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From: CJ Szafir <cj@will-law.org>
Sent: Monday, December 16, 2019 3:43 PM
To: CJ Szafir
Subject: FAQ: WILL Election Lawsuit

Friends – Please see the email below for background information about our election lawsuit victory last Friday night - what does it mean, what happens next, *what does the law say*, etc.

Let me know if you have any questions.

Thanks,
CJ

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From: Wisconsin Institute for Law & Liberty [mailto:info@will-law.org]
Sent: Monday, December 16, 2019 2:59 PM
To: CJ Szafir
Subject: What You Need to Know: Court Order in WILL Lawsuit Against Elections Commission

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What You Need to Know: Court Order in WILL Lawsuit Against Elections Commission

Ozaukee County Circuit Court Judge Paul Malloy decided in favor of WILL Friday in a lawsuit against the Wisconsin Elections Commission (WEC). WILL filed a lawsuit on November 13, on behalf of three Wisconsin voters, after the Wisconsin Elections Commission ignored state law and adopted policies that allow voters who have moved to maintain active voter registrations at old addresses beyond 30 days.

What Does it Mean and Why Does it Matter?

As of now, the Wisconsin Elections Commission must immediately follow state law, removing voters from the rolls that failed to confirm their address within 30 days.

The legislature enacted policies to ensure election integrity and clean voter rolls. This decision ensures the law will be followed and Wisconsinites can have confidence in their elections.

Just as important, state agencies cannot ignore state law. This decision is a win for an accountable administrative state.

What Happens Next?

Many seem to be anticipating an appeal but an appeal has not yet been authorized by the Wisconsin Elections Commission. WEC met on December 9th to discuss the matter but deadlocked on a resolution. Unless and until WEC (the client) authorizes an appeal, the Wisconsin Department of Justice (as attorneys) should not rush forward with an appeal.

If DOJ proceeds with an appeal without obtaining the consent of a majority of the WEC commissioners, the public should know that fact. It would be an unfortunate situation if three of the WEC commissioners wanted to follow the law as directed by Judge Malloy and the DOJ nevertheless proceeded with an appeal not authorized by WEC.

What Does the Law Say?

WEC ignored state law on how to handle the “movers.” Wisconsin participates with 28 other states in the Electronic Registration Information Center (ERIC). ERIC flags “movers” – individuals who report an official government transaction from an address different than their voter registration address – to state election agencies. State law provides specific direction to WEC on how to handle “movers.” Wis. Stat. s. 6.50(3) reads:

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 by mailing a notice by 1st class mail to the elector's registration address stating the source of the information. . . . 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.

In summary, when WEC receives reliable information that voters have moved, they are to:

- Send a notice to the mover at the address of their voter registration.
- A voter has 30 days to affirm whether they still live at the address.
- If the voter affirms they live at the address – by returning the postcard or completing a brief form online – nothing happens.
- If the voter takes no action for 30 days, WEC is to change the voter's registration status from eligible to ineligible.

On June 11, 2019 the Wisconsin Elections Commission decided that changes in eligibility for a voter flagged as a “mover” will not occur for 12 to 24 months. **WILL sued because WEC's actions violate state law.**

WEC failed to follow the rule-making process when adopting a new policy. When state agencies adopt new policies, they are required to follow the rule-making process laid out in state law (sometimes referred to as Chapter 227). The rule-making process requires a state agency to publish a proposed rule, allow for public comment, and a formal adoption of the rule after a set period of time.

When WEC adopted the new policy on “movers” at their June 11, 2019 meeting, they followed none of these procedures. **WILL sued because WEC’s actions violate state law.**

Will This Decision Disenfranchise Voters?

No. For the vast majority of the more than 200,000 voter registrations impacted by this decision, we have reason to believe that the ERIC data on movers is reliable (to the tune of 90-95% accuracy). That means those voter registrations are, in fact, located at old addresses and should come off the rolls.

For those who may find themselves on the ERIC list by mistake, WEC sends a postcard notifying them that they must take steps to confirm their voting address. If they fail to take those steps, Wisconsin has same-day voter registration and two full weeks of in-person absentee voting, meaning voters have ample opportunity to re-register and cast a ballot.

Is This Lawsuit About Partisan Politics?

Much has been made in the press about the potential “impact” of WILL’s lawsuit and Judge Malloy’s decision. Because the ERIC list includes more voters in traditionally Democratic voting areas, this lawsuit has been cast as a partisan attempt at voter suppression.

This is wrong for two reasons. First, the success of our lawsuit depends on making the case (see above) that the Wisconsin Elections Commission violated state law. We make that case based on the law and the law only.

Second, those who claim to know the “impact” of this decision are mistaken. The only thing we know is that ERIC identified more than 200,000 voter registrations of individuals who may have moved. Those who claim to know the political views of those voters are not being honest. Further, for the decision to have any “impact” other than cleaning up the voter rolls, one would have to know, with certainty, that those whose registrations have been deactivated cannot, for some reason, re-register and cast a ballot from a current or future address.

