
In re the Complaint of
Mitchell Berman and Jillian Berman,
Complainants
v.
Linda Terry, Clerk, Village of Raymond,
Respondent.

COMPLAINANTS' REPLY IN SUPPORT
OF THEIR COMPLAINT AGAINST LINDA TERRY

As stated in their earlier submission, Respondent's decision to remove Complainants Mitchell Berman and Jillian Berman from the voter rolls is based on an erroneous interpretation of Wis. Stat. § 6.10, and contrary to the strict standard of review set forth in Wis. Stat. § 6.325 (prohibiting disqualification of an elector unless the challenger demonstrates ineligibility beyond a reasonable doubt). While we rely primarily on our initial submission, some points require clarification here.

Respondent's memorandum doubles down on her erroneous interpretation, particularly emphasizing the factual finding that it would be "illegal" for the Bermans to use the Raymond address as their residence. (Memo ¶¶ 13-16.) As stated, that is not the standard; residence for voting purposes does not depend on the legality of the residence for zoning or occupancy purposes.

Moreover, Respondent cites to an online directory for the definition of "homeless" (¶ 17 n.4) and emphasizes sleeping on the street. WEC guidance does not rely on "sleeping on the street" or any particular definition or criteria that renders an elector homeless. Instead, it focuses on statutory qualifications:

Any United States citizen aged 18 or older who is not otherwise disqualified may vote in Wisconsin if he or she meets the statutory residency requirements. Qualified individuals

must have lived in Wisconsin for at least 28 days. These persons must have an identifiable location that they consider their residence for voting purposes and to which they intend to return, when absent.

Homeless individuals may designate a fixed location for their residence for voting purposes if it is an identifiable location in the state of Wisconsin which could conceivably serve as a temporary residence. This location may be a homeless shelter, a park bench, or other location where a homeless individual may spend time or return to when absent.¹

The Raymond address is an identifiable location that the Bermans consider their residence for voting purposes and to which they intend to return. It is an identifiable location that could conceivably serve as a temporary residence. They have presented ample proof of residency and have met the statutory requirements for registering and voting at the Raymond address.²

That should be the beginning and the end of the analysis. However, Respondent has claimed that the Bermans cannot “return” to an unestablished residence. This claim is based on both legal and factual fallacies.. Factually, the Bermans have established the residence and they are physically present at the residence frequently (daily or nearly so). Legally, statutes and administrative code are silent on the frequency or duration of physical presence required.

In addition, Respondent has cited heavily to a 1971 Attorney General opinion (60 Op. Atty’ Gen. 214), but omits significant context.³ It is important to note that the Opinion concerns absentee

¹ <https://elections.wi.gov/publications/brochures/enabling-homeless-voters>

² Respondent indicated that the “most pertinent fact adduced at the hearing” was that the Bermans did not spend an overnight in the Village of Raymond. That was not their testimony. The question posed by the Village Attorney (who conducted the hearing) was “you’ve never spent an overnight at the dream home on County Line Road,” to which Mr. Berman responded, “no.” Then, the Attorney clarified the question, and Mr. Berman indicated that they “have not stayed *in the home* overnight.” He did not testify that they never stayed in the Village of Raymond. In fact, the Bermans have spent nights on their property, just not in the structure under construction.

³ The Opinion points out that there are no absolute criteria for determining residence; each case depends on its particular facts. *Id.* at 291.

voters who have long moved out of Wisconsin, reside in another state, yet continue to vote here; it does not concern voters who own a home that they temporarily cannot live in. That said, context favors the Bermans here:

Our court has also referred to the general rule that a man must have a habitation or domicile somewhere and that he can have but one at the same time for one and the same purpose and that in order to lose one, he must acquire another. ... Thus, when a person has once *acquired* or established a residence, it is generally held that such residence is presumed to continue until a new one is established, and the law of this State places the burden on the person who asserts the nonresidence of a voter to prove such assertion.

(60 Op. Att’y Gen. 214, 219 (1971) (emphasis added).) The Bermans have acquired the Raymond residence and they do not have another. They sold their prior residence and they are currently transient.

The Raymond residence is the only logical place from which they could vote. To accept Respondent’s interpretation of the law would disenfranchise them completely. Her decision should be overturned and the Bermans’ voter registration should be reinstated.

Respectfully submitted this ____ day of March, 2022,

HALLING & CAYO, S.C.
Attorneys for Complainants

/s/ Electronically signed by Stacie H. Rosenzweig

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VERIFICATION

I, Mitchell Berman, being first duly sworn upon oath, state that I personally read the above response, and that the statements contained in the response are true and correct based on my personal knowledge, or that on my information and belief, I believe them to be true.



Mitchell Berman

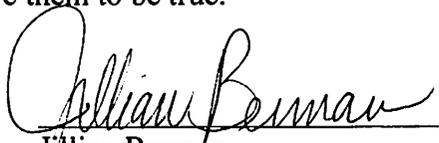
Subscribed and sworn to before me
this 25 day of March, 2022.



Jessica Rodriguez (NOTARY)
Notary Public, State of Wisconsin
My commission expires: 02/10/2026.

JESSICA RODRIGUEZ
Notary Public
State of Wisconsin

I, Jillian Berman, being first duly sworn upon oath, state that I personally read the above response, and that the statements contained in the response are true and correct based on my personal knowledge, or that on my information and belief, I believe them to be true.



Jillian Berman

Subscribed and sworn to before me
this 25 day of March, 2022.



Jessica Rodriguez (NOTARY)
Notary Public, State of Wisconsin
My commission expires: 02/10/2026.

JESSICA RODRIGUEZ
Notary Public
State of Wisconsin