

STATE OF WISCONSIN CIRCUIT COURT WAUKESHA COUNTY

RICHARD BRAUN
S29W29571 Ancestral Drive
Waukesha, WI 53188,

Plaintiff,

v.

Declaratory Judgment
Case Code: 30701
Case No. 22-CV-

WISCONSIN ELECTIONS COMMISSION
201 West Washington Avenue, Second Floor
Madison, WI 53703,

Defendant.

SUMMONS

THE STATE OF WISCONSIN, to each person named above as a Defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within 45 days of receiving this summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is **Clerk of Circuit Court, Waukesha County Courthouse, 515 W. Moreland Blvd., Waukesha, WI 53188** and to the Wisconsin Institute for Law

& Liberty, Plaintiff's attorney, whose address is **330 E. Kilbourn Ave., Suite 725, Milwaukee, WI 53202**. You may have an attorney help or represent you.

If you do not provide a proper answer within 45 days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 15th day of September, 2022.

WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.

Electronically signed by Anthony F. LoCoco

Richard M. Esenberg (WI Bar No. 1005622)

Anthony F. LoCoco (WI Bar No. 1101773)

Lucas T. Vebber (WI Bar No. 1067543)

330 E. Kilbourn Avenue, Suite 725

Milwaukee, WI 53202

Telephone: (414) 727-9455

Facsimile: (414) 727-6385

Rick@will-law.org

ALoCoco@will-law.org

Lucas@will-law.org

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COMPLAINT

Plaintiff Richard Braun, by his undersigned attorneys at the Wisconsin Institute for Law & Liberty, Inc., hereby alleges as follows:

INTRODUCTION

1. This is an action against the Wisconsin Elections Commission (“WEC”) seeking a declaratory judgment regarding the legality of use of the National Mail Voter Registration Form (the “Form”) in Wisconsin. The form is made available by the United States Election Assistance Commission (“EAC”) at https://www.eac.gov/sites/default/files/eac_assets/1/6/Federal_Voter_Registration_ENG.pdf.

2. According to the EAC, the Form “can be used to register U.S. citizens to vote, to update registration information due to a change of name, make a change of address or to register with a political party.”

3. Pursuant to 52 U.S.C. § 20505(a), states are generally obligated to accept the Form for use in elections for federal office, but Wisconsin is exempt from that provision because it allows same day registration. *See* 52 U.S.C. § 20503(b). Whether Wisconsin accepts the Form for use in our state for voter registration is therefore up to the State to decide.

4. Relevant to this decision, Wisconsin law prescribes, in detail, requirements for any voter registration form used in this state, while delegating the actual creation of the forms to WEC. *See* Wis. Stat. § 6.33(1).

5. As a creature of the Legislature, WEC is obligated to include in any voter registration form it creates or approves those items that Wis. Stat. § 6.33(1) requires.

6. As explained in more detail below, the Form does not comply with Wis. Stat. § 6.33(1) as it is missing several items required by that statute. To take one of many examples, § 6.33(1) requires WEC to “design the form to obtain from each elector information as to . . . whether the elector has been convicted of a felony for which he or she has not been pardoned, and if so, whether the elector is incarcerated, or on parole, probation, or extended supervision.” The Form does not request this information.

7. Despite this noncompliance, WEC’s Election Administration Manual declares that the Form is approved for use for voter registration in Wisconsin. *See*

Wisconsin Elections Commission, *Election Administration Manual*, p. 66 (Sept. 2020) (“The elector must complete and sign a Voter Registration Application (EL-131), enclose a copy of the elector’s proof of residence, and mail the completed application to the municipal clerk’s office. Wis. Stat. § 6.34(2). . . . Wisconsin also accepts the National Mail Voter Registration Form and the Federal Post Card Application.”).

8. This is not the only problem with the Form. As will be explained in more detail below, the Form conversely requests items *not* provided for by any statute or rule. For example, the Form prompts an elector to disclose his or her race.

9. Although Wis. Stat. § 227.01(13)(q) exempts from rulemaking any “form the content or substantive requirements of which are prescribed by a rule or a statute,” to the extent WEC wishes to go *beyond* the “requirements of . . . rule or . . . statute” in its creation of a registration form, it would need to engage in statutorily-authorized rulemaking. *See* Wis. Stat. §§ 227.01(13), 227.10.

10. But, although WEC has approved use of the Form, it has not engaged in any rulemaking that would permit the inclusion of extraneous items like requests for identification of race, contrary to Wis. Stat. § 227.10.

11. Failure to comply with statutory requirements around the creation and use of voter registration forms in Wisconsin hinders uniformity and predictability around the administration of elections and increases the risk of error. In addition, Wisconsin agencies have no authority to ignore the lawful commands of the Legislature.

12. Given the Form's deficiencies, Plaintiff seeks a declaration that use of the Form in Wisconsin is illegal and an order requiring WEC to withdraw its approval of the Form. Plaintiff is not seeking any action with respect to electors who have already registered in Wisconsin using the Form.

PARTIES

13. Plaintiff Rick Braun is a registered Wisconsin voter and taxpayer residing in the town of Geneseo, Waukesha County, Wisconsin, with a mailing address of S29W29571 Ancestral Drive, Waukesha, WI 53188.

14. Defendant Wisconsin Elections Commission is a governmental agency created under Wis. Stat. § 5.05 and charged with the responsibility for the administration of Chapters 5 through 10 and 12 of the Wisconsin Statutes. WEC has its offices and principal place of business at 201 West Washington Avenue, Second Floor, Madison, WI 53703.

JURISDICTION AND VENUE

15. This court has jurisdiction pursuant to either or both Wis. Stat. §§ 806.04 and 227.40.

16. Venue is proper in this Court pursuant to Wis. Stat. §§ 801.50(3)(b) and/or 227.40(1).

BACKGROUND

17. WEC's Election Administration Manual declares that the National Mail Voter Registration Form is approved for use for voter registration in Wisconsin.

18. On information and belief, Wisconsin residents have used the Form to register to vote in Wisconsin in a variety of Wisconsin municipalities. Plaintiff's counsel sent open records requests to certain clerks and received voter registration forms that were submitted to and processed by the clerks and the voters were registered using the Form. Plaintiff's counsel has provided those forms to WEC. They are not being attached to this complaint because the identities of the individual voters are not relevant to this complaint.

19. On July 26, 2022, Plaintiff's counsel sent a letter to WEC explaining why use of the Form in Wisconsin is illegal. Because the details of WEC's approval of the Form remain unclear, the letter made a request under Wisconsin's Public Records Law, Wis. Stat. §§ 19.31-19.39, for records showing when and by whom the Form was approved for use in Wisconsin as set forth in WEC's Election Administration Manual. And given that the Form fails to comply with Wisconsin law, the letter warned that absent either a legally sufficient explanation from WEC or withdrawal of approval of the form, a lawsuit would follow. A true and correct copy of the letter (without attachments) is attached hereto as Exhibit A. The letter is redacted to remove the identities of individual voters referenced because they are not relevant to this complaint.

20. To date WEC has not provided the records requested by Plaintiff's counsel. WEC did send an email on 9/14/22 responding to the Open Records Request but WEC did not identify or produce any documents showing when and by whom the

Form was approved for use in Wisconsin. WEC has provided no other substantive response to the letter.

CAUSES OF ACTION

CLAIM I – Declaratory Judgment – Violation of Wis. Stat. § 6.33(1)

21. Plaintiff realleges and incorporates by reference the preceding allegations of the complaint.

22. Wis. Stat. § 6.33(1) contains the requirements for what must be included in any voter registration application form used in this state.

23. The Form does not comply with all of the requirements of Wis. Stat. § 6.33(1).

24. For example, Wis. Stat. § 6.33(1) requires that voter registration forms obtain information as to “whether the elector has resided within the ward or election district for the number of consecutive days specified in s. 6.02 (1).”

25. The Form does not request this information.

26. Wisconsin Stat. § 6.33(1) requires that voter registration forms obtain information as to “whether the elector has been convicted of a felony for which he or she has not been pardoned, and if so, whether the elector is incarcerated, or on parole, probation, or extended supervision.”

27. The Form does not request this information.

28. Wisconsin Stat. § 6.33(1) mandates the inclusion of the following statement below the space for the elector’s signature or authorization on voter

registration forms: “Falsification of information on this form is punishable under Wisconsin law as a Class I felony.”

29. The Form does not include this statement.

30. Wisconsin Stat. § 6.33(1) requires that voter registration forms include “a space to enter the name of any inspector, municipal clerk, or deputy clerk under s. 6.55 (2) who obtains the form and a space for the inspector, clerk, or deputy clerk to sign his or her name, affirming that the inspector, clerk, or deputy clerk has accepted the form.”

31. The Form does not include such a space.

32. Wisconsin Stat. § 6.33(1) requires that voter registration forms include “a space for entry of the ward and aldermanic district, if any, where the elector resides and any other information required to determine the offices and referenda for which the elector is certified to vote.”

33. The Form does not include such a space.

34. Wisconsin Stat. § 6.33(1) requires that voter registration forms include “a space where the clerk may record an indication of whether the form is received by mail or by electronic application.”

35. The Form does not include such a space.

36. Wisconsin Stat. § 6.33(1) requires that voter registration forms include “a space where the clerk shall record an indication of the type of identifying document submitted by the elector as proof of residence under s. 6.34 or an indication that the elector’s information in lieu of proof of residence was verified under s. 6.34 (2m), the

name of the entity or institution that issued the identifying document, and, if the identifying document includes a number that applies only to the individual holding that document, that number.”

37. The Form does not include such a space.

38. Wisconsin Stat. § 6.33(1) requires that voter registration forms include “a space where the clerk, for any elector who possesses a valid voting identification card issued to the person under s. 6.47 (3), may record the identification serial number appearing on the voting identification card.”

39. The Form does not include such a space.

40. The requirements of Wis. Stat. § 6.33(1) are the established policy of the State of Wisconsin as mandated by the Legislature.

41. WEC does not have the power to set aside the policy decisions of the Wisconsin Legislature in this regard.

42. Notwithstanding the clear and mandatory provisions of Wisconsin law, WEC has approved the Form for use in Wisconsin.

43. WEC’s failure to comply with Wis. Stat. § 6.33(1) harms Plaintiff as a voter and taxpayer.

CLAIM II – Declaratory Judgment – Violation of Wis. Stat. § 227.10

44. Plaintiff realleges and incorporates by reference the preceding allegations of the complaint.

45. Wisconsin Stat. § 227.10(1) provides that “[e]ach agency shall promulgate as a rule each statement of general policy and each interpretation of a

statute which it specifically adopts to govern its enforcement or administration of that statute.”

46. Wisconsin Stat. § 227.10(2m) provides that “[n]o agency may implement or enforce any standard, requirement, or threshold . . . unless that standard, requirement, or threshold is explicitly required or explicitly permitted by statute or by a rule that has been promulgated in accordance with this subchapter,” with exceptions not applicable here.

47. The Form includes boxes in which an elector is directed to state his or her political party and race.

48. Neither item of information is required by Wisconsin statute or rule and conversely no Wisconsin statute or rule authorizes WEC to request the information on its own initiative.

49. Although forms “the content or substantive requirements of which are prescribed by a rule or a statute” are exempt from rule-making, *see* Wis. Stat. § 227.01(13)(q), neither political party nor race are prescribed by Wis. Stat. § 6.33(1) and, thus, these items could only be added to the registration form by rulemaking. That rulemaking—which would have provided notice to the public and an opportunity for comment on the propriety of requesting such information—did not occur here.

50. Consequently, WEC’s approval of the Form is *ultra vires*.

51. WEC’s failure to comply with Wis. Stat. § 227.10 harms Plaintiff as a voter and taxpayer.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Enter a declaratory judgment that WEC's approval of the National Mail Voter Registration Form for use in Wisconsin violates Wis. Stat. § 6.33(1);
- B. Enter a declaratory judgment that WEC's approval of the National Mail Voter Registration Form for use in Wisconsin violates Wis. Stat. § 227.10;
- C. Enter a permanent injunction requiring that WEC withdraw its approval of the form, cease and desist from failing to comply with Wis. Stat. §§ 6.33(1) and 227.10, and correct the information in Wisconsin's Election Administration Manual indicating that the National Mail Voter Registration Form is approved for use in Wisconsin;
- D. Award the Plaintiff such costs as allowed by law; and
- E. Grant the Plaintiff such other and further relief as the Court deems appropriate.

Dated this 15th day of September, 2022.

WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.

Electronically signed by Anthony F. LoCoco

Richard M. Esenberg (WI Bar No. 1005622)

Anthony F. LoCoco (WI Bar No. 1101773)

Lucas T. Vebber (WI Bar No. 1067543)

330 E. Kilbourn Avenue, Suite 725

Milwaukee, WI 53202

Telephone: (414) 727-9455

Facsimile: (414) 727-6385

Rick@will-law.org

ALoCoco@will-law.org

Lucas@will-law.org



WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.
330 E. Kilbourn Avenue, Suite 725, Milwaukee, WI 53202-3141
414-727-WILL (9455)
Fax 414-727-6385
www.will-law.org

July 26, 2022

VIA ELECTRONIC MAIL TO: elections@wi.gov

Meagan Wolfe, Administrator
Don M. Millis (Chairperson)
Marge Bostelmann
Julie M. Glancey
Ann S. Jacobs
Robert F. Spindell, Jr.
Mark L. Thomsen

RE: National Mail Voter Registration Form

Dear Commissioners and Administrator Wolfe:

I am writing to you regarding the use of the National Mail Voter Registration Form in Wisconsin. The form is made available by the U.S. Election Assistance Commission. If you are not familiar with the form you can find it at this link:

https://www.eac.gov/sites/default/files/eac_assets/1/6/Federal_Voter_Registration_ENG.pdf

Pursuant to 52 U.S.C.A. § 20505 (which is part of the Voter Registration Act) states are generally obligated to accept this form in elections for federal office, but Wisconsin is exempt from that provision because it allows same day registration. *See* 52 U.S.C.A. § 20503. So whether Wisconsin accepts this form for use in our state is up to the state to decide.

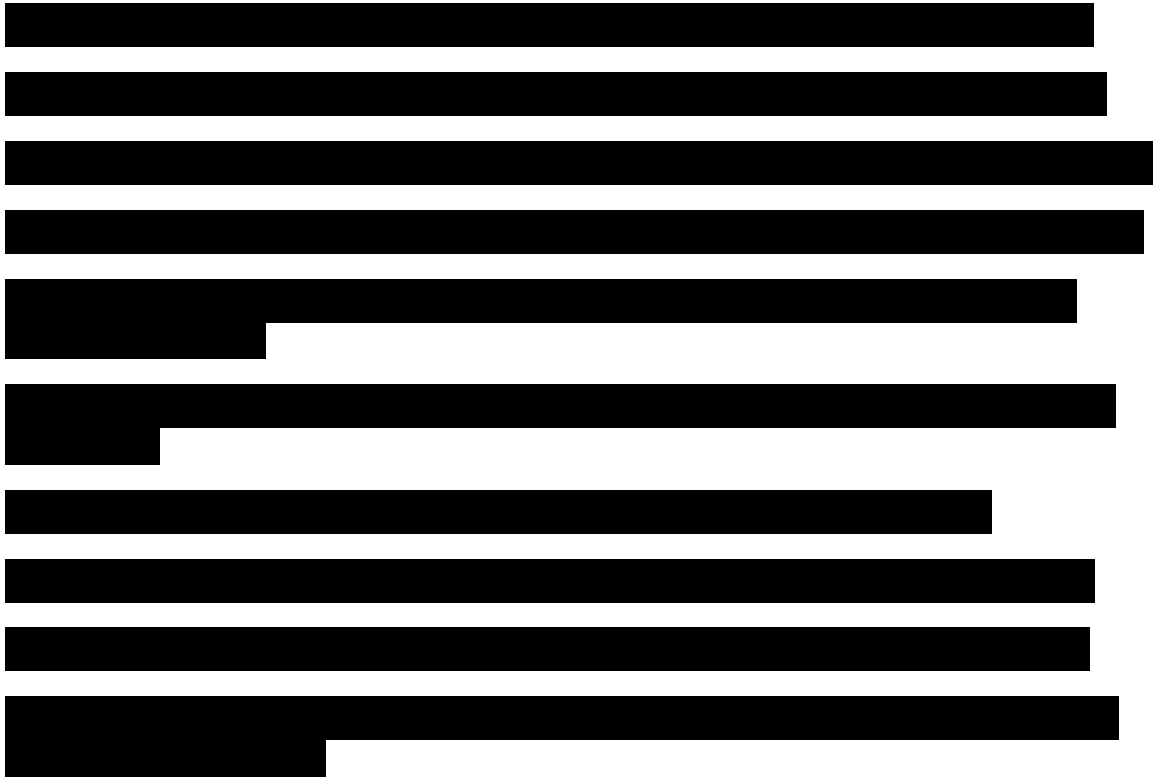
According to page 66 of the WEC Election Administration Manual this form is approved for use for voter registration in Wisconsin. In this letter we are questioning how and why this form is approved for use in this state given that the form does not comply with Wis. Stat. § 6.33(1) which contains the requirements for what must be included in any voter registration application form used in this state.

First, on the “how” question, can you please provide us with records that would show when and by whom this form was approved for use in this state as set forth in the Election Administration Manual? Please consider this letter a request under Wisconsin’s Open Records Law for those records.

Second, with respect to the “why” question we have done some research on this matter and I will briefly summarize what we have found. It would be extremely difficult, if not impossible, to learn how many people have registered to vote in Wisconsin using this form, but we certainly know that some people have done so. For example, here is a list of 10 individuals who have done



so at various different times and in various municipalities (copies of their registration forms are attached hereto):



The number of examples is irrelevant. We simply wanted to show that the form has been accepted by a variety of municipalities over a span of years.

We have also compared the federal form to Wisconsin's requirements as set forth in Wis. Stat. § 6.33(1). The deficiencies in the federal form are listed in the chart below.

	Statutory Requirement	Federal Form Complies?
1	Name	Yes
2	Date	Yes
3	Residence Location	Yes
4	Location of Previous Residence Immediately Before Moving to Current Residence Location	Yes
5	Citizenship	Yes
6	Date of Birth	Yes
7	Age	Yes
8	The number of a current and valid operator's license issued to the elector under ch. 343 or the last 4 digits of the elector's social security account number	Yes

9	Whether the elector has resided within the ward or election district for the number of consecutive days specified in § 6.02(1) (must reside in election district or ward for 28 consecutive days)	No
10	Whether the elector has been convicted of a felony for which he or she has not been pardoned, and if so, whether the elector is incarcerated, or on parole, probation, or extended supervision	No
11	Whether the elector is disqualified on any other ground from voting	Yes
12	Whether the elector is currently registered to vote at any other location	Yes
13	Below the space for the signature or authorization, respectively, the commission shall include the following statement: "Falsification of information on this form is punishable under Wisconsin law as a Class I felony."	No; but the federal form has a substantially equivalent statement
14	A space to enter the name of any inspector, municipal clerk, or deputy clerk under § 6.55(2) who obtains the form and a space for the inspector, clerk, or deputy clerk to sign his or her name, affirming that the inspector, clerk, or deputy clerk has accepted the form	No
15	A space for entry of the ward and aldermanic district, if any, where the elector resides and any other information required to determine the offices and referenda for which the elector is certified to vote	No
16	A space where the clerk shall record an indication of whether the form is received by mail or by electronic application	No
17	A space where the clerk shall record an indication of the type of identifying document submitted by the elector as proof of residence under § 6.34 or an indication that the elector's information in lieu of proof of residence was verified under § 6.34(2m), the name of the entity or	No

	institution that issued the identifying document, and, if the identifying document includes a number that applies only to the individual holding that document, that number	
18	A space where the clerk, for any elector who possesses a valid voting identification card issued to the person under § 6.47(3), may record the identification serial number appearing on the voting identification card	No

If you do a side by side comparison between the federal registration form and the registration form created by WEC (EL-131), the deficiencies in the federal form are glaring.

Given that Wisconsin has the option of whether or not to use this form and given that the form does not comply with Wis. Stat. § 6.33(1), we are wondering if you can provide an explanation as to why the federal form is approved for use in Wisconsin? Absent a legally sufficient explanation, we are requesting that WEC withdraw approval for the use of this form in Wisconsin and inform all municipal clerks that approval of the form has been withdrawn.

A few other things we noticed in our research. Some voters who use this form apparently receive the form from third party groups. A problem sometimes occurs that the voter sends in the form but the voter is already registered. That is a separate problem but we point it out because that may be true for some of the voters listed above.

Also, we note that on some of the forms that the clerks try to make up for the deficiencies in the forms by making notes in the margin (*see the* [redacted] form as an example). Those notes are a symptom of the problem and not a cure for the problem. None of the notes made by the clerks cure all of the deficiencies in the form. Moreover, only a few clerks make notes, and even if they do, the notes they make, vary from form to form.

Also, we understand that there is a second page for the federal form that is entitled “For Official Use Only” and that page contains a set of blank lines. It is possible that clerks could insert information on this page that could cure some of the deficiencies noted in boxes 14-18 of the chart above. In our open records requests we specifically asked for both pages. Only one clerk – the clerk in Glenbeulah – sent us a second page. That was for the application of [redacted]. That second page was completely blank. We are assuming that the other clerks did not ever receive the second page from the voter. That would further explain why other clerks make notes in the margin of the first page.

In addition to all of the above, the federal form also has boxes for the voter to state their political party and race. Neither is required by the Wisconsin statute. That creates two additional problems. First, while forms “the content or substantive requirements of which are prescribed by a rule or a statute” are exempt from rule-making (*see* Wis. Stat. § 227.01(13)(q)), neither political party nor race are prescribed by Wis. Stat. § 6.33(1) and, thus, could only be added to the

registration form by rule-making (which did not occur here). Second, requesting this information from Wisconsin voters is, at a minimum, intrusive and seems inappropriate in this context. Neither is related to a voter's ability to register.

Given the fact that the federal form fails to comply with Wisconsin law and given the problems caused to the clerks in trying to register a voter with an insufficient form, absent either a legally sufficient explanation from WEC or withdrawal of approval of the form, we would file an action to obtain a declaration that the form is illegal in this state. We would ask that you get back to us within 14 days of the date of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony F. LoCoco". The signature is fluid and cursive, with a prominent flourish at the end.

Anthony F. LoCoco
Deputy Counsel

Attachments