

## Special Counsel Report Inaccuracies

### **Topic: Center for Tech and Civic Life grants**

**Claim:** The Center for Tech and Civic Life's \$8,800,000 Zuckerberg Plan Grants being run in the Cities of Milwaukee, Madison, Racine, Kenosha and Green Bay constitute Election Bribery Under Wis. Stat. § 12.11

**Reality:** Courts before and after the 2020 election considered complaints against the acceptance of CTCL grants in Wisconsin's five largest cities, and those complaints were dismissed. One federal judge concluded there is no prohibition in state statutes on local governments accepting private money to run elections. Further, CTCL has reported that more than 200 cities, towns, and villages in Wisconsin applied for grants and received the full amount of money they requested.

A ban on private grants would require a new law to be passed.

### **Topic: FIDO keys**

**Claim:** The security of WisVote FIDO Keys is insufficient.

**Reality:** FIDO keys used to access WisVote are exceptionally secure. The Special Counsel clearly lacks understanding of how the FIDO standard works. The number of FIDO keys in the possession of a clerk does not in any way undermine the security of the WisVote system.

FIDO stands for "Fast Identity Online" and was created by an open industry association called the FIDO Alliance. FIDO key usage is a part of a multi-factor authentication protocol, which in this case uses a security key in addition to other security measures. FIDO key firmware is hard coded, and FIDO cryptographic data cannot be altered, phished, or extracted.

FIDO keys do not work like common mechanical keys. FIDO keys are non-transferrable, variable, and unique. A common metal key, such as for your house, may be transferred to another user. Anyone with the key can enter your house. In contrast, FIDO keys are associated only with a specific user through a registration process. Someone else can use the key, but only if they re-register it with their own credentials. This registration process is also sometimes called "bootstrapping."

During registration, two cryptographic codes are created. Each pair of FIDO cryptographic login codes are unique to the statewide system and unique to the user. They must be used in conjunction with the user credentials to obtain access.

These codes, the user credentials, and additional cryptographic data, must all match for access to be granted. Three devices in the authentication process (key, browser, and server) each exchange different sets of unique encrypted data, associated with a specific user, to complete authentication. Simply plugging in the key does not grant access. This security model effectively eliminates the risks of phishing, all forms of password theft and replay attacks.

If a user loses his or her key, another person could not access the WisVote system because they would not have access to the affiliated clerk's username and password. Furthermore,

nothing on the key provides any information about the associated user. Finally, lost keys are easily deregistered and effectively restored to a like-new condition.

Thus, the number of FIDO security keys in the possession of a clerk does not at all detract from the security of WisVote. An unregistered FIDO key has almost no value. Having more FIDO security keys on-hand simply saves municipal and county clerks both time and money when they acquire additional staff or need to replace a broken key.

### **Topic: API access to WisVote**

**Claim:** “At least one city apparently provided an API to the WisVote and 16 BadgerBooks systems, which provided real time, free information to special interest groups who used that information for selective, racially-targeted get-out-the-vote purposes under the contracts. That application may still have an active API and may remain viable, so that it might be used by the private groups in future elections.”

**Reality:** This claim is false. An API stands for Application Programming Interface, which is custom computer code allowing for two systems to communicate with each other. An API, for example, is what allows an online travel service to access the information housed in dozens of airline flight databases to provide the online travel service customer with available flight information for a given route at a given time. This is an efficient means of sharing information long term, but not simple to implement and impractical for short-term use.

In the case of WisVote, the false allegation appears to be that a city provided WisVote access to third parties using an API. A municipality has no ability to create, extend, offer, or otherwise conjure an API with WisVote. Municipalities are users of WisVote and they do not have access to the backend of the system. This is like claiming a person who owns a copy of TurboTax software can create an API to the Internal Revenue Service. There is absolutely no evidence that any such API exists or that special interest groups gained access to the WisVote system.

The WEC has seen this API myth perpetuated in the context of local clerks who may have shared publicly available voter registration data with third parties. Any such records release is not done using an API, but rather using extracted data reports already available to the public.

State statute requires the release of certain non-confidential voter registration data and directs the WEC to charge for public records requests related to data from WisVote. Clerks may also provide non-confidential voter information as permitted by Wisconsin law, and use administrative code and municipal decision making structure to determine when it is appropriate to charge.

### **Topic: Administrator Wolfe was untruthful in her March 2021 testimony before the Assembly Committee on Campaigns and Elections**

**Claim:** “For example, Ms. Wolfe told the Assembly Committee on Campaigns and Elections both that she did not know about the CTCL grants and that cities did not have access to statewide WisVote or BadgerBooks data. Both of these statements are demonstrably untrue.”

**Reality:** An out-of-context video clip involving Administrator Wolfe has created confusion about the timeline and sequence of events surrounding CTCL grants. The fact remains that neither the WEC nor Administrator Wolfe were involved in municipalities applying for or receiving CTCL grant funds. WEC did not inform clerks about the private grants, did not promote them, and did not authorize or opine on if municipalities could engage with the grants. Administrator Wolfe's statements to the Assembly committee in 2021 were accurate and full video and testimony is available to the public.

During the March 31, 2021 Committee hearing the Special Counsel brought up in his report, Rep. Thiesfeldt asked Administrator Wolfe, "When this group, CTCL, which was the Facebook money, when they started getting emails from this group, saying, 'hey, we can help you with this election, we have funding available,' I assume that you received communications from clerks wondering about this group?"

Administrator Wolfe understood Rep. Thiesfeldt's question as inquiring whether she knew about CTCL grants at the time clerks were applying for them.

Administrator Wolfe responded, "No, I wasn't aware that this grant was available nor was I aware that the clerks were engaging with it.."

This is true.

Administrator Wolfe and WEC only became aware of the grant funding later, after the municipalities had accepted them, through reports from Wisconsin municipalities regarding their readiness for the 2020 general election, and the litigation and complaints that were filed later in 2020. There was a lawsuit filed in federal court on this matter in the summer of 2020, and in October of 2020 the Court ruled that there are no laws that prevent local governments from accepting private grant funds.

The email correspondence that the Special Counsel presented did not occur until late August of 2020, after the grants to Wisconsin's largest cities had been publicly announced and accepted in July 2020.

Further, Michael Spitzer-Rubinstein had reached out to the WEC as a representative of the Vote at Home Institute, not CTCL. Administrator Wolfe had passed along contact information about the Vote at Home Institute to large municipalities as a potential resource because they were the ones experiencing the most precipitous increases in by-mail absentee voting in 2020 and were preparing reports for the WEC on their readiness for the November elections. You can see their reports here: [How Wisconsin Is Ready for the November 3, 2020 Election | Wisconsin Elections Commission](#).

### **Topic: Status of drop boxes**

**Claim:** The use of absentee ballot drop boxes has been successfully challenged in state court as being unlawful.

**Reality:** This issue is still under review by the Wisconsin Supreme Court. But even the strictest legal interpretation acknowledges the lawfulness of drop boxes under certain circumstances.

### **Topic: Voters in nursing homes**

**Claim:** “Vetted” Nursing homes in Milwaukee, Racine, Dane, Kenosha, and Brown Counties experienced very high percentages of their residents voting in the 2020 presidential election, sometimes as high as 100%.

**Reality:** The Special Counsel does not show his work.

The report does not provide a list of specific nursing homes, nor supporting evidence, nor a methodology, for how he calculated the turnout rates for particular nursing homes.

Data from the city of Milwaukee actually show a smaller number of voters in residential care facilities (who would typically use the special deputy voting process) participating in the 2020 presidential election than in 2016:

November 2020: 579 ballots issued to SVD voters; 389 ballots returned

November 2016: 810 ballots issued to SVD voters; 633 ballots returned

For more information about special voting deputies, <https://elections.wi.gov/node/7537>

### **Topic: Indefinitely confined voting**

**Claim:** “WEC Also Unlawfully Encouraged Evasion of Ballot Security Measures Related to “Indefinitely Confined” Voters at the Behest of Outside Corporations”

**Reality:** (From our FAQ): The WEC did not encourage anyone to declare themselves indefinitely confined or to claim that status to avoid the photo ID law – it’s actually the opposite. In *Jefferson v. Dane County*, 394 Wis.2d 602, the Wisconsin Supreme Court agreed with the WEC’s guidance about indefinitely confined voters – including that voters could not use it to get out of providing a photo ID. At its meeting of March 27, 2020, the six-member, bipartisan Wisconsin Elections Commission discussed how the indefinitely confined statutes intersected with COVID-19. The Commission adopted the following guidance, which was later affirmed by the Wisconsin Supreme Court, related to the use of indefinitely confined status to assist local election officials working with absentee voters:

Designation of indefinitely confined status is for each individual voter to make based upon the voter’s current circumstance. It does not require permanent or total inability to travel outside of the residence. The designation is appropriate for electors who are indefinitely confined because of age, physical illness or infirmity or are disabled for an indefinite period.

Indefinitely confined status shall not be used by electors simply to avoid the photo ID requirement without regard to whether they are indefinitely confined because of age, physical illness, infirmity, or disability.

### **Topic: Removing ineligible voters from WisVote**

**Claim** (italics added): “The Help America Vote Act, section 21083, provides “if a State is described in section 4(b) of the National Voter Registration Act of 1993 (42 U.S.C. §§ 1973gg–2(b)) 101 [now 52 U.S.C. § 20503(b)], that State shall remove the names of ineligible voters

from the computerized list in accordance with State law.” Wisconsin is described in section 20503(b); so, section 21083 requires the state’s election officials to follow state law on removal of ineligible voters from the computerized list. *Accordingly, section 21083 requires that WEC remove the names of ineligible voters from the computerized list, WisVote, in accordance with Wisconsin law.*”

**Reality:** The WEC does deactivate certain types of ineligible voters, as required by statute. For example, the Commission is required by law every two years to conduct voter record maintenance to identify individuals who have not voted in the previous four years and to deactivate them unless they wish to remain registered.

In June of 2021, the Commission identified 186,982 registered voters who had not voted since the November 2016 presidential election. The Commission mailed “Notice of Suspension” postcards to these voters, asking them whether they wanted to remain active on the state’s voter list. To remain active, voters had 30 days to mail a return postcard to their municipal clerk, which 12,121 voters did. Voters who did not respond or whose postcard was returned as undeliverable by the Post Office were deactivated on July 31, as required by state law.

Additionally, Wisconsin is exempt from the requirements of the National Voter Registration Act of 1993 because it is a same-day voter registration state.

Clerks are given the statutory responsibility to deactivate other types of ineligible voters, such as deceased voters, voters serving a sentence for a felony conviction, voters who have been adjudicated incompetent, and voters who may have moved or are otherwise determined to be ineligible by the municipal clerk. The WEC can provide information to clerks about such voters, but it is the clerk’s responsibility to deactivate them. Clerks around the state do an admirable job in this maintenance as was demonstrated in the Legislative Audit Bureau’s review of list maintenance practices.

### **Topic: Preventing “incapacitated voters” from voting**

**Claim:** In violation of its federal and state legal duties, Wisconsin election officials failed to prevent wards and incapacitated persons from voting in the 2020 Presidential election — casting doubt on the election result.

**Reality:** Clerks deactivate voters upon receiving reliable information from a court that a voter has been adjudicated incompetent to vote in this state. Without such an adjudication, an eligible elector’s right to vote must be preserved. State law does not allow for the right to vote to be taken away, even by family members, without such an adjudication.

### **Topic: Deactivating non-citizen voters based upon information about non-citizens allegedly available from the Department of Transportation**

**Claim** (italics added): Section 21083 of the Help America Vote Act provides “if a State is described in section 4(b) of the National Voter Registration Act of 1993 (42 U.S.C. §§ 1973gg–2(b)) [now 52 U.S.C. § 20503(b)], that State shall remove the names of ineligible voters from the computerized list in accordance with State law.” Wisconsin is described in section 20503(b); so, section 21083 requires the state’s election officials to follow state law on removal of ineligible

voters from the computerized list. *Accordingly, section 21083 requires that WEC remove the names of non-citizens, who are by definition ineligible voters, from the computerized list, WisVote, in accordance with Wisconsin law.*

**Reality:** To register to vote in Wisconsin, an elector must self-certify that he or she is an eligible U.S. citizen. This self-certification is subject to the penalties for false statements under Wis. Stat. § 12.60(1)(b). Citizenship qualifications of an elector can be challenged, and challenges are accepted by municipalities at the time of registration and prior to election day. Any instances of voter fraud identified by clerks are reported to the respective district attorney, [and a report is produced](#) that summarizes the referrals statewide that is submitted to the legislature and posted for the public.

The WEC is not allowed to add additional criteria to the voter registration process, such as cross-referencing voter records proving citizenship or non-citizenship, unless directed to do so by law. There have been bills considered by the legislature over the last 10 years to add this requirement, but those bills have not become law. Adding this requirement would require a change to election law.

### **Topic: Fees for voter registration data**

**Claim:** Currently, voter registration information, including addresses, names, and voter history, are available for purchase. WEC sells that information for \$12,500. However, this information is not available in real time and, worse yet, the fees are waived by contract with special interest groups.

**Reality:** Every claim above is false.

The overwhelming majority of requests are self-service requests, with results available immediately. More than 90% of requests are fulfilled on the spot. Over a two-year period (2020-2021) there were 654 different customers who purchased 1,812 different data sets (75.5 purchases per month). The median transaction cost was \$55.00.

The standard rate of \$5 per 1,000 records applies and is established in [Wisconsin Legislature: EL 3.50](#). No fees are waived for anyone.

The \$12,500 charge for the statewide voter registration data is set by administrative code [Wisconsin Legislature: EL 3.50](#).

Any changes to the cost of voter data would require the passage of a new law, or the passage of a new administrative code.

### **Topic: Opening absentee ballots early**

**Claim:** Guidance by WEC “enabling” clerks to open envelopes prior to the statutorily mandated deadline denies citizens their right to observe that process.

**Reality:** The above claim is false. The Wisconsin Elections Commission did not issue any guidance, rules, or other directives to clerks that they could open absentee ballot envelopes prior to the statutory allowed time on Election Day.

**Topic: Electronic Registration Information Center**

**Claim:** The State of Wisconsin pays this outside group six figures per year to assist it in cleaning up our voter rolls but receives little to no benefit from it.

**Reality:** ERIC's four list maintenance reports identify voters who have moved within the state, voters who have moved from one ERIC state to another, voters who have died, and voters with duplicate registrations in the state. These reports help states improve the accuracy of their voter lists.

Membership in ERIC is required by Wisconsin statutes.