

STATE OF WISCONSIN CIRCUIT COURT WAUKESHA COUNTY
BRANCH 8

ARDIS CERNY, et al.,

Petitioners,

v.

Case No. 24-CV-1353

WISCONSIN ELECTIONS COMMISSION, et al.,

Respondents.

**RESPONDENTS' RENEWED MOTION FOR STAY PENDING APPEAL;
ALTERNATIVELY, FOR AN ADMINISTRATIVE STAY PENDING THE
COURT'S DECISION ON THAT MOTION**

PLEASE TAKE NOTICE that pursuant to Wis. Stat. §§ 808.07(2)(a)1., 3., and 809.12, Respondents Wisconsin Elections Commission, Commissioners Marge Bostelmann, Ann S. Jacobs, Don M. Millis, Carrie Riepl, Robert F. Spindell, Jr., Mark L. Thomsen, Administrator Meagan Wolfe, Wisconsin Department of Transportation, and Secretary Kristina Boardman (collectively "Respondents"), by undersigned counsel, renew their October 14, 2024, request for an immediate stay pending appeal and move this Court for a decision on that motion by October 6, 2025. Alternatively, Respondents move this Court for an immediate administrative stay of the Court's October 3, 2025, decision and order until such time as the Court issues a decision on Respondents' request for a stay pending appeal.

Respondents submit the following in support of this motion.

1. On October 14, 2024, Respondents filed their brief in opposition to Petitioners' motion for a temporary injunction. (Doc. 93.) The brief explained why temporary injunctive relief should be denied and further requested that, "if this Court grants any relief," it also issue "an immediate stay of that order pending appeal pursuant to *Waity v. LeMahieu*, 2022 WI 6, 400 Wis. 2d 356, 969 N.W.2d 263." (Doc. 93:4.)

2. On October 3, 2025, this Court granted expansive mandamus and injunctive relief to Petitioners. (Doc. 150.) This Court did not, however, issue a decision on Respondents' request for an immediate stay pending appeal.

3. This Court's October 3, 2025, injunction purports to require a massive overhaul of Wisconsin's voter registration system and the creation of new verification requirements not otherwise provided for by statute. The injunction enjoins the Commission from accepting any voter registration unless the applicant submits "verification that the applicant is a U.S. citizen," but it does not explain what such verification entails. (Doc. 150:13.) To the extent "verification" means requiring something additional from the registrant—such as an affidavit or documentary proof via a birth certificate or U.S. passport—implementation of the injunction will require time. For example, such a major modification to Wisconsin's electronic voter registration process will require months of development and testing before the changes may

be deployed. (Declaration of Robert Kehoe ¶¶ 9–20, filed herewith.) To the extent electronic voter registration must be disabled while the changes are implemented, such an action would, in turn, violate state laws requiring the Commission to maintain an electronic voter registration system for Wisconsin electors and further contravene the rights of electors who wish to register electronically as guaranteed by the Legislature. The impact would be enormous: Wisconsin receives an average of more than 200 online voter registrations per day. (*Id.* ¶ 6.)

4. In addition to the argument already presented in its initial request for a stay (Doc. 93:23–25), Respondents submit the following points.

5. When considering a request for a stay pending appeal, the court cannot “simply input its own judgment on the merits of the case and conclude that a stay is not warranted;” rather, the court “must consider the standard of review, along with the possibility that appellate courts may reasonably disagree with its legal analysis.” *Waity*, 400 Wis. 2d 356, ¶¶ 52–53. There are multiple reasons why the appellate court may reasonably disagree with this Court’s legal analysis. Four reasons stand out.

6. *First*, injunctions “must be specific as to the prohibited acts and conduct in order for the person being enjoined to know what conduct must be avoided.” *Welytok v. Ziolkowski*, 2008 WI App 67, ¶ 24, 312 Wis. 2d 435, 752 N.W.2d 359. Here, the Court’s order “enjoin[s] [the Commission] from

accepting any request to register to vote, whether electronically made or through a paper process, without verification that the applicant is a U.S. citizen,” but does not specify what constitutes “verification.” (Doc. 150:13.) Given that the Court is already aware that a voter registration applicant must certify that he or she is a U.S. citizen under penalty of imprisonment, (Doc. 50:1), the Court must be envisioning some additional proof of citizenship. Without a clear articulation of this critical component, the injunction is impermissibly vague.

7. *Second*, the order misapplies the law of mandamus. Even assuming the Commission “has a plain and positive duty to verify U.S. citizenship of every person seeking to register to vote in Wisconsin,” (Doc. 150:12), it does not have a plain and positive duty to require a registrant to submit proof of citizenship beyond the applicant’s self-certification. The Legislature has enacted detailed statutes regarding voter registration, including one instance where documentation *is* required: proof of residency. Wis. Stat. § 6.34. The Legislature knows how to require proof of a condition of voter eligibility; there is no such statute requiring proof of citizenship.

8. *Third*, while injunctions are an equitable remedy, courts cannot issue injunctions that violate state law. *See United States v. Oakland Cannabis Buyers’ Coop.*, 532 U.S. 483, 496 (2001). The Commission is required by statute to offer electronic voter registration. *See* Wis. Stat. § 6.30(5). But even small

modifications to MyVote—Wisconsin’s electronic voter registration system—take months to implement. (Kehoe Decl. ¶¶ 9–20.) During the development of new technical processes for electronic voter registration, the Commission must choose between maintaining the existing system and tracking new registrations, or entirely disabling electronic registration. (*Id.* ¶ 20.)

9. *Fourth*, the injunction purports to enjoin local election officials along with the Commission, even though local election officials are not parties to this lawsuit. (Doc. 150:13.) This is beyond the scope of the Court’s authority.

10. The Court should consider the reasonable likelihood that its order will be reversed on appeal and, pursuant to *Waity*, issue a stay pending appeal. While there is no immediately pending election creating the same concerns present as of October 14, 2024, the injunction creates other urgent problems, as outlined above.

THEREFORE, Respondents respectfully request:

A. A decision on their request for an immediate stay pending appeal by October 6, 2025; or

B. Alternatively, if the Court desires additional briefing or time, an immediate administrative stay of the Court's October 3, 2025, decision and order until such time as it issues a decision on Respondents' request for a stay pending appeal.

Dated this 6th day of October 2025.

Respectfully submitted,

JOSHUA L. KAUL
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Electronically signed by:

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CERTIFICATE OF SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed Respondents' Renewed Motion for Stay Pending Appeal; Alternatively, for an Administrative Stay Pending the Court's Decision on that Motion with the clerk of court using the Wisconsin Circuit Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 6th day of October 2025.

Electronically signed by:

Lynn K. Lodahl

LYNN K. LODAHL

Assistant Attorney General