



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

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**PREPARED TESTIMONY OF
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United States House of Representatives
Committee on House Administration
Subcommittee on Elections
Thursday, May 6, 2021

Chairperson Butterfield and Members of the Subcommittee on Elections:

Thank you for inviting me to testify before this subcommittee.

Pursuant to legislation passed in 2015, the State of Wisconsin joined the Electronic Registration Information Center, Inc. (“ERIC”). Wis. Stat. § 6.36(1)(ae). Through ERIC, states and the District of Columbia share data with the goal of using that data to assist them in identifying eligible voters who are not registered and voter registrations that are no longer valid. ERIC uses data from states’ voter files, as well as data from other sources, including the U.S. Postal Service.

Every other year, ERIC sends Wisconsin a report that identifies voters who may have moved. Wisconsin first received a so-called “movers report” in 2017. Based on that report, the Wisconsin Elections Commission (“WEC”) sent postcards to approximately 340,000 potential “movers” and gave them 30 days to respond in order for their registration to remain active. Over 6,000 voters responded and thereby kept their voter registrations active at the address at which they were registered, while the other voters’ registrations were deactivated. Memorandum from Meagan Wolfe, Interim Adm’r, WEC, to Members, WEC 3-4 (for Mar. 11, 2019 meeting) (regarding assessment of Wisconsin’s Electronic Registration Information Center (ERIC) participation).

According to a memo from WEC staff, “[t]he deactivation of these movers caused some problems for the 2018 Spring Primary, as some voters who had not moved, but had not returned the postcard, were left off the poll book. In other words, while available data from the DMV implied many had moved, some of the voters, in fact, had not moved.” *Id.* at 3. The memo explains that, “[a]fter talking to affected voters, WEC staff identified several additional situations where voters appeared to have moved

but did not. . . . Overall, 12,133 [voters] were proactively reactivated by staff or were stopped from being deactivated due to these data discrepancies between January and March of 2018.” *Id.* at 4. In addition, three municipalities—the City of Milwaukee, the City of Green Bay, and the Village of Hobart—had all of their voters on the movers list reactivated. *See id.* at 4-5.

A Supplemental Movers Poll List was created, and “[d]eactivated voters flagged as in-state movers were included on the Supplemental Movers Poll List instead of the regular poll book, beginning with the 2018 Spring Election.” *Id.* at 4. Voters who signed this poll list and thereby confirmed the continued validity of the address on their deactivated voter registration were able to re-activate their registration without submitting a new voter registration, and over 6,000 voters ultimately used this method to continue their registrations. *See id.*; Memorandum from Meagan Wolfe, Adm’r, WEC, to Members, WEC 1 (for June 11, 2019 meeting) (regarding Wisconsin’s Electronic Registration Information Center (ERIC) mover analysis).

WEC employed a different approach with the 2019 movers data it received from ERIC. In letters sent in October of that year to approximately 230,000 people, WEC asked those individuals to confirm if they still resided at their registration address and indicated that voting would result in a voter’s registration status remaining active. The letters said nothing about deactivating these voters. In November 2019, however, three registered Wisconsin electors and taxpayers, represented by the conservative Wisconsin Institute for Law & Liberty (“WILL”), filed suit and sought the deactivation of the voter registrations of movers who had not responded to these letters within 30 days.

Under Wis. Stat. § 6.50(3), “Upon receipt of reliable information that a registered elector has changed his or her residence to a location outside of the municipality, the municipal clerk or board of election commissioners shall notify the elector If the elector no longer resides in the municipality or fails to apply for continuation of registration within 30 days of the date the notice is mailed, the clerk or board of election commissioners shall change the elector’s registration from eligible to ineligible status.” And, in December 2019, the circuit court in which the case brought by WILL was filed issued an order stating that “Defendant Wisconsin Election Commission is hereby ordered to comply with the provisions of § 6.50(3) and deactivate the registrations of those electors who have failed to apply for continuation

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of their registration within 30 days of the date the notice was mailed under that provision.”

The court of appeals subsequently reversed, holding that “the plain language of § 6.50(3) neither refers to the Commission nor places any duties on the Commission.” *Zignego v. Wis. Elections Comm’n*, 2020 WI App 17, ¶ 3, 391 Wis. 2d 441, 391 Wis. 2d 441, 91 N.W.2d 284. And, in a 5-2 decision, the Wisconsin Supreme Court affirmed the court of appeals. *Zignego v. Wis. Elections Comm’n*, 2021 WI 32. According to the state supreme court, the plaintiffs’ “primary argument” for deactivation of voters “disregard[ed] nearly every foundational principle of statutory interpretation.” *Id.* ¶ 27.

Notably, according to data from WEC, of the approximately 230,000 people who were sent the 2019 mailing, as of January 25, 2021, 16,698 voters—approximately 7.2%—affirmed that they had not, in fact, moved. Memorandum from Meagan Wolfe, Adm’r, WEC, to Members, WEC 3-4 (for Feb. 3, 2019 meeting) (regarding Election Registration Information Center (ERIC) movers list update). Further, an analysis utilizing the Supplemental Movers Poll List that was used in the wake of the 2017 mailing concluded that “at least 9000 registrants . . . went out to vote in 2018 at the address of registration flagged by ERIC as out of date.” Gregory A. Huber et al., *The Racial Burden of Voter List Maintenance Errors: Evidence from Wisconsin’s Supplemental Movers Poll Books*, Science Advances, Feb. 2021, at 7. The analysis found “that the burden of incorrect removal falls more heavily on minority registrants” and “that the lower bound on the false mover error rate is more than twice as large for black registrants as it is for white registrants.” *Id.*

In short, the available evidence from Wisconsin shows that thousands of individuals identified by ERIC movers data as having possibly moved have not in fact moved and that minority voters are disproportionately likely to be incorrectly identified as having possibly moved.