

**STATE OF WISCONSIN
ELECTIONS COMMISSION**

COMPLAINT FORM

Please provide the following information about yourself:

Name Ardis Cerny
Address W233 N3037 Oakmont Court East, Unit C, Pewaukee, WI 53072
Telephone Number (262) 691-8884
E-mail ardiscerny@gmail.com

**State of Wisconsin
Before the Elections Commission**

The Complaint of Ardis Cerny

_____, Complainant(s) against
Wisconsin Elections Commission, et al, attached, Respondent, whose
address is 201 West Washington Avenue, Second Floor, Madison, WI 53703

This complaint is under § 5.06(1) (Insert the applicable sections of law in chs. 5 to 10 and 12 and other laws relating to elections and election campaigns, other than laws relating to campaign financing)

I, Ardis Cerny, allege that:

Complaint attached.

(Set forth in detail the facts that establish probable cause to believe that a violation has occurred. Be as specific as possible as it relates to dates, times, and individuals involved. Also provide the names of individuals who may have information related to the complaint. Use as many separate pages as needed and attach copies of any supporting documentation.)

Date: July 27, 2024

Ardis Cerny
Complainant's Signature

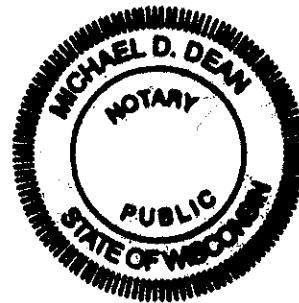
I, Ardis Cerny, being first duly sworn, on oath, state that I personally read the above complaint, and that the above allegations are true based on my personal knowledge and, as to those stated on information and belief, I believe them to be true.

Ardis Cerny
Complainant's Signature

STATE OF WISCONSIN

County of Waukesha,
(county of notarization)

Sworn to before me this 27th day of
July, 2024.



Michael D. Dean
(Signature of person authorized to administer oaths)

My commission expires _____, or is permanent.

Notary Public or _____
(official title if not notary)

Please send this completed form to:

Mail: Wisconsin Elections Commission
P.O. Box 7984
Madison, WI 53707-7984
Fax: (608) 267-0500
Email: elections@wi.gov

STATE OF WISCONSIN
ELECTIONS COMMISSION

ARDIS CERNY,

Complainant,

v.

WISCONSIN ELECTIONS COMMISSION,
MEAGAN WOLFE, DON M. MILLIS,
ROBERT F. SPINDELL, JR., MARGE BOSTELMANN,
ANN S. JACOBS, MARK L. THOMSEN, and CARRIE RIEPL,

Respondents.

VERIFIED COMPLAINT

SUMMARY, PARTIES AND JURISDICTION

1) Complainant alleges that Respondents have failed to perform their federal and state law obligations to implement measures ensuring that registrants included in the statewide voter list are United States citizens and otherwise eligible, all in violation of Complainant's and other citizens' equal rights to cast their votes in federal and state elections uncanceled by illegal ballots cast by non-citizens or other unqualified voters.

2) This Complaint is against Respondents for failure to act with respect to voting qualifications. Respondent Wisconsin Elections Commission (WEC) has jurisdiction pursuant to Wis. Stat. § 5.06(1).¹

3) Complainant is an elector legally qualified and registered to vote, residing in the City of Pewaukee, Wisconsin. Complainant has regularly presented the required identification and voted in past elections for over twenty years and intends to do so again in the primary and general elections in August and November, 2024.

4) Respondents are the independent executive agency and election officials obligated to administer and enforce applicable state and federal election laws. Respondents Wolfe and Commissioners are all election officials. Sec. 5.02(4e).

¹ Hereafter, state statutes are cited only by "Sec." or "§" and section number.

REQUIREMENTS TO CAST LEGAL VOTES

5) There are three basic requirements to cast a legal vote in federal and state elections: qualification, registration, and identification. *League of Women Voters of Wisconsin Educ. Network, Inc. v. Walker*, 2014 WI 97, ¶¶ 3-5, 357 Wis. 2d 360, 365, 851 N.W.2d 302, 305. Those requirements are successive and cumulative – anyone not qualified may not legally register, and anyone not legally registered may not legally present identification and vote.

6) *Qualification*. Only U.S. citizens can be “eligible electors” legally qualified to vote. 18 U.S.C. §§ 611, 911, 1015(f); U.S. Const. amend. XXVII; § 6.02; Wis. Const. art. III § 1.

7) *Registration*. With limited exceptions, all eligible electors must register and be included in the statewide voter list known as “WisVote.”² Sec. 6.27. With limited exceptions, every registration applicant must complete Form EL-131,³ which requires the applicant to provide certain personal information and certify that he or she is a U.S. citizen. Secs. 5.02(16c), 6.33(1), 6.36, Stats. WEC processes applications submitted online. Sec. 6.30(5). Municipal clerks process applications submitted by other methods, mainly by mail or in person. Secs. 6.30(1), 6.30(4), 6.33(5)(a)1., 6.79(2)(a), 6.28(1)(a) and 6.875(1)(bm); Wis. Adm. Code § DHS 94.22(1)(b).

8) *Identification*. To cast a legal ballot, a legally qualified and registered elector must present a valid form of authorized identification matching his or her information in the WisVote list. Secs. 5.02(6m), 5.02(16c), 6.79(2). Authorized forms of identification include a free identification card for voting and a receipt for one, both of which the Division of Motor Vehicles issues only to U.S. citizens. Secs. 5.02(6m)(a)2., 5.02(6m)(d), 343.50(1), 343.50(5)(a)3., 343.165(8).

² <https://elections.wi.gov/clerks/election-topics-z/wisvote>. WisVote is an election management system, which includes the state voter list. The list itself is an aggregation of multiple databases. Selected data from the list is available for purchase. <https://badgervoters.wi.gov/> (“Create a request for voter data from the Wisconsin Voter Registration System (WisVote).” WEC provides a portal for online voter registrations known as “MyVote.” <https://myvote.wi.gov/en-us/Register-To-Vote>.

³ <https://elections.wi.gov/wec-form/voter-registration-application>.

DMV FREE VOTER IDENTIFICATION PROCEDURES DETECT AND PREVENT
FALSE CERTIFICATIONS OF CITIZENSHIP WHILE ASSISTING AND
PAYING COSTS FOR QUALIFIED ELECTORS TO OBTAIN DOCUMENTARY PROOF

9) At a May 16, 2024, joint Wisconsin legislative committee hearing,⁴ Washington County Clerk Ashley Reichert stated municipal clerks would like to have real time resources for verifying citizenship to be sure that they are not registering illegal applicants. Reichert @ 1:22:35.

10) In contrast to Respondents, who do *not* verify citizenship of voter *registration* applicants, the Division of Motor Vehicles *does* verify citizenship of voter *identification* applicants.

11) Department of Transportation Deputy Secretary Kristina Boardman testified that requirements for the *original* ID card⁵ and the free *voting* ID card⁶ are generally the same, and that all applicants must submit Form MV3004⁷ regardless of which card they apply for. Boardman @ 12:25.

12) The *difference* is that an *original* ID applicant need not be a U.S. citizen.⁸ But U.S. citizenship is required to vote, so a free *voter* ID applicant certifies U.S. citizenship on the MV3004 Form:

Box 4. ID for FREE – I certify that I am a U.S. citizen, will be at least 18 years of age by the next election and require a Wisconsin ID for free to vote. YES ___

....

I certify that the information on this application is true under penalty of perjury and I am a resident of Wisconsin

Voter ID applicants must *also* provide *proof* of citizenship,⁹ which a birth certificate satisfies.¹⁰
Boardman @ 13:52.

⁴ The Assembly Committee on Campaigns and Elections and the Senate Committee on Shared Revenue, Elections and Consumer Protection held a joint informational hearing regarding free identification cards for voting issued by the DMV. Video-recording by Wisconsin Eye available at <https://wiseye.org/2024/05/16/joint-assembly-and-senate-committees-on-campaigns-elections-shared-revenue-and-consumer-protection/>. Citations are designated by the speaker's name and "hour:minute:second" pinpoint in the video file.

⁵ <https://wisconsin.gov/Pages/dmv/license-drvs/how-to-apply/id-card.aspx>.

⁶ <https://wisconsin.gov/Pages/dmv/license-drvs/how-to-apply/petition-process.aspx>.

⁷ <https://wisconsin.gov/Documents/formdocs/mv3004.pdf>.

⁸ <https://wisconsin.gov/Pages/dmv/license-drvs/how-to-apply/citizen-leg-pres.aspx>.

⁹ See Wis. Admin. Code § Trans 102.14(1g):

The Department may not issue an identification card without charge for voting purposes to any person who is not a U.S. citizen or is not age 17 or older. The Department may not determine whether a person is otherwise eligible to vote.

¹⁰ <https://wisconsin.gov/Pages/dmv/license-drvs/how-to-apply/petition-process.aspx>.

13) If an applicant does not have a birth certificate or other proof of citizenship, DMV checks the applicant's legal status through the "SAVE" system administered by U.S. Citizenship and Immigration Services.¹¹ If citizenship and the other requirements are confirmed, DMV issues a receipt and mails the ID card later after it is printed. Boardman @ 14:03.

14) But if a free voter ID applicant cannot afford the fees or does not have access to obtain one, the DMV assists the applicants to obtain a birth certificate or other records confirming citizenship through the ID Petition Process (IDPP), which DOT/DMV created by administrative rule in response to a 2014 Wisconsin Supreme Court decision. Boardman @ 15:00.

15) Now codified at §§ 343.165(8)(a) and 343.50(1) and (3), IDPP allows a free voter ID applicant to petition DMV to assist and bear the cost of obtaining a birth certificate or other citizenship documentation. Sec. 343.50(5)(a)3. Boardman @ 16:25.

16) In addition to Form 3004, an IDPP applicant must also submit Form MV3012,¹² which requests information that DMV uses to obtain the applicant's birth records. Once those Forms are submitted, DMV will mail the applicant a receipt that is valid identification for voting. Boardman @ 17:31.

17) DMV then shares the IDPP applicant's information with the Department of Health Services Vital Records office,¹³ which uses the information to obtain the applicant's birth records through the Electronic Verification of Vital Events (EVVE) system.¹⁴ Boardman @ 18:32.

18) Many applications submitted under IDPP are confirmed by DHS within 24 hours. If all other documentation is complete, DMV prints and mails the free voting ID card. Boardman @ 18:51.

¹¹ <https://www.uscis.gov/save/about-save/save-verification-process>; <https://www.dhs.gov/publication/systematic-alien-verification-entitlements-save-program>.

¹² [MV3012 DMV Administrator Petition - Unavailable Documentation \(milwaukee.gov\)](https://www.milwaukee.gov/mv3012).

¹³ <https://www.dhs.wisconsin.gov/vitalrecords/index.htm>

¹⁴ <https://secure.ssa.gov/poms.nsf/lnx/0200302980>

"The Electronic Verification of Vital Events (EVVE) system is the result of collaboration between the Social Security Administration and the National Association for Public Health Statistics and Information Systems (NAPHSIS)."

NAPHSIS is a non-profit organization that facilitates exchange of vital records among agencies in U.S. states and territories <https://www.naphsis.org/about/what-we-do> https://evve.naphsis.us/EVVE_MI/form/login.jsp

19) Sec. 343.50(1)(c) provides the timeline for IDPP. If DMV is unable to obtain an applicant's birth record through EVVE within 30 days, DMV initiates a notice and termination process. If the applicant does not respond timely and complete IDPP within 60 days, the process terminates. Boardman @ 19:15.

20) If the applicant reconnects with DMV, the process begins again. DMV makes reasonable efforts and pays all fees to submit corrected birth information to EVVE, or to obtain "secondary documentation" verifying citizenship if birth records are not available from EVVE. Sec. 343.165(8)(b)3g. Boardman @ 20:30.¹⁵

THE WISVOTE LIST INCLUDES A SUBSTANTIAL NUMBER OF ILLEGAL NON-CITIZEN REGISTRANTS DUE TO RESPONDENTS' REFUSAL TO REQUIRE PROOF OF CITIZENSHIP FROM REGISTRATION APPLICANTS OR VERIFY THEIR CERTIFICATIONS

21) *Registration* applicants certify citizenship on the EL-131 Form the same as *identification* applicants certify citizenship on the MV3004 Form. *Registration* applicants check the first box in Section 1 of the EL-131 Form that "YOU . . . Are a citizen of the United States," and then sign the Certification in Section 9:

I also certify that I am not otherwise disqualified from voting and that all statements on this form are true and correct. If I have provided false information, I may be subject to fine or imprisonment under State and Federal laws.

22) Again, DMV *does* require proof of citizenship and *does* verify *identification* applicant certifications. But for voter *registration* applicants, Respondents do *neither*.

23) In fact, Respondents WEC and Wolfe themselves affirmatively allege that the WisVote list includes individuals who are not "properly registered," Affidavit of Daniel J. Eastman, Exh. A, Response to Request No. 3.

24) Deputy Boardman's testimony regarding false or fraudulent voter *identification* applications submitted to DMV indicates the magnitude of the problem of false or fraudulent *registration* applications submitted to WEC and local clerks.

¹⁵ [MV3012 DMV Administrator Petition - Unavailable Documentation \(milwaukee.gov\)](#). Form 3004 states on page one:

NOTE: If your documents proving U.S. citizenship, name and date of birth, or legal name change are unavailable, and you are applying for an ID card for the first time and it is for voting purposes, you may use the document verification petition process by completing both this application form MV3004 and form [MV3012 DMAAV Administrator Petition - Unavailable Documentation](#).

<file:///M:/FFF/FFF075%20Election%20Integrity/40%20WEC%20HAVA%20Complaint/42%20Exhibits/mv3004.pdf>

25) In the approximate 10-year period between September 15, 2014, and May 31, 2024, DMV has issued 11,018 free voter IDs through the IDPP process. Most of the 8,217 canceled applications were canceled by the applicant. DMV canceled 53 applications due to fraud or ineligibility, or 0.48% of the 11,018 applicants. Twenty-three of those cancellations were documented as fraud and referred to law enforcement. In 9 cases, or about 1 per year, a voting receipt was actually issued before DMV canceled the application. Boardman @ 22:05.¹⁶

26) During the same approximate 10-year period between September 15, 2014, and March 11, 2024, 3,194,786 new registrants were added to the WisVote list. Of those new registrants, 2,097,399 remain listed as active. Affidavit of Brian Kind.¹⁷

27) If the same 0.48 % of those active registrants certified citizenship or other information incorrectly, there would be 10,068 illegally registered voters still active in the WisVote List. That number would be increased by any inactive registrants who resume active status. In that case, 0.48% of 3,194,786 registrants could be a maximum of 15,335 illegally registered voters.

28) However, the percentage of erroneous or fraudulent certifications for *registration* applications is likely significantly higher than for *identification* applications because the *identification* applicants know DMV *will* verify citizenship, and many of the 8,217 self-cancellations were likely prompted by that fact.

29) To the contrary, *registration* applicants know that WEC and municipal clerks will *not* verify citizenship, so as a practical matter, the likelihood of error or fraud is significantly greater for *registration* applications than for *identification* applications.

RESPONDENTS' POWERS AND DUTIES

30) Respondent WEC is an independent administrative executive agency. Sec. 15.61. Among its "Powers and Duties," § 5.05, WEC's "*General Authority*" includes "the responsibility for the administration of chs. 5 to 10 and 12 *and other laws relating to elections* and election campaigns, other than laws relating to campaign financing." Sec. 5.05(1) (emphasis added).

¹⁶ Deputy Boardman gave approximate numbers at the hearing. The numbers cited are exact through May 31, 2024, based on DMV IDPP statistics, available at <https://wisconsindot.gov/Documents/dmv/shared/IDPPmay24.pdf>

¹⁷ March 11, 2024, is the date on which the entire MyVote file was downloaded, which Mr. Kind used to obtain the totals stated.

31) Respondent Wolfe serves as the state's chief election officer. Sec. 5.05(3g). WEC is under her supervision and direction. Sec. 15.61(1)(b)1.

32) Respondent Commissioners are appointed under Wis. Stat. § 15.61(1)(a). As WEC's "head," they are responsible for internal organization and allocation of "duties and functions not assigned by law." Secs. 15.01(8), 15.02(4).

33) Duties "not assigned by law" include duties "incident to the power and duty expressly conferred" by "chs. 5 to 10 and 12 and other laws relating to elections" that WEC has the duty to administer. *Att'y Gen. v. Levitan*, 195 Wis. 561, 219 N.W. 97, 98 (1928).

34) To perform its duties, WEC (including Respondents) has all "those powers which are expressly conferred or which are necessarily implied by the statutes under which it operates." *Kimberly-Clark Corp. v. Pub. Serv. Comm'n of Wisconsin*, 110 Wis. 2d 455, 461-62, 329 N.W.2d 143, 146 (1983).

35) The Chapters WEC administers "shall be construed to give effect to the will of the electors." Sec. 5.01(1) ("CONSTRUCTION OF CHS. 5 TO 12"). The "will of the electors" is that "The person receiving the greatest number of *legal* votes for the office shall be declared elected." Sec. 5.01(3)(a) ("PLURALITY SHALL ELECT") (emphasis added).

36) "In the discharge of its duties," WEC may conduct investigations; bring "civil actions . . . for any violation of chs. 5 to 10 or 12;" and sue for injunctions, writs and any other "legal or equitable relief as may be appropriate to enforce any law regulating the conduct of elections or election campaigns." Secs. 5.05(1)(b), (c), (d).

37) Further, WEC has the explicit *mandatory* duty to investigate and prosecute submission of false or fraudulent voter registration applications. Sec. 5.06(2m) provides:

(2m) ENFORCEMENT.

(a) *The commission shall investigate violations of laws administered by the commission and may prosecute alleged civil violations of those laws, directly or through its agents under this subsection, pursuant to all statutes granting or assigning that authority or responsibility to the commission.*

(Emphasis added.)

38) WEC also has the duty to "Promulgate rules under ch. 227 applicable to all jurisdictions for the purpose of interpreting or *implementing the laws regulating the conduct of elections or election campaigns, other than laws regulating campaign financing, or ensuring their proper administration.*" Sec. 5.05(1)(f) (emphases added).

39) And while § 5.05(1) states that “Pursuant to such responsibility, the commission *may*” exercise those powers of investigation, litigation, and rulemaking, those powers are mandatory for the purpose of redressing violation of election laws and “ensuring their proper administration” because “the word *may* means *must* or *shall*” where “the public interests or rights are concerned” and “the public or third persons have a claim *de jure* that the power should be exercised.” *Cutler v. Howard*, 9 Wis. 309, 311–12 (1859) (emphases original).

40) Among its *specific* duties, Respondents are obligated to maintain the WisVote list, §§ 5.05(15) and 6.36(1), which consists only of those “electors that are *properly* registered to vote,” § 5.02(17) (emphasis added).

41) The “design and maintenance of the official [WisVote] registration list under s. 6.36” is WEC’s most critical duty because the list is indispensable in ensuring that only “legal votes” are cast at all. Sec. 5.05(15).

42) As a threshold matter, because Wisconsin is exempt from the National Voter Registration Act (NVRA) and its “accept and use” provisions, Respondents have authority to promulgate regulations and procedures requiring all *registration* applicants to provide birth certificates or other “documentary proof of citizenship” (DPOC) as a condition of registration. And even if Wisconsin were *not* exempt from NVRA, Respondents are still authorized to verify applicant’s citizenship using SAVE and EVVE or other “information in their possession.” *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 9, 15, 133 S. Ct. 2247, 2254, 2257 (2013).

43) In 2014, the DMV exercised its authority to promulgate regulations and use the SAVE and EVVE systems to create and implement IDPP, providing a reasonable system to identify and reject non-citizen *identification* applications.

44) Respondents have the same requirements, authority and resources as DMV to identify and reject non-citizen *registration* applications, if not more.¹⁸

¹⁸ Even subsequent to enactment of Wis. Stat. § 227.10(2m), it is difficult to imagine how the legislature could have been more clear in providing *explicit* and *broad* authority to administer Wisconsin’s constitutional and statutory citizenship requirements. *Clean Wisconsin, Inc. v. Wisconsin Dep’t of Nat. Res.*, 2021 WI 72, ¶ 23, 398 Wis. 2d 433, 961 N.W.2d 611, 619.

45) The WisVote list is created and administered in compliance with the Help America Vote Act (HAVA), 52 U.S.C. Ch. 209, §§ 20901– 21145. HAVA requires that Wisconsin,

acting through the chief State election official, shall implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every *legally* registered voter in the State

52 U.S.C. § 21083(1)(A) (emphasis added).

46) To ensure that *registration* applicants in Wisconsin and other states provide truthful information on the EL-131 and comparable state application forms, 52 U.S.C. §21083 specifically requires WEC and DMV to “match information” in their databases:

(5) (B) Requirements for State officials

(i) Sharing information in databases

The chief State election official and the official responsible for the State motor vehicle authority of a State shall enter into an agreement to match information in the database of the statewide voter registration system with information in the database of the motor vehicle authority *to the extent required to enable each such official to verify the accuracy of the information provided on applications for voter registration.*

(Emphasis added.)

47) Further, HAVA provides only “minimum requirements,” and does not “prevent a State from establishing election technology and administration requirements that are more strict.” 52 U.S.C. § 21084.

48) Even a rudimentary data comparison of driver’s license or original identification card data would disclose non-citizen registrants because the date their legal presence expires is usually different than their birth dates. Secs. 343.20(1m), 343.50(5)(c).

49) But as apparently construed by Respondents, Wisconsin statutes do *not* comply with *and are pre-empted by* HAVA. Contrary to HAVA’s requirement that WEC and DMV share information “required to enable each such official to verify the accuracy of the information provided on *applications for voter registration*,” §§ 5.056 and 85.61 require only that WEC and DMV share information included in the WisVote list under § 6.36(1) and limited information included in the online registration specified by § 6.34(2m) – neither of which include *citizenship information* required by application Form EL-131.¹⁹

¹⁹ Wisconsin statutes provide:

5.056 Matching program with secretary of transportation.

RESPONDENTS' POWERS AND DUTIES TO IMPLEMENT
PROCEDURES AND PROVIDE RESOURCES FOR LOCAL OFFICIALS

50) Respondents share list maintenance duties with municipal clerks. *State ex rel. Zignego v. Wisconsin Elections Comm'n*, 2021 WI 32, ¶ 15, 396 Wis. 2d 391, 400, 957 N.W.2d 208, 212

51) In addition to Respondents' responsibilities maintaining the WisVote list and verifying citizenship certifications in *online* registration applications that *they* receive, Respondents are *also* obligated to provide municipal clerks with guidance and resources to perform the *clerks'* duties maintaining the list and verifying citizenship certifications in the registration applications the *clerks* receive. *Id.*

52) In their own Election Administration Manual, p. 5., Respondents advise clerks that “you are entrusted with the responsibility of ensuring fair, accessible, and transparent elections” and that “*Our job at the Wisconsin Elections Commission (WEC) is to provide you with a range of resources to support you in carrying out your duties.*”²⁰

53) And at Manual p. 43, Respondents state, “A municipal clerk is charged with the responsibility of maintaining records to track voter registration” and that “In order to register to vote, an individual must: 1. Be a U.S. citizen.”

54) Thus, Respondents have the authority and obligation to provide the clerks with the “resources” that they need to “track voter registration” and ensure that every list registrant is “a U.S. citizen.”

55) Sec. 5.05(15) directs that WEC “*shall* require all municipalities to use the list in every

The commission administrator shall enter into the agreement with the secretary of transportation specified under s. 85.61(1) to match *personally identifiable information on the official registration list maintained by the commission under s. 6.36(1) and the information specified in s. 6.34(2m)* with personally identifiable information maintained by the department of transportation.

85.61 Compliance with federal Help America Vote Act.

(1) The secretary of transportation and the administrator of the elections commission shall enter into an agreement to match *personally identifiable information on the official registration list maintained by the commission under s. 6.36(1) and the information specified in s. 6.34* with personally identifiable information in the operating record file database under ch. 34 and vehicle registration records under ch. 341 to the extent required to enable the secretary of transportation and the administrator of the elections commission to verify the accuracy of the information provided for the purpose of voter registration.

(Emphases added.)

²⁰ *State ex rel. Zignego v. Wisconsin Elections Comm'n*, 2021 WI 32, ¶ 15, 396 Wis. 2d 391, 400, 957 N.W.2d 208, 212 (emphasis added, quoting the Manual, p. 5, available at https://elections.wi.gov/sites/default/files/documents/EA%20Manual-February%202024_format%20update.pdf).

election,” and authorizes WEC to “*require any municipality to adhere to procedures established by the commission for proper maintenance of the list.*” And WEC must “Allocate and assign sufficient members of its staff to coordinate their activities with local election officials.” Sec. 7.08(11).

56) Municipal clerks have “charge and supervision of elections *and registration* in the municipality,” and “shall perform . . . *any others* that may be necessary to *properly conduct* elections or *registration.*” Sec. 7.15(1) (emphases added.)²¹

57) In addition to processing registration applications other than those submitted online to WEC, § 6.22(6) also obligates clerks to ensure that “military electors” (subsec. (1)(b)) are “eligible,” likely because non-citizens are authorized to serve in the military²² and military electors are exempt from registration under subsec. (3), so are not required to complete a citizenship affirmation at all.²³

58) Specifically, subsec. (6) requires that “Each municipal clerk *shall* keep an up-to-date list of all *eligible* military electors who reside in the municipality in the format prescribed by the commission. . . . The list *shall* be kept current through *all possible means,*” and clerks “shall exercise *reasonable care* to avoid duplication of names or *listing anyone who is not eligible to vote.*” *Id.* (emphases added). Sec. § 6.325 also authorizes clerks to verify citizenship of naturalized citizens.

59) But contrary to §§ 6.22(6) and 6.325, clerks cannot exercise *any* “care” or use *any* “possible means” to make the WisVote list “accessible” and “transparent” or avoid registering “anyone who is not *eligible*” because Respondents do not access the SAVE and EVVE systems already used by the DMV or provide clerks any other alternative resources to conduct citizenship verifications or assist applicants without means or access to obtain the necessary documentation.

60) As County Clerk Reichert testified, municipal clerks *want* to fulfill their obligations and would like to have resources to conduct real-time citizenship verification so that they do not ille-

²¹ WEC and clerks administer the List through an online system known as “WisVote” created in 2015. Robert Kehoe, Commission Technology Director, *Testimony before Assembly Committee on Campaigns and Elections, Feb. 16, 2022*, @ :16:45, available at <https://wiseye.org/2022/02/16/assembly-committee-on-campaigns-and-elections-26/00>. See also, Wis. Elections Comm’n, *History of WisVote*, available at: <https://elections.wi.gov/history-wisvote>, and Wis. Elections Comm’n, *WISVOTE*, available at <https://elections.wi.gov/clerks/election-topics-z/wisvote>.

²² 8 U.S.C. § 1440.

²³ Interestingly, the exemption of military voters originated with the Military Suffrage Act enacted during the Civil War in 1862. See. *State ex rel. Chandler v. Main*, 16 Wis. 398, 400 (1863). Wis. Stats. § 6.27 references two other exemptions under Wis. Stats. §§ 6.15 and 6.18 for “new residents” and “former residents” voting in presidential elections. Those sections both require the exempted elector to swear to citizenship.

gally register non-citizens, but Respondents have failed and defaulted on their obligations to provide those resources.

COMPLAINANTS' RIGHTS AND RESPONDENTS' VIOLATIONS

61) Besides defaulting in performance of their statutory duties, Respondents also violate Complainant's state and federal equal rights to cast *legal* votes uncanceled by *illegal* ballots cast by non-citizen or otherwise ineligible voters.

62) In 1965, the Wisconsin Supreme Court confirmed that the "right to vote" in Wisconsin elections "must be on the one man-one vote principle" established in a trilogy of Supreme Court decisions voiding Jim Crow abuses that imposed disproportionate representation and diluted the votes of black citizens. *State ex rel. Sonneborn v. Sylvester*, 26 Wis. 2d 43, 53, 55, 132 N.W.2d 249, 254, 255 (1965).²⁴

63) The one man-one vote axiom that forbids *disproportionate* votes forbids *illegal* with even greater force. A disproportionate ballot merely *dilutes* a qualified elector's legal vote. But an *illegal* ballot *cancels* a qualified elector's legal vote *entirely*.

64) "[P]opular governments" are "instituted by the *citizens* for *their* liberty and protection," and government's "powers and functions" must be "*exercised only by them and through their agency*." *State ex rel. Off v. Smith*, 14 Wis. 497, 499 (1861) (emphases added).

65) Accordingly, under Wisconsin's constitution and laws, there are no greater "public interests or rights" than the interests and rights of Complainant and other citizens to demand that *only* citizens vote in their elections, and they have every right to demand that Respondents' "power and functions" be "exercised" to "implement[] the laws" prohibiting registration and voting by non-citizens and "ensur[e] their proper administration." *State ex rel. Wettengel v. Zimmerman*, 249 Wis. 237, 242, 24 N.W.2d 504, 506 (1946). ("Every *citizen* owes allegiance to both [state and federal] governments and . . . must be obedient to the laws of each. *In return he is entitled to demand protection from each within its own jurisdiction*. (Emphases added.))

²⁴ Following *Baker v. Carr*, 369 U.S. 186, 82 S. Ct. 691, 705 (1962); *Gray v. Sanders*, 372 U.S. 368, 380, 83 S. Ct. 801, 808 (1963); *Wesberry v. Sanders*, 376 U.S. 1, 84 S. Ct. 526 (1964).

66) However, even though Respondents themselves affirmatively allege that the WisVote list includes electors who are not “properly registered,” *supra*, Affidavit of Daniel J. Eastman, Respondents have failed and refused to investigate such admitted “violation[s] of chs. 5 to 10 or 12;” have failed to bring suit seeking redress for such violations; have failed to seek injunctions or writs or orders enjoining such violations; have failed to “promulgate rules” establishing requirements and procedures to prevent continuing violations in the future; and have failed to issue and “require any municipality to adhere to procedures established by the commission for proper maintenance of the list” that would enable local elections officials to perform their duties as *Zignego* requires. Sec. 5.05(15).

WHEREFORE, Complainant demands that Respondents immediately:

- 1) Investigate the violation of chs. 5 to 10 and 12 and other laws by the inclusion of non-citizens or other unqualified registrants in the WisVote list;
- 2) Bring suit seeking redress for such violations;
- 3) Bring suit seeking injunctions, writs or orders prohibiting such violations in the future;
- 4) Promulgate rules requiring that applicants for voter registration produce birth certificates or other documentary proof of citizenship as a requirement for legal registration;
- 5) Issue and require municipalities to adhere to procedures established by the commission for proper maintenance of the WisVote list to include only U.S. citizens; and
- 6) Provide municipal clerks and other local elections officials guidance and resources to perform their duties.

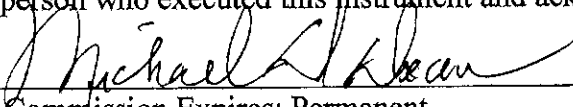
Dated July 27, 2024.



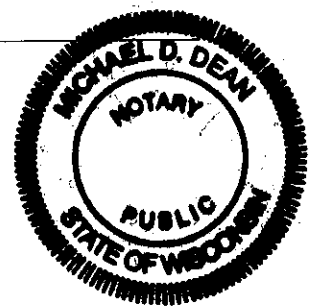
Ardis Cerny

State of Wisconsin)
)
County of Waukesha)

Personally came before me on July 27, 2024, the above named Ardis Cerny, known to me to be the person who executed this instrument and acknowledged the same.



My Commission Expires: Permanent



COUNSEL FOR COMPLAINANT

/s/ Michael D. Dean
Michael D. Dean, WSNB 01019171
MICHAEL D. DEAN, LLC
P.O. Box 2545
Brookfield, WI 53008
Telephone: (262) 798-8044
Email: miked@michaelddeanllc.com

/s/ Kevin P. Scott
Kevin M. Scott (SBN 1036825)
THE LAW OFFICE OF KEVIN M. SCOTT
LLC
2665 S. Moorland Road, Suite 200
New Berlin, WI 53151
Telephone: (414) 899-8273
Email: kevin@kevinscottlaw.com

STATE OF WISCONSIN
ELECTIONS COMMISSION

Ardis Cerny,

Complainant,

v.

WISCONSIN ELECTIONS COMMISSION,
MEAGAN WOLFE, DON M. MILLIS,
ROBERT F. SPINDELL, JR., MARGE BOSTELMANN,
ANN S. JACOBS, MARK L. THOMSEN, and CARRIE RIEPL,

Respondents.

VERIFICATION OF ARDIS CERNY

Ardis Cerny states under oath that she has read the foregoing Complaint and that the allegations are based on information and belief which she believes to be true to the best of her knowledge.

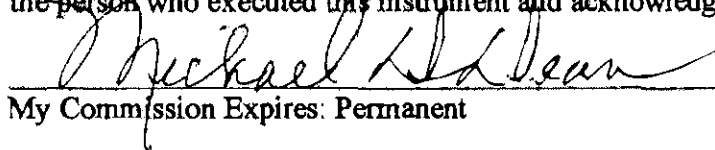
Date: July 27, 2024



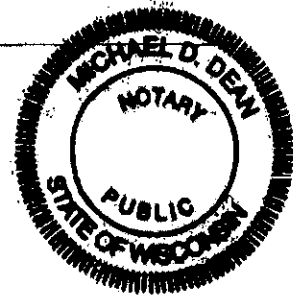
Ardis Cerny

State of Wisconsin)
)
County of Waukesha)

(Personally came before me on July 27, 2024, the above named Ardis Cerny, known to me to be the person who executed this instrument and acknowledged the same.



My Commission Expires: Permanent



STATE OF WISCONSIN
ELECTIONS COMMISSION

ARDIS CERNY,

Complainant,

v.

WISCONSIN ELECTIONS COMMISSION,
MEAGAN WOLFE, DON M. MILLIS,
ROBERT F. SPINDELL, JR., MARGE BOSTELMANN,
ANN S. JACOBS, MARK L. THOMSEN, and CARRIE RIEPL,

Respondents.

AFFIDAVIT OF DANIEL J. EASTMAN

State of Wisconsin)
)
County of Ozaukee)

Daniel J. Eastman states under oath:

1) I am counsel for Complainant Scott Sidney in his action against Respondents Wisconsin Elections Commission and Meagan Wolfe, *Sidney v. Wisconsin Elections Commission et al.*, Ozaukee County Case No. 22 CV 300.

2) Attached as Exhibit A is a true and correct copy of responses of Respondents Wisconsin Elections Commission and Meagan Wolfe, dated February 23, 2023, responding to Requests to Admit propounded by Plaintiff in that action.

Date at Mequon, Wisconsin, July 27, 2024

Electronically Signed by Daniel J. Eastman .
Daniel J. Eastman

Subscribed and sworn before me July 27, 2024.

Electronically notarized by Michael D. Dean .
Notary Public.
My commission is permanent.

SCOTT SIDNEY,

Plaintiff,

v.

Case No. 22-CV-300

Declaratory Judgment: 30701

WISCONSIN ELECTIONS
COMMISSION AND MEAGAN
WOLFE, AS ADMINISTRATOR
OF THE WISCONSIN ELECTIONS
COMMISSION,

Defendants.

**DEFENDANTS' RESPONSE TO PLAINTIFF'S
FIRST SET OF DISCOVERY DEVICES**

NOW COMES the defendants, by their attorneys, Attorney General Josh Kaul and Assistant Attorney General Brian P. Keenan, and respond to Plaintiff's First Set of Discovery Requests as follows:

GENERAL OBJECTIONS

1. Defendants object to each of these requests to the extent they seek information protected from disclosure by the attorney-client privilege, the work product doctrine, the common interest doctrine, or other applicable privilege. Only documents not protected by these protections will be provided

Exhibit A

and ETF will not disclose privileged information in response to any interrogatory or request for admission.

2. Defendants object to the instructions and requests to the extent they attempt to impose a requirement or obligation not in the Wisconsin statutes.

3. Defendants object to the definition of "Registration List" to the extent the plaintiff intends it to mean anything other than the "official registration list" in Wis. Stat. § 6.36(1)(a) and Wis. Admin. Code EL § 3.50(1)(c). Defendants' responses are based on this understanding of the term.

4. Defendants expressly reserve their right to supplement each and every response as additional information is discovered in the course of this litigation in accordance with Wis. Stat. § 804.01(5). In answering the interrogatories, Defendants have worked diligently to review documents and consult with witnesses in order to provide thorough responses based on the information Defendants have in their possession, custody and control at this time. Defendants may need to supplement some or all responses.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Admit that Wis. Stat. § 6.36(1)(a) requires WEC to "compile and maintain electronically an official registration list" (the "Registration List") containing certain information listed in that statutory subsection.

RESPONSE: Defendants admit Wis. Stat. § 6.36(1)(a) provides that WEC "shall compile and maintain electronically an official registration list,"

which “shall contain” the information listed in Wis. Stat. § 6.36(1)(a)1.–16. Defendants deny any characterization of Wis. Stat. § 6.36(1)(a) that is contrary to its express terms.

REQUEST FOR ADMISSION NO. 2: Admit that Wis. Stat. § 6.36(1)(a) was enacted to comply with the Federal Help America Vote Act of 2002 (HAVA).

RESPONSE: Defendants lack knowledge or information sufficient to admit or deny this request. Defendants do not know the motivations of the Legislature in enacting Wis. Stat. § 6.36(1)(a), which occurred before the Wisconsin Elections Commission was created.

REQUEST FOR ADMISSION NO. 3: Admit that Wis. Stat. § 5.02(17) requires that the Registration List mandated by Wis. Stat. § 6.36(1)(a) contain only “electors who are properly registered to vote.”

RESPONSE: Defendants admit that Wis. Stat. § 5.02(17) contains a definition of “registration list,” which is defined as a “the list of electors who are properly registered to vote,” but deny any characterization of Wis. Stat. § 5.02(17) that is contrary to its express terms. Defendants also deny that the Registration List mandated by Wis. Stat. § 6.36(1)(a) contains only electors who are properly registered to vote because the Wisconsin Statutes contemplate challenges to “the registration of any other registered elector,” Wis. Stat. § 6.48(1)(a), provisions for revising the Registration List in Wis. Stat. § 6.50, , and instructions for when registration status is changed from eligible to ineligible, Wis. Stat. § 6.33(4), which only make sense if the Registration

List contains the names of some people who are not properly registered to vote or no longer properly registered to vote.

REQUEST FOR ADMISSION NO. 4: Admit that Wis. Stat. § 6.36(1)(a) requires WEC to ensure that the Registration List is devoid of persons who are not “electors who are properly registered to vote.”

RESPONSE: Deny.

REQUEST FOR ADMISSION NO. 5: Admit that the December 30, 2021 letter attached as Exhibit A (the “Letter”) is a true and correct copy of a letter sent by WEC to Representative Janel Brandtjen and members of the Assembly Committee on Campaigns and Elections.

RESPONSE: Defendants are not able to admit or deny this request because there was no Exhibit A attached to the requests.

REQUEST FOR ADMISSION NO. 6: Admit that the “State of Wisconsin voter registration program and database” (the “Database”) is synonymous with the term “WisVote.”

RESPONSE: Defendants deny that the “State of Wisconsin voter registration program and database” (the “Database”) is synonymous with WisVote because WisVote encompasses more than just the Database. Defendants, however, admit that the terms are often interchangeable in the context of the issues presented in this case.

REQUEST FOR ADMISSION NO. 7: Admit that the Database is the Registration List for the State of Wisconsin.

RESPONSE: Deny.

REQUEST FOR ADMISSION NO. 8: Admit that the Registration List for the State of Wisconsin is found within the Database.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 9: Admit that the term “elector” as it is used in Wis. Stat. § 5.02(17) has the same meaning as the term is defined in Article III, Section 1 of the Wisconsin Constitution.

RESPONSE: Defendants admit this request subject to the provisions in Wis. Stat. §§ 6.01–6.25 that further codify the law regarding electors in Wisconsin.

REQUEST FOR ADMISSION NO. 10: Admit that the term “elector” as it is used in Wis. Stat. § 6.36 has the same meaning as the term is defined in Article III, Section 1 of the Wisconsin Constitution.

RESPONSE: Defendants admit this request subject to the provisions in Wis. Stat. §§ 6.01–6.25 that further codify the law regarding electors in Wisconsin.

REQUEST FOR ADMISSION NO. 11: Admit that only persons that are United States citizens age 18 or older who are a resident of an election district in the State of Wisconsin may be “electors” as the term is used in Wis. Stat. § 5.02(17) in the State of Wisconsin.

RESPONSE: Defendants admit this request subject to the provisions for “overseas electors” as defined in Wis. Stat. § 5.02(12n), *see, e.g.*, Wis. Stat. § 6.24, and “military electors” as defined in Wis. Stat. § 6.22(1)(b), *see, e.g.*, Wis. Stat. § 6.22, and the provision that seventeen year-olds can register to vote if they will be eighteen by election day, Wis. Stat. § 6.05.

REQUEST FOR ADMISSION NO. 12: Admit that only persons that are United States citizens age 18 or older who are a resident of an election district in the State of Wisconsin may be “electors” as the term is used in Wis. Stat. § 6.36 in the State of Wisconsin.

RESPONSE: Defendants admit this request subject to Wis. Stat. § 6.10, which governs elector residence, as well as the provisions for “overseas electors” as defined in Wis. Stat. § 5.02(12n), *see, e.g.*, Wis. Stat. § 6.24, and “military electors” as defined in Wis. Stat. § 6.22(1)(b), *see, e.g.*, Wis. Stat. § 6.22.

REQUEST FOR ADMISSION NO. 13: Admit that a United States citizen age 18 or older who is a resident of an election district in the State of Wisconsin may only qualify as an “elector” as the term is used in Wis. Stat. § 5.02(17) in the election district in which the person is a resident.

RESPONSE: Defendants admit this request subject to the provisions for “overseas electors” as defined in Wis. Stat. § 5.02(12n), *see, e.g.*, Wis. Stat. § 6.24, and “military electors” as defined in Wis. Stat. § 6.22(1)(b), *see, e.g.*, Wis. Stat. § 6.22, and the provisions in Wis. Stat. §§ 6.10(5) and 6.18.

REQUEST FOR ADMISSION NO. 14: Admit that a United States citizen age 18 or older who is a resident of an election district in the State of Wisconsin may only qualify as an “elector” as the term is used in Wis. Stat. § 6.36 in the election district in which the person is a resident.

RESPONSE: Defendants admit this request subject to the provisions for “overseas electors” as defined in Wis. Stat. § 5.02(12n), *see, e.g.*, Wis. Stat. § 6.24, and “military electors” as defined in Wis. Stat. § 6.22(1)(b), *see, e.g.*, Wis. Stat. § 6.22.

REQUEST FOR ADMISSION NO. 15: Admit that only persons that are United States citizens age 18 or older who are a resident of an election district in the State of Wisconsin may be included on the Registration List.

RESPONSE: Defendants admit that, subject to the provisions for “overseas electors” as defined in Wis. Stat. § 5.02(12n), *see, e.g.*, Wis. Stat. § 6.24, and “military electors” as defined in Wis. Stat. § 6.22(1)(b), *see, e.g.*, Wis. Stat. § 6.22, and the provision that seventeen year-olds can register to vote if they will be eighteen by election day, Wis. Stat. § 6.05, only persons that are United States citizens age 18 or older who are a resident of an election district in the State of Wisconsin should properly be included on the Registration List

REQUEST FOR ADMISSION NO. 16: Admit that an “elector” as the term is used in Wis. Stat. § 5.02(17) cannot be a deceased person.

RESPONSE: Admit. Defendants further state that the statutes provide for how to handle an absentee ballot submitted by an elector who dies before the date of the election. *See* Wis. Stat. § 6.21.

REQUEST FOR ADMISSION NO. 17: Admit that an “elector” as the term is used in Wis. Stat. § 6.36 cannot be a deceased person.

RESPONSE: Admit. Defendants further state that the statutes provide for how to handle an absentee ballot submitted by an elector who dies before the date of the election. *See* Wis. Stat. § 6.21.

REQUEST FOR ADMISSION NO. 18: Admit that a person who is not a resident of an election district of the State of Wisconsin cannot be an “elector” as the term is used in Wis. Stat. § 5.02(17).

RESPONSE: Defendants admit this request subject to Wis. Stat. § 6.10, which governs elector residence, as well as the provisions for “overseas electors” as defined in Wis. Stat. § 5.02(12n), *see, e.g.*, Wis. Stat. § 6.24, and

“military electors” as defined in Wis. Stat. § 6.22(1)(b), *see, e.g.*, Wis. Stat. § 6.22.

REQUEST FOR ADMISSION NO. 19: Admit that a person who is not a resident of an election district of the State of Wisconsin cannot be an “elector” as the term is used in Wis. Stat. § 6.36.

RESPONSE: Defendants admit this request subject to the provisions for “overseas electors” as defined in Wis. Stat. § 5.02(12n), *see, e.g.*, Wis. Stat. § 6.24, and “military electors” as defined in Wis. Stat. § 6.22(1)(b), *see, e.g.*, Wis. Stat. § 6.22, and the provisions in Wis. Stat. §§ 6.10(5) and 6.18.

REQUEST FOR ADMISSION NO. 20: Admit that only electors that are “properly registered to vote” may be included on the Registration List.

RESPONSE: Defendants admit that only electors that are properly registered to vote should be included on the Registration List. However, the Wisconsin Statutes contemplate challenges to “the registration of any other registered elector,” Wis. Stat. § 6.48(1)(a), provisions for revising the Registration List in Wis. Stat. § 6.50, and instructions for when registration status is changed from eligible to ineligible, Wis. Stat. § 6.33(4), which only make sense if the Legislature understood that Registration List would contain the names of some people who are not properly registered to vote or no longer properly registered to vote until they are able to be removed from the list.

REQUEST FOR ADMISSION NO. 21: Admit that only persons that are United States citizens age 18 or older may be electors in the State of Wisconsin.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 22: Admit that there are persons on the Registration List who are not citizens of the United States.

RESPONSE: Defendants lack knowledge or information sufficient to admit or deny this request. However, the Wisconsin Statutes contemplate challenges to “the registration of any other registered elector,” Wis. Stat. § 6.48(1)(a), provisions for revising the Registration List in Wis. Stat. § 6.50, , and instructions for when registration status is changed from eligible to ineligible, Wis. Stat. § 6.33(4), which only make sense if the Legislature understood that Registration List would contain the names of some people who are not properly registered to vote or no longer properly registered to vote until they are able to be removed.

REQUEST FOR ADMISSION NO. 23: Admit that the Registration List contains persons who are not electors that are “properly registered to vote.”

RESPONSE: Defendants lack knowledge or information sufficient to admit or deny this request. However, the Wisconsin Statutes contemplate challenges to “the registration of any other registered elector,” Wis. Stat. § 6.48(1)(a), provisions for revising the Registration List in Wis. Stat. § 6.50, , and instructions for when registration status is changed from eligible to ineligible, Wis. Stat. § 6.33(4), which only make sense if the Legislature understood that Registration List would contain the names of some people who

are not properly registered to vote or no longer properly registered to vote until they are able to be removed.

REQUEST FOR ADMISSION NO. 24: Admit that the Registration List contains persons who are not residents of an election district of the State of Wisconsin

RESPONSE: Defendants lack knowledge or information sufficient to admit or deny this request. However, the Wisconsin Statutes contemplate challenges to “the registration of any other registered elector,” Wis. Stat. § 6.48(1)(a), provisions for revising the Registration List in Wis. Stat. § 6.50, , and instructions for when registration status is changed from eligible to ineligible, Wis. Stat. § 6.33(4), which only make sense if the Legislature understood that Registration List would contain the names of some people who are not properly registered to vote or no longer properly registered to vote until they are able to be removed.

REQUEST FOR ADMISSION NO. 25: Admit that the Wisconsin law providing the exclusive means by which an elector may request an absentee ballot is Wis. Stat. § 6.86.

RESPONSE: Defendants admit this request subject to the provisions for “overseas electors” as defined in Wis. Stat. § 5.02(12n), *see, e.g.*, Wis. Stat. § 6.24, and “military electors” as defined in Wis. Stat. § 6.22(1)(b), *see, e.g.*, Wis. Stat. § 6.22.

REQUEST FOR ADMISSION NO. 26: Admit that Wis. Stat. § 6.86 contains no provision allowing an elector to request an absentee ballot from WEC.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 27: Admit that persons can request the absentee ballot of a Wisconsin elector utilizing the website myvote.wi.gov ("MyVote").

RESPONSE: Admit subject to the understanding that absentee ballot requests via MyVote are sent to municipal clerks for review, processing and distribution of the absentee ballot.

REQUEST FOR ADMISSION NO. 28: Admit that a persons can request the absentee ballot of a Wisconsin elector utilizing MyVote knowing only the Wisconsin elector's full name, date of birth, and registered address.

RESPONSE: Defendants admit this request to the extent that the elector has photo identification on file with their local clerk per Wis. Stat. § 6.87(4)(b)3.

REQUEST FOR ADMISSION NO. 29: Admit that a person located in another country can request an absentee ballot of a Wisconsin elector utilizing MyVote.

RESPONSE: Defendants admit that a person located in certain other countries can request an absentee ballot of a Wisconsin elector utilizing MyVote. People located in certain countries, however, are blocked by MyVote from requesting an absentee ballot.

REQUEST FOR ADMISSION NO. 30: Admit that a person located in another country can request the absentee ballot of a Wisconsin elector utilizing MyVote knowing only the Wisconsin elector's full name, date of birth, and registered address.

RESPONSE: Defendants admit this request to the extent that the elector has photo identification on file with their local clerk and the person is located in a country that is not blocked by MyVote.

REQUEST FOR ADMISSION NO. 31: Admit that persons have been added to the Registration List that do not exist in real life.

RESPONSE: Defendants lack knowledge or information sufficient to admit or deny this request.

REQUEST FOR ADMISSION NO. 32: Admit that, based on activity performed on MyVote, WEC has requested that municipal clerks send absentee ballots to nonexistent persons.

RESPONSE: Deny.

REQUEST FOR ADMISSION NO. 33: Admit that the only persons of whom WEC is aware that have fraudulently requested the absentee ballot of a Wisconsin elector have self-reported the act to law enforcement authorities.

RESPONSE: Deny.

REQUEST FOR ADMISSION NO. 34: Admit that the Registration List contains persons that are deceased.

RESPONSE: Defendants lack knowledge or information sufficient to admit or deny this request. However, the Wisconsin Statutes have procedures for reviewing the Registration List for deceased voters. See Wis. Stat. § 6.50(2r)(e), (4). The statutes provide that “[t]he municipal clerk or board of election commissioners shall change the registration of deceased electors from eligible to ineligible status by means of checking vital statistics reports.” Wis.

Stat. § 6.50(4). These provisions only make sense if the Legislature understood that Registration List would contain the names of some people who are deceased until they are able to be removed.

REQUEST FOR ADMISSION NO. 35: Admit that the Database contains persons that are deceased.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 36: Admit that the Registration List contains persons whose right to vote has been revoked by a Wisconsin Court because they have been adjudicated as incompetent.

RESPONSE: Defendants lack knowledge or information sufficient to admit or deny this request. However, the Wisconsin Statutes contemplate challenges to “the registration of any other registered elector,” Wis. Stat. § 6.48(1)(a), provisions for revising the Registration List in Wis. Stat. § 6.50, , and instructions for when registration status is changed from eligible to ineligible, Wis. Stat. § 6.33(4), which only make sense if the Legislature understood that Registration List would contain the names of some people who are not properly registered to vote or no longer properly registered to vote until they are able to be removed.

REQUEST FOR ADMISSION NO. 37: Admit that the Database contains persons whose right to vote has been revoked by a Wisconsin Court because they have been adjudicated as incompetent.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 38: Admit that the Registration List contains persons convicted of a felony.

RESPONSE: Defendants lack knowledge or information sufficient to admit or deny this request. However, the Wisconsin Statutes contemplate challenges to “the registration of any other registered elector,” Wis. Stat. § 6.48(1)(a), provisions for revising the Registration List in Wis. Stat. § 6.50, , and instructions for when registration status is changed from eligible to ineligible, Wis. Stat. § 6.33(4), which only make sense if the Legislature understood that Registration List would contain the names of some people who are not properly registered to vote or no longer properly registered to vote until they are able to be removed.

REQUEST FOR ADMISSION NO. 39: Admit that the Database contains persons convicted of a felony.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 40: Admit that the Registration List contains persons that have moved out of the State of Wisconsin.

RESPONSE: Defendants lack knowledge or information sufficient to admit or deny this request. However, the Wisconsin Statutes have procedures for reviewing the Registration List for people who have moved. *See* Wis. Stat. § 6.50(3). The statutes provide that “[u]pon 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” take certain actions. *Id.* These provisions only make sense if the Legislature

understood that Registration List would contain the names of some people who have moved out of the State until they can be removed.

REQUEST FOR ADMISSION NO. 41: Admit that the Database contains persons that have moved out of the State of Wisconsin.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 42: Admit that WEC provides access to the Database to Wisconsin's Municipal Clerks.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 43: Admit that WEC knows the identity of all persons who make changes to the Registration List.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 44: Admit that WEC is improperly performing its statutory duty to maintain the Registration List by placing and retaining persons on it who are not electors that are properly registered to vote.

RESPONSE: Deny.

REQUEST FOR ADMISSION NO. 45: Admit that WEC does not maintain the Registration List.

RESPONSE: Deny.

REQUEST FOR ADMISSION NO. 46: Admit that WEC has not entered into a membership agreement with Electronic Registration Information Center, Inc. ("ERIC"), for the purpose of maintaining the Registration List.

RESPONSE: Defendants object to this request as vague and ambiguous.

Wisconsin Stat. § 6.36(1)(ae)1., "[t]he chief election officer shall enter into a membership agreement with Electronic Registration Information Center, Inc.,

for the purpose of maintaining the official registration list under this section.” Defendants admit that the chief election officer has entered into such an agreement as required by Wis. Stat. § 6.36(1)(ae)1. The defendants deny the request to the extent it seeks an admission of anything other than what has been expressly admitted.

REQUEST FOR ADMISSION NO. 47: Admit that Defendant Meagan Wolfe has entered into a membership agreement with Electronic Registration Information Center, Inc. (“ERIC”), for the purpose of maintaining the Registration List.

RESPONSE: Defendants object to this request as vague and ambiguous. Wisconsin Stat. § 6.36(1)(ae)1., “[t]he chief election officer shall enter into a membership agreement with Electronic Registration Information Center, Inc., for the purpose of maintaining the official registration list under this section.” Defendants admit that the chief election officer has entered into such an agreement as required by Wis. Stat. § 6.36(1)(ae)1. The defendants deny the request to the extent it seeks an admission of anything other than what has been expressly admitted.

REQUEST FOR ADMISSION NO. 48: Admit that ERIC maintains the Registration List.

RESPONSE: Deny.

REQUEST FOR ADMISSION NO. 49: Admit that WEC has no legal authority to enter into any agreement with any third-party to maintain the Registration List.

RESPONSE: Defendants object to the relevancy of this request because WEC has not entered into contracts with any third-party to maintain the database. Subject to that objection, Defendants deny the request.

REQUEST FOR ADMISSION NO. 50: Admit that employees and/or agents of ERIC have made changes to the Registration List.

RESPONSE: Deny.

REQUEST FOR ADMISSION NO. 51: Admit that employees and/or agents of ERIC make changes to the Registration List.

RESPONSE: Deny.

REQUEST FOR ADMISSION NO. 52: Admit that employees and/or agents of ERIC have made changes to the Database.

RESPONSE: Deny that employees and/or agents of ERIC have made changes to the Database while employees or agents of ERIC, which is how the defendants understand this request. For the sake of transparency, the defendants state that a former employee of WEC (and its predecessor the Government Accountability Board) is now an employee of ERIC, and that person would have made changes to the database while employed by WEC/GAB but has not done so while employed by ERIC.

REQUEST FOR ADMISSION NO. 53: Admit that employees and/or agents of ERIC make changes to the Database.

RESPONSE: Deny.

REQUEST FOR ADMISSION NO. 54: Admit that employees and/or agents of ERIC have access to the Database.

RESPONSE: Deny.

REQUEST FOR ADMISSION NO. 55: Admit that WEC is required to comply with HAVA when maintaining the Database.

RESPONSE: Defendants object to this request as vague and ambiguous. Defendants admit that, per the Supremacy Clause, WEC must comply with any federal statute that applies to it. Given that the request does not specify any particular part of HAVA that WEC must comply with or what WEC must do to comply with that part of HAVA, Defendants cannot admit or deny this request with any more specificity.

REQUEST FOR ADMISSION NO. 56: Admit that WEC is required to comply with HAVA when maintaining the Registration List.

RESPONSE: Defendants object to this request as vague and ambiguous. Defendants admit that, per the Supremacy Clause, WEC must comply with any federal statute that applies to it. Given that the request does not specify any particular part of HAVA that WEC must comply with or what WEC must do to comply with that part of HAVA, Defendants cannot admit or deny this request with any more specificity.

INTERROGATORIES

INTERROGATORY NO. 1: Identify each person answering, responding, providing information or assisting in answering or responding to these Requests for Admission, Interrogatories, and/or Requests for Production of Documents.

ANSWER: Defendants respond that, other than undersigned counsel the following people were involved with person answering, responding, providing information or assisting in answering or responding to these Requests for Admission, Interrogatories, and/or Requests for Production of Documents:

- Robert Kehoe, Deputy Administrator of WEC
- Sara Linksy, IT Director of WEC
- James Witecha, Chief Legal Counsel of WEC

INTERROGATORY NO. 2: Identify the actions WEC has taken, and currently takes, to “maintain” the Registration List as the phrase “maintain” is used in Wis. Stat. § 6.36.

ANSWER: Defendants object that this interrogatory is vague and ambiguous in asking for “the actions WEC has taken, and currently takes, to ‘maintain’ the Registration List as the phrase ‘maintain’ is used in Wis. Stat. § 6.36.” Subject to that objection, Defendants respond that WEC takes a number of actions to maintain the Registration List.

WEC maintains the Registration List through the centralized user interface of WisVote. The content of the Registration List is revised in the database, through clerk actions (except as otherwise authorized by statutes). The user interface collects information such as a voter’s name, voter registration number, elections they’ve voted in. For example, when a voter registers to vote by completing a paper EL-131 at their clerk’s office – that

paper record is compiled and maintained at the clerk's office. But because WEC is required to compile and maintain the official registration list, the clerk must use the electronic form and fields provided by WEC to include that information on the electronic Registration List. For example, WEC provides the method and mechanism by defining separate columns to collect First, Middle, and Last names. However not all voters have a middle name or even a last name. WEC maintains the mechanism that does not require a middle name and can override the requirement for a last name in those circumstances. Similarly, WEC determines the format of acceptable birth dates so that clerks can maintain their data appropriately. The user interface allows clerks to meet their statutory duties.

WEC works with DET to host the Database, of which the Registration List is one part. WEC is not the only entity with access to the Registration List. Local clerks also have access to the Registration List. WEC maintains several mechanisms to support clerks in this endeavor. WEC provides voter registration list alerts that notify clerks of potential matches from their voter records to other records maintained in the system – death records, felon records, duplicates across voter records in other municipalities. WEC receives felon data from the Department of Corrections and death data from the Department of Health Services. In addition, county registers in probate inform WEC regarding adjudications of incompetency, and WEC staff then enter that

data into Registration List. While WEC maintains the functionality of Registration List Alerts, local clerks review and either accept or deny these matches. Clerks may also view the data to determine matches of challenges against any of their electors.

WEC also maintains the functionality to appropriately district a voter to the appropriate ward or aldermanic district as listed in Wis. Stat. § 6.36(1)(a)3. In the recent redistricting process, WEC staff performed the system updates that updated the boundary lines for these districts on our system address records, which updated the ward and aldermanic assignments of the voters. WEC also maintains the system logic that determines a voter's unique registration number assigned by the commission as described in Wis. Stat. § 6.36(1)(a)4. However, it is a local responsibility to assign an address to a voter, which assigns the ward and aldermanic district.

WEC staff also maintain records that help facilitate other actions required under Wis. Stat. § 6.36. WEC creates election records so that local clerks can associate election participation recorded on the poll books in accordance with Wis. Stat. § 6.36(1)(a)7.

There are many other instances where WEC maintains or creates a record to facilitate the Registration List in Wis. Stat. § 6.36. WEC staff receives and processes notifications of registration of electors in other states. For example, California sent WEC a communication that 5 voters registered there

whose last registered address was in Wisconsin. Using the information available, WEC staff will inactivate those voter records.

INTERROGATORY NO. 3: Identify the actions WEC has taken, and currently takes, to interpret the term “maintain” as the phrase is used in Wis. Stat. § 6.36.

ANSWER: Defendants object that this interrogatory is vague and ambiguous in asking for “the actions WEC has taken, and currently taken, to interpret the term ‘maintain’ as the phrase is used in Wis. Stat. § 6.36.” WEC has not promulgated administrative rules or guidance documents interpreting the word “maintain.” WEC has promulgated rules related to voter registration, which provide that the “Statewide Voter Registration System’ is the election administration software application provided by the commission to enable local election officials to register voters, track absentee voting and administer elections.” Wis. Admin. Code EL § 3.01(16). In addition, WEC follows the Wisconsin Supreme Court’s interpretation of the voter registration statutes as announced in *State ex rel. Zignego v. WEC*, 2021 WI 32, ¶¶ 13–37, 396 Wis. 2d 391, 957 N.W.2d 208. WEC interpreted Wis. Stat. § 6.36 in designing the WisVote interface, so that each item in the statute could be captured through the user interface that clerks must use to maintain their data locally and to fulfill their other duties such as printing the poll list, tracking absentee ballots, etc.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1: A copy of the current Database including all standard data fields that are available to the public.

RESPONSE: Defendants object to this request as overly broad and unduly burdensome in requesting the entire Database, which includes many pieces of information, such as polling place records, millions of address points, and others, that are not relevant to this case. In addition, Defendants object that certain voter registration information cannot be provided to members of the public, Wis. Stat. § 6.36(1)(b)1.a., and some registration records are made confidential under Wis. Stat. § 6.47. Further, even with respect to a narrower request for only the voter registration records within the Database, Wis. Stat. § 6.36(6) provides that WEC “shall establish by rule the fee for obtaining a copy of the official registration list, or a portion of the list,” with the amount of the fee “set, after consultation with county and municipal election officials, at an amount estimated to cover both the cost of reproduction and the cost of maintaining the list at the state and local level.” WEC has established the fee at \$12,500 for the entire Registration List containing voter registration data that is not confidential or protected by law. Wis. Admin. Code EL § 3.50(4). As a result, Defendants believe Wisconsin law does not allow them to provide a responsive document without payment of the statutorily required fee.

REQUEST NO. 2: A copy of the Database as it was constituted at 11:59 p.m. on October 1, 2022.

RESPONSE: Defendants respond that they have no such document.

Defendants are not able to recreate the Database as it existed as of a certain date and time in the past.

REQUEST NO. 3: A copy of the Database as it was constituted at 11:59 p.m. on November 3, 2022.

RESPONSE: Defendants respond that they have no such document.

Defendants are not able to recreate the Database as it existed as of a certain date and time in the past.

REQUEST NO. 4: A copy of the Database as it was constituted on December 31, 2022.

RESPONSE: Defendants respond that they have no such document.

Defendants are not able to recreate the Database as it existed as of a certain date and time in the past.

REQUEST NO. 5: Copies of all contracts with any vendor(s) that currently provide software, firmware, and/or hardware utilized in maintaining the Database.

RESPONSE: Defendants will produce documents responsive to this request, which are invoices for the licenses for certain software programs. The hardware used for the Database is owned and operated by the Wisconsin Department of Administration, Division of Enterprise Technology (DET), and WEC does not have a contract with DET.

REQUEST NO. 6: Copies of all contracts with any vendor(s) that have provided software, firmware, and or hardware utilized in creating and/or

maintaining the Database.

RESPONSE: Defendants will produce documents responsive to this request, which are invoices for the licenses for certain software programs. The hardware used for the Database is owned and operated by DET, and there is no contract between DET and WEC.

REQUEST NO. 7: Copies of any hosting agreement(s) related to the creation and/or maintenance of the Database.

RESPONSE: Defendants respond that they have no such documents. DET hosts the Database, and there is no contract between WEC and DET.

REQUEST NO. 8: Copies of all contracts with any vendor(s) that have provided firmware utilized in creating and/or maintaining the Database.

RESPONSE: Defendants respond that they have no such documents.

REQUEST NO. 9: Copies of all contracts with any vendor(s) that currently provide hardware utilized in maintaining the Database.

RESPONSE: Defendants respond that they have no such documents.

REQUEST NO. 10: A copy of the Registration List as it was constituted on October 1, 2022.

RESPONSE: Defendants respond that it does not have such a document in its possession, custody or control. Defendants are not able to recreate the Registration List as it existed as of a certain date and time in the past.

REQUEST NO. 11: A copy of the Registration List as it was constituted on November 3, 2022.

RESPONSE: Defendants respond that it does not have such a document in its possession, custody or control. Defendants are not able to recreate the Registration List as it existed as of a certain date and time in the past.

REQUEST NO. 12: A copy of the Registration List as it was constituted on December 31, 2022.

RESPONSE: Defendants respond that it does not have such a document in its possession, custody or control. Defendants are not able to recreate the Registration List as it existed as of a certain date and time in the past.

REQUEST NO. 13: A copy of any agreement between WEC and ERIC for the purpose of maintaining the Registration List, including all amendments.

RESPONSE: Defendants object to this request as vague and ambiguous in asking for an agreement “for the purposes of maintaining the Registration List.” ERIC has no role in maintaining the Registration List. Subject to this objection, Defendants will produce responsive documents. Defendants note that the Bylaws and Membership Agreement for ERIC are publicly available at:

[https://ericstates.org/wp-content/uploads/2022/06/ERIC Bylaws and Membership Agreement June 2022 FINAL FOR PUBLICATION.pdf](https://ericstates.org/wp-content/uploads/2022/06/ERIC%20Bylaws%20and%20Membership%20Agreement%20June%202022%20FINAL%20FOR%20PUBLICATION.pdf)

REQUEST NO. 14: A copy of any agreement between Wolfe or any other “chief election officer” as that term is defined by Wisconsin Statutes and ERIC for the purpose of maintaining the Registration List, including all amendments.

RESPONSE: See Response to Request No. 13.

REQUEST NO. 15: Copies of all documents that evince, verify, show, or otherwise establish the underlying support to any of the answers to these Requests to Admit or Interrogatories.

RESPONSE: Defendants will produce documents responsive to this request, if any exist.

REQUEST NO. 16: Produce all documents referred to by you in responding to any of the preceding Requests for Admission or Interrogatories.

RESPONSE: Defendants will produce documents responsive to this request, if any exist.

REQUEST NO. 17: Produce all documents relied upon by you in preparing a Response to any of the preceding Requests for Admission or Interrogatories.

RESPONSE: Defendants will produce documents responsive to this request, if any exist.

Dated this 20th day of February 2023.

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin

As to the requests to admit, objections to interrogatories and document requests:

Electronically signed by:

Brian P. Keenan
BRIAN P. KEENAN
Assistant Attorney General
State Bar #1056525

Attorneys for Defendants

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-0020
(608) 294-2907 (Fax)
keenanbp@doj.state.wi.us

STATE OF WISCONSIN
ELECTIONS COMMISSION

ARDIS CERNY,

Complainants,

v.

WISCONSIN ELECTIONS COMMISSION,
MEAGAN WOLFE, DON M. MILLIS,
ROBERT F. SPINDELL, JR., MARGE BOSTELMANN,
ANN S. JACOBS, MARK L. THOMSEN, and CARRIE RIEPL,

AFFIDAVIT OF BRIAN KIND

Brian Kind states under oath:

- 1) I am the owner of BK-DATASTRATEGY LLC and am in the business of data analysis, management and consulting.
- 2) I have been retained by Attorney Michael Dean to provide the following information obtained from the complete "Statewide List" of registered Wisconsin voters commonly known as "MyVote," available for purchase at <https://badgervoters.wi.gov/Requests/NewRequest>, and downloaded March 11, 2024.
- 3) Between September 15, 2014 and March 11, 2024, 3,194,786 new registrants were added to the MyVote list. Of those new registrants, 2,097,399 remain listed as "active."
- 4) The most common methods for new registration were registrations at polling places (50.1 %), online (27.9 %), and at municipal clerk offices (13.1 %).

Date: July 26, 2024

Brian Kind

Brian Kind

State of Wisconsin)
)
County of Dane)

Personally came before me July 26, 2024, the above named Brian Kind, known to me to be the person who executed this instrument and acknowledged the same.

Emily Jean Wheeler

Print Name: *Emily Jean Wheeler*

My Commission Expires: *11/20/2025*

