

FILED
07-26-2024
Clerk of Court
Marinette County
2024CV000176
Honorable James A.
Morrison
Branch 2

STATE OF WISCONSIN CIRCUIT COURT MARINETTE COUNTY

THOMAS OLDENBURG

Petitioner,

vs.

Case No.

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

Case Code: 30952

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

Respondents.

PETITION FOR WRIT OF MANDAMUS

NOW COMES Petitioner Thomas Oldenburg, by his attorneys the Law Office of Kevin M. Scott LLC, by Kevin M. Scott, and Michael D Dean LLC, by Michael D Dean, and as for a Petition for a Writ of Mandamus states as follows—

INTRODUCTION

This petition seeks a writ of mandamus compelling Respondent Wisconsin Elections Commission (“WEC”) to maintain the state’s “registration list”—the list of eligible voters that the state’s clerks are required to utilize when conducting elections—so that on a prospective basis only United States citizens are added to the list.

WEC is statutorily charged with the duty to “compile and maintain electronically [the state’s] official registration list (the “Registration List”).” Wis. Stat. §§ 5.05(15); 6.36(1)(a). Wisconsin statutes define the Registration List as the list of “**electors that are properly registered to vote.**” Wis. Stat. § 5.02(17) (emphasis added). The statutory requirement to do so is legislation conforming with the federal Help America Vote Act of

2002 (“HAVA”)—which requires that states create and maintain a “single, uniform, official, centralized, interactive computerized statewide voter registration list...that contains the name and registration information of every **legally registered voter** in the State....” 42 U.S.C. § 15483(a)(1)(A) (emphasis added). Wisconsin’s municipal clerks are statutorily required to utilize the Registration List in every election. Wis. Stat. § 5.05(15).

By definition, to be a “properly registered elector,” and thus eligible to be added to the Registration List, one must first be an “elector.” To be an “elector” under Wisconsin law, a person must be a United States citizen. The Wisconsin Constitution defines a “qualified elector” as “[e]very **United States citizen** age 18 or older who is a resident of an election district in this state.” WI Const art. III Sec 1 (emphasis added). Wis. Stat. § 6.02(1) defines an “eligible elector” as “[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.” (emphasis added).

As a result, it is WEC’s plain and positive duty that whether “compiling” or “maintaining” the Registration List, WEC must ensure that only United States citizens may be added to it. However, WEC takes no steps whatsoever to see that persons who fill out applications to register are, in fact, United States citizens. This mandamus action is for the purpose of forcing WEC to perform its plain and positive duty to only place United States citizens on the Registration List.

While this duty is axiomatic and should require no intervention by the courts, WEC has abandoned its duty under both federal and state law as the administrator of Wisconsin’s elections to protect the constitutional right of Wisconsin citizens to equal representation on the “one man-one vote” principle. A ballot cast illegally by a non-citizen cancels a qualified elector’s vote altogether. This court must protect the rights of the

citizens of this state by issuing a writ of mandamus requiring WEC to forestall the addition of non-United states citizens to the Registration List for any upcoming election.

PARTIES

1. Petitioner Thomas Oldenburg is an adult resident of the Town of Amberg in the State of Wisconsin.

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

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

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

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

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

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

APPLICABLE LAW

WEC has been granted the Power to administer Wisconsin’s Elections in a manner consistent with the Will of the Electors.

8. U.S. citizenship is the principal, indispensable qualification to register and vote in both federal and state elections. It is grounded in the “Qualification Clauses” of both federal and state constitutions and in corresponding federal and state statutes. See U.S. Const. [art. I § 2 cl. 1](#) (second phrase), the [Seventeenth Amendment](#), and [Wis. Const. art. III § 1](#).

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

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

11. To that end—

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

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

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

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

14. Pursuant to Wis. Stat. § 5.05(1) WEC has “the responsibility for the administration of chs. 5 to 10 and 12 and other laws relating to elections and election campaigns, other than laws relating to campaign financing.”

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

15. Wis Stat. § 5.01(1) provides the guiding duty for construing that responsibility:

5.01 Scope.

(1) CONSTRUCTION OF CHS. 5 TO 12. Except as otherwise provided, chs. 5 to 12 *shall be construed to give effect to the will of the electors...*

(Emphasis added.)

16. Sec. 5.01(3)(a) defines the “will of the electors” that those election laws “shall be construed” to “give effect to”:

(2) PLURALITY SHALL ELECT. (a) The person receiving the greatest number of *legal* votes for the office *shall* be declared elected.

(Emphasis added.)

17. Thus, the guiding purpose for construing WEC’s duties and authority is to “give effect” to the will of electors casting “legal votes.” *Wanish v. Lab. & Indus. Rev. Comm’n*, 163 Wis. 2d 901, 908, 472 N.W.2d 596, 598 (Ct. App. 1991) (“The primary objective in construing a statute is to achieve a reasonable construction that will effectuate the statutory purpose.”)

**United States Citizenship is a Paramount Legal Requirement
for being an “Elector” in the State of Wisconsin**

18. To be an “elector” as defined by Wisconsin law a person must be a United States citizen.

19. The Wisconsin Constitution defines a “qualified elector” as “[e]very **United States citizen** age 18 or older who is a resident of an election district in this state.” WI Const art. III Sec 1 (emphasis added).

20. Wis. Stat. § 6.02(1) defines an “eligible elector” as “[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.” (emphasis added).

21. In 1861, the Wisconsin Supreme Court declared the axiomatic nature of United States citizenship as it related to the electoral process.

22. In *Smith*, defendant Smith had received the most votes in an election for Jefferson County sheriff, but he was not a “qualified elector” because he was *not* a U.S. citizen.

23. Defendant Smith “relied, for the most part, upon the *absence* of any constitutional or statutory provision prohibiting the election of aliens to offices of this kind, and argued thence that the electors are at liberty to confer them upon whom they please.” *Id.* at 499 (emphasis added)

24. However, The unanimous court was emphatic:

These arguments are far-fetched, and when viewed in the light of those first principles of national law and policy which pertain to all independent popular governments, seem altogether inadequate to sustain the conclusions contended for. As to all such governments it is an acknowledged principle, which lies at the very foundation, and **the enforcement of which needs neither the aid of statutory nor constitutional enactments or restrictions**, that the government is instituted by the citizens for their liberty and protection, and that it is to be administered and its powers and functions exercised only by them and through their agency.

Id. (Emphasis added.)

**As part of its general duty to administer the Wisconsin's Elections,
WEC has been statutorily charged with
compiling and maintaining the State's Registration List**

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

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

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

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

28. Wis. Stat. § 5.05(15) provides—

REGISTRATION LIST. The commission is responsible for the design and maintenance of the official registration list under s. 6.36. **The commission shall require all municipalities to use the list in every election** and may require any municipality to adhere to procedures established by the commission for proper maintenance of the list.

(emphasis added)

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

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

30. The statutes above setting out WEC's duty to create and maintain the Registration List were created or amended as part of 2003 Wisconsin Act 265, which was initiated by the state Elections Board in response to the standards imposed on the state by the federal Help America Vote Act of 2002 (“HAVA”). Wisconsin Legislative Council

Information Memorandum, IM 2004-2, *2003 Wisconsin Act 265, New Law Relating to Election Administration*, p. 1.²

31. Previous to HAVA and Act 265, there was no statewide voter registration list. *Id.*

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

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

(a) Computerized statewide voter registration list requirements

(1) Implementation

(A) In general

Except as provided in subparagraph (B), each State, acting through the chief State election official, shall implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized **statewide voter registration list** defined, maintained, and administered at the State level **that contains the name and registration information of every legally registered voter in the State** and assigns a unique identifier to each **legally registered voter** in the State (in this subsection referred to as the "computerized list"), and includes the following:

- (i) The computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the State.
- (ii) The computerized list contains the name and registration information of every legally registered voter in the State.
- (iii) Under the computerized list, a unique identifier is assigned to each legally registered voter in the State.
- (iv) The computerized list shall be coordinated with other agency databases within the State.

²https://docs.legis.wisconsin.gov/misc/lc/study/2004/special_committee_on_election_law_review/010_october_13_2004_meeting/im_2004_02

(v) Any election official in the State, including any local election official, may obtain immediate electronic access to the information contained in the computerized list.

(vi) All voter registration information obtained by any local election official in the State shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official.

(vii) The chief State election official shall provide such support as may be required so that local election officials are able to enter information as described in clause (vi).

(viii) The computerized list shall serve as the official voter registration list for the conduct of all elections for Federal office in the State.

(emphasis added)

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

Bush stated in part—

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

The commission that helped inspire this legislation was led by two exceptional Americans, with broad experience in public service, our 38th and 39th President— Presidents. *[Laughter]* Although Gerald Ford and Jimmy Carter could not be here today, our Nation is grateful for their work on election reform and for all they have given to America.

...

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

(emphasis added)

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

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

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

**WEC is not performing its Ministerial Duty to only place
“Electors” on the Registration List**

**In opposition to its ministerial duty, WEC has created a system by which Non-Citizens
are being added to the Registration List with no attempt to verify Citizenship**

36. Wis. Stats. 6.30 provides three ways for an elector to register—in person at a municipal clerk’s office, by mail, or by “electronic application.”

37. While only an elector (meaning a United States citizen) may register to vote under Wisconsin statutes, WEC has promulgated rules whereby an application to register may be processed by the municipal clerk *even though the applicant fails to certify they are a United States citizen.*

38. Chapter EL 3.03 provides—

EL 3.03 Treatment of voter registration applications.

(1) If an applicant for voter registration fails to check either or both of the boxes indicating the elector is a U.S. citizen and indicating the elector is or will be at least 18 years old at the time of the next election, the municipal clerk may process the voter registration application if the elector has signed the certification on the application form indicating the voter meets or will meet the applicable requirements to vote in this state.

(2) If information is missing from a voter registration application form, the municipal clerk shall contact the applicant by any means feasible, including in person, by email, facsimile transmission or telephone, to obtain the missing information.

39. In other words, EL 3.03 allows a clerk to process an application to register even though the applicant does not certify they are a United States citizen, so long as the applicant signs a “certification” on an application form that they meet the “requirements to vote.”

40. Then, WEC has promulgated Form EL-131, which is the uniform application to register.

41. The Form EL-131 **does not require an applicant to certify, under penalty of law, that they are a United States citizen.**

42. A true and correct copy of the current Form EL-131 is attached as **Exhibit A.**

43. The EL-131 only requests that an applicant “please” check a box stating they are a citizen.

44. Then, it only requires that an applicant certify that “**to the best of my knowledge, I am a qualified elector.**” (emphasis original).

45. As a result, all that is required for a municipal clerk to process an application is that the applicant state an **opinion** that the applicant is a “qualified elector.”

46. Thus, an application made in person or by mail to a municipal clerk utilizing the EL-131 does not require any attestation that the elector is a United States citizen for the clerk to process the application.

47. Nor is an applicant that applies online required to ever certify that the applicant is, in fact, a United States citizen.

48. The certification that an online applicant is required to make reads as follows—

I hereby certify, **to the best of my knowledge**, that I am a qualified elector, a U.S. citizen at least 18 years old or will be at least 18 years old at the time of the next election, having resided at the above residential address for at least 28 consecutive days preceding this election with no present intent to move. I am not currently serving a sentence including probation or parole for a felony conviction, and not otherwise disqualified from voting. I certify that all statements on this form are true and correct. If I have provided false information I may be subject to imprisonment under State and Federal laws.

49. Again, the applicant is only asked to certify an *opinion* that the applicant is a United States citizen.

50. WEC then allows and/or actually adds the names of persons who complete the registration process, whether in person, by mail, or online, even though no certification of citizenship is ever performed by the applicant to the Registration List. See Wis. Stat. § 6.32(1), (4).

WEC takes no Steps to Verify Citizenship of Applicants, even though a System is available and utilized by the Department of Motor Vehicles that can do so.

51. In addition to promulgating rules and forms that ensure an applicant never has to certify that the applicant is a United States citizen, at no point in the process of adding an applicant's information to the Registration List does WEC take any steps to **verify** that any applicant is a United States citizen.

52. In contrast, the Wisconsin Department of Motor Vehicles uses a federal database to conduct an initial citizenship check of all applicants for identification cards that an applicant may use for the purpose of voting.

53. At a May 16 legislative hearing, Department of Transportation Deputy Secretary Kristina Boardman testified that applicants applying to the Division of Motor Vehicles for a free voter identification card must present a birth certificate or other proof of citizenship. Wisconsin Eye video-recording @ 13:52. (Hearing before the Wisconsin

Assembly Committee on Campaigns and Elections and Wisconsin Senate Committee on Shared Revenue, Elections and Consumer Protection. Recording available at <https://wiseye.org/2024/05/16/joint-assembly-and-senate-committees-on-campaigns-elections-shared-revenue-and-consumer-protection/>.)

54. For applicants who do not have proof of citizenship available, legal status of citizenship is confirmed through the SAVE system. (See U.S. Citizenship and Immigration Services, *SAVE Verification Process*, available at <https://www.uscis.gov/save/about-save/save-verification-process>.) Hearing @ 14:03.

55. If the SAVE system does not confirm an applicant's U.S. citizenship, the DMV assists the applicant and pays associated fees to obtain birth record information confirming citizenship through the Electronic Verification of Vital Events (EVVE) system so that no qualified elector lacking means to acquire proof of citizenship is deprived of the right to vote. (See <https://www.naphsis.org/about/what-we-do>.) Hearing @ 15:00.

56. That process, known as the ID Petition Process (IDPP), was created by Wisconsin DOT by administrative rule in response to a 2014 Wisconsin Supreme Court decision, and is now codified at §§ 343.165(8)(a) and 343.50(1), (3), Stats. Hearing @ 15:00.

57. The SAVE and EVVE systems are available to Respondents, either by agreement with the DMV, or by direct subscription with DHS.

58. However, Respondents have established no procedures or requirements whatever to require applicants to present "documentary proof of citizenship" as a condition of registration, which they clearly have authority to do because Wisconsin is exempt from the National Voter Registration Act and its "accept and use" provisions. And even if Wisconsin were *not* exempt from NVRA, Respondents are still authorized to verify

applicant's citizenship using SAVE and EVVE "information in their [Respondents'] possession." *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 9, 15, 133 S. Ct. 2247, 2254, 2257 (2013).

59. Nor have Respondents made any effort to establish "procedures" or administrative rules as DOT/DMV did in 2014, to enable themselves and municipal clerks to perform their citizenship verification obligations.

60. The United States House of Representatives recently passed H.R. 8281, the Safeguard American Voter Eligibility (SAVE Act).

61. The SAVE Act amends the National Voter Registration Act of 1993 to require proof of United States citizenship to register an individual to vote in elections for Federal office, and for other purposes.

62. According to the official summary of H.R.. 8281—

This bill requires individuals to provide documentary proof of U.S. citizenship in order to register to vote in federal elections.

Specifically, the bill prohibits states from accepting and processing an application to register to vote in a federal election unless the applicant presents documentary proof of U.S. citizenship.

Further, the bill (1) prohibits states from registering an individual to vote in a federal election unless, at the time the individual applies to register to vote, the individual provides documentary proof of U.S. citizenship; and (2) requires states to establish an alternative process under which an applicant may submit other evidence to demonstrate U.S. citizenship.

Each state must take affirmative steps on an ongoing basis to ensure that only U.S. citizens are registered to vote, which shall include establishing a program to identify individuals who are not U.S. citizens using information supplied by specified sources.

Additionally, the bill requires states to remove noncitizens from their official lists of eligible voters.

The bill allows for a private right of action against an election official who registers an applicant to vote in a federal election who fails to present documentary proof of U.S. citizenship.

The bill also establishes criminal penalties for registering an applicant to vote in a federal election who fails to present documentary proof of U.S. citizenship.

The Election Assistance Commission must, within 10 days, adopt and transmit guidance for implementing the bill's requirements to chief state election officials.

<https://www.congress.gov/bill/118th-congress/senate-bill/4292>

63. The SAVE Act passed the House of Representatives on July 10, 2024 by a vote of 221 to 198.

64. It is against this backdrop that Petitioner seeks to compel Respondents to perform their duty to ensure that the Registration List contains only United States citizens.

PETITION

A Writ of Mandamus must be issued compelling WEC to Compile and Maintain the Registration List Void of Non-Citizens.

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

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

There is a Clear Legal Right to have the Registration List be Void of Non-Citizens.

67. It is axiomatic that the "will of the electors," the guiding principle behind American democracy, can and should only be exercised by "electors" as defined by federal and state law.

68. Having non-citizens (non-electors) on the Registration List, and thus able to vote, defiles the “one man-one vote” principle held as axiomatic in the conduct of American elections.

69. In a series of three decisions between 1962 and 1964, the Supreme Court extended that authority to establish the “one man-one vote” principle.

70. In *Baker v. Carr*, the Court ruled that irrational apportionment among state legislative districts violated equal protection and due process, noting that “A citizen's right to a vote free of arbitrary impairment by state action has been judicially recognized as a right secured by the Constitution, when such impairment resulted from *dilution by a false tally*.” 369 U.S. 186, 208, 82 S. Ct. 691, 705 (1962) (emphasis added) (citing *United States v. Classic*, 313 U.S. 299, 61 S.Ct. 1031 (1941)).

71. Similarly, in *Gray v. Sanders*, the Court ruled that allocation of state primary election votes among counties on a winner-take-all-basis violated equal protection, noting that the rights and protections Petitioners are guaranteed include the right to “*be protected from the diluting effect of illegal ballots*.” 372 U.S. 368, 380, 83 S. Ct. 801, 808 (1963) (emphasis added) (citing *Ex parte Siebold*, 100 U.S. 371; *United States v. Saylor*, 322 U.S. 385, 64 S.Ct. 1101).

72. Finally, in *Wesberry v. Sanders*, electors in Georgia’s Fifth Congressional District successfully argued that because the Fifth District population was “two to three times” greater than populations in other districts, they were “deprived of the full benefit of their right to vote” by the resulting “vote-diluting discrimination” in violation of U.S. Const. [art. I, § 2, cl. 1](#). 376 U.S. 1, 2-3, 8, 84 S. Ct. 526, 527, 530 (1964).

73. In conformance with those decisions, the Wisconsin Supreme Court likewise affirmed the “the one man-one vote principle” in *State ex rel. Sonneborn v. Sylvester*, 26 Wis. 2d 43, 53, 55, 132 N.W.2d 249, 254, 255 (1965).

74. The one man-one vote axiom applies with its greatest force when addressing the right of the electorate to be free of illegally cast ballots. A ballot illegally cast by a non-citizen does not merely unconstitutionally *dilute* a qualified elector’s vote, it *cancels* the qualified elector’s vote altogether.

75. Non-citizens who cast illegal ballots are subject to criminal penalties of fines and imprisonment. 18 U.S.C. §§ [611](#), [911](#); 18 U.S.C. § [1015](#)(f). See *Fitzpatrick v. Sessions*, 847 F.3d 913, 914 (7th Cir. 2017) (“Aliens are forbidden to vote in federal elections. 18 U.S.C. § 611”).

76. The same criminal penalties apply to non-citizens who falsely *register* to vote in federal elections. *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 8–9, 133 S. Ct. 2247, 2253 (2013) (hereafter, “ITCA”) (citizenship requirements are “Times, Places and Manner” regulations enacted under the Elections Clause, and include “regulations relating to *registration*” (citations omitted and cleaned up, emphasis added)).

77. Therefore, the citizens of the State of Wisconsin, including Petitioner, have a clear legal right to have the Registration List free of non-citizens so that they may be able to have their ballots counted in a manner that comports with statutory and constitutional requirements.

A “Plain and Positive Duty” exists for WEC to “Compile and Maintain” the Registration List so that it is void of Non-Citizens.

78. Existence of a “positive and plain” duty subject to mandamus is a question of law resolved by the court, even where the question is a “novel” one, not previously

“settled or obvious.” See *State ex rel. Dep’t of Nat. Res. v. Wisconsin Ct. of Appeals, Dist. IV*, WI 25, ¶ 11, 380 Wis. 2d 354, 366, 909 N.W.2d 114, 120, discussed *infra*, § II.A.

79. As the Wisconsin Supreme Court identified in *Smith*, citizenship is the quintessential inherent principle of “all independent popular governments” by their very nature, and “enforcement” of that principle “needs neither the aid of statutory nor constitutional enactments or restrictions.” *Smith* at 497.

80. “[P]opular governments” are “instituted by the citizens for their liberty and protection,” and government’s “powers and functions” must be “exercised only by them and through their agency.” *Id.* at 499

81. WEC is an independent administrative executive agency. Sec. 15.61.

82. Its administrator (Meagan Wolfe) serves as the state’s chief election officer. Sec. 5.05(3g).

83. WEC Commissioners are appointed under § 15.61(1)(a), and are WEC’s “head.” Sec. 15.01(8).

84. WEC is statutorily charged with the duty to “compile and maintain electronically [the state’s] official registration list (the “Registration List”).” Wis. Stat. §§ 5.05(15); 6.36(1)(a).

85. Wisconsin statutes define the Registration List as the list of “electors that are properly registered to vote.” Wis. Stat. § 5.02(17)(emphasis added).

86. Wisconsin’s municipal clerks are statutorily required to utilize the Registration List in every election. Wis. Stat. § 5.05(15).

87. These statutory duties place the plain and positive duty upon WEC to “compile and maintain” a Registration List that consists only of “electors,” which by definition must be United States citizens.

88. There is no discretion involved in the duty to only place “electors” on the Registration List.

89. “Elector” is a constitutionally and statutorily defined term that has three very simple requirements—

- a. United States citizen;
- b. 19 years or older at the time of election;
- c. Resident of an election district for more than 28 days prior to the election.

90. There is no discretion involved in the choice of whether to place or not to place a non-citizen on the Registration List.

91. A registration applicant is either a citizen or is not — it is a binary inquiry that is easily resolved without any exercise of discretion.

92. WEC has a ministerial duty to **only place citizens on the Registration List.**

93. “A ministerial duty is not an undifferentiated duty to act but a duty to act in a particular way: to post a warning sign...to attempt an immediate rescue of occupants of a submerged van...to send a squad to investigate a downed tree in a roadway at night... A ministerial duty, by definition, is explicit as to time, mode, and occasion for performance, and does not admit of any discretion... *Lodl v. Progressive Northern Ins. Co.*, 2002 WI 71, ¶ 44, 253 Wis. 2d 323, 646 N.W.2d 314 (2002).

94. Wisconsin law clearly sets out that WEC must compile and maintain the Registration List in a manner so that it only contains “electors,” who by definition must be United States citizens.

95. WEC has no discretion whether to add non-citizens to the Registration List.

96. Every time a non-citizen is added to the Registration List, WEC acts contrary to law and its explicit duty to “compile and maintain” a list of “electors.”

97. As *Smith* directs, WEC’s duty to conduct threshold citizenship checks is inherent not only in its “powers and functions” expressed in Wis. Const. art. III §§ 1 and 2 and §§ 5.05(1) *et al.*, but in the nature of “popular government” itself, and “the constitution as well as the statutes of the state are to be construed with reference to the fundamental principles above stated, and so as, if possible, to give them effect.” *Smith* at 497.

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

98. As noted above, a ballot illegally cast by a non-citizen cancels a qualified elector’s vote altogether.

99. Electoral schemes that “operate to minimize or cancel out the voting strength of racial or political elements of the voting population” are not tolerable under the law.” *Burns v. Richardson*, 384 U.S. 73, 88, 86 S.Ct. 1286, 1294, 16 L.Ed.2d 376, 388 (1966).

100. As alleged *supra*, par. 63 – 68 (discussing *Baker v. Carr et al.*), while the one man-one vote axiom bars apportionment or districting schemes that merely *dilute* a qualified elector’s vote, it applies with the greatest force to bar illegal votes that *cancel* a qualified electors vote altogether.

101. In contrast to *Wesberry*’s remand to draw new Congressional districts lacking “mathematical precision” that merely reduced *dilution* of legal votes, the writ Petitioners seek here protects against complete *cancellation* of legal votes. For each non-citizen’s *illegal* ballot prevented by the writ, the efficacy of a citizen’s *legal* ballot is preserved – not merely reducing dilution of a legal vote, but preserving its efficacy *entirely*.

102. The damage done by the cancellation of the legal votes of Wisconsin citizens through the casting of illegal ballots by non-citizens included by Respondents in the Registration List will be substantial, and injurious to every Wisconsin elector.

There is No Other Adequate Remedy at Law.

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

104. Upon information and belief, Respondents are expending a significant amount of state tax money to maintain the state's registration list in a manner that is contrary to law as detailed in the above allegations.

REQUEST FOR WRIT OF MANDAMUS

105. Based on the above, Petitioner is entitled to a writ of mandamus compelling WEC to perform its duty to compile and maintain the Registration List so that only United States citizens are added to the list going forward.

106. Wis. Stat. § 801.02(5) provides that an action for a writ of mandamus may be commenced by the following procedure—

...by filing a complaint demanding and specifying the remedy, if service of an authenticated copy of the complaint and of an order signed by the judge of the court in which the complaint is filed is made upon the defendant under this chapter within the time period specified in the order. The order may specify a time period shorter than that allowed by s. 802.06 for filing an answer or other responsive pleading.

107. As time is of the essence in this matter, pursuant to Wis. Stat. §§ 783.01 and 801.02(5), the Petitioners request that the Court sign an order designating that—

- a. Authenticated copies of this Petition and the Order specified by Wis. Stat. § 801.02(5) be served upon WEC by **August 2, 2024**; and that
- b. **The return date for the writ is five business days after service of authenticated copies of the Petition and Order.**

WHEREFORE, Petitioners respectfully request a Writ of Mandamus be issued against the Respondents specifying the following relief—

1. On a prospective basis, WEC may only add United States citizens to the Registration List.
2. Awarding such other relief as the Court deems appropriate.

Dated this 26th day of July, 2024.

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