

**FILED**  
**07-20-2020**  
**CLERK OF WISCONSIN**  
**SUPREME COURT**

**No. 2019AP2397 and 2020AP112**

---

**In the Wisconsin Supreme Court**

STATE OF WISCONSIN EX REL. TIMOTHY ZIGNEGO,  
DAVID W. OPITZ AND FREDERICK G. LUEHRS, III

PLAINTIFFS-RESPONDENTS-PETITIONERS,

v.

WISCONSIN ELECTIONS COMMISSION, MARGE BOSTELMANN,  
JULIE GLANCEY, ANN JACOBS, DEAN KNUDSEN AND MARK  
THOMSEN,

DEFENDANTS-APPELLANTS.

Appeal from the Circuit Court of Ozaukee County

Honorable Paul V. Malloy, Presiding

Case No. 19-CV-449

**BRIEF OF THE PUBLIC INTEREST LEGAL FOUNDATION AS  
*AMICUS CURIAE* IN SUPPORT OF PLAINTIFFS-  
RESPONDENTS-PETITIONERS**

ERIC J. HATCHELL  
FOLEY & LARDNER LLP  
150 East Gilman Street  
Suite 5000  
Madison, WI 53703-1482  
(608) 258-4270  
ehatchell@foley.com

KAYLAN PHILLIPS\*  
PUBLIC INTEREST LEGAL  
FOUNDATION  
32 E. Washington St.  
Suite 1675  
Indianapolis, IN 46204  
(317) 203-5599  
kphillips@publicinterestlegal.org  
\*Pro hac vice application pending

## INTRODUCTION

Petitioners seek to ensure the Wisconsin Elections Commission “compl[ies] with state election law requiring them to ensure clean voter rolls in advance of the 2020 elections.” (Petition at 2.) National events since the filing of the Petition make the need for clean voter rolls even more urgent. As Petitioners state in their brief, “As more of us vote by mail, it becomes even more important than ever that our voter registration lists are accurate, and that the process, mandated by state law, is followed.” (Pet. Br. at 9.) Indeed, research done by *amicus curiae* Public Interest Legal Foundation (“Foundation”) further demonstrates why action is needed by the Wisconsin Elections Commission prior to the 2020 election.

The Foundation is a non-partisan, 501(c)(3) public-interest organization that is dedicated entirely to promoting the integrity of elections nationwide through research, education, remedial programs, and litigation. Research undertaken by the Foundation demonstrates the acute inaccuracies of Wisconsin’s voter registration rolls. Specifically, the Foundation’s research reveals thousands of active registrants in Wisconsin who are potentially deceased and thousands more registrants who are

potentially registered to vote more than once *and* who were apparently assigned voting credits in the 2016 and 2018 General Elections.

While election officials alone are the final judge of voter eligibility and are perfectly capable of replicating the Foundation's research, the Foundation believes this Court should be aware of potential serious problems with the voter rolls that would be compounded by a finding for the Wisconsin Elections Commission in this matter.

## **ARGUMENT**

### **I. The Foundation's Research and Submission of Findings to the Wisconsin Elections Commission.**

As part of its organizational mission, the Foundation analyzes voter rolls across the Nation. In the fall of 2019, the Foundation purchased a copy of the Wisconsin voter data file from the State of Wisconsin via BADGER Voters. Then, at considerable expense for a 501(c)(3) charitable organization, using detailed methodologies and matching techniques (described *infra* and in the attached letter), the Foundation flagged registrations that are potentially inaccurate, outdated, or no longer valid. In Wisconsin, these registrations include the following: (1) registrations belonging to likely deceased individuals; (2) persons apparently registered twice within the state.

On July 10, 2020, the Foundation sent a letter to the Wisconsin Elections Commission that describes the Foundation's methodology and findings and asks the Commission to investigate and take corrective action where necessary.<sup>1</sup> Exhibit A (hereafter, the "Letter").

## **II. The Foundation Matched 6,000 Wisconsin Registrants to a Verifiable Record of Death.**

The Foundation's research indicates that there were potentially more than 6,000 deceased individuals with an active registration in Wisconsin in the voter roll data purchased by the Foundation. Letter at 1.

In order to ensure a high degree of confidence, the Foundation matched the Wisconsin voter roll data against the U.S. Social Security Death Index (SSDI), and where possible, against the SSDI and printed obituaries and other public notices. Letter at 1. The true number of deceased registrants is likely even higher because the Foundation limited its research to only registrants with active registrations. While it is true that the Wisconsin Election Commission may have removed some of these deceased voters in the intervening time, the record is not subject to dispute

---

<sup>1</sup> Election officials are the final judge of voter eligibility. The Foundation asks election officials to do what is permissible under state and federal law to investigate the leads the Foundation submits.

that there are problems of deceased registrants remaining active for many years.

**III. The Foundation Identified Potentially Duplicated Registrations with Apparent Voting Credits Assigned for the 2016 and 2018 General Elections.**

Using the same Wisconsin voter data file, the Foundation also flagged registrations that are potentially duplicated within the same Wisconsin county. Letter at 2. To ensure a high degree of confidence, the Foundation flagged only those registrations with identical addresses and identical dates of birth and nearly identical first and last names. *Id.* The Foundation also reviewed voting histories to determine if one or more voting credits were assigned to these potentially problematic entries. A voting credit is a government record from the state of Wisconsin indicating whether a registrant voted in a particular election.

For the 2016 General Election, more than 2,000 potential duplicate registrations were apparently assigned voting credits according to government records. Letter at 2. For the 2018 General Election, more than 1,800 potential duplicate registrations were apparently assigned voting credits according to government records. *Id.* The Foundation cannot confirm whether the apparent duplicate registrations did or did not cast

ballots, only that the records from the state of Wisconsin indicated that they did.

The number of individuals with two or more active duplicate registrations is almost certainly even higher because the Foundation flagged only registrations that were apparently assigned voting credits according to records provided by the State of Wisconsin. The Foundation has not yet accounted for some well-known causes of duplication, such as married-name confusion, which happens when a registrant becomes married and then submits a subsequent registration using a different last name. Such cases of duplication would only increase the total number of duplicate active registrations. The Foundation has seen those circumstances result in significantly higher numbers of likely duplicated registrations in other jurisdictions.

It is paramount that the Wisconsin Elections Commission investigate and confirm the registrations the Foundation flagged and further examine Wisconsin's rolls for other duplicate entries.

**IV. The Foundation Invites the Court to Appoint an *Amicus Curiae* to Verify the Foundation's Research.**

The Foundation's research can be replicated. The Foundation hopes that replication can resolve any doubts concerning ambiguities or

uncertainties in the data. The Foundation therefore invites the Court to verify its research. The Foundation welcomes efforts to verify and improve upon its work so that the Court is working with the most accurate and up-to-date data when rendering a decision in this matter. For example, the Foundation invites the Court to appoint its own *amicus curiae* to replicate the study to ascertain the number of deceased and duplicate registrations on the public voter rolls in Wisconsin, if the Court believes it is warranted. The Foundation is happy to work with any such designee to assist with replicating the Foundation's analysis and cataloging the numbers of problematic registrations on the rolls that would undermine the integrity of Wisconsin's elections.

**V. The Foundation's Research Demonstrates Voter Roll Inaccuracies Nationwide.**

The Foundation's research across the nation affirms how important it is that election officials continuously act to maintain accurate voter rolls.

*North Carolina*

The Foundation recently informed the North Carolina State Board of Elections of potentially duplicated registrations that were apparently assigned voting credits for the same election. *Thousands of North Carolina Registrants are Credited for Voting Twice by Mail*, Public Interest Legal

Foundation (July 9, 2020).<sup>2</sup> Specifically, for the 2016 General Election, more than 1,700 potential intercounty duplicates were apparently assigned voting credits according to government records, and more than 9,700 potential intracounty duplicates were apparently assigned voting credits according to government records. *Id.* For the 2018 General Election, 7,000 potential duplicated registrations were apparently assigned voting credits according to government records. *Id.*

### *California*

In June 2020, the Foundation alerted election officials in the State of California to concerns regarding potentially deceased registrations and potentially duplicated registrations. *Court Brief: Thousands of Dead, Duplicated CA Voter Registrants Could Get Mail Ballots*, Public Interest Legal Foundation (June 24, 2020).<sup>3</sup> The Foundation's research found more than 23,000 potentially deceased individuals with an active registration in the State of California. The Foundation also identified more than 12,200 registrations listing a year of birth occurring 105 or more years ago, raising

---

<sup>2</sup> Available at <https://publicinterestlegal.org/blog/thousands-of-north-carolina-registrants-are-credited-for-voting-twice-by-mail/>

<sup>3</sup> Available at <https://publicinterestlegal.org/blog/court-brief-thousands-of-dead-duplicated-ca-voter-registrants-could-get-mail-ballots/>



further concerns regarding the accuracy of the state's voter rolls. *Id.*

Regarding potentially duplicated registrations, the Foundation identified more than 2,000 potentially duplicated registrations across state lines with apparent voting credits assigned by election officials in each state for the 2018 General Election. *Id.*

### *Virginia*

In April 2020, the Foundation informed election officials in the state of Virginia of potential inaccuracies on its voter rolls. *Court Brief: Thousands of Dead Registrants Remain on Voter Rolls in Virginia*, Public Interest Legal Foundation (April 28, 2020).<sup>4</sup> Specifically, the Foundation identified 11,600 potentially deceased registrants. *Id.*

## **CONCLUSION**

Inaccurate voter rolls create risks for the franchise. For that reason, the research discussed herein merits consideration and further investigation by election officials and this Court alike.

---

<sup>4</sup> Available at <https://publicinterestlegal.org/blog/court-brief-thousands-of-dead-registrants-remain-on-voter-rolls-in-virginia/>

Dated: July 20, 2020

Respectfully Submitted,

*/S/ ERIC J. HATCHELL*

---

ERIC J. HATCHELL  
FOLEY & LARDNER LLP  
150 East Gilman Street  
Suite 5000 |  
Madison, WI 53703-1482  
(608) 258-4270  
ehatchell@foley.com

KAYLAN PHILLIPS  
PUBLIC INTEREST LEGAL FOUNDATION  
32 E. Washington St., Ste. 1675  
Indianapolis, IN 46204  
(317) 203-5599  
kphillips@publicinterestlegal.org  
*\*Pro hac vice* application pending

**FORM AND LENGTH CERTIFICATION**

I hereby certify that this brief conforms to the rules contained in s. 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 1389 words.

Dated this 20th day of July 2020.

*/S/ ERIC J. HATCHELL*

---

ERIC HATCHELL

**CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)**

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § (Rule) 809.19(12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 20th day of July 2020.

*/S/ ERIC J. HATCHELL*

---

ERIC HATCHELL

# PUBLIC INTEREST

— LEGAL FOUNDATION —

VIA EMAIL

July 10, 2020

Wisconsin Elections Commission  
212 East Washington Avenue, Third Floor  
P.O. Box 7984  
Madison, Wisconsin 53707-7984  
Email: [elections@wi.gov](mailto:elections@wi.gov)

**Re: Voter List Maintenance Leads  
Request for Meeting**

Dear Commissioners:

Our organization—the Public Interest Legal Foundation—is a non-partisan, 501(c)(3) public-interest organization that is dedicated entirely to promoting the integrity of elections nationwide through research, education, remedial programs, and litigation. As part of our mission, we study, audit, and analyze voter rolls throughout the country to assess their health and accuracy. We compare voter roll data against federal and other public or commercial databases to flag registrations that may be incomplete, outdated, or no longer valid. We then submit findings and leads to proper election officials for further investigation and confirmation to better aid voter roll maintenance programs.

We write today to offer you our findings regarding potential duplicate registrations and potential deceased registrations in the State of Wisconsin.

## **Summary of Findings and Methodology**

### **1. Potentially Deceased Registrants with an Active Registration.**

In the Fall of 2019, we purchased a copy of the Wisconsin voter data file from the State of Wisconsin Elections Commission via BADGER Voters. The “active” portion of the extract was compared against the U.S. Social Security Death Index (SSDI), a database made available via the U.S. Social Security Administration. Where possible, voter registration entries were compared against the SSDI *and* printed obituaries and other public notices.

Our analysis showed there were potentially more than **6,000 deceased individuals** with an active registration in the State of Wisconsin at that time.

We have utilized multiple means to verify these potentially deceased registrants, but ultimately only your office can conclusively determine whether the registrants are indeed deceased.

## **2. Potential Duplicated Registrations with Apparent Voting Credits Assigned for 2016 and 2018 General Elections.**

Using the same Wisconsin voter data file, we also flagged registrations that are potentially duplicated within the same Wisconsin county. To ensure a high degree of confidence, the Foundation flagged only those registrations with identical addresses and dates of birth and nearly identical first and last names. We then reviewed assigned voting credits for each such registration. We then reviewed assigned voting credits for each such registration.

For the 2016 General Election, more than 2,000 potential duplicated registrations were apparently assigned overlapping voting credits. For the 2018 General Election, more than 1,800 potential duplicated registrations were apparently assigned voting credits.

We have utilized multiple means to verify these potentially duplicate registrations but ultimately only your office can conclusively determine whether these registrations are indeed duplications with genuine document trails reflecting the voting credits shown in the purchased voter data file.

### **Request for Meeting**

We would like to offer our findings to you for further investigation and confirmation. We are available via telephone or videoconference, if needed, to discuss our research and how we can best transfer the data to you. Please let us know which date(s) and time(s) you prefer.

Should you need to contact us regarding this matter, please contact me at [lchurchwell@publicinterestlegal.org](mailto:lchurchwell@publicinterestlegal.org). Thank you for your service on this matter.

Sincerely,



Logan Churchwell  
Communications & Research Director  
Public Interest Legal Foundation  
[lchurchwell@publicinterestlegal.org](mailto:lchurchwell@publicinterestlegal.org)