

STATE OF WISCONSIN EX REL ARDIS CERNY,
ARDIS CERNY personally,

STATE OF WISCONSIN EX REL ANNETTE KUGLITSCH,
ANNETTE KUGLITSCH personally,

Case No. 24CV1353

Petitioners,

Case Code: 30952

and

ASSEMBLY COMMITTEE ON CAMPAIGNS AND ELECTIONS,

REP. SCOTT KRUG (Chair), REP. DAVE MAXEY (Vice-Chair),
REP. DAVID MURPHY, REP. DONNA ROZAR, REP. PAUL TITTL,
REP. RON TUSLER, REP. LEE SNODGRASS, REP. LISA SUBECK,
and REP. CLINTON ANDERSON, in their official capacities as
Wisconsin State Assemblymen and Assemblywomen,

SENATE COMMITTEE ON SHARED REVENUE, ELECTIONS AND
CONSUMER PROTECTION,

SEN. DAN KNODL (Chair), SEN. DAN FEYEN, SEN. ROBERT QUINN,
SEN. MARK SPREITZER, SEN. JEFF SMITH, in their official capacities
as Wisconsin State Senators,

Involuntary Petitioners,

vs.

WISCONSIN ELECTIONS COMMISSION,

MARGE BOSTELMANN, ANN S. JACOBS, DON M. MILLIS,
CARRIE RIEPL, ROBERT F. SPINDELL, JR., MARK L. THOMSEN,
in their official capacities as Commissioners,

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

WISCONSIN DEPARTMENT OF TRANSPORTATION,

KRISTINA BOARDMAN, in her official capacity as
Secretary of the Wisconsin Department of Transportation,

Respondents.

**AMENDED VERIFIED PETITION AND COMPLAINT FOR WRIT OF MANDAMUS,
DECLARATORY JUDGMENT AND COMMON LAW CERTIORARI REVIEW**

NOW COME Petitioners Ardis Cerny and Annette Kuglitsch, by their attorneys Michael D Dean LLC, by Michael D Dean and the Law Office of Kevin M. Scott LLC, by Kevin M. Scott,

and petition for a Writ Mandamus, Declaratory Judgment and Common Law Certiorari Review as follows.

I. PARTIES.

1) Petitioner Ardis Cerny is an adult resident of the City of Pewaukee in the State of Wisconsin. She is a Wisconsin taxpayer and an eligible elector who is legally qualified and registered to vote in Wisconsin state and federal elections, has previously voted in numerous state and federal elections, and intends to do so in the future.

2) Petitioner Annette Kuglitsch is an adult resident of the City of Waukesha in the State of Wisconsin. She is a Wisconsin taxpayer and an eligible elector who is legally qualified and registered to vote in Wisconsin state and federal elections, has previously voted in numerous state and federal elections, and intends to do so in the future.

3) Involuntary Petitioner Assembly Committee on Campaigns and Elections is a duly constituted committee of the Wisconsin Legislature (“Assembly Committee”).

4) Involuntary Petitioners Rep. Scott Krug (Assembly Committee Chairman), Rep. Dave Maxey (Vice-Chair), Rep. David Murphy, Rep. Donna Rozar, Rep. Paul Tittl, Rep. Ron Tusler, Rep. Lee Snodgrass, Rep. Lisa Subeck, and Rep. Clinton Anderson, are elected members of the Wisconsin State Assembly and are members of the Assembly Committee.

5) Involuntary Petitioner Senate Committee on Shared Revenue, Elections and Consumer Protection, is a duly constituted committee of the Wisconsin Legislature (“Senate Committee”).

6) Sen. Dan Knodl (Senate Committee Chairman), Sen. Dave Feyen, Sen. Robert Quinn, Sen. Mark Spreitzer, and Sen. Jeff Smith are elected members of the Wisconsin State Senate and are members of the Senate Committee.

7) Respondent Wisconsin Elections Commission (“WEC”) is an independent agency. Wis. Stats. § 15.61.¹ Among other duties, WEC compiles and maintains the WisVote statewide voter list² (“WisVote List”) pursuant to § 6.36(1), which Wisconsin’s municipal clerks are required to utilize in conducting state and federal elections. Sec. 5.05(15).

8) Respondents Marge Bostelmann, Ann S. Jacobs, Don M. Millis, Carrie Riepl, Robert F.

¹ Hereafter, Wisconsin statutes are referenced only as “Sec.” or “§”.

² <https://elections.wi.gov/clerks/election-topics-z/wisvote>. Technically, WisVote is an election management system. The “List” is an aggregation of records from multiple databases.

Spindell, Jr., and Mark L. Thomsen are WEC's commissioners (the "Commissioners"). The Commissioners are WEC's "Head." Sec. § 15.01(8).

9) Respondent Meagan Wolfe (together with WEC, and WEC Commissioners, "WEC Respondents") serves as WEC's administrator and the chief elections officer of the State of Wisconsin. Sec. 5.05(3g).

10) Respondent Wisconsin Department of Transportation ("DOT") is a department of Wisconsin state government. Sec. 15.46. The Division of Motor Vehicles ("DMV") is a division of DOT, and acts and matters alleged in relation to DMV are those of and attributable to DOT. *E.g.*, § 343.165(8)(b)2.

11) Respondent Kristina Boardman (together with DOT, "DOT Respondents") is DOT's secretary. Sec. 15.05.

12) All officials and legislators are sued in their official capacities only.

II. PETITIONERS' CLAIMS

13) Petitioners assert that Respondents are in default of their duties under law alleged herein to protect against violation of Petitioners' voting rights and the rights of other eligible electors who are legally qualified and registered and vote in Wisconsin state and federal elections, including expending state tax money in an unlawful manner in relation to the administration of elections in this state in violation of Petitioners' voting rights and the voting rights of other eligible electors who are legally qualified and registered and vote in state and federal elections.

14) Involuntary Petitioners have an interest relating to the subject of this action situated such that the disposition of this action may, as a practical matter, impair or impede their ability to protect that interest. Sec. 803.03(3).

Writ of Mandamus

15) Pursuant to § 781.01, Petitioners seek a writ of mandamus, which requires showing "(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.*, 110 Wis.2d 447, 449, 329 N.W.2d 275 (Ct. App. 1982).

16) As alleged herein, Petitioners and other legally qualified and registered eligible Wisconsin electors have rights to cast their votes in free and transparent elections without impairment or cancellation by unlawful ballots cast by non-citizens or other unqualified voters. Respondents are

in violation of plain and positive duties to obey state laws protecting those rights. As with all fundamental rights, the resulting deprivation or violation is irreparable injury *per se*, which cannot be compensated by money damages. *Elrod v. Burns*, 427 U.S. 347, 373, 96 S. Ct. 2673, 2690 (1976). *See American Mut. Liability Ins. Co. v. Fisher*, 58 Wis.2d 299, 305, 206 N.W.2d 152 (1973).

Declaratory Judgment

17) Pursuant to § 806.04, Petitioners also seek declaratory judgment construing § 85.61(1) consistent with 52 U.S.C. § 21083(a)(5)(B)(i), together with injunctive relief requiring Respondents WEC and DOT to match information in their respective databases to identify any registrants in the statewide voter list whom DOT records identify as being non-U.S. citizens, and thereafter to proceed in relation to such identified residents as required by law consistent with requirements of due process.

Common Law Certiorari

18) Petitioners also seek review by common law certiorari of WEC's decision refusing to accept or consider Petitioner Cerny's administrative complaint filed July 29, 2024 alleging that WEC Respondents are in violations of Wisconsin law regarding "voting qualifications" pursuant to § 5.06(1), and that WEC Respondents and DOT Respondents are in violation of the Help America Vote Act pursuant to § 5.061.

III. PETITIONERS' RIGHTS AND AUTHORITY

19) Petitioners assert their "fundamental and sacred . . . right to vote," which is limited to "The right of a *qualified* elector to cast a ballot" and is "a fundamental political right, because [it is] preservative of all rights." *League of Women Voters of Wisconsin Educ. Network, Inc. v. Walker*, 2014 WI 97, ¶¶ 72 – 73, 357 Wis. 2d 360, 393, 851 N.W.2d 302, 319 (C.J. Abrahamson, dissenting, citing Wis. Const. art. III, § 2.4 and *State ex rel. Frederick v. Zimmerman*, 254 Wis. 600, 613, 37 N.W.2d 473 (1949) , cleaned up). *See Clarke v. Wisconsin Elections Comm'n*, 2023 WI 70, 995 N.W.2d 779, 781 (court granting petition of private parties to proceed with original action on matters *publici juris*).

20) Petitioners assert their right to bring a complaint and obtain remedies against WEC Respondents pursuant to § 5.06(1), Stats., for violation of and failure to comply with their obligations and duties in relation to voter qualifications.

21) Petitioners assert such right without filing the preliminary administrative complaint under § 5.06(2) because WEC Respondents have refused to accept or consider Petitioner Cerny's

administrative complaint and engaging in a futile procedure would serve only to delay proceedings where timely relief is of the essence. *Fazio v. Dep't of Emp. Tr. Funds*, 2002 WI App 127, ¶ 1, 255 Wis. 2d 801, 804, 645 N.W.2d 618, 620; *Milwaukee Deputy Sheriffs' Ass'n v. Cnty. of Milwaukee*, 2010 WI App 109, ¶ 8, 328 Wis. 2d 231, 238, 789 N.W.2d 394, 398.

22) Petitioners assert their right to bring a complaint and obtain remedies against WEC Respondents and DOT Respondents pursuant to § 5.061(1), Stats., for violation of the Help America Vote Act.

23) Petitioners assert such right without filing the preliminary administrative complaint under § 5.061(1) because WEC Respondents have refused to accept or consider Petitioner Cerny's administrative complaint and engaging in a futile procedure would serve only to delay proceedings where timely relief is of the essence. *Fazio* at ¶ 1; *Milwaukee Deputy Sheriffs' Ass'n* at ¶ 8.

24) Involuntary petitioners Committees have legislative authority pursuant to § 13.45(7) to demand and receive WEC and DOT "books, records or other information" including, but not limited to, the information Committee Chairmen requested DOT to produce as alleged herein.

25) Involuntary petitioners Committees have and exert, on behalf of the Wisconsin legislature as a separate and equal branch of government, inherent investigative, oversight, and other authority which cannot be invaded or usurped by an executive agency through agreements between the agency and third parties. In particular in this action, such authority cannot be usurped WEC's predecessor, the Government Accountability Board ("GAB"), through its agreement with the Electronic Registration Information Center ("ERIC") as by former DOT Secretary Craig Thompson as alleged herein.

26) Petitioners further assert that they are taxpayers to the State of Wisconsin, and challenge Respondents unlawful expenditure of public funds as alleged herein.

IV. BACKGROUND

A. REQUIREMENTS TO CAST A LAWFUL VOTE IN WISCONSIN.

27) Qualification, registration, and identification ("ID") are the three basic requirements to cast a legal vote in Wisconsin federal and state elections.

Qualification

28) Only U.S. citizens can be "eligible elector[s]" legally qualified to register, present identification, and vote. U.S. Const. amend. XXVII; 18 U.S.C. §§ 611, 911, 1015(f); § 6.02 Stats.; Wis. Const. art. III § 1.

Registration

29) Generally, eligible electors seeking to lawfully vote must register using WEC Form EL-131 processed by municipal clerks or using an online form processed by WEC through its “MyVote” portal.³ Secs. 6.27; 6.30(1), (4), (5).

30) Both forms require a registration applicant to provide personal information including a certification that she is a U.S. citizen, which WEC uses to register and create a record for her in the WisVote List. Secs. 5.02(16c); 6.33(1), (5)(a)1.; 6.36(1). A copy of Form EL-131 and screen shots of the online form are attached as Exhibits A and B.

Identification

31) To cast a lawful vote, a legally qualified and registered elector must also present a valid form of authorized ID matching her record information in the List. Secs. 5.02(6m), 5.02(16c), 6.79(2). Authorized forms of ID include a free ID card and a receipt for one, which DMV 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).

32) DMV has established the ID Petition Process (“IDPP”) ensuring that each ID card applicant is provided due process, including assistance and payment of fees by DMV to obtain a birth certificate or other documentary proof of citizenship (“DPOC”) if it is unavailable or if she lacks ability to pay the fees required to obtain it. Secs. 343.165(8)(a) and 343.50(1), (3); Wis. Admin. Code Trans §§ 102.15(2)(bm), 102.15(5m).⁴

B. MAY 16, 2024 JOINT COMMITTEE HEARING REGARDING DOT ISSUANCE OF FREE VOTER IDENTIFICATION CARDS FOR THE PURPOSE OF VOTING.

33) On May 16, 2024, the Assembly Committee and Senate Committee held a joint hearing at which DOT then Deputy Secretary Respondent Boardman testified regarding free ID cards issued by DMV for the purpose of voting.⁵

34) By letter to Respondent Wolfe and former Secretary Thompson dated May 31, 2024, Committee Chairmen Knodl and Krug requested that WEC and DOT share citizenship information held by DOT to provide an additional layer of integrity to Wisconsin’s election system. A copy of the Chairmen’s letter is attached as Exhibit C.

³ <https://myvote.wi.gov/en-us/Register-To-Vote>

⁴ Citations to Wis. Admin. Code Department of Transportation Chapter hereafter designated as “Trans.”

⁵ 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.

35) By memorandum dated June 4, 2024, Wisconsin Legislative Council Staff Attorney Katie Bender-Olson provided the Senate Committee with information “whether state or federal law prevents the Wisconsin Department of Transportation (DOT) from sharing citizenship information in its Department of Motor Vehicles (DMV) databases with the Wisconsin Elections Commission (WEC) for determining whether individuals listed within the statewide voter registration list are U.S. citizens.” A copy of the Legislative Council memorandum is attached as Exhibit D.

36) By letter to Respondents Wolfe and Secretary Thompson dated June 27, 2024, the Committee Chairmen requested DOT’s list of permanent non-citizen Wisconsin residents who had obtained a driver’s license or ID card pursuant to § 13.45(7). A copy of the Chairmen’s letter is attached as Exhibit E.

37) By letter dated July 16, 2024, Secretary Thompson denied the Chairmen’s May 31 request that DOT and WEC share information, stating that DOT does not have authorization. In response to the Chairmen’s June 27 request for a “list” of non-citizen permanent residents pursuant to § 13.45(7), Secretary Thompson stated that DOT does not have such a “list,” that DOT is subject to the federal Driver Privacy and Protection Act (DPPA) restricting disclosure of such information, and that “Requesters authorized under the DPPA may submit an MV2896 to request driver records for certain permitted uses.” A copy of Secretary Thompson’s letter is attached as Exhibit F.

38) On July 29, 2024, Petitioner Cerny filed a complaint (“Administrative Complaint”) with WEC alleging that WEC Respondents are in violation of law relating to voting qualifications and that WEC Respondents and DOT respondents are in violation of the Help America Vote Act. A copy of Petitioner’s Complaint and supporting verifications is attached as Exhibit G. Petitioners incorporate by reference Petitioner Cerny’s allegations contained in Exhibit G.

39) By letter dated August 8, 2024, WEC attorney Angela Sharpe replied to Petitioner Cerny’s counsel, advising that WEC will not consider the Administrative Complaint. A copy of Attorney Sharpe’s letter is attached as Exhibit H.

40) By letter to Respondent Wolfe and Secretary Thompson dated September 3, 2024, the Committee Chairmen requested DOT’s information regarding non-citizen Wisconsin residents who hold driver’s licenses or ID cards pursuant to § 13.45(7). A copy of the Chairmen’s letter is attached as Exhibit I.

41) By letter dated September 10, 2024, Secretary Thompson denied the Chairmen’s September 3 request that DOT and WEC share information, referencing his response dated July 16,

and claiming that WEC's agreement with ERIC (the "ERIC Agreement") "specifically prohibits member states from transmitting a WisDOT record where the record contains documentation or other information indicating the individual is a non-citizen of the United States." A copy of Secretary Thompson's letter is attached as Exhibit J.

42) The ERIC Agreement referenced in Secretary Thompson's September 10 letter was putatively authorized pursuant to § 6.36(1)(ae), Stats., and is attached as Exhibit K.

C. DOT CITIZENSHIP VERIFICATION OF APPLICANTS FOR DRIVER'S LICENSES AND IDENTIFICATION CARDS USED FOR VOTING.

43) As Respondent Boardman testified at the May 16 hearing, DOT is responsible for issuing regulations and administering statutes governing driver's licenses and state ID cards. Wis. Stats. Ch. 343, Subchs. II and V.; Wis. Admin. Code Trans Ch. 102.

44) DOT performs that duty through its Division of Motor Vehicles ("DMV"), which is reasonably performing its duty to determine the citizenship or other legal status of all applicants for driver's licenses and ID cards to ensure that non-citizens do not illegally obtain restricted license endorsements or ID cards for voting. Sec. 343.14; Trans § 102.15(2)(bm), (3m).

45) DMV's administration of the IDPP process to obtain an ID card for voting establishes that verification of a license or ID applicant's citizenship is essential to protect voting rights of Petitioners and other qualified electors, and that citizenship information gathered by DMV from license and identification applicant certifications would be effective to verify registration applicant certifications gathered by WEC and municipal clerks if Respondents were compelled by mandamus or injunction to perform their duties to match WEC and DOT information "to the extent required . . . to verify the accuracy of the information provided for the purpose of voter registration," all as alleged herein.

46) Respondent Boardman testified that all applicants for either an *original* ID card or a free *voting* ID card must submit Form MV3004.⁶ That Form includes a U.S. citizenship certification, which a voter ID card applicant must complete and submit to obtain the card. Boardman @ 13:52.

47) Voter ID applicants must also provide DPOC, which a birth certificate satisfies. If an applicant does not have a birth certificate or other DPOC, DMV checks the applicant's legal status through the "SAVE" system administered by U.S. Citizenship and Immigration Services. If citizenship and other requirements are confirmed, DMV issues a receipt and mails the ID card later

⁶ <https://wisconsindot.gov/Documents/formdocs/mv3004.pdf>.

after it is printed. Boardman @ 14:03.

48) To ensure that no eligible elector is deprived of the right to vote, DOT created IDPP by administrative rule in 2014. IDPP is now codified at §§ 343.165(8)(a) and 343.50(1), (3), (5)(a)3.

49) IDPP can be requested by any ID applicant who does not have a birth certificate or other DPOC available or cannot pay the fees to obtain it. DMV then assists the applicant and pays the fees to obtain the DPOC or other satisfactory documentation. Boardman @ 15:00, 16:25.

50) In addition to Form 3004, an IDPP applicant must also submit Form MV3012,⁷ which requests information that DMV uses to obtain the applicant's birth records. Once the 3004 and 3012 Forms are submitted, DMV mails the applicant a receipt that is valid ID for voting. Boardman @ 17:31.

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

52) Many IDPP applications 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.

53) But 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. Sec. 343.50(1)(c). Boardman @ 19:15.

54) If the applicant reconnects with DMV, the process begins again, and DMV makes reasonable effort and pays all fees to submit corrected birth information to EVVE or to obtain "secondary documentation" verifying citizenship if EVVE does not have birth records available. Sec. 343.165(8)(b)3g. Boardman @ 20:30.

55) DOT's IDPP process has been effective preventing non-citizens from obtaining voter ID cards. In the approximate 10-year period between September 15, 2014, and May 11, 2024, DMV has issued 11,018 free voter IDs through that 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.

⁷ [MV3012 DMV Administrator Petition - Unavailable Documentation \(milwaukee.gov\)](#).

D. THE NUMBER OF NON-QUALIFIED REGISTRANTS ILLEGALLY INCLUDED IN THE WISVOTE LIST IS SUBSTANTIAL.

56) As alleged in the Administrative Complaint to WEC, ¶¶ 21) *et seq.*, WEC Respondents themselves affirmatively allege that the WisVote List includes individuals who are not “properly registered.” Exhibit G, Affidavit of Daniel J. Eastman.

57) Respondent Boardman testified that DOT commenced IDPP in September, 2014. Boardman @ 22:05. During the same approximate 10-year period between September 15, 2014, and March 11, 2024, 3,194,786 new *registration* applicants have been added to the WisVote List. Of those new registrants, 2,097,399 remain listed as active. Exhibit G, Affidavit of Brian Kind.

58) If those active *registration* applicants provided false or fraudulent citizenship certifications at the same 0.48 % rate that *identification* applicants did during the same period, there would be 10,068 illegally registered active voters in the WisVote List, and 15,335 total active and inactive illegally registered voters.

59) Again, DMV requires driver’s license and *identification* card applicants to present proof of citizenship or legal status, and verifies the citizenship certification for each. But for voter *registration* applicants, WEC Respondents require neither.

60) Consequently, the frequency of false or fraudulent citizenship certifications provided by *registration* applicants is likely significantly higher than 0.48%. *Identification* applicants know DMV *will* require them to provide or obtain DPOC and *will* verify their citizenship certifications, and many of the 8,217 self-cancellations were likely prompted by the applicants discovering that fact.

61) But *registration* applicants know that WEC and municipal clerks will never verify citizenship, so there is virtually no meaningful consequence or disincentive for anyone falsely certifying U.S. citizenship in order to register and vote.

V. RESPONDENTS ARE FAILING CLEAR AND POSITIVE DUTIES TO PROTECT PETITIONERS’ AND CITIZENS’ SUFFRAGE RIGHTS.

A. RESPONDENTS’ “POSITIVE AND PLAIN” DUTIES SUBJECT TO MANDAMUS.

62) Petitioners’ First Cause of Action seeks a writ of mandamus pursuant to § 781.01 directing Respondents to perform duties alleged in Petitioner Cerny’s Administrative Complaint and herein.

63) A writ of mandamus will lie where a petitioner shows “(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.*, 110 Wis.2d 447, 449, 329 N.W.2d 275 (Ct. App. 1982).

64) A ministerial duty subject to mandamus is “a duty to act in a particular way” that does not require exercise of “discretion.” *Lodl v. Progressive Northern Ins. Co.*, 2002 WI 71, ¶ 44, 253 Wis. 2d 323, 646 N.W.2d 314 (2002).

65) However, no discretion is required if an official has received “all of the information and all of the documents that the law can reasonably require. . . .” *Walter Laev, Inc. v. Karns*, 40 Wis. 2d 114, 120, 161 N.W.2d 227, 230 (1968).

66) Further, in addition to compelling “performance of a ministerial duty when the obligation to perform such an act is plainly defined,” mandamus may also be “employed to compel action . . . in matters involving judgment or discretion, but not to direct the exercise of discretion in a particular way nor to direct the retraction or the reversal of action already taken in the exercise of either.” *Flynn v. Shultz*, 748 F.2d 1186, 1194 (7th Cir. 1984).

67) For example, where WEC has a plain duty to investigate an election law violation or conduct a hearing, mandamus will not lie to control exactly *how* WEC conducts the investigation or hearing, but WEC cannot simply refuse to conduct them entirely.

B. WEC IS FAILING ITS DUTY TO VERIFY ACCURACY OF CITIZENSHIP INFORMATION PROVIDED BY VOTER REGISTRATION APPLICANTS.

68) WEC has the plain and positive duty to administer “chs. 5 to 10 and 12 and other laws relating to elections.” Sec. 5.05(1).

69) As alleged in the Administrative Complaint, ¶¶ 40 – 41, 44, WEC is in violation of its plain and positive duty to administer, comply with, and enforce applicable law to ensure that only “eligible electors” – legally qualified U.S. citizens – are registered to vote, included in the WisVote List, and permitted to vote in Wisconsin federal and state elections.

70) WEC has no discretion whether to include non-U.S. citizens in the WisVote List because the List may include only those “electors that are *properly* registered to vote.” Sec. 5.02(17) (emphasis added). WEC therefore has the plain and positive duty to verify citizenship information provided in voter registration applications, to reject non-citizen applications, and de-activate the WisVote record of any such non-citizen registrant or remove that record altogether.

71) For example, it is DMV’s similar plain and positive duty to approve a driver’s license or

voter ID application when DMV receives DPOC verifying the applicant's citizenship or legal status, and to reject the application when DMV does not receive them.

72) IDPP is the ministerial process utilized by DMV to verify an applicant's citizenship or legal status that satisfies constitutional norms. It was created after 11 years of litigation in five state and federal cases, and is conclusive as to what DPOC DMV can "reasonably" require an applicant to provide or DMV to obtain to verify citizenship. Boardman @ 12:15.

73) WEC has the same authority to establish a verification system similar to IDPP because Wisconsin is exempt from the National Voter Registration Act ("NVRA") and its "accept and use" provisions. *Arizona v. Inter Tribal Council of Arizona, Inc.* ("ITCA"), 570 U.S. 1, 9, 15, 133 S. Ct. 2247, 2254, 2257 (2013).

74) But in contrast to DMV, which *does* verify citizenship of voter *identification* applicants who apply for ID cards for purposes of voting, WEC Respondents do *not* verify citizenship of voter *registration* applicants.

75) In 2012, WEC's predecessor GAB explored developing a citizenship verification system and published a study titled "Final Report of the SAVE Fact-Finding Team" discussing GAB's possible use of the SAVE program for citizenship verification the same as DMV uses it. A copy of the Final Report is attached as Exhibit K.

76) But neither GAB nor WEC has taken any meaningful steps to develop such a system. Rather, WEC has promulgated EL 3.03, which allows an applicant to register who does not complete the EL-131 citizenship certification, but only signs a statement that she meets or will meet elector qualifications at the time of the next election.

77) Further, in contrast to DMV Form 3004, which requires an actual certification of *fact* under penalty of perjury that the citizenship and other information a license or ID applicant provides is true, WEC's EL-131 does *not* require an actual certification of fact under penalty of law that the applicant is a U.S. citizen.

78) Rather, EL-131 requests only that a registration applicant check a box that she is a U.S. citizen, then sign a certification that "to the best of my knowledge" she is qualified to vote and that "I *may* be subject to fine or imprisonment" for providing false information.

79) Similarly, upon information and belief, WEC's online MyVote registration form also does not require an actual attestation of fact under penalty of perjury that the applicant is a "qualified elector," and includes only the certification that "to the best of my knowledge" she is qualified and

that “I *may* be subject to fine or imprisonment” for providing false information. Sec 6.33(1) (“electronic forms shall contain the same information as nonelectronic forms”).

80) Consequently, WEC includes registration applicants in the WisVote List without any attestation of fact under penalty of perjury and without any verification of any kind that they are, in fact, U.S. citizens. Municipal clerks must necessarily do the same because they are dependent on procedures, guidance and resources from WEC, and WEC has failed to provide any such procedures, guidance or resources enabling clerks to verify citizenship of registration applicants.

81) WEC is therefore failing its plain and positive duty to verify the citizenship certification of each voter registration applicant before adding her to the WisVote List as a legally qualified elector.

C. WEC AND DOT ARE FAILING THEIR DUTY TO MATCH INFORMATION “TO VERIFY THE ACCURACY OF THE INFORMATION PROVIDED FOR THE PURPOSE OF VOTER REGISTRATION.”

82) As alleged in the Administrative Complaint, ¶¶ 45–49, WEC and DOT are in violation of their plain and positive duty to match information in their respective databases to verify citizenship of voter registration applicants.

Summary

83) Secs. 5.056 and 85.61(1) are among “other laws” that WEC administers. Sec. 5.05(1).

84) Sec. 5.056 requires Respondents Wolfe and Boardman to enter into an agreement to match “*personally identifiable information*” maintained by WEC in the WisVote List with “*personally identifiable information*” maintained by DOT.

85) Sec. 85.65(1) requires Respondents Wolfe and Boardman to execute and perform an agreement

- a) “*to match personally identifiable information*” contained in the WisVote List administered by WEC and specified in § 6.34(2m) (name, birth date, and driver’s license or ID card number)
- b) “*with personally identifiable information*” in the “operating record file database” and “vehicle registration records” administered by DOT
- c) “*to the extent required* to enable the secretary of transportation [Respondent Boardman] and the administrator of the elections commission [Respondent Wolfe] *to verify the accuracy of the information provided for the purpose of voter registration.*”

86) Citizenship is “personally identifiable information.” *Luft v. Evers*, 963 F.3d 665, 675 (7th Cir. 2020) (holding that state statute requiring disclosure of students’ citizenship in dorm list used

for voter identification violates Family Educational Rights and Privacy Act prohibiting disclosure of “personally identifiable information”).

87) WEC and DOT must therefore match citizenship information contained in DOT records against WEC registrant records in the WisVote List to verify that the citizenship certifications provided by registration applicants in their EL-131 and online forms are accurate.

88) If DOT records verify that a citizenship certification provided in a registration form is accurate, the applicant must be registered and included in the WisVote List. But if DOT records verify that a citizenship certification is *not* accurate, the applicant is not an “eligible elector,” and her application must be rejected. *E.g.*, § 6.32(2).

89) And if DOT records verify that a citizenship certification by a registrant already included in the List was *not* accurate, that registrant’s record must be de-activated or removed from the List altogether. *E.g.*, § 6.03(3) (person disqualified by reason of adjudicated incompetency “may be denied the right to register to vote”); § 6.32(4) (name entered on registration list only if clerk or commission has “no reliable information to indicate that the proposed elector is not qualified”); § 6.33(1) (registration form designed to determine “whether the elector is disqualified on any other ground from voting”); 52 U.S.C. § 21083(a)(2), (4) (federal legislation contemplates “removal” from the list).

90) Summarized, it is WEC’s ministerial duty to approve or reject a voter registration application when the exchange of personally identifiable information with DOT under §§ 5.056 and 85.61(1) confirms that DMV has received or obtained DPOC verifying the accuracy of the citizenship certification and other information provided by the registration applicant “for the purpose of voter registration.”

91) Even if Wisconsin were not exempt from NVRA and could not require registration applicants themselves to provide DPOC, information-matching under §§ 5.056 and 85.61(1) would still be available because Respondents are authorized to verify each registration applicant’s citizenship using DOT information and any other “information in their possession.” *ITCA*, 570 U.S. at 9, 15, 133 S. Ct. at 2254, 2257.

1. Wis. Stats., § 85.61(1) Requires Respondents Wolfe and Boardman to Match “Personally Identifiable Information” in Their Databases “To Verify the Accuracy of the Information Provided for the Purpose of Voter Registration.”

92) The WisVote List was authorized by 2003 WIS ACT 265, enacted to implement the Help America Vote Act of 2002 (“HAVA”), P.L. 107-252, 116 Stat. 1666, now codified as amended at

52 U.S.C. Ch. 209, §§ 20901– 21145.

93) The WisVote List was created to comport with HAVA Section 303, which requires that 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 information of every legally registered voter in the State* . . .

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

94) 52 U.S.C. § 21083(a)(5)(B)(i) requires that

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*.

(Empasis added.)

95) In compliance with HAVA requirements, § 85.61(1) requires the accuracy of *any* information submitted for voter registration, not just information “on applications”:

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 (2m) with personally identifiable information in the operating record file database under ch. 343 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.)

96) Consistent with § 21083(a)(5)(B)(i)’s requirement to match “information in the database of the motor vehicle authority,” § 5.056 requires WEC to match “personally identifiable information maintained by the department of transportation” *generally, without* § 85.61(1)’s limitation to “information in the operating record file database under ch. 343 and vehicle registration records under ch. 341”:

5.056 Matching program with secretary of transportation. 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*.

(Emphases added.)

2. Citizenship Is “Personally Identifiable Information” Contained in DOT Operating Record Files.

97) As alleged above, DOT is responsible for issuing and administering driver’s licenses and state ID cards to legally qualified applicants. Stats. Ch. 343, Subchs. II and V.

98) DOT requires each applicant for a license or ID card to submit “valid documentary proof that the individual is a citizen or national of the United States or an alien lawfully admitted,” and retains those documents and citizenship information in the applicant’s record file. Sec. 343.14(2)(es); Trans §102.15(2)(bm), (3m).

99) DOT “*verifies*” the information and documents, then “capture[s] a digital image of each document,” and the “[i]mages captured” are “maintained, in electronic storage and in a transferable format, in the applicant’s file or record.” Secs. 343, 105, 343.23.

100) As alleged above, Respondents Wolfe and Boardman are obligated to enter into and perform an agreement requiring *citizenship and legal status* information be included in the “personally identifiable information” they match under §§ 85.61(1) and 5.056.

101) Again, citizenship is “personally identifiable information,” *Luft*, 963 F.3d at 675, and §§ 5.056 and 85.61(1) therefore require WEC and DOT to match citizenship information in DOT records against registrant records in the WisVote List “to the extent required . . . to verify the accuracy” of the citizenship certifications provided by applicants in their EL-131 and online forms “for the purpose of voter registration.”

3. Respondents Have Failed to Require Proof of Citizenship and Match Information Verifying.

102) Even a rudimentary analysis and match of DOT’s driver’s license or identification card data would disclose most non-citizen registrants in the WisVote List because a non-citizen’s license or ID card has both a birth date and an expiration date, which is almost always different than the birth date because the license or card expires the same date the non-citizen’s legal presence in the United States expires. Secs. 343.20(1m), 343.50(5)(c). (*See* Legislative Council Memorandum, Exhibit D, p. 2: “A driver’s license or ID card issued to a person who is not a citizen generally expires on the date the person is no longer legally present. [ss. 343.20 (1m) and 343.50 (5) (c), Stats.].”)

103) Matching DOT information would identify essentially all other non-citizen applicants as well because online registration through MyVote is restricted to applicants holding a driver’s license or ID card, and other applicants using the EL-131 to register by mail or in person must

provide a driver's license number or the last four social security number digits, which are also contained in DOT records. Secs. 6.30(5), 6.33(1)(a)5., 343.165(1)(c), 343.14(1)(bm).

104) But Respondents construe and apply §§ 85.61(1) and 5.056 to require matching *only* information included in the WisVote List under § 6.36(1) and the limited information included in the online registration specified by § 6.34(2m) – *neither* of which include *citizenship information*.

105) Respondents completely ignore § 85.61(1)'s requirement to *also* match “personally identifiable information” collected and maintained by DOT in its “operating record file database under ch. 343 and vehicle registration records under ch. 341” that would “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.*”

106) Thus, as construed and applied by Respondents, §§ 5.056 and 85.61(1) are in violation of HAVA, and would be pre-empted by 52 U.S.C. § 21083(a)(5)(B)(i) in any event. *See* Administrative Complaint, ¶¶ 45 – 49.

107) To correctly construe and apply §§ 5.056 and 85.61(1) consistent with HAVA, WEC and DOT need do nothing more than include citizenship information in the DOT information that WEC matches against the information provided by applicants “for the purpose of voter registration.”

4. DPPA Does Not Prohibit Respondents from Matching Citizenship Information.

108) Secretary Thompson's reference in his July 16 letter to DPPA restricting disclosure of citizenship information to WEC is baseless.

109) DPPA is codified at 18 U.S.C. §§ 2721-25. Sec. 2721(a) prohibits DMV from disclosing any “highly restricted” or other “personal information” to “any person or entity.”

110) But Secretary Thompson's letter ignores § 2725(2), which states that the term “‘person’ . . . does not include a State or agency thereof.” *See, e.g., Pub. Int. Legal Found. v. Boockvar*, 431 F. Supp. 3d 553, 562 (M.D. Pa. 2019),

111) Further, § 2721(b) “Permissible Uses” provides that “Personal information . . . may be disclosed . . . (1) For use by any government agency . . . in carrying out its functions”

112) GAB's 2012 “Final Report of the SAVE Fact-Finding Team,” Exhibit K, explains that the SAVE program requires DOT and other users to input an ID applicant's Alien Verification Number (“AVN”), which is another type of personal information.

113) The GAB Report discusses whether DPPA prohibits DOT from disclosing AVNs for use

by GAB, and notes that DOT's own general counsel "initially agreed" that the AVN could be disclosed and advised that GAB could submit the same MV2896 Information Request referenced by Secretary Thompson:

The Driver's Privacy Protection Act and the REAL ID Act also contain confidentiality restrictions applicable to the Wisconsin DOT's release of personally identifiable information, particularly the AVN, which is necessary for the G.A.B. to conduct any search in the SAVE Program. *While an AVN is within the definition of "personal information" under the Driver's Privacy Protection Act and normally is not discloseable by DOT, there is an exception that permits disclosure for use by a government agency in carrying out its functions. 18 U.S.C. Secs. 2721(a)(1) and (b)(1); 2725(4).* General Counsel for DOT has initially agreed with this interpretation of the Federal Acts. Upon submission of a completed Vehicle/Driver Information Request (MV2896) to DOT in which the G.A.B. requests access to the DOT data for the "purpose of the government agency to carry out its functions," a final determination would be made.

(Exhibit K, p. 20, emphasis added.)

114) The GAB Report also discusses legislation and budget appropriations necessary for GAB itself to access the SAVE system directly, but no legislation or appropriation is necessary for WEC and DOT to include citizenship information DOT already has with the other "personally identifiable information" that WEC and DOT match "to the extent necessary . . . to *verify the accuracy of the information provided for the purpose of voter registration.*"

5. The ERIC Agreement Does Not Prohibit Respondents from Matching Citizenship Information.

115) In his September 10 letter responding to the Committees' request for information pursuant to § 13.45(7), Stats., Exhibit J, Secretary Thompson completely misrepresents Par. 2 of the ERIC Agreement, Exhibit K, claiming that:

Therefore, while state law would permit WisDOT to release citizenship information to WEC if required under the ERIC agreement, the ERIC agreement specifically prohibits member states from transmitting a WisDOT record where the record contains documentation or other information indicating the individual is a non-citizen of the United States.

116) The prohibition against transmission of citizenship information in Par. 2 of the Agreement explicitly applies to *GAB's* transmission of citizenship data to *ERIC*. Par. 2 says nothing whatever about *DOT's* transmission of citizenship data to *WEC*:

2. Voter Files and Motor Vehicle Records. The Member shall transmit to ERIC the following data related to its voter files and motor vehicle records (collectively, the "Member Data").

- b. Within sixty (60) days of the Certification Date, and at least every sixty (60) days thereafter, the Member shall transmit: (1) all inactive and active voter files (excluding those records that are confidential or protected from disclosure by law), including those fields identified in Exhibit B, and (2) all licensing or identification records contained in the motor vehicles database (excluding those fields unrelated to voter eligibility, such as fields related to an individual's driving record), including those fields identified in Exhibit B. Under no circumstances shall the Member transmit an individual's record where the record contains documentation or other information indicating that the individual is a non-citizen of the United States. Should Member believe it has an alternative source of data

117) Further, GAB director Kevin Kennedy executed the ERIC Agreement pursuant to the legislature's specific authorization and direction under § 6.36(1)(ae), which says nothing whatever about transferring data between state agencies.

118) Secretary Thompson's claim that the ERIC agreement prohibits disclosure of citizenship between DOT and WEC is a usurpation of legislative authority by an executive agency - that by contract between the agency and a third party, the agency can deprive the legislature of oversight authority to investigate and oversee management of the very contract the legislature authorized and directed the agency to enter into to begin with.

D. WEC IS FAILING ITS DUTY TO INVESTIGATE VIOLATIONS OF AND ENFORCE "LAWS ADMINISTERED BY THE COMMISSION" THAT PROHIBIT NON-U.S. CITIZENS OR OTHER UNQUALIFIED PERSONS FROM REGISTERING TO VOTE AND BEING INCLUDED IN THE STATE VOTER WISVOTE LIST.

119) As alleged in the Administrative Complaint, ¶¶ 36 - 37, WEC is in violation of its plain and positive duty to investigate violations of and otherwise enforce election laws prohibiting voting by non-citizens.

120) Sec. 5.05(1) grants WEC "General authority . . . for the administration of chs. 5 to 10 and 12 and other laws relating to elections" and, "Pursuant to such responsibility, the commission *may*" exercise various powers provided in subsecs. (1)(b)-(f). *Supra* § V.B.

121) However, in contrast to the *permissive* term "may" in § 5.05(1), the directive regarding WEC's *enforcement* responsibility is *mandatory*: "ENFORCEMENT. *The commission shall investigate violations of laws administered by the commission* and may prosecute alleged civil violations of those laws . . ." in § 5.06(2m)(a) (emphases added.)

122) Again, WEC itself has admitted that illegal registrants are included in the WisVote List. Exhibit G, Affidavit of Daniel J. Eastman. And as alleged above, even assuming the incidence of unlawful *registration* applications (where applicants know WEC will *not* verify citizenship) is no greater than that of unlawful *identification* applications (where applicants know DOT *will* verify citizenship), the number of active registrants unlawfully included in the WisVote List in the last 10

years is still staggering – in excess of 10,000.

123) Sec. 5.05(1) also provides that WEC “may” exercise its powers of investigation pursuant to subsec. (1)(b) “in the discharge of its duties,” but “the word *may* means *must* or *shall*” because “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).

124) Petitioners do not claim that WEC is obligated to abandon discretion in conducting the investigation, nor does Petitioner seek to “direct the exercise of discretion in a particular way.” *Flynn*, 748 F.2d at 1194.

125) Rather, Petitioners assert only that WEC Respondents are obligated to conduct a reasonable investigation of registrants unlawfully added to the WisVote list because they have available “all of the information and all of the documents that the law can reasonably require.” *Karns*, 40 Wis. 2d at 120,

126) Notwithstanding the clear authority and mandate to do so, WEC Respondents have failed and refused to enforce and investigate violations of the laws it administers.

E. WEC IS FAILING ITS DUTY TO BRING SUIT TO REMEDY VIOLATIONS OF STATUTES REQUIRING U.S. CITIZENSHIP AND PREVENT SUCH VIOLATIONS IN THE FUTURE.

127) As alleged in the Administrative Complaint, ¶¶ 36 - 37, that WEC is in violation of its plain and positive duty to bring suit to remedy violations of statutes requiring U.S. citizenship and prevent such violations in the future.

128) WEC is authorized to bring “civil actions . . . for any violation of chs. 5 to 10 or 12” and to 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) (c) and (d).

129) WEC therefore has the duty to conduct legal actions ancillary to the performance of its other duties to enforce the laws it administers. Specific litigation can not be compelled by mandamus at this time because WEC Respondents have failed and refused to investigate violations of law at all that such litigation would address.

130) The Court need not mandate how WEC Respondents conduct legal proceedings, but a declaration that they cannot ignore their duty to conduct “appropriate” litigation incident or ancillary to performance of their duties to enforce citizenship requirements and investigate violations is appropriate to preclude piecemeal litigation forcing them to do so if an investigation or other enforcement proceeding discloses actionable violations. *Flynn*, 748 F.2d at 1194. *Supra* § V.A.

F. WEC IS FAILING ITS DUTY TO PROMULGATE RULES ENSURING THAT ONLY CITIZENS ARE INCLUDED IN THE STATE VOTER REGISTRATION LIST.

131) As alleged in the Administrative Complaint, ¶¶ 38, 42 – 43, WEC is in violation of its plain and positive duty to promulgate rules ensuring that only citizens are included in the WisVote List.

132) WEC 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 ensuring their proper administration.*” Sec. 5.05(1)(f) (emphasis added).

133) DOT’s promulgation of rules implementing IDPP process verifying *identification* applicants’ citizenship is conclusive that WEC Respondents have “all of the information and all of the documents that the law can reasonably require” to promulgate rules implementing an equivalent process verifying *registration* applicants’ citizenship. *Karns*, 40 Wis. 2d at 120. *Supra* §§ V.A. and V.B.2.

134) Again, because of Wisconsin’s NVRA exemption, WEC Respondents have authority the same as DOT to promulgate rules requiring that applicants provide birth certificates or other DPOC and verify citizenship certifications. *ITCA*, 570 U.S. at 15, 133 S. Ct. at 2254.

135) Also the same as DOT’s IDPP, WEC has authority to avoid unconstitutional burdens on voting rights of registration applicants by promulgating rules like IDPP to assist those whose birth certificate or other DPOC is unavailable and pay the fees to obtain it if they cannot afford them.

136) And even if Wisconsin were *not* exempt from NVRA, Respondents would still have authority to promulgate rules using SAVE, EVVE, DOT’s records, and any other “information in their possession.” *Id.*

137) But WEC Respondents have taken no steps whatever to promulgate rules addressing violations by non-citizen or other registrants they admit are unlawfully included in the WisVote List, and are in violation of their duty to do so.

G. WEC IS FAILING ITS DUTY TO ISSUE PROCEDURES AND PROVIDE RESOURCES ENABLING MUNICIPAL CLERKS TO INCLUDE ONLY U.S. CITIZENS IN THE WISVOTE LIST.

138) As alleged in the Administrative Complaint, ¶¶ 56 – 51, WEC is in violation of its plain and positive duty to issue procedures and provide resources to county and municipal clerks ensuring that only citizens are included in the WisVote List.

139) 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.) County clerks may perform those services under agreement with a municipal clerk. Sec. 6.33(5)(b), Stats.

140) “[W] whenever a municipal clerk receives a *valid* registration or *valid* change of a name or address . . . the municipal clerk . . . shall promptly enter electronically on the [WisVote] list maintained by the commission under s. 6.36 (1) the information required under that subsection.” Sec. 6.33(5)(a)1. (Emphases added.)

141) Although § 5.05(15) makes WEC responsible for “design and maintenance” of the List, clerks share that responsibility with WEC when they enter registration and change information in the List. *State ex rel. Zignego v. Wisconsin Elections Comm’n*, 2021 WI 32, ¶ 15, 396 Wis. 2d 391, 400, 957 N.W.2d 208, 212.

142) In particular, under § 6.32(4), WEC and clerks are responsible for updating the List with new and changed registrations – WEC with registration information received online, clerks with information received by mail or in person. Sec. 6.30(1), (4), (5).

143) Clerks also use the List to compile election day poll lists of active voters in their jurisdictions, § 6.45, and add records of election-day registrants to the List within 30 days following the election. Sec. 6.275.

144) Sec. 5.05(15) directs that WEC “*shall* require all municipalities to use the list in every election” and authorizes WEC to “*require* any municipality to adhere to *procedures established by the commission for proper maintenance of the list*.” (Emphases added.)

145) With WEC’s authority comes the obligation to provide the guidance and resources necessary for the clerks to perform their duties.

146) WEC is required to “Allocate and assign sufficient members of its staff to coordinate their activities with local election officials.” Sec. 7.08(11).

147) In their own Election Administration Manual, p. 5., WEC 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.*”⁸

148) And at p. 43, the Manual states, “A municipal clerk is charged with the responsibility of

⁸ *Zignego*, ¶ 15, 396 Wis. 2d at 400, 957 N.W.2d at 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).

maintaining records to track voter registration” and “In order to register to vote, an individual must: 1. Be a U.S. citizen.”

149) But WEC has made no effort whatever to establish “procedures” or provide “resources” enabling clerks to comply with their § 6.33(5)(a)1. obligations to accept and upload only *valid* registrations and *valid* changes of a name or address.

150) As County Clerk Reichert testified, clerks *want* to fulfill their obligations and would like to have resources from WEC to conduct real-time citizenship verification to avoid unlawfully registering non-citizen voters. But without those resources a clerk cannot possibly know whether she is uploading a valid registration or change of a current registrant’s List record.

151) Sec. 6.22(6) is a glaring instance of WEC’s default making it impossible for clerks to perform their duties. That section obligates clerks to ensure that “military electors” are “eligible” because non-citizens are authorized to serve in the military⁹ and military electors are exempt and are not required to complete a citizenship certification at all because they are exempt from registration under subsec. (3).

152) 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,” that the list “*shall* be kept current through *all possible means*,” and that clerks “*shall* exercise *reasonable care* to avoid duplication of names or *listing anyone who is not eligible to vote*.” (Emphases added).

153) Another instance is § 6.325, which authorizes clerks to verify citizenship of naturalized citizens. WEC and DOT already maintain a system verifying proof of residence “on an *instant* basis.” Sec. 6.34(4).

154) At the May 16, 2024, joint Wisconsin legislative committee hearing, Washington County Clerk Ashley Reichert testified that municipal clerks would like to have resources available for real time verification of voter registration applicants’ citizenship to ensure that they (the clerks) are not unlawfully registering non-citizens to vote. Reichert @ 1:22:35.

155) But WEC’s default forces clerks to violate their express duties under §§ 6.22(6) and 6.325 because clerks cannot exercise *any* “care” or use *any* “possible means” to avoid registering “anyone who is not *eligible*” because WEC does not provide any means for them to verify whether military service personnel are citizens or those claiming to be naturalized citizens are, in fact,

⁹ 8 U.S.C. § 1440.

citizens.

H. DOT IS FAILING ITS DUTY TO PROVIDE THE COMMITTEES THE “BOOKS, RECORDS OR OTHER INFORMATION” REQUIRED BY § 13.45(7), STATS.

156) Sec. 13.45(7), Stats. provides:

(7) COOPERATION OF STATE AGENCIES. The departments, officers and employees of Wisconsin state government, and the governing bodies of the political subdivisions of this state, shall assist legislative committees in the completion of their tasks. They shall provide legislative committees with ready access to any books, records or other information relating to such tasks. Upon request by legislative committees, and within the limits of existing appropriations, departments of state government shall supply such specialized staff assistance as a legislative committee may require.

157) The information requested by the Chairmen in their May 31, June 27, and September 3 letters, Exhibits C, E, and I, relates to the tasks of the Committees to conduct oversight and investigation in relation to current and prospective legislation.

158) However, Respondents DOT and Thompson disobeyed § 13.45(7) by refusing to provide any access at all to the information requested. Exhibits F and G.

159) As alleged above, Secretary Thompson’s objections to the Committees’ request based on DPPA and ERIC are completely spurious.

160) DOT and now Respondent Boardman have no basis whatever for denying the Committees the requested information, and are in violation of § 13.45(7).

I. ALL RESPONDENTS ARE FAILING THEIR DUTY TO EXPEND PUBLIC FUNDS IN COMPLIANCE WITH THE LAWS THEY ADMINISTER.

161) As alleged above, Respondents are expending significant amounts of state tax moneys to maintain the WisVote List and administer state statutes in unlawfully.

VII. CAUSES OF ACTION

FIRST CAUSE OF ACTION:

WRIT OF MANDAMUS

162) Petitioners incorporate all foregoing paragraphs by reference.

163) Petitioners seek a writ of mandamus pursuant to §§ 781.01 and 801.02(5). The Court has previously issued a writ pursuant to those provisions, which has been served upon Respondents and to which Respondents have filed responsive pleadings, and Petitioners now file this Amended Petition.

164) As alleged above, a writ of mandamus requires showing (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. *S.M.O.*, 110 Wis.2d at 449.

Clear Legal Right

165) A legally qualified elector must also be a U.S. citizen under the Wisconsin constitution and statutes. U.S. Const. art. I § 2 cl. 1 and amend. XVII; 18 U.S.C. §§ 611, 911; 18 U.S.C. § 1015(f); Wis. Const. art. III § 1.; § 6.02(1), Stats.

166) For a democratic government, there are no greater public interests or individual rights than ensuring that only those lawfully entitled to register and vote may do so. The Supreme Court's "one man-one vote" means that lawful votes must be protected against "impairment result[ing] from *dilution by a false tally*," *Baker v. Carr*, 369 U.S. 186, 208, 82 S. Ct. 691, 705 (1962), that they must "be protected from the *diluting effect of illegal ballots*," *Gray v. Sanders* 372 U.S. 368, 380, 83 S. Ct. 801, 808 (1963), and qualified voters casting them must not be "*deprived of the full benefit of their right to vote*" by "vote-diluting discrimination." *Wesberry v. Sanders*, 376 U.S. 1, 2-3, 8, 84 S. Ct. 526, 527, 530 (1964). (All emphases added.)

167) Following suit, the Wisconsin Supreme Court ruled in *State ex rel. Sonneborn v. Sylvester* that the state constitution likewise requires "the one man-one vote principle." 26 Wis. 2d 43, 53, 55, 132 N.W.2d 249, 254, 255 (1965).

168) Voting rights of legally qualified electors are protected under the 1st and 14th Amendments. *United States v. Classic*, 313 U.S. 299, 310, 61 S. Ct. 1031, 1035 (1941); *United States v. Olinger*, 759 F.2d 1293, 1302-03 (7th Cir. 1985).

Plain and Positive Duty

169) The laws administered by WEC "shall be construed to give effect to the will of the electors," which is that the "person receiving the greatest number of legal votes for the office shall be declared elected." Secs. 5.01(1), (3)(a) (emphases added). It is axiomatic that the "will of the electors" is determined only by accurately tabulating lawful votes cast by legally qualified electors

170) Accordingly, Respondents have the plain and positive duties alleged above to accomplish that controlling purpose, so that the

rules and regulations under which [the franchise] may be exercised . . . 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 (citations omitted, brackets by the court, emphases added).

Substantial Damages or Injury Absent Relief

171) The one man-one vote axiom applies with greatest force protecting voting rights of lawfully qualified electors from violation by illegal ballots. As *Baker, Gray and Wesbury* teach, even a *legal* vote violates that axiom if it is *disproportionate* and merely *dilutes* another legal vote. But an *illegal* ballot cast by a non-citizen registrant whom Respondents allow to be included in the WisVote List cancels another legal vote *entirely*.

172) The facts pleaded by Petitioners are accepted as true, as are “reasonable inferences from those facts.” *Pagoudis v. Keidl*, 2023 WI 27, ¶ 9, 406 Wis. 2d 542, 553, 988 N.W.2d 606, 611 (citation omitted).

173) As alleged above, WEC Respondents themselves admit that the WisVote List includes individuals who are not “properly registered.” Exhibit G, Affidavit of Daniel J. Eastman.

174) Based on the May 16 testimony of Respondent Boardman that during the 10 years IDDP has been in existence, 42.7% of free ID card applicants self-cancelled, and .48 % of those who did not cancel provided false or fraudulent information.

175) Because free ID card applicants know or realize at some point that DMV will verify citizenship, it is reasonable to conclude that the same or greater percentage of voter registration applicants provided false or fraudulent information during the same period because registration applicants know WEC will *not* verify citizenship, inferring that there are over 10,000 active voters and over 15,000 total voters in the WisVote list who are unlawfully registered.

176) Where Respondents have produced no countervailing evidence and, indeed, have asserted they are legally prevented from doing so, they cannot rebut that conclusion.

Inadequate Remedy at Law

177) Impairment or deprivation of the full benefit of fundamental rights “for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. at 373, 96 S. Ct. at 2690.

178) Further, Respondents are governmental agencies with exclusive authority, management and control of the processes, data and resources necessary to verify citizenship of those included in the WisVote List and permitted to vote.

179) Petitioners therefore have no other remedy at law to prevent continuing and future impairment or deprivation of their fundamental rights.

SECOND CAUSE OF ACTION:

DECLARATORY AND INJUNCTIVE RELIEF, INCLUDING CONSTRUCTION OF WIS. STATS. § 85.61(1) CONSISTENT WITH 52 U.S.C. § 21083(a)(5)(B)(i)

180) Petitioners incorporate all foregoing paragraphs by reference.

181) Wis. Stat. § 806.04(2) provides:

POWER TO CONSTRUE, ETC. Any person interested under a deed, will, written contract or other writings constituting a contract, *or whose rights, status or other legal relations are affected by a statute*, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder. No party shall be denied the right to have declared the validity of any statute or municipal ordinance by virtue of the fact that the party holds a license or permit under such statutes or ordinances.

(Emphasis added.)

182) Actual existing and bona fide controversies exist between Petitioners and Respondents in relation to Respondents' violations of clear and positive duties alleged herein.

183) In particular, and without limitation, an actual existing and bona fide controversy exists between Petitioners and Respondents regarding construction of § 85.61(1). Administrative Complaint, ¶¶ 45 – 49.

184) As its caption provides, § 85.61 was enacted to implement and comply with HAVA requirements, 52 U.S.C. § 21083(a)(5)(B)(i): “85.61 Compliance with federal Help America Vote Act.” Correctly construed and applied *in pari materia* with 52 U.S.C. § 21083(a)(5)(B)(i), § 85.61(1) requires that WEC and DOT include DOT citizenship information in the information they match. Such construction is required by the plain language of the statutes, and avoids federal preemption of § 85.61(1) as Respondents currently construe and apply it.

185) However, Respondents have construed and applied §§ 85.61(1) and 5.056 to require matching *only* information included in the WisVote List under § 6.36(1) and the limited information included in the online registration specified by § 6.34(2m), but they completely ignore § 85.61(1)'s requirement to *also* match “personally identifiable information” collected and maintained by DOT in its “operating record file database under ch. 343 and vehicle registration records under ch. 341” that would “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.*”

186) Petitioners therefore demand declaratory and injunctive relief that Respondents comply with the duties alleged above and, in particular, without limitation, that they comply with §§

85.61(1) and 5.056 construed in compliance and *pari materia* with HAVA requiring them to include citizenship information collected and maintained by DOT with the other “personally identifiable information” that WEC and DOT match “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.”

THIRD CAUSE OF ACTION:

DECLARATION CONSTRUING WIS. STATS. § 13.45 (7)

187) Petitioners incorporate all foregoing paragraphs by reference.

188) Pursuant to § 803.03(3), Petitioners have named the Committees and their Chairmen and members as involuntary plaintiffs to obtain construction of their inherent authority and statutory authority pursuant to § 13.45 (7).

189) Actual existing and bona fide controversies exist between the Petitioners and Involuntary Petitioners and Respondents in relation to the claims made by Secretary Thompson that DPPA and the ERIC Agreement prohibit DOT’s disclosure to the WEC and the Committees of citizenship information held by DOT as requested by the Chairmen in their letters, Exhibits C, E and I.

190) The question whether DPPA and the ERIC Agreement pre-empt and limit the Committees’ inherent and statutory authority to request disclosure of and obtain the citizenship information held by DOT is necessarily dispositive of one or more of Petitioners’ claims.

191) Involuntary Petitioners therefore have interests vindicating their statutory and inherent authority such that disposition of this action, as a practical matter, may impair or impede their ability to protect that interest. Sec. 803.09.

192) A declaration of the Committees’ authority under § 13.45 (7) vis-à-vis the DPPA and ERIC Agreement are essential to the preservation of both Involuntary Petitioners’ inherent and statutory authority as a co-equal branch of government, as well as to the preservation of Petitioners’ rights as electors and citizens.

FOURTH CAUSE OF ACTION:

COMMON LAW CERTIORARI REVIEW OF WEC DECISION

193) Petitioners incorporate all foregoing paragraphs by reference.

194) Petitioners seek common law certiorari review of WEC’s refusal to accept or consider or issue any determination in relation to claims in Petitioner Cerny’s Administrative Complaint that

they are in violation of laws in relation to voter qualifications under § 5.06(1) Stats., and that they are in violation of HAVA under § 5.061(1).

195) Common law certiorari review of an agency decision is available because those statutes provide no express statutory method of review of such a decision by WEC. *Ottman v. Town of Primrose*, 2011 WI 18, ¶ 35, 332 Wis. 2d 3, 22, 796 N.W.2d 411, 420

196) Common law certiorari review of WEC's decision is available because (1) WEC failed to act within its jurisdiction (2) WEC failed to act according to law because it failed to act at all, (3) WEC's action failed to reflect its judgment rather than its will because it engaged in no judgment at all, and (4) WEC provided no evidence supporting its order because it failed to consider any evidence at all. *Id.*

197) Under those circumstances, Petitioners are entitled to review by common law certiorari to have Petitioner Cerny's Administrative Complaint claims determined which WEC refused to consider.

PRAYER FOR RELIEF

Wherefore, Petitioners Request the following relief:

FIRST AND SECOND CAUSES OF ACTION

A writ of mandamus or declaratory and injunctive relief requiring that:

1) WEC shall administer chs. 5 to 10 and 12 and other laws relating to elections to ensure that only U.S. citizens legally qualified to vote are registered and have a corresponding record included in the WisVote List.

2) On behalf of Respondents WEC and DOT, Respondents Wolfe and Boardman shall enter into and perform an agreement (i) requiring that *citizenship and legal status* information maintained by DOT shall be included in the personally identifiable information that WEC and DOT match to the extent necessary to verify the accuracy of the citizenship certifications provided by the applicants for the purpose of voter registration, (ii) further requiring that if a certification by an applicant or existing registrant is *not* accurate, WEC shall reject the applicant's registration form or de-activate the registrant's WisVote record or remove it from the List altogether as the case may be. Secs. 85.61(1) and 5.056.

3) For any such applicant or registrant whose application is rejected or List record de-activated or removed, WEC shall establish procedures such as those provided by DOT in IDPP to ensure due process opportunity to establish citizenship and have her record be included or restored in the WisVote List. Sec. 5.05(15).

4) WEC shall investigate the violation of chs. 5 to 10 and 12 and other laws by registration and inclusion of non-U.S. citizens or other unqualified registrants in the WisVote List, subsecs. 5.05(1)(b), (2m)(a)., and if the investigation(s) disclose(s) non-citizens included in the WisVote List, WEC shall bring suit or take other appropriate action seeking redress for such violations, removing records of such unlawful registrants from the List, and preventing such violations in the future. Secs. 5.05(1)(c) and (d).

5) WEC shall promulgate rules requiring that applicants for voter registration submit proof of citizenship as a requirement for voter registration, and further providing assistance to qualified applicants unable to submit that proof such that the voting rights of those applications are not impaired. Sec. 5.05(1)(f).

6) WEC shall issue and require municipalities to adhere to procedures established by WEC for proper maintenance of the WisVote List to include only U.S. citizens. Sec. 5.05(15).

7) WEC shall provide municipal clerks and other local elections officials guidance and resources to perform their duties to ensure that only U.S. citizens legally qualified to vote are registered and included in the WisVote List. Secs. 5.05(15); 7.15(1).

THIRD CAUSE OF ACTION

8) A declaration that § 13.45(7) requires DOT and WEC to provide the information requested by the Chairmen in Exhibits C, E, and I, and that DPPA and the ERIC Agreement do not in any way limit either the legislature's inherent and statutory authority to require such information or the DOT and WEC's obligation to comply with the relief sought by Petitioners stated in Paragraphs 1) – 7) above relating to Petitioners' First and Second Causes of Action.

9) Such other relief as Involuntary Petitioners may choose to seek, if any.

FOURTH CAUSE OF ACTION

COMMON LAW CERTIORARI REVIEW OF WEC DECISION

10) Judgment granting the Petitioners the relief and remedies available pursuant to Petitioner Cerny's Administrative Complaint with WEC filed July 29, 2024.

Dated September 30, 2024.

ATTORNEYS FOR PETITIONERS

By:

*Electronically signed by
Michael D. Dean*

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By:

*Electronically signed by
Kevin M. Scott*


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VERIFICATION OF ARDIS CERNY

Ardis Cerny states under oath that she has read the foregoing Amended Petition and Complaint and that the allegations of fact are true to the best of her knowledge based upon personal knowledge or upon reasonable information and belief.

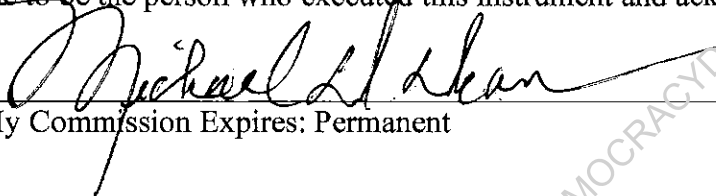
Date: September 30, 2024



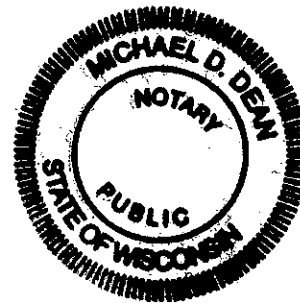
Ardis Cerny

State of Wisconsin)
)
County of Waukesha)

(Personally came before me on September 30, 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



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