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Clerk of Court
Marinette County
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Honorable Peggy L. Miller
Branch 1

STATE OF WISCONSIN CIRCUIT COURT MARINETTE COUNTY

STATE OF WISCONSIN
ex rel. THOMAS OLDENBURG

Petitioner,

vs.

Case No.

WISCONSIN ELECTIONS COMMISSION, Marge
Bostelmann, Ann S. Jacobs, Don M. Millis,
Carrie Riepl, Robert F. Spindell, Jr., Mark L. Thomsen
Commissioners,

Case Code: 30952

MEAGAN WOLFE, in her official capacity as
Administrator of the Wisconsin Elections Commission

Respondents.

APPLICATION FOR ALTERNATIVE WRIT OF MANDAMUS

NOW COMES Petitioner Thomas Oldenburg, by his attorneys the Law Office of Kevin M. Scott LLC, by Kevin M. Scott, in order to enforce matters *publici juris*, and as for an Application for the immediate issuance of an Alternative Writ of Mandamus states as follows—

INTRODUCTION

This application seeks an alternative writ of mandamus compelling Respondent Wisconsin Elections Commission (“WEC”) to maintain the state’s “registration list”—the list of eligible voters that the state’s clerks are required to utilize when conducting elections—so that no voters are added to it that have been previously designated as “inactive” and thus have been removed from the list.

WEC is statutorily charged with the duty to “compile and maintain electronically [the state’s] official registration list (the “Registration List”).” Wis. Stat. §§ 5.05(15); 6.36(1)(a). Wisconsin statutes define the Registration List as the list of “**electors that are**

properly registered to vote.” Wis. Stat. § 5.02(17) (emphasis added). The statutory requirement to do so is legislation conforming with the federal Help America Vote Act of 2002 (“HAVA”)—which requires that states create and maintain a “single, uniform, official, centralized, interactive computerized statewide voter registration list...that contains the name and registration information of every **legally registered voter** in the State....” 42 U.S.C. § 15483(a)(1)(A) (emphasis added). Wisconsin’s municipal clerks are statutorily required to utilize the Registration List in every election. Wis. Stat. § 5.05(15).

WEC maintains the registration list by keeping it within a larger database of voter records. The database contains upwards to 7.8 million voter records. However, the majority of these entries are designated as “inactive” voter records. Inactive voters consist of those that WEC acknowledges are not properly registered electors such as felons, dead persons, and people that have moved out of the state.

The registration list consists of those voter records within the database that are designated “active” voters. WEC has described the voter database system as a “filing cabinet” and the registration list as consisting of a “drawer” in that filing cabinet.

The issue that has arisen is that WEC is maintaining the database in a manner where “inactive” voters can be designated as “active” at any time. In other words, rather than simply having a separate list of only those who are “properly registered to vote,” WEC maintains a system whereby any one of approximately 3.9 million persons that WEC acknowledges are not eligible voters can be added to the registration list—even dead persons—at any time with no action required other than a simple change of status. Who can make this change? Thousands of people including any employee of WEC, any one of Wisconsin’s 1,852 clerks or their employees, or anyone designated as an “election official” by one of the clerks.

There is no dispute that persons listed as “active” can properly be switched to “inactive” status by election officials. Wisconsin statutes provide 10 separate instances whereby a clerk or other person is *mandated* to change a voter’s status from “eligible” to “ineligible (i.e. active to inactive). However, at no time is any election official entitled under Wisconsin law to switch a voter’s status from “ineligible” to “eligible” (inactive to active). There is *not one statute* authorizing such activity.

As a result, it is WEC’s plain and positive duty that whether “compiling” or “maintaining” the Registration List, WEC must ensure that no voter files designated as “inactive” in the database are added to the registration list by becoming “active.” “Inactive” voters are not properly registered to vote and may not be part of the registration list, While persons designated as “inactive” may re-register (if eligible), when they do so they are required to be given a new voter identification number and new voter file to be included on the registration list. They may not utilize the old registration file.

To that end, this application seeks an alternative writ of mandamus compelling WEC to cease maintaining the registration list in a manner whereby voter files designated as “inactive” may be changed to “active” voter files, and thus become part of the registration list.

PARTIES

1. Petitioner Thomas Oldenburg is an adult resident of the Town of Amberg in the State of Wisconsin. Petitioner brings this matter on behalf of the citizens of the State of Wisconsin as a matter *publici juris*.

2. Petitioner is an eligible elector who has voted in recent elections.

3. Petitioner is also a taxpayer, and asserts that the Respondents are expending state tax money in an unlawful manner in relation to the administration of elections in this state as detailed in the allegations below.

4. Respondent Wisconsin Elections Commission (“WEC”) is an independent agency created under Subchapter III of Wisconsin Statutes Chapter 15.

5. Marge Bostelmann, Ann S. Jacobs, Don M. Millis, Carrie Riepl, Robert F. Spindell, Jr., and Mark L. Thomsen are WEC’s commissioners (the “Commissioners”).

6. The Commissioners are WEC’s “Head” per Wis. Stat. § 15.01(8).

7. Respondent Meagan Wolfe serves as WEC’s administrator and the chief elections officer of the State of Wisconsin. Wis. Stats. § 5.05(3g).

APPLICABLE LAW

8. Article I, § 4, of the U.S. Constitution provides that “[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof.”

9. “It is true that...the legislature has the constitutional power to say how, when and where a ballot shall be cast. . . .” *State ex rel. Frederick v. Zimmerman*, 254 Wis. 600, 613, 37 N.W.2d 472 (1949).

10. To that end—

[T]he right as well as the duty is vested in the legislature to prescribe reasonable rules and regulations under which [the franchise] may be exercised. Such rules and regulations tend to certainty and stability in government and render it possible to guard against corrupt and unlawful means being employed to thwart the will of those lawfully entitled to determine governmental policies. Their aim is to protect lawful government, not to needlessly harass or disfranchise any one.

League of Women Voters of Wisconsin Educ. Network, Inc. v. Walker, 2014 WI 97, ¶ 20, 357 Wis. 2d 360, 373, 851 N.W.2d 302, 309 (quoting *State ex rel. Small v. Bosacki*, 154 Wis. 475, 478-79, 143 N.W. 175 (1913)).

11. In pursuance of this goal, the Legislature has enacted laws related to the casting of ballots in Wisconsin. They are primarily found in Chapters 5 to 10 and 12.

12. According to the 2015 Wisconsin Act 118 Legislative Council Act Memo, WEC was created WEC to “administer and enforce election laws.”¹

13. Pursuant to Wis. Stat. § 5.05(1) WEC has “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.”

14. As part of its general duty to administer the Wisconsin’s Elections, WEC has been statutorily charged with compiling and maintaining the State’s “registration list.”

WEC’s Responsibility to Compile and Maintain the Registration List
as set forth in Wisconsin Statutes

15. In addition to other duties assigned under section 5.05, the Legislature has tasked WEC with the duty to “compile and maintain electronically an official registration list.” Wis. Stat. § 6.36(1).

16. The “registration list” is defined as “the list of electors who are properly registered to vote.” Wis. Stat. 5.02(17).

17. Wis. Stat. § 6.36(1)(a) sets forth the information about “electors who are properly registered to vote” that the “registration list” must contain.

18. Wis. Stat. § 5.05(15) provides—

REGISTRATION LIST. The commission is responsible for the design and maintenance of the official registration list under s. 6.36. **The**

¹ Found at <https://docs.legis.wisconsin.gov/2015/related/lcactmemo/act118.pdf>

commission shall require all municipalities to use the list in every election and may require any municipality to adhere to procedures established by the commission for proper maintenance of the list.

(emphasis added)

19. In sum, WEC is expressly charged by Wisconsin law with providing an official registration list to Wisconsin's clerks for use in every election that is "the list of electors that are properly registered to vote."

The History of WEC's Statutory Duty to Compile and Maintain the Registration List

20. The statutes above setting out WEC's duty to create and maintain the Registration List were created or amended as part of 2003 Wisconsin Act 265, which was initiated by the state Elections Board in response to the standards imposed on the state by the federal Help America Vote Act of 2002 ("HAVA"). Wisconsin Legislative Council Information Memorandum, IM 2004-2, *2003 Wisconsin Act 265, New Law Relating to Election Administration*, p. 1.²

21. Section 303 of HAVA (enacted as 42 U.S.C. § 15483 sets forth the federal mandate that states create a statewide, computerized registration list for use in federal elections and provides—

§15483. Computerized statewide voter registration list requirements and requirements for voters who register by mail

(a) Computerized statewide voter registration list requirements

(1) Implementation

(A) In general

Except as provided in subparagraph (B), each State, 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**

²https://docs.legis.wisconsin.gov/misc/lc/study/2004/special_committee_on_election_law_review/010_oct_ober_13_2004_meeting/im_2004_02

information of every legally registered voter in the State and assigns a unique identifier to each **legally registered voter** in the State (in this subsection referred to as the "computerized list"), and includes the following:

- (i) The computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the State.
- (ii) The computerized list contains the name and registration information of every legally registered voter in the State.
- (iii) Under the computerized list, a unique identifier is assigned to each legally registered voter in the State.
- (iv) The computerized list shall be coordinated with other agency databases within the State.
- (v) Any election official in the State, including any local election official, may obtain immediate electronic access to the information contained in the computerized list.
- (vi) All voter registration information obtained by any local election official in the State shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official.
- (vii) The chief State election official shall provide such support as may be required so that local election officials are able to enter information as described in clause (vi).
- (viii) The computerized list shall serve as the official voter registration list for the conduct of all elections for Federal office in the State.

(emphasis added)

22. In his October 29, 2002, remarks on signing HAVA, President George W.

Bush stated in part—

The President. Today I'm proud to sign into law an important reform for our Nation. Americans are a self-governing people, and the central commitment of self-government is free and fair elections. The Help America Vote Act of 2002 is a bipartisan measure to help States and localities update their systems of voting and ensure the integrity of elections in America.

The commission that helped inspire this legislation was led by two exceptional Americans, with broad experience in public service, our 38th and 39th President— Presidents. *[Laughter]* Although Gerald

Ford and Jimmy Carter could not be here today, our Nation is grateful for their work on election reform and for all they have given to America.

...

The legislation I sign today will add to the Nation's confidence. **Each State will be required to maintain a clean and current and accurate State—statewide list of registered voters**, making it easier to register and easier to detect fraud.³

(emphasis added)

23. As stated by President Bush, one of the main purposes of HAVA is to require states to maintain a “clean and current” registration list that contains only “legally registered voters.”

24. HAVA was then the basis for enactment of section 6.36 and the requirement that WEC compile and maintain an “electronic list” of “electors that are properly registered to vote” referred to herein as the Registration List.

FACTS

WEC Maintains the Registration List within a larger Database of Voter Files.

25. WEC described its method of compiling and maintaining the Registration List as it relates to a larger database of voter records it maintains in the matter Scott Sidney v. Wisconsin Elections Commission, et al. Ozaukee County Case No. 2022CV000300 (“Sidney”).

26. In Sidney, WEC filed an affidavit of Deputy Administrator Robert Kehoe who (attached as **Exhibit A**) providing sworn testimony that the method was as follows—

³ Found at—<https://georgewbushwhitehouse.archives.gov/news/releases/2002/10/20021029-1.html>.

6. The State maintains a database with voter registration records (the "Database") that supports the MyVote system. WEC is the lead agency responsible for the Database, but other agencies assist in the maintenance, support, and security of the Database, including the Department of Administration's Division of Enterprise Technology, the Department of Transportation, the Department of Corrections, the Department of Health Services, and the Department of Justice.

7. The Database contains records of every voter registration record known to the State of Wisconsin of every person who has ever registered to vote in the state. The Database includes records of individuals who are currently validly registered to vote and eligible to cast a ballot. It also includes records of individuals in the four categories listed above (among others) who once were but no longer are validly registered to vote.¹

8. The Database contains data fields that indicate which records correspond to active voter registrations and which records do not. To track which individuals in the Database are validly registered and which are not, there is a data field associated with each record that indicates whether that individual is "active" (i.e. eligible) or "inactive" (i.e. ineligible).

9. For those records that are marked as "inactive," separate data fields indicate: (1) the reason why that individual is ineligible; (2) when the determination of ineligibility was made; (3) who documented the ineligibility; (4) and when the record was created.

10. The Database represents the technical method WEC uses to compile and maintain the statewide "official registration list" required by Wis. Stat. § 6.36(1)(a). The set of individuals in the Database who are listed as "active" constitute the "official registration list," as they are registered voters.

11. When poll books are printed or otherwise prepared for use under provisions like Wis. Stat. §§ 6.36(6) and 6.45, or when registration lists are requested

by members of the public under provisions like Wis. Stat. § 6.36(1)(b)1., active records are extracted from the Database and translated into a useable format like Excel spreadsheets, Word documents, or Adobe PDFs.

12. Qualified local election officials may access the Database and view and modify all records, both active and inactive, that correspond to their jurisdiction. For instance, the City of Port Washington's clerk has editing access to the portion of the Database containing all active and inactive records whose residence is listed as the City of Port Washington.

13. When municipal clerks use the Database to print poll books to be used on election day, they do so by using a poll book generation process that only includes records marked as "active" in the Database. (A record must meet various other requirements to appear in a poll book, for example those related to residency duration.) It is not technically possible for municipal clerks to generate a poll book for use on election day that contains records marked as "inactive." Municipal clerks must use the automatic process that WEC has created and cannot edit that process in any way.

14. Although "inactive" records in the Database are not used when generating registration or poll lists, municipal clerks often use the records of inactive individuals for other purposes. Most importantly, when clerks receive a voter registration application, they will check it against the Database as an initial step in determining whether the applicant is eligible to register. If the applicant is listed as "inactive" in the Database, the application may be rejected (assuming the

corresponding explanation indicates that the individual is in fact ineligible to register).²

18. It is difficult to understand, as a technical matter, what Plaintiff means by this request. Although the Database contains both active and inactive records, the set of inactive records is not in any other way linked or otherwise connected to the registration list. Again, the registration list is simply the subset of records in the Database marked as “active,” a subset that can be extracted from the Database and used for various purposes during election seasons.

19. An analogy may help illuminate how the Database works in this regard. The Database functions like a filing cabinet. Within that filing cabinet there are separate drawers—one for eligible records, and one for inactive records. The “drawer” of eligible records constitutes the registration list, and the “drawer” of inactive records is used to ensure that ineligible voters do not make it into the “drawer” of eligible records. Plaintiff apparently wants the already-separate “drawers” to be moved to entirely different filing cabinets, but that would make no functional difference whatsoever in how the eligible and inactive records are used.

27. Kehoe indicates that election officials have the ability to convert “inactive” records to “active” in paragraph 14 of his affidavit, provided above.

28. WEC later filed the “Supplemental Affidavit of Robert Kehoe” (attached as **Exhibit B**), in which he explicitly admitted that “qualified election officials” were able to change a voter record’s status from “inactive” to “active”—

3. If a qualified local election official who has permission to view and edit portions of WEC's database changes a voter registration record's status from "Inactive" to "Active" (or vice versa), that status change is recorded and tracked in the database such that WEC can see it.

**There is no Statutory Authority by which a Voter Record
may be changed from Inactive to Active, and WEC is acting improperly by
allowing such Changes.**

29. WEC provided the above sworn testimony that it equates the statutory terms “eligible” and “ineligible” with “active” and “inactive” insofar as its maintenance of the Registration List is concerned.

30. There are eighteen statutory sections in Wisconsin Statutes that refer to when it is necessary for an election official to change a voter’s record from “eligible” to “ineligible.”

31. These statutory sections are—

- [6.50\(2r\)\(g\)](#)
- [6.50\(6\)](#)
- [6.33\(4\)](#)
- [6.50\(7\)](#)
- [6.50\(4\)](#)
- [6.48\(1\)\(d\)](#)
- [6.36\(1\)\(e\)](#)
- [6.50\(2\)](#)
- [6.36\(1\)\(d\)](#)
- [6.33\(5\)\(a\)1.](#)
- [6.50\(10\)](#)
- [6.48\(2\)\(b\)](#)
- [6.50\(5\)](#)
- [6.32\(4\)](#)
- [6.56\(4\)](#)
- [6.50\(3\)](#)
- [6.275\(1\)\(f\)](#)
- [6.56\(3\)](#)

32. Ten of the above statutory sections describe situations wherein a voter’s record *must* be changed from eligible to ineligible (i.e. active to inactive) status. These are—

- [6.50\(6\)](#) – “The municipal clerk, upon authorization by an elector, **shall change the elector’s registration from eligible to ineligible status.**”

- [6.50\(4\)](#) - “The 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. No notice need be sent of registration changes made under this subsection.”
- [6.48\(1\)\(d\)](#) - “If the clerk determines that the challenged elector is not qualified, the clerk **shall change the challenged elector’s registration from eligible to ineligible** status on the registration list and notify the inspectors for the ward or election district where the elector was registered.”
- [6.50\(2\)](#) – “If an elector to whom a notice of suspension was mailed under sub. [\(1\)](#) has not applied for continuation of registration within 30 days of the date of mailing, the commission **shall change the registration status of that elector from eligible to ineligible** on the day that falls 30 days after the date of mailing.”
- [6.36\(1\)\(d\)](#) - “Upon receipt of official notification by the appropriate election administrative authority of another state, territory, or possession that an elector whose name appears on the list has registered to vote in that state, territory, or possession, the commission or the municipal clerk of the municipality where the elector formerly resided **shall change the elector’s registration from eligible to ineligible status.**”
- [6.48\(2\)\(b\)](#) - “Upon appearing in person, objectors shall be examined, under oath, by the commissioners and testimony taken. Judgment rests with the board of election commissioners and decisions shall be rendered as soon as heard. All cases are heard and decided summarily. The commissioners shall determine whether the person objected to is qualified. If they determine that a person is not qualified, the executive director of the board of election commissioners **shall change the elector from eligible to ineligible status** on the registration list and shall notify the proper ward officials of the change immediately.”
- [6.50\(5\)](#) - “The registration of any elector whose address is listed at a building which has been condemned for human habitation by the municipality under s. [66.0413 \(1\) \(j\)](#) shall be investigated by the municipal clerk or board of election commissioners. **If the clerk or board of election commissioners can find no reason why the registration of such an elector should not be changed from eligible to ineligible status, the clerk or board of election commissioners shall change the elector’s registration status.** If the elector has left a forwarding address with the U.S. postal service, a notice of change in status shall be mailed by the clerk or board of election commissioners to the forwarding address.”
- [6.32\(4\)](#) - “If the form is sufficient to accomplish registration and the commission or clerk has no reliable information to indicate that the proposed elector is not qualified, the commission or clerk shall enter the elector’s name

on the registration list and transmit a 1st class letter or postcard to the registrant, specifying the elector's ward or aldermanic district, or both, if any, and polling place. The letter or postcard shall be sent within 10 days of receipt of the form. If the letter or postcard is returned, or if the commission or clerk is informed of a different address than the one specified by the elector, **the commission or clerk shall change the status of the elector on the list from eligible to ineligible.** The letter or postcard shall be marked in accordance with postal regulations to ensure that it will be returned to the commission or clerk if the elector does not reside at the address given on the letter or postcard.

- [6.50\(3\)](#) - "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 \(5\)](#)."
- [6.56\(3\)](#) - "Upon receipt of the list under sub. [\(1\)](#), the municipal clerk or board of election commissioners shall make an audit of all electors registering to vote at the polling place or other registration location under s. [6.55 \(2\)](#) and all electors registering by agent on election day under s. [6.86 \(3\) \(a\) 2](#), unless the clerk or board of election commissioners receives notice from the elections commission under sub. [\(7\)](#) that the elections commission will perform the audit. The audit shall be made by 1st class postcard. The postcard shall be marked in accordance with postal regulations to ensure that it will be returned to the clerk, board of election commissioners, or elections commission if the elector does not reside at the address given on the postcard. If any postcard is returned undelivered, or if the clerk, board of election commissioners, or elections commission is informed of a different address than the one specified by the elector which was apparently improper on the day of the election, **the clerk, board of election commissioners, or elections commission shall change the status of the elector from eligible to ineligible on the registration list**, mail the elector a notice of the change in status, and provide the name of the elector to the district attorney for the county where the polling place is located and the elections commission."

33. There is not one section in Wisconsin Statutes authorizing any election official to change a voter record status from ineligible to eligible (i.e. inactive to active).

34. When an otherwise qualified elector's voter record is changed from eligible to ineligible status, the remedy provided by the statutes is not to simply change the record back to eligible status, but for the elector to reregister altogether. Wis. Stat. § 6.50(10).

APPLICATION

A Writ of Mandamus must be issued compelling WEC to prevent "Inactive" Voters from being added to the Registration List by having their Voter Record status changed to "Active."

35. A writ of mandamus requires "(1) a clear legal right; (2) a plain and positive duty; (3) substantial damages or injury should the relief not be granted, and (4) no other adequate remedy at law." *State ex rel. S.M.O., In re*, 110 Wis.2d 447, 449, 329 N.W.2d 275 (Ct. App. 1982).

36. All of the criteria to issue a writ of mandamus are present in this matter.

There is a Clear Legal Right to have WEC conform its actions to Statutory Requirements.

37. "It is the settled rule in this state, and is in accord with the great weight of American authority, that, where the relief sought is a matter of public right, the people at large are the real party, and any citizen is entitled to a writ of mandamus to enforce the performance of such public duty. *State ex rel. Burnham v. Cornwall*, 97 Wis. 565, 73 N.W. 63 (1897).

38. Petitioner seeks to have this Court issue a writ of mandamus to compel WEC to conform its actions to the law—a public right.

39. There is a clear legal right to have WEC conform its actions to statutory requirements.

40. "Every administrative agency must conform precisely to the statutes from which it derives power." *Karow v. Milwaukee County Civil Service Commission*, 82 Wis.2d 565, 570 n. 5, 263 N.W.2d 214 (1978)(citing *Mid-Plains Telephone, Inc. v. Public Service Commission*, 56 Wis.2d 780, 786, 202 N.W.2d 907, 910 (1973); *State ex rel. Baranowski v. Koszewski*, 251 Wis. 383, 386, 387, 29 N.W.2d 764 (1947)).

41. WEC is statutorily charged with compiling and maintaining the Registration List.

42. In doing so, there is a clear legal right vested in the citizens to see that WEC does so in accordance with the statutes that govern the process.

A "Plain and Positive Duty" exists for WEC to compile and maintain the Registration List so that only Properly Registered Electors are designated as "Active" Voters.

43. Existence of a "positive and plain" duty subject to mandamus is a question of law resolved by the court, even where the question is a "novel" one, not previously "settled or obvious." See *State ex rel. Dep't of Nat. Res. v. Wisconsin Ct. of Appeals, Dist. IV*, WI 25, ¶ 11, 380 Wis. 2d 354, 366, 909 N.W.2d 114, 120, discussed *infra*, § II.A.

44. Wisconsin law provides that the Registration List is to only consist of "electors that are properly registered to vote." Wis. Stat § 5.02(17).

45. By WEC's own admission the database consists of "every voter registration record known to the State of Wisconsin of every person who has ever registered to vote in the state" including deceased persons, persons convicted of a felony, persons adjudicated as incompetent, and persons who have moved out of Wisconsin.

46. WEC acknowledges that these people are not "validly registered."

47. To designate those that are not validly registered, WEC applies the label "inactive voter," which corresponds to the term "ineligible" in the statutes.

48. WEC asserts that only those who are “active” voters are considered to be part of the Registration List.

49. However, WEC allows changes to the database so that “inactive” (ineligible) voters may be added to the Registration List at any time, simply by changing their status from “inactive” to “active.”

50. In other words, WEC allows persons to be added to the Registration List at any time who have been designated as ***not*** properly registered to vote, merely by changing one data field in the voter record.

51. The change can be made by any person with authorized access to the Registration List, which includes “an employee of [WEC], a municipal clerk, or an election official who is authorized by a municipal clerk.” Wis. Stat. § 6.36(1)(b)(2).

52. An “election official who is authorized by a municipal clerk” can be any one of thousands of unidentified persons.

53. In other words, thousands of unidentified persons can add a any ineligible voter found in the database, including a dead person, to the Registration List without any determination whatsoever that the person being added is, in fact, a properly registered elector.

54. This is because WEC allows voter records to be altered from “inactive” to “active” status without any criteria for doing so whatsoever.

55. There is no statutory authorization for WEC to allow persons to be added to the Registration List who are not “electors that are properly registered to vote,” including those designated as “inactive” in the database.

56. To the extent that WEC believes it is authorized to do so based on its general authority to administer elections, it is wrong.

57. Wis. Stat. § 227.10(1) provides that “[e]ach agency ***shall promulgate as a rule*** each statement of general policy and ***each interpretation of a statute which it specifically adopts to govern its enforcement or administration of that statute.***” (emphasis added).

58. WEC has never promulgated any rule that authorizes a person’s voter record to be changed from “inactive” to “active” status.

59. To conform its actions to the law, a writ of mandamus must be issued compelling WEC to compile and maintain the Registration List in a manner so that “inactive” voter records may not be changed to “active,” and thus placing persons on the Registration List that are not “properly registered to vote.”

There will be Substantial Damages or Injury should Mandamus not be granted.

60. The public has a substantial interest in seeing that public officers perform duties imposed by law. *State ex rel. Pierce v. Inst*, 158 Wis. 417, 149 N.W. 205 (1914)

61. By the same token, the public is substantially injured when government officials do not perform acts required by law.

62. There is no need to show individualized injury as “any citizen is entitled to the writ of mandamus to enforce the performance of such public duty...” *State ex rel. Pierce v. Inst*, 158 Wis. 417, 149 N.W. 205 (1914).

63. If WEC continues to allow inactive voters to be added to the Registration List, it will affect the poll lists that Clerks will be creating for the upcoming general election. Wis. Stat. § 5.05(15).

64. The one man-one vote axiom applies with its greatest force when addressing the right of the electorate to be free of illegally cast ballots. A ballot illegally

cast by a non-qualified voter does not merely unconstitutionally *dilute* a qualified elector's vote, it *cancels* the qualified elector's vote altogether.

65. Allowing the cancellation of valid votes by those who are not qualified, properly registered electors causes substantial damage to every qualified voter and leads to distrust in the results of elections.

There is No Other Adequate Remedy at Law.

66. Here, the injury and damages described above sustained cannot be compensated by an award of monetary damages and as such, this element is satisfied. See *American Mut. Liability Ins. Co. v. Fisher*, 58 Wis.2d 299, 305, 206 N.W.2d 152 (1973). (To receive an injunction there must be an "irreparable injury that cannot be compensated by money damages.")

**REQUEST FOR IMMEDIATE ISSUANCE OF
ALTERNATIVE WRIT OF MANDAMUS**

67. Based on the above, Petitioner is entitled to a writ of mandamus compelling WEC to perform its duty to compile and maintain the Registration List so that "inactive" voter records may not be changed to "active" voter records, thus allowing "inactive" voters to be added to the Registration List.

68. An alternative writ of mandamus is "[a] mandamus issued upon the first application for relief, commanding the defendant either to perform the act demanded or to appear before the court at a specified time to show cause for not performing it'." *State ex rel. Milwaukee Police Assoc. v. Jones*, 2000 WI App 146, ¶ 7 & n.7, 237 Wis. 2d 840, 615 N.W.2d 190 (quoting BLACK'S LAW DICTIONARY (7th Ed. 1999)).

69. "The usual practice, if a prima facie case is made out by the petition or application, is to issue an alternative writ of mandamus, directed to the person claimed to

be under a duty to act, requiring the person, either to act or to show cause why the person should not be compelled to do so.” 9 *Wis. Pleading & Practice Forms*, § 85.37 (5th Ed., June 2021 Update) (footnote omitted).

70. This Petition and exhibits establish a prima facie case that Respondents have failed to perform their clear duties mandated by Wisconsin law.

WHEREFORE, Petitioner respectfully requests the Alternative Writ of Mandamus submitted concomitantly be issued against the Respondents.

Dated this 3rd day of October, 2024.

ATTORNEYS FOR PETITIONER

By: Electronically signed by Kevin M. Scott
Kevin M. Scott, SBN: 1036825
The Law Office of Kevin M. Scott LLC
2635 S. Moorland Road, Suite 200
New Berlin, WI 53151

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