

FILED
10-03-2024
Clerk of Court
Marinette County
2024CV000240
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.

**EMERGENCY MOTION FOR TEMPORARY RELIEF
PURSUANT TO WIS STAT 781.02**

Petitioner Thomas Oldenburg, by his attorneys the Law Office of Kevin M. Scott LLC, by Kevin M. Scott, hereby moves the court for emergency, ex parte temporary relief pursuant to Wis. Stat. § 781.02. The grounds for this motion are as follows—

1. Wis. Stat. § 781.02 provides—

781.02 Temporary relief. A plaintiff in an action or proceeding seeking an extraordinary remedy may request, by motion, temporary relief pending disposition of the action or proceeding. Procedure on the motion is governed by s. [801.15 \(4\)](#) **unless the plaintiff establishes that an emergency exists, in which event the court may rule on the motion ex parte.**

(emphasis added)

2. Petitioner has submitted his application for an alternative writ of mandamus.

3. The November general election is approximately one month away, to be held on November 5, 2024.

4. On September 26, 2024 the Republican National Committee sent a letter to the Wisconsin Elections Commission (“WEC”) in which it detailed its concern that over 1,200 absentee ballots had been sent to voters that were in “inactive” status.

5. A true and correct copy of the letter is attached as **Exhibit C** to the Declaration of Kevin M. Scott.

6. According to the RNC, WEC had provided data to the RNC evincing that the following inactive voters had received absentee ballots prior to September 26—

Requests	Voter Status	Voter Status Reason
10	Inactive	Administrative Action
456	Inactive	Deceased
3	Inactive	Deceased
633	Inactive	Merged
86	Inactive	Moved
4	Inactive	Movers List
15	Inactive	Undeliverable Mailing
11	Inactive	Voter Request
1,208	Inactive	Total
1,033	Inactive	Ballot Sent Date Before 9/26/2024

7. WEC responded by letter dated September 27, 2024, in which it stated in part—

In Wisconsin, only active, registered voters may request a ballot and have their vote counted. Individuals with an inactive voter record are not allowed to request or cast a ballot. Officials with the statutory authority to modify the statewide registration list may change a voter’s registration status from eligible (active) to ineligible (inactive). Eligible records are registered to vote, appear on pollbooks, and can cast a ballot in statewide elections. Ineligible records are not registered to vote, do not appear on pollbooks, and cannot cast a ballot in Wisconsin elections.

8. A true and correct copy of WEC's 9/27 letter is attached to the Declaration of Kevin M. Scott as **Exhibit D**.

9. So while WEC acknowledged that officials may change voter status from active to inactive, it did not acknowledge that officials can also change a voter's status from inactive to active.

10. There is a legitimate concern that there are officials that, even mistakenly, may be activating inactive voter records and sending out absentee ballots.

11. While WEC explained that one voter record was inactivated after the ballot was sent, it provided no details as to the other 1,207 voter records identified.

12. WEC has provided sworn testimony that it can see, and tracks every time an election official changes a voter record from "inactive" to active" status. Declaration of Kevin M. Scott Ex. B, ¶ 3.

13. While there are legitimate reasons for an election official to change a voter record from active to inactive as WEC identifies in its 9/27 letter, there is no basis for an official to change a record from inactive to active.

14. This motion is brought in an emergency basis as there are apparent issues with the subject matter of the Application for Alternative Writ of Mandamus occurring currently, that need to be addressed in time for the general election in a month.

15. Granting this temporary relief will have no appreciable effect on the conduct of the election, in that any voter that is erroneously designated as inactive may reregister by any number of methods up to and including election day.

16. The temporary relief requested would only serve to prevent mis or malfeasance on the part of election officials who incorrectly change a voter's status from

inactive to active, and again would not affect the normal course of registering and voting.

WHEREFORE until the final disposition of this matter, this court should grant emergency temporary relief in the form of an order instructing WEC to—

- A. Prevent any voter record that is currently inactive from being changed to active status.

Dated this 3rd day of October, 2024.

ATTORNEYS FOR PETITIONER

By: Electronically signed by Kevin M. Scott
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