brief. The length of this brief is 2,890 words.

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