

Because the legislative response to the Defendants' request for legislative clarification is relevant, Plaintiffs submit a copy of the letter herewith. The letter can also be found at the following link: http://www.thewheelerreport.com/wheeler_docs/files/120519lemaheiu.pdf

Dated this 6th day of December, 2019.

Respectfully submitted,

WISCONSIN INSTITUTE FOR LAW & LIBERTY
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S/ electronically signed by Richard M. Esenberg

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WISCONSIN LEGISLATURE

P.O. Box 7882 • Madison, WI 53707-7882

December 5, 2019

Dean Knudson, Chair
Wisconsin Elections Commission
212 East Washington Ave
Madison, WI 53707

Meagan Wolfe, Administrator
Wisconsin Elections Commission
212 East Washington Ave
Madison, WI 53707
<<HAND DELIVERED>>

Dear Chair Knudson and Administrator Wolfe,

Thank you for seeking guidance from the Legislature regarding provisions of 2015 Wisconsin Act 261, also known as the Elections Technology, Access and Security Act. As the lead authors of that legislation, we are happy to help clarify the intent of the statute.

When it was signed into law, we stated that the fundamental goal of this legislation was to “strengthen the security of the voter registration process in order to avoid voter fraud” by accessing the Electronic Registration Information Center (ERIC) and cleaning up our statewide voter list. If the Commission waits until 2021 to use the data received from ERIC and clean up the voter list, then the Commission has frustrated the fundamental purpose of this statute and left countless ineligible voters on the voter list heading into a series of major national elections.

Unfortunately, the guidance prepared for the Commission by Staff Counsel Mike Hass fails to clearly and plainly address the Commission’s fundamental mandate in Act 261 – to remove voters from the voter list if they do not respond to the ERIC mailing within 30 days. Wis. Stat. § 6.50(2) clearly states, “If an elector to whom a notice of suspension was mailed under sub. (1) has not applied for continuation of registration within 30 days of the date of mailing, the commission shall change the registration status of that elector from eligible to ineligible on the day that falls 30 days after the date of mailing.” The mandate could not be clearer and yet the Memorandum prepared for your meeting on December 2nd fails to plainly state this as a starting point before discussing a number of side issues that never contradict this fundamental statutory directive.

In addition, the discussion in Mr. Haas’ memo regarding the voter list maintenance procedures outlined under the National Voter Registration Act (NVRA) is irrelevant. Wisconsin is exempt from NVRA and Act 261 included a provision that clarified that the agreement with ERIC “did not affect the exemption for this state under the National Voter Registration Act” [*Wis. Stat. § 6.36(1)(ae)*].

We are confident in your ability to refine your process in using the ERIC data to clean up the statewide voter list in a manner that complies with the plain language of state law. Mr. Haas’ memo clearly states that

maintenance of the statewide voter list is your responsibility and doing so makes everyone's job easier on Election Day, from the Administrator of the Election Commission down to the clerk of the smallest village in our great state. Seeking further legislative clarification will only delay you from accomplishing these legislatively mandated goals and we strongly encourage you to look for solutions that comply with the statute rather than delaying the proper implementation of a four year old statute.

We all share the goal of making Wisconsin's elections the fairest and most accurate in the nation and ensuring that our voter lists are accurate is fundamental to that purpose. If there is anything else we can do to assist you in complying with the plain language of the statute, let us know.

Sincerely,



Devin LeMahieu

State Senator

Former Chair – *Senate Elections & Local Government*

Senate Author – 2015 WI Act 261



Kathy Bernier

State Senator

Former Chair – *Assembly Campaigns & Elections*

Assembly Author – 2015 WI Act 261