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10-03-2025
Clerk of Circuit Court
Waukesha County
2024CV001353

BY THE COURT:

DATE SIGNED: October 3, 2025

Electronically signed by Michael P. Maxwell
Circuit Court Judge

STATE OF WISCONSIN CIRCUIT COURT- BRANCH 8 WAUKESHA COUNTY

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

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

Petitioners,

Case No: 24-CV-1353

vs.

WISCONSIN ELECTIONS COMMISSION,

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.

DECISION AND ORDER
MOTION TO DISMISS
AND
REQUEST FOR TEMPORARY INJUNCTION

BACKGROUND

This case concerns an amended petition by Ardis Cerny and Annette Kuglitsch (“Petitioners”) for a writ of mandamus and declaratory relief. Petitioners seeks a writ of mandamus ordering WEC and the DOT (“Respondents”) to take actions verifying the citizenship of applicants registering to vote. (See Amended Petition for Writ of Mandamus and Declaration Construing Statutes, Dkt. 49, p. 3). Petitioners allege Respondents have certain positive and plain duties under Wisconsin law. First, Petitioners argue Respondents have a duty to match citizenship information contained in the DOT’s records with WEC’s registration records under *Wis. Stat.* § 85.61(1). (Id., p. 5). Second, Petitioners argue that if citizenship information in the DOT’s records do not match that of a registrant in WEC’s records, WEC has a duty to remove the registrant. (Id., p. 5). Petitioners further argue that WEC is failing to investigate unlawful voter registrations, failing to bring suit for such unlawful registrations, failing to promulgate rules ensuring lawful registrations, and failing to issue procedures to municipal clerks to ensure lawful registrations. (Id., p. 21-23).

Respondents argue that Petitioners cannot meet the mandamus requirements as there are no clear legal right or plain and positive duty for Respondents to share and match data and remove non-citizens from the statewide voter registration list. (Dkt. 86, p. 1-2) Further, Respondents claim that Petitioners lack standing and have not pled facts to show substantial damage or injury to them. (Id.) Respondents argue that Petitioners' claim for declaratory and injunctive relief is not justiciable and does not show a legally protectable interest. (Id.) Finally, Respondents argue that Petitioners' claim for common-law certiorari is not viable as one of the Petitioners did not seek judicial review under *Wis. Stat.* § 5.06(8). (Id.)

DISCUSSION

Who is an “eligible elector” in Wisconsin and who is responsible for ensuring only someone “eligible” casts a vote in Wisconsin? The answer to these two very basic questions is the heart of this action. Article III, § 1 of the Wisconsin Constitution provides that “[e]very United States citizen age 18 or older who is a resident of an election district in this state is a qualified elector of that district.”¹ Inherent in this constitutional mandate are three requirements: 1) U.S. citizenship, 2) Age of 18 or older, and 3) Residency. *Wis. Stat.* § 6.02(1) mirrors that language, providing that “[e]very U.S. citizen age 18 or older who has resided in an election district or ward for 28 consecutive days before any election where the citizen offers to vote is an eligible elector.” So, the statutory language adds a fourth requirement – that of 28 days of consecutive residency. A plain language reading of the Wisconsin State Constitution and Wisconsin Statutes clearly indicate that you must be: a U.S. citizen, of the age of at least 18, and

¹ Wisconsin voters overwhelmingly approved a constitutional amendment change the word “every” to “only” placing further emphasis on only U.S. citizens be eligible to vote in Wisconsin elections. See <https://wislawjournal.com/2024/11/05/wisconsin-voters-approve-constitutional-amendment-barring-non-u-s-citizens-from-voting/>

resident of the state to participate in our elections. Petitioners claim that the Respondents, WEC and DOT, should be cooperating with each other and sharing data that could answer the question of whether a person appearing on the voter registration list is, in fact, a U.S. citizen. The Respondents, WEC in particular, claim Wisconsin Statutes “do not require the Commission to prevent non-U.S. citizens from appearing on the list or to remove non-U.S. citizens from the list.” (Dkt. 84, p. 3)

LEGAL STANDARD FOR MOTION TO DISMISS

The Court can only consider facts well plead in a complaint and any “reasonable inferences therefrom” upon request for a motion to dismiss. *Data Key Partners v. Permira Advisers LLC*, 2014 WI 86, ¶19, 356 Wis. 2d 665, 676, 849 N.W.2d 693, 699 (citing *Kaloti Enters., Inc. v. Kellogg Sales Co.*, 2005 WI 111, ¶ 11, 283 Wis. 2d 555, 699 N.W.2d 205). This Court must accept all facts in the complaint as true and any “reasonable inferences therefrom.” *Id.* (citing *Kaloti Enters., Inc. v. Kellogg Sales Co.*, 2005 WI 111, ¶11, 283 Wis. 2d 555, 699 N.W.2d 205). However, legal conclusions will not be accepted as true, so this Court must distinguish facts from legal conclusions. *Id.* (citing *Doe 67C v. Archdiocese of Milwaukee*, 2005 WI 123, ¶19, 284 Wis. 2d 307, 700 N.W.2d 180).

I. The Petitioners have standing to bring the action.

Generally, standing in Wisconsin is not jurisdictional, it is a matter of sound judicial policy. *Friends of Black River Forest v. Kohler Co.*, 2022 WI 52, ¶17, 402 Wis. 2d 587, 977 N.W.2d 342 (quoting *McConkey v. Van Hollen*, 2010 WI 57, ¶15, 326 Wis. 2d 1, 783 N.W.2d 855). Wisconsin courts will “construe the law of standing ‘liberally, and ‘even an injury to a trifling interest’ may suffice.” *Id.*, ¶19. However, “while standing is to be liberally construed, the

claim asserted must be legally recognizable in Wisconsin jurisprudence." *Id.* (quoting *Foley-Ciccantelli*, 333 Wis. 2d 402, ¶165 (Roggensack, J., concurring)).

Standing in this type of action was conclusively resolved by the Wisconsin Supreme Court's recent decision in *Clarke v. Wisconsin Elections Commission*. In *Clarke*, the Court allowed private parties, like Cerny and Kuglitsch, to commence an original action to enforce contiguity requirements provided in Wis. Const. art. IV, §§ 4 and 5, for drawing legislative district boundaries, because the issue was "*publici juris*, implicating the sovereign rights of the people of this state." 2023 WI 70, 995 N.W.2d 779, 779–81. The Supreme Court determined that the private *Clarke* parties, who did not live in and never would reside in district boundaries being challenged, had standing to proceed, in an original action, to challenge statutes of contiguity. Certainly, if the private *Clarke* parties had standing for an original action, Cerny and Kuglitsch, who have much more at stake as they allege their votes being diluted by non-citizens voting, likewise have standing to challenge statutes over elector qualifications. In fact, if Cerny and Kuglitsch were not to have standing in this matter, under *Clarke*, or any of the other liberally construed standing analysis, it is hard to see where a private citizen would ever have standing to challenge WEC on an alleged violation of election law. In fact, were this Court or any other Court to deny Cerny and Kuglitsch standing to pursue their claims under current jurisprudence, it would be rendering a political decision, not a legal one.

Post *Clarke*, the Supreme Court decided *Brown v. Wisconsin Elections Commission*, 2025 WI 5. The Court sought additional briefing from the parties as to whether *Brown* would change the arguments put forth by the parties on standing. Rather than clearing up the standing problems created by the lack of a clear majority opinion on the subject in *Teigen*, *Brown* provides little help to this Court. What little clarity this Court can ascertain from *Brown* is that

the standing question turned on whether Brown had standing to seek a review of a WEC decision under *Wis. Stat.* § 5.06. Petitioners in this matter do not seek a review under *Wis. Stat.* § 5.06, but rather mandamus and declaratory relief. As the question before this Court on a motion to dismiss is whether Petitioner has standing to claim that their votes are being diluted by someone casting a vote who is not lawfully able to cast a vote, the *Brown* decision does not provide this Court an answer while *Clarke* clearly does.

II. Petitioners have a clear legal right to ensure that their votes are not cancelled by someone voting who is not lawfully entitled to cast a vote in Wisconsin.

A writ of “[m]andamus is an extraordinary legal remedy, available only to parties that can show that the writ is based on a clear, specific legal right which is free from substantial doubt.” *State ex rel. Zignego v. WEC*, 2021 WI 32, ¶ 38, 396 Wis. 2d 391, 957 N.W.2d 208 (citation omitted). The “party seeking mandamus must also show that the duty sought to be enforced is positive and plain; that substantial damage will result if the duty is not performed; and that no other adequate remedy at law exists.” *Id.* (citation omitted). “It is an abuse of discretion to compel action through mandamus when the duty is not clear and unequivocal and requires the exercise of discretion.” *LESB v. Vill. of Lyndon Station*, 101 Wis. 2d 472, 494, 305 N.W.2d 89 (1981) (citation omitted).

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.; Wis. Stat. § 6.02(1). The U.S. Supreme Court has pronounced that “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). Wisconsin has consistently followed these principles. *State ex rel. Sonneborn v. Sylvester*, 26 Wis. 2d 43, 53, 55, 132 N.W.2d 249, 254, 255 (1965). Petitioners have a clear legal right to ensure that their votes are not cancelled or diluted by an ineligible person casting an unlawful vote.

III. WEC has a plain and positive duty to ensure that only “legal votes” are cast by “legally qualified electors.”

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.” *Wis. Stat.* §§ 5.01(1), (3)(a)[emphasis added]. Determining which candidate receives the greatest number of “legal” votes can only be accomplished if only legally qualified electors are casting votes. The requirements of eligibility to vote in Wisconsin could not be clearer.

Every U.S. citizen age 18 or older who has resided in an election district or ward for 28 consecutive days before any election where the citizen offers to vote is an eligible elector.

Wis. Stat. § 6.02(1).

Shockingly, the agency that Wisconsin’s citizens rely upon to ensure the integrity of our electoral process claims Wisconsin statutes “do not require the Commission to prevent non-U.S. citizens from appearing on the list or to remove non-U.S. citizens from the list.” (Dkt. 84, p. 3.) WEC is wrong. Wisconsin statutes are replete with requirements that only lawful voters are allowed to cast a vote:

- *Wis. Stat.* § 5.01(3)(a) states, in part, “[t]he person receiving the greatest number of legal votes for the office shall be declared elected, and the canvassers shall so determine and certify. [emphasis added.]
- *Wis. Stat.* § 5.01(5)(a) states, in part, “[t]he persons receiving the greatest number of legal votes cast jointly for them for governor and lieutenant governor shall be declared elected, and the canvassers shall so determine and certify.” [emphasis added.]
- *Wis. Stat.* § 6.02 states: “(1) Every U.S. citizen age 18 or older who has resided in an election district or ward for 28 consecutive days before any election where the citizen offers to vote is an eligible elector. (2) Any U.S. citizen age 18 or older who moves within this state later than 28 days before an election shall vote at his or her previous ward or election district if the person is otherwise qualified. If the elector can comply with the 28-day residence requirement at the new address and is otherwise qualified, he or she may vote in the new ward or election district.” [emphasis added.]
- *Wis. Stat.* § 6.15(1) states, in part, “[a]ny person who was or who is an eligible elector under ss. 6.02 and 6.03, except that he or she has been a resident of this state for less than 28 consecutive days prior to the date of the presidential election, is entitled to vote for the president and vice president but for no other offices.” [emphasis added.]
- *Wis. Stat.* § 6.18, providing for a former resident, who is not eligible in the state he/she currently resides to vote, to vote in a presidential election, requires the person to “swear or affirm that [he/she] is a citizen of the United States”
- *Wis. Stat.* § 6.24, defining an “overseas elector” as a “U.S. citizen.”

WEC has no discretion whether to include non-U.S. citizens in the official voter roll, because the official voter roll may only include those “electors that are properly registered to vote.” *Wis. Stat.* § 5.02(17). WEC is failing in the most basic task of ensuring that only lawful voters make it to the voter roll from where lawful votes are cast.

IV. HAVA and Wisconsin Statutes require WEC to verify the accuracy of the information provided on applications for voter registrations.

Wisconsin's official voter roll was authorized by 2003 WIS ACT 265, (codified at *Wis. Stat.* § 5.061), 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. HAVA Section 303, 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.] Further, 52 U.S.C. § 21083(a)(5)(B)(i) requires that "[t]he chief State election official and the official responsible for the State motor vehicle authority of a State shall enter into an agreement to match information in the database of the statewide voter registration system with information in the database of the motor vehicle authority to the extent required to enable each such official to verify the accuracy of the information provided on applications for voter registration. [emphasis added.]

Wis. Stat. § 85.61(1) requires the accuracy of any information submitted for voter registration. Specifically, the matching of the voter roll information with information maintained by the DMV is necessary to "verify the accuracy of the information provided for the purpose of voter registration. *Wis. Stat.* § 85.61(1)(emphasis added.) As *Wis. Stat.* § 85.61 and HAVA demand, *Wis. Stat.* § 6.34 requires proof of residency, not some self-reporting affirmation. Proof of citizenship is no different under *Wis. Stat.* § 85.61 and HAVA. WEC fails the citizens of Wisconsin again in this regard.

- V. Wisconsin Statutes specifically require WEC and DOT to match the information provided in DOT records to the information in the voter registration system so that WEC can fulfill its duties under HAVA to verify the accuracy of the information provided.**

WEC argues that state and federal law prevent it from matching data from the Department and that the agreement it entered into with the Electronic Registration Information Center, Inc. (ERIC) prohibits it from sharing such citizenship information. Again, WEC is wrong on both assertions. The federal statute in question provides an explicit exception for use of personal information on motor vehicle records “by any government agency . . . in carrying out its functions.” 18 U.S.C. § 2721(b)(1). In an attempt to avoid applying this explicit exception, WEC manufactures a tortured reading of the statutes (see statutory list *supra*, sec. III), to conclude that WEC is not required to “prevent non-U.S. citizens from appearing on the list or to remove non-U.S. citizens from the list.” (Dkt. 84, p. 3.) Federal statute specifically allows use of motor vehicle records for this purpose and statute statutes require verification of citizenship. The DOT records are but one method that WEC could simply and easily use to verify citizenship. Further, the ERIC agreement, if legally enforceable, merely states that WEC is prohibited from transmitting citizenship information from WEC to ERIC – it says nothing about transmitting citizenship data from DOT to WEC. (Dkt. 109, p. 2)

VI. Petitioners are entitled to injunctive relief as WEC is failing to secure Wisconsin voter registration list from non-citizens being able to access the voter rolls and potentially cast unlawful ballots.

To obtain temporary relief pursuant to *Wis. Stat. § 781.02*, Petitioners must show a probability of success pursuing mandamus under *Wis. Stat. § 781.01*, 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). To obtain a preliminary injunction, Petitioners must

show: (1) likelihood of success on the merits; (2) irreparable harm; (3) necessity to preserve the status quo; and (4) no other remedy at law. *Werner v. A.L. Grootemaat & Sons, Inc.*, 80 Wis. 2d 513, 520–21, 259 N.W.2d 310, 314 (1977); *Milwaukee Deputy Sheriffs' Ass'n v. Milwaukee Cnty.*, 2016 WI App. 56, ¶ 20, 370 Wis. 2d 644, 883 N.W.2d 154. When considering whether to grant a temporary injunction, “competing interests must be reconciled and the plaintiff must satisfy the trial court that on balance equity favors issuing the injunction.” *Pure Milk Prods. Coop. v. Nat'l Farmers Org.*, 90 Wis. 2d 781, 800, 280 N.W.2d 691 (1979).

As noted in sec. II and III supra., Petitioners have a clear legal right to not have their votes diluted by a non-citizen casting an unlawful ballot. Further, WEC has a plain and positive duty to ensure that only U.S. citizens may be registered to vote in Wisconsin and therefore only U.S. citizens may appear on Wisconsin voter rolls. Both a “clear legal right” and a “plain and positive” duty have been satisfied by the Petitioners.

If one non-citizen is present on the voter rolls and thus can cast even one unlawful vote, there can be no doubt as to the injury to every other lawful voter in Wisconsin who's lawfully cast vote could be cancelled. Were this to happen to a Wisconsin citizen, like the Petitioners, the damage to the right to cast a lawful ballot would be irreparable and there is no other remedy available at law to cure it. The right to cast a lawful vote is one of the most fundamental acts of our Republic protected by both the U.S. Constitution and the Wisconsin State Constitution. In fact it is a “sacred right of the highest character.” (J. A.W. Bradley, dissenting, *Teigen v. Wis. Elections Comm'n*, 2022 WI 64, P205 citing *State ex rel. McGrael v. Phelps*, 144 Wis. 1, 15, 128 N.W. 1041 (1910).

The difficulty remaining for this Court is what injunctive relief is necessary to preserve the status quo, when the status quo is WEC violating state and federal statutes by maintaining an election system that potentially allows individuals on to the voter rolls who may not be lawfully entitled to cast a vote in Wisconsin. "[T]he general rule is that a court may grant such relief as it feels a party is entitled to, even if such relief has not been demanded . . ." *Klaus v. Vander Heyden*, 106 Wis. 2d 353, 359 (1982).

One form of relief sought by the Petitioners is to require DOT and WEC to utilize the information in DOT records to determine if non-citizens may be currently on Wisconsin's voter rolls. Such relief is proper, but only gets the parties as far as identification of potential individuals on the voter rolls who may not be lawfully entitled to vote in Wisconsin. To the extent that Petitioners seek removal of such identified individuals, there are other available avenues to challenge an individual on the voter rolls that incorporate due process and serve the public interest better than any injunctive relief that this Court could fashion at this time. However, what remains is the current voter registration system for which WEC is ultimately responsible for which does not comport with state or federal statute in that it allows a person to register to vote in Wisconsin without proof of U.S. citizenship. This cannot continue and injunctive relief is appropriate.

IT IS HEREBY ORDERED,

- 1) Petitioners request for mandamus is granted. WEC has a plain and positive duty to verify U.S. citizenship of every person seeking to register to vote in Wisconsin. Further, WEC has a plain and positive duty to determine whether any non-citizens are currently listed as eligible voters on Wisconsin's voter rolls.

- 2) WEC, along with any local election official it regulates through the administration of elections as defined by *Wis. Stat. § 5.05*, is hereby enjoined from accepting any request to register to vote, whether electronically made or through a paper process, without verification that the applicant is a U.S. citizen along with any other lawful requirement as currently required by statute.
- 3) The parties shall meet and confer on a process and plan to evaluate the current voter rolls, whether through the matching of information contained in the DOT files or other lawfully available means, to determine if there are any registrants on the voter rolls who are not lawfully entitled to cast a vote in Wisconsin. The review of the current voter rolls for this purpose shall be substantially completed prior to the next regularly scheduled statewide election.
- 4) The court's clerk shall set a status hearing via Zoom in 60 days to update the Court on the progress of said plan and to discuss any other legal issues or relief remaining in this matter.

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