

Timothy Zignego
David W. Opitz
Frederick G. Luehrs, III

Plaintiffs

Case No: 19-CV-449

vs.

Wisconsin Election Commission

Marge Bostelmann, Julie Glancey,
Ann Jacobs, Dean Knudsen
Mark Thomsen

Defendants.

**PLAINTIFFS' NOTICE OF MOTION AND MOTION TO HOLD THE DEFENDANTS
IN CONTEMPT OF COURT AND FOR REMEDIAL SANCTIONS**

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Please take Notice that on _____, at ____ o'clock __.m., or as soon thereafter as the matter may be heard, Plaintiffs will appear before the Hon. Paul V. Malloy and, pursuant to Wis. Stats. § 785.03 and 808.07(2), request that the Court hold the Defendants in contempt of court and order remedial sanctions. The ground for this motion are as set forth below. The Plaintiffs do not intend to file a separate brief in support of the motion.

1. This is an action against the Wisconsin Election Commission (“WEC”) and five of the Commissioners of the Wisconsin Election Commission (the “WEC Commissioners”), (collectively “the Defendants”), based upon the Defendants’ failure and refusal to comply with state law.

2. On December 13, 2019, this Court issued its oral decision ordering the Defendants to comply with Wisconsin Statute § 6.50(3) with respect to notices that had been sent to approximately 234,000 voters in October, 2019.

3. On December 17, 2019 this Court issued a written Mandamus Order stating as follows:

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

4. To date, the Defendants have not complied with this Court’s Mandamus Order.

5. On December 17, 2019 the Defendants appealed this Court’s Order and filed a motion for an expedited stay (including *ex parte* consideration) of the Mandamus Order with the Court of Appeals.

6. On December 18, 2019, the Court of Appeals denied the Defendants' motion for *ex parte* consideration of the motion for a stay and ordered the Plaintiffs to respond to the motion for an expedited stay by December 23, 2019.

7. On December 20, 2019, the Plaintiffs filed a Petition for Bypass with the Wisconsin Supreme Court. The Defendants have until January 3, 2020 to respond to the Petition.

8. On December 23, 2019, the Plaintiffs filed their response brief opposing the Defendants' motion for a stay. Among other things, the Plaintiffs pointed out that the Petition for Bypass filed on December 20th, deprived the Court of Appeals of jurisdiction of the appeal, including the motion for a stay. See, Wis. Stat. 809.60(3), *State v. Holmes*, 106 Wis. 2d 31, 37, 315 N.W.2d 703, 706 (1982) (filing of petition to bypass stayed court of appeals from taking under submission petition for supervisory writ).

9. On December 27, 2019, the Defendants wrote a letter to the Court of Appeals asking that Court to decide the motion for a stay no later than the morning of December 30, 2019 because the Defendants were faced with various deadlines due to the upcoming elections. (See, Ex. A attached hereto.)

10. The Court of Appeals did not respond to the Defendants' December 27th letter and the Court of Appeals has not issued a stay of this Court's Mandamus Order.

11. The Defendants, to this date, have not asked the Wisconsin Supreme Court for a stay.

12. The Defendants met on December 16, 2019. A motion was made to immediately comply with this Court's Mandamus Order but the motion was not adopted. The Commission deadlocked with a vote of 3-3.

13. The Defendants met again on December 30, 2019 for the express purpose of determining how to proceed with respect to this Court's Mandamus Order and again failed to order that the staff of the Wisconsin Election Commission comply with this Court's Mandamus Order.

14. The Defendants have posted the following statement on the WEC website effective December 30, 2019:

At a special meeting today, the Wisconsin Elections Commission did not pass any motion directing staff to take action on the movers mailing list. This means the Commission will await further direction from the Court of Appeals and the Supreme Court of Wisconsin. When those courts provide direction, the Commission will hold another meeting to discuss action to comply with the ruling.

15. The Defendants do not believe that this Court's Mandamus Order is "the law." According to an article in the Cap Times dated December 16, 2019, https://madison.com/ct/news/local/govt-and-politics/wisconsin-elections-commission-deadlocks-over-response-to-order-purging-voters/article_6675794c-cd9d-5c90-a234-ee1924097d58.html:

"We know that there's going to be an appeal," Democratic appointee Mark Thomsen said. "The law isn't the law until the Court of Appeals says what it is and to mislead the public by this motion [that the Defendants comply with this Court's Order] does a disservice to voters and voters' rights everywhere."

16. The Defendants have had 20 days since this Court's oral ruling and 15 days since the written Mandamus Order and have still failed to comply with this Court's Order and, it is obvious that the Defendants do not intend to take any action to comply with this Court's Order.

17. The Defendants have had the opportunity to seek a stay but no stay has been granted. Moreover, the only court that could now issue a stay is the Wisconsin Supreme Court and the Defendants have chosen not to seek a stay from the Supreme Court.

18. According to the letter sent by Defendants' counsel to the Court of Appeals on December 27th (Ex. A), the Defendants must send out ballots to Wisconsin municipalities by January 2, 2019 for the upcoming Seventh Congressional District race. Those ballots will then be made available to registered voters who request one for absentee ballot purposes, including voters whose registrations should have been deactivated pursuant to this Court's Mandamus Order.

19. The same is true for the upcoming state primary elections set for February 18, 2020 except that the deadline for sending out ballots for those elections is January 28, 2019. *See*, WEC Staff Report for December 30, 2019 WEC meeting attached as Exhibit B.

20. The WEC Staff Report (Ex. B) further states that WEC staff needs 3 days to deactivate the 200,000+ voters involved. Thus, because the Defendants have refused to take action to comply with this Court's Mandamus Order that means that the voter registration rolls will not be updated by the January 2nd deadline and are unlikely to be updated by the January 28th deadline unless this Court takes action to enforce its Order.

21. Time remains of the essence to update the voting rolls *before* the upcoming elections.

22. In the WEC Staff Report (Ex. B), the staff laid out four options for the Defendants to consider with respect to compliance with this Court's Order and a fifth option to take no action, i.e., to not comply. The Defendants have obviously chosen the fifth option.

23. The Defendants' failure to comply with this Court's Order constitutes contempt of court under Wis. Stat. § 785.01(1)(b) ("disobedience, resistance or obstruction of the authority, process or order of a court").

24. Wis. Stat. § 785.04(c) authorizes a remedial sanction of up to \$2,000 per day for each day the contempt of court continues.

25. Because the failure to comply here is direct and deliberate the maximum monetary sanction is appropriate.

WHEREFORE, as a remedy for the Defendants' contempt, the Plaintiffs request that this Court impose a fine on the Defendants of \$2,000 per day per Defendant until the Defendants establish that they are in full compliance with this Court's Mandamus Order or that the Court issue such other order as the Court deems appropriate to ensure compliance with the previous Order of this Court.

Respectfully submitted this 2nd day of January, 2020.

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