



Wisconsin Elections Commission

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DATE: June 14, 2021

TO: Wisconsin Municipal Clerks
City of Milwaukee Election Commission
Wisconsin County Clerks
Milwaukee County Election Commission

FROM: Wisconsin Elections Commission (WEC)

SUBJECT: 2019 ERIC Movers Maintenance Process

- Purpose.** This memorandum provides updated information to municipal and county clerks regarding the 2019 ERIC Movers Maintenance Process and what will happen to approximately 69,000 voter records that are still in Active-Movers status.
- WEC Plan.** Active-mover records remaining in the voter registration system from the 2019 ERIC movers process will be changed to inactive status in conjunction with the four-year maintenance deactivations scheduled on July 31, 2021. Before that occurs, municipalities may view the list of their remaining Active-Mover voters by performing a voter search for voters with a voter status of “Active” and a status reason of “Movers.”
- Background.** On June 11, 2019, the Commission directed staff, in a unanimous vote, to flag voters identified by ERIC as potential in-state movers and to monitor this group through the April 2021 election. Remaining members of the 2019 group would then be deactivated after the April 2021 election.¹ Of the original 232,579 records in the group, approximately 69,000 records remain in “Active-Mover” status. In the last two years, these voters did not update their registration, affirm their address, or vote in any election. Approximately 39,000 of the Active-Mover records are also on the 2021 Four-Year Maintenance list, meaning these voters will be sent a “Notice of Voter Registration Suspension” postcard the week June 14. Assuming the majority of these voters are deactivated at the end of July due to Four-Year Maintenance, that would leave approximately 30,000 Active-Movers on the list.

The 2019 Active-Mover group was the subject of litigation that ultimately advanced to the Wisconsin Supreme Court in *State of Wis. ex rel. Timothy Zignego, et al. v. Wisconsin Elections Commission, et al.*, (2021 WI 32). The question before the Wisconsin Supreme Court was whether Wisconsin

¹ Out-of-state movers who registered to vote in another state were immediately deactivated pursuant to Wis. Stat. § 6.36(1)(d).

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Statutes section 6.50(3) placed a positive and plain duty on the Wisconsin Elections Commission to deactivate the 2019 Active-Mover voters. The Supreme Court concluded that it does not.

The Court determined that section 6.50(3) specifically applies to municipalities. Section 6.50(3) provides:

Upon receipt of reliable information that a registered elector has changed his or her residence to a location outside of the municipality, the municipal clerk or board of election commissioners shall notify the elector by mailing a notice by 1st class mail to the elector's registration address stating the source of the information. All municipal departments and agencies receiving information that a registered elector has changed his or her residence shall notify the clerk or board of election commissioners.

If the elector no longer resides in the municipality or fails to apply for continuation of registration within 30 days of the date the notice is mailed, the clerk or board of election commissioners shall change the elector's registration from eligible to ineligible status.

Upon receipt of reliable information that a registered elector has changed his or her residence within the municipality, the municipal clerk or board of election commissioners shall change the elector's registration and mail the elector a notice of the change. This subsection does not restrict the right of an elector to challenge any registration under s. 6.325, 6.48, 6.925, 6.93, or 7.52 (5).²

Nothing in this memorandum affects municipal responsibilities in section 6.50(3) and municipal clerks may exercise their own judgment, and make registration status changes, as they find appropriate, and in accordance with state law. The Wisconsin Elections Commission will not intentionally override or otherwise alter municipal clerk decisions made pursuant to section 6.50(3).

² Explanatory Notes on the Wisconsin State Legislature website:

The phrase "board of election commissioners" as used in sub. (3) does not refer to the Wisconsin Elections Commission (WEC) but, rather, refers to a municipal board established by the legislature under ss. 7.20 to 7.22 that is a separate and distinct governmental body from WEC with separate duties and authority. WEC has no duties pursuant to sub. (3). State ex rel. Zignego v. Wisconsin Elections Commission, [2020 WI App 17](#), [391 Wis. 2d 441](#), [941 N.W.2d 284](#), [19-2397](#).

Sub. (3) does not define "reliable" and does not specify how reliability is determined or what type of information is reliable regarding any particular voter. Further, neither sub. (3) nor any other statute in the election laws states that information provided through a membership agreement with a nonprofit corporation that shares data regarding electors who may have moved is reliable under sub. (3). In this case, the discretionary determination regarding what information was reliable was not a proper subject of a writ of mandamus. State ex rel. Zignego v. Wisconsin Elections Commission, [2020 WI App 17](#), [391 Wis. 2d 441](#), [941 N.W.2d 284](#), [19-2397](#).

Sub. (3) requires that a determination of reliability of information, and any possible change of voter registration status to ineligible, be made voter-by-voter and not as a group. State ex rel. Zignego v. Wisconsin Elections Commission, [2020 WI App 17](#), [391 Wis. 2d 441](#), [941 N.W.2d 284](#), [19-2397](#).

4. WEC's 2019 Decision for ERIC Movers Remains in Place. At its most recent meeting on June 10, the Wisconsin Elections Commission considered how to proceed with the 2019 ERIC Movers list in light of the Wisconsin Supreme Court's decision and now that the April 2021 Spring Election has passed. While the Supreme Court ruled that WEC does not have a plain duty to remove Active-Movers, the decision did not answer the question of whether the WEC has the authority to deactivate Active-Movers.

After extensive discussion about that issue at the open meeting, the Commission did not reach agreement on whether to adopt a new plan or to modify its 2019 plan, which directs staff to deactivate any remaining Active-Mover voter records following the April 2021 Spring Election. Under the Commission's operating procedures, it takes four votes to change a prior decision. Because there were not four votes to make a change, the directive to deactivate the remaining Active-Movers is still in place. Draft minutes of that WEC meeting are available here: <https://elections.wi.gov/node/7447>.

Because the Commission did not have four votes to adopt a new plan or to alter its original plan, the 2019 directive will be implemented on July 31, 2021. This will give approximately 39,000 voters on the 2019 Active-Mover list one last chance to respond to the Four-Year Maintenance postcard and request continuation of their registration. The remaining approximately 30,000 Active-Movers are scheduled to have their status changed to inactive at the same time as the Four-Year Maintenance deactivation on July 31, 2021.

5. 2021 Plan Published Separately. The Wisconsin Elections Commission unanimously voted to take affirmative action on the 2021 ERIC movers list and that plan will be detailed in a separate communication. The information in this document is only relevant to the remaining Active-Movers from the 2019 ERIC movers list.

6. Questions. Please contact the WEC Help Desk if you have any questions or require assistance with the statewide voter registration system.