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Clerk of Circuit Court

Kenosha County

2022CV000958

State of Wisconsin:

Circuit Court:

Kenosha County

Branch 3

Jay Stone
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Pleasant Prairie, WI 53158

Vincent Tobias
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Kenosha, WI 53143

Paula Perez
7822 Sheridan Rd
Kenosha WI 53143

and

Hot Government
PO Box 136
3747 Douglas Ave
Racine WI. 53402

Plaintiffs

v.

Wisconsin Election Commission
201 West Washington Avenue
Madison, WI 53703

Defendant

Case Code No(s). 30701, 30607

Case No. 2022CV000958

**PLAINTIFFS NOTICE OF MOTION AND MOTION FOR AN EX PARTE
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

TO: Wisconsin Election Commission,
201 West Washington Avenue
Madison, WI 53703

NOTICE OF MOTION

PLEASE TAKE NOTICE that Plaintiffs Jay Stone, Vincent Tobias, Paula Perez and HOT Government, (collectively, "Plaintiffs"), hereby moves the Court for an Ex Parte Temporary Restraining Order and Preliminary Injunction to enjoin Defendant from using MyVote as a centralized Internet location for receiving voters' absentee ballot application requests and then creating and emailing absentee ballot applications to clerks, as set forth in the proposed Temporary Restraining Order. Plaintiffs request that this motion be heard by the Honorable Bruce E. Schroeder at the Kenosha County Courthouse, 912 56th Street, Kenosha, WI 53140 at the first available date and time.

Motion

1. Relief Requested. Pursuant to Wis. Stat. §§ 813.02 and 813.025, Plaintiffs hereby move the Court for an Ex Parte Temporary Restraining Order and Preliminary Injunction to enjoin Defendant from using MyVote as a centralized Internet location for receiving voters' absentee ballot application requests and then creating and emailing absentee ballot applications to clerks, as set forth in the proposed Temporary Restraining Order.

2. Grounds. The grounds for this motion are set forth in the Complaint and accompanying brief in Support of Motion for an Ex Parte Temporary Restraining Order and Preliminary Injunction.

**PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR FOR AN EX PARTE
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Dated: September 19, 2022

By: Electronically signed by Jay Stone
Pro Se Attorney Jay Stone

Address:

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No Statute for WEC's Centralized Internet Absentee Ballot Request Location

Wisconsin election law only provides the Wisconsin Election Commission (hereafter "WEC") to create and maintain two centralized Internet locations. One centralized Internet location is for voter registration and the other centralized Internet location is for voters to track their absentee ballots. Wis. Stat. § 6.30(5) gave WEC the authority to electronically register voters via the Internet; WEC's electronic register to vote webpage is part of the MyVote Wisconsin website.

Wis. Stat. § 5.05(14)(b) authorized WEC to establish and maintain a centralized Track My Ballot webpage that is also part of the MyVote website. In comparison to the two authorized centralized Internet locations for voter registration and track my ballot, *No* Wisconsin statute

provides WEC with the authority to receive, write, or email absentee ballot applications from one centralized Internet location.

Because Wisconsin Legislative Policy expressed in Wis. Stat. § 6.84(1) is to strongly encourage voter registration, the legislature gave WEC the authority to set up *electronic voter registration* in one centralized Internet location.

In Wis. Stat. § 6.84(1) the legislature also conveyed the need to carefully regulate absentee voting to prevent the potential for vote fraud, abuse, or overzealous solicitation of absentee electors. To help meet Wis. Stat. § 6.84(1)'s legislative policy to regulate absentee voting, the legislature created a window for voters to observe the status of their absentee ballots at any time through MyVote's Track My Ballot webpage.

Given that the legislature approved two centralized WEC websites, the legislature was keenly aware of how it wanted to use the Internet for some aspects of voting and not use the Internet for other aspects of voting. If the Wisconsin legislature wanted WEC to create a centralized Internet location for voters to obtain absentee ballots like it did for voter registration and the tracking of absentee ballots, the legislature would have authorized it in a statute.

MyVote Not One of the Six Mandatory Methods to Obtain Absentee Ballot Applications

Wis. Stat. § 6.84(2) requires a mandatory interpretation and execution of Wis. Stat. § 6.86's six methods to obtain an absentee ballot. According to Wis. Stat. § 6.86(1)(a), qualified electors may make written applications to their respective clerks to obtain absentee ballots. Instead of clerks asking electors to request their absentee ballot applications from them, a high percentage of clerks are directing electors to the MyVote webpage to submit their absentee ballot requests. For example, the municipal clerks of Burlington, Green Bay, Janesville, Madison, Racine, and Waukesha send their local electors from their webpage via an Internet link to the

MyVote webpage to request their absentee ballots. Clerks directing electors to MyVote for the purpose of MyVote creating and emailing the electors' absentee ballot applications back to the clerks is contrary to Wis. Stat. § 6.86(1)(a) requirement that electors send their written absentee application requests to their local clerks.

Wis. Stat. § 6.86(1)(a) mandates electors handwrite or typewrite their own absentee ballot applications unless they are physically unable to do so. When electors submit their information to the MyVote absentee ballot request page, MyVote and WisVote digitally create the electors' absentee ballot applications without the electors' knowledge or consent. Because electors don't handwrite or typewrite their own MyVote absentee ballot applications, the absentee ballot applications that MyVote and WisVote create for electors are not compliant with Wis. Stat. § 6.86(1)(a).

Wis. Stat. § 6.86(1)(a) allows electors to submit their absentee ballot applications to the clerks via email. Similarly Wis. Stat. § 6.86(ac) also states, "Any elector qualifying under par. (a) may make written application to the municipal clerk for an official ballot by means of facsimile transmission or electronic mail." Both Wis. Stat. § 6.86(1)(a) and Wis. Stat. § 6.86(ac) give electors the option of emailing their written absentee ballot applications to their clerks, but Wis. Stat. § 6.86(1)(a) and Wis. Stat. § 6.86(ac) do not permit MyVote to send clerks electors' absentee ballot applications via MyVote emails.

Wis. Stat. § 6.86(1)(a) lists six methods for electors to make a written absentee ballot application to the clerks. Electors may choose one of the six methods to obtain their absentee ballots, but none of the six mandatory methods in Wis. Stat. § 6.86(1)(a) allow for MyVote to receive electors' absentee ballot requests, fill in electors' absentee ballot application information without electors' knowledge, or send emails of absentee ballot applications to the clerks without the electors consent.

"Rather than a top-down arrangement with a central state entity or official controlling local actors, Wisconsin gives some power to its state election agency [WEC] and places significant responsibility on a small army of local election officials." State ex rel. Zignego v. WEC, 2021 WI 32, ¶13, 396 Wis. 2d 391, 957 N.W.2d 208. It is local clerks who have the "primary role in running Wisconsin elections." *Id.*, ¶15." "WEC is therefore given authority and oversight over some things, and not others. It may speak authoritatively at times, but not at all times" *Teigen et al. v. Wisconsin Election Commission* 2022 WI 64 ¶195

The authority and duty to send and receive absentee ballots applications is the sole responsibility of the clerks and electors, not WEC. According to Wis. Stat. § 6.86(1)(a), all six mandatory methods for electors to request absentee ballot applications and then for electors to return their completed absentee ballot applications are pursuant only to municipal clerks. Wis. Stat. § 6.86(1)(a) makes it clear that the clerks are the one and only authority who have duty to provide and receive electors' absentee ballot applications.

Two Recent Injunctions and Decisions that Involve Absentee Ballots

There are two strikingly similar cases to this one that involve absentee voting and circuit court judges issuing Declaratory Judgements and Injunctions. In the *Teigen et al. v. Wisconsin Election Commission* case, Circuit Court Judge Michael O. Bohren ruled that what WEC Administrator Wolfe wrote in two memos to 1,922 Wisconsin clerks was contrary to Wis. Stat. § 6.87(4)(b)1, another one of the mandatory statutes cited in Wis. Stat. § 6.84(2). Judge Bohren added that, "The Court further declares that WEC's Memos are administrative rules under Chapter 227 of the Wisconsin statutes and are invalid not only for the reasons described above, and but also because they should have been, but were not, promulgated as rules." *Teigen et al. v. Wisconsin Election Commission*, 142d. 2 (2022).

As with the *Teigen* decision, WEC's MyVote manuals' instructions for receiving electors absentee ballot requests and emailing electors' absentee ballot applications to the clerks needed

to be promulgated as rules and consistent with Wis. Stat. § 6.86(1)(a), but they were not. Besides the Declaratory Judgement for the plaintiffs, Judge Bohren also issued a Permanent Injunction to stop the use of absentee ballot drop boxes and the use of agents to return absentee ballots. On July 8, 2022, the Wisconsin State Supreme Court upheld Waukesha Judge Bohren's decision. *Teigen et al. v. Wisconsin Election Commission*, 142d. 3 (2022).

Waukesha County Judge Michael J. Aprahamian ruled that WEC's curing of the ballot guidance was contrary to Wis. Stat. § 6.87, another one of the mandatory statutes cited in Wis. Stat. § 6.84(2). Judge Aprahamian also issued an injunction that prohibited WEC from "advising, guiding, instructing, publishing or otherwise communicating information to Wisconsin municipal clerks and local election officials that clerks or local election officials have the duty or ability to modify or add information to incomplete absentee ballot certificates." *White et al. v. Wisconsin Election Commission*, 167d. 2 (2022).

Similar to the *White et al. v. WEC* case, Administrator Wolfe's June 17, 2016 memo was contrary to both the law and fact (Exhibit 1). Wolfe's memo telling clerks how to process MyVote absentee ballot requests is contrary to law because Wis. Stat. § 6.86(1)(a) specifies six methods for electors to request and obtain absentee ballots from *clerks*. None of the six lawful methods to request or obtain absentee ballots include WEC's participation in the process. Wolfe's memo is contrary to fact because Wolfe instructed clerks to record the MyVote absentee ballot requests that it sends to clerks as having been emailed from voters when in fact it was MyVote who emailed absentee ballot requests to the clerks.

Injunction Protects Electors' November 8, 2022 Absentee Votes

Wis. Stat. § 6.84(2) states that, "Ballots cast in contravention of the procedures specified in those provisions may not be counted. Ballots counted in contravention of the procedures specified in those provisions may not be included in the certified result of any election." Because WEC created MyVote absentee ballot applications for electors and emailed them without

electors' knowledge and consent to clerks, electors received absentee ballots that are in contravention to the six methods to obtain an absentee ballot listed in Wis. Stat. § 6.86(1)(a). Pursuant to Wis. Stat. § 6.84(2), the absentee ballots received through MyVote are currently at risk of not being counted and included in the November 8, 2020 certified election results.

The MyVote absentee ballot applications are easily identifiable since the absentee ballot applications have the MyVote logo in the upper left hand corner of the application (Exhibit 2). Wis. Stat. § 7.23(1)(f) requires clerks to retain absent ballot applications for at least 22 months. Because of Wis. Stat. § 7.23(1)(f), clerks still have the easily identifiable absentee ballot applications that MyVote created and emailed to clerks for the November 8, 2022 election. The clerks can use the MyVote absentee ballot applications to identify which voters were victims of WEC's MyVote absentee ballot application scheme.

Wis. Stat. § 6.93 allows the absentee vote of any elector to be challenged for cause. Political candidates, political parties, political organizations, etc. have good cause to challenge the votes of absentee electors who received MyVote absentee ballots in contravention of Wis. Stat. § 6.86(1)(a).

The Court can protect the votes of electors who are at risk because MyVote created and emailed their absentee ballot applications by imposing an Injunction on MyVote and issuing a Declaratory Judgement that requires clerks to provide new absentee ballot applications to those who originally requested absentee ballots from MyVote in contravention of Wis. Stat. § 6.86(1)(a). There is still time before the November 8, 2022 election for absentee voters to request, receive, and cast their absentee ballots before election officials count the November 8, 2022 votes.

Without an Injunction and Declaratory Judgement, plaintiffs will experience harm because a significant number of absentee ballots are in contravention of Wis. Stat. § 6.86(1)(a) and will be likely cast and counted. In 2020 Wisconsin voters cast more than 1.9 million absentee

ballots. The number of absentee ballots cast in contravention of Wis. Stat. § 6.86(1)(a) could be enough to change the November 8, 2022 election results for governor, U.S. senator, attorney general, etc. Elections with a substantial number of unlawful absentee votes that are counted and included in certified election results are contrary to Wis. Stat. § 6.84(2) and to voters and candidates First Amendment right to a “free exercise of an election.”

Conclusion

Given the two recent circuit court Declaratory Judgements and Injunctions, and the similarity of those absentee ballot cases to this absentee ballot case, (1) Plaintiffs have established that: they are likely to succeed on the merits; (2) the Injunction is necessary to preserve the status quo that existed prior to WEC creating its one centralized Internet location to receive absentee ballot requests (3) they have no adequate remedy of law; and (4) the Plaintiffs are likely to suffer irreparable harm in the absence of temporary relief. Plaintiffs respectfully urge this Court to immediately prohibit WEC from using MyVote as a centralized Internet location for receiving voters’ absentee ballot application requests and then creating and emailing absentee ballot applications to clerks by entering an ex parte temporary restraining order and, following a hearing, a temporary injunction.

Dated: September 19, 2022

By: Electronically signed by Jay Stone
Pro Se Attorney Jay Stone