STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT IV

Case No. 19AP2397, 20AP0112

STATE OF WISCONSIN ex rel.
TIMOTHY ZIGNEGO, DAVID W. OPITZ,
and FREDERICK G. LUEHRS, III,

Plaintiffs-Respondents,

v.

WISCONSIN ELECTIONS
COMMISSION, MARGE BOSTELMANN,
JULIE GLANCEY, ANN JACOBS, DEAN
KNUDSEN and MARK THOMSEN,

Defendants-Appellants.

APPEAL FROM A FINAL ORDER
OF THE OZAUKEE COUNTY CIRCUIT COURT,
THE HONORABLE PAUL V. MALLOY, PRESIDING

BRIEF AND APPENDIX OF DEFENDANTS-APPELLANTS

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases

Page

Statutes

Page

INTRODUCTION

Three Wisconsin voters filed this lawsuit seeking deactivation of the registrations of over 200,000 voters based on one source of information indicating that these voters *may have* moved from their voting residences. That effort is flawed for multiple reasons, including basic statutory ones. The statute that Plaintiffs sought to use—Wis. Stat. § 6.50(3)—has no application to their mass deactivation effort. It is triggered only by "reliable information" that a *particular* voter has moved outside a municipality. However, these proceedings examined no individual voter's circumstances, at all, but rather the circuit court adopted wholesale a single database—called ERIC—that is known *not* to always be an accurate indicator of whether a person has changed her voting residence. The "reliable information" statute cannot apply to these circumstances.

Much less do Plaintiffs have a right to seek mass-deactivation under it here. Rather, where individual electors like Plaintiffs seek to challenge another elector's registration, they must prove it beyond a reasonable doubt in a fact-finding proceeding before a local body.

These are not the only fundamental mismatches with the statute. Wisconsin Stat. § 6.50(3), by its plain terms, does not direct the Wisconsin Elections Commission (the "Commission") to do anything. It necessarily follows that the circuit court's mandamus order against the Commission to deactivate voter registrations was erroneous, as it is unquestionably true that a statute that does not even apply cannot supply the required clear, unequivocal, and non-discretionary duty to act. Rather, when it applies, section 6.50(3) allows local entities—municipal clerks and boards of elections commissioners—to deactivate voter registrations if there is "reliable information" that a particular voter has moved outside of the municipality. That is something that

requires local, on-the-ground determinations. There is simply no basis for a mass-deactivation writ against the Commission.

The circuit court failed to apply the plain terms of the statute and the mandamus standards, and its writ of mandamus should be reversed.

ISSUES PRESENTED

1. Did the circuit court properly issue a writ of mandamus ordering the Commission to comply with Wis. Stat. § 6.50(3) and deactivate voter registrations on a mass scale, when section 6.50(3) requires a discretionary reliability determination about a particular voter, provides no right to Plaintiffs to raise their mass challenge, and does not apply to the Commission in the first place?

The circuit court answered yes.

This Court should answer no.

2. Did the circuit court properly find the Commission in contempt for failing to comply with the writ of mandamus, when the Commission sought and was granted a stay of the writ and when the writ itself was unclear?

The circuit court answered yes.

This Court should answer no.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Oral argument is unnecessary because the issues presented are fully briefed and may be resolved by applying well-established principles of statutory construction to undisputed facts.

Publication may be warranted because the statute in question—Wis. Stat. § 6.50(3)—has not been addressed in any published case and because the issues presented here are of substantial and continuing public interest.

STATEMENT OF THE CASE

I. Statutory scheme

The Wisconsin Elections Commission is a state agency responsible for administering certain election laws in the state. Wis. Stat. § 5.05. Among other duties, the Commission is responsible for compiling and maintaining electronically an official voter registration list. Wis. Stat. §§ 5.05(15), 6.36(1). The list is maintained electronically on WisVote, the statewide election management and voter registration system. (R. 23:2.) Commission employees, municipal clerks, boards of election commissioners, and authorized election officials may make changes to the list when the statutes allow for revisions. Wis. Stat. §§ 6.36(1)(b)1.b., (1)(c), 7.20(1).

Revision of the list is required only under certain circumstances. One such circumstance is when an elector has not voted in the previous four years and does not respond to an official notice. Pursuant to Wis. Stat. § 6.50(1), the Commission is required to "examine the registration records for each municipality and identify each elector who has not voted within the previous 4 years if qualified to do so during that entire period" and mail a notice to that elector notifying them that their registration will be suspended unless they apply for continuation of registration within 30 days. Pursuant to Wis. Stat. § 6.50(2),

> If an elector to whom the 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.

Wis. Stat. § 6.50(2).

Another circumstance requiring revision to the registration list is when the municipal clerk or municipal

board of election commissioners determines there is reliable information that an individual elector has changed her residence. Wis. Stat. § 6.50(3). Wisconsin Stat. § 6.50(3)— the only subsection at issue in this case—states in full:

> 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.
>
> All municipal departments and agencies receiving information that a registered elector has changed his or her residence shall notify the clerk or board of election commissioners.
>
> 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.
>
> Upon receipt of reliable information that a registered elector has changed his or her residence within the municipality, the municipal clerk or board of election commissioners shall change the elector's registration and mail the elector a notice of the change.
>
> This subsection does not restrict the right of an elector to challenge any registration under s. 6.325, 6.48, 6.925, 6.93, or 7.52(5).

Wis. Stat. § 6.50(3) (format changed for readability).

As referenced in section 6.50(3), separate statutes provide authorization and procedures for one elector to challenge another elector's registration status. For example, Wis. Stat. § 6.48 provides that "[a]ny registered elector of a municipality may challenge the registration of any other registered elector." In turn, Wis. Stat. § 6.325 provides that

"[n]o person may be disqualified as an elector unless the municipal clerk, board of election commissioners or a challenging elector under s. 6.48 demonstrates beyond a reasonable doubt that the person . . . is not properly registered."

II. Relevant factual background

In 2015, the Legislature enacted a statute directing Wisconsin to join the Electronic Registration Information Center, Inc. (ERIC) for the purpose of maintaining Wisconsin's official voter registration list. The statute required the Commission to enter into a membership agreement with ERIC and to comply with the terms of the agreement. *See* Wis. Stat. § 6.36(1)(ae). (R. 23:3–4; 24.) The statute does not require deactivation of voter registrations, nor does it cross-reference the subsections requiring revision of the registration list, including Wis. Stat. § 6.50(3). *See* Wis. Stat. § 6.36(ae).

ERIC is a nonprofit consortium of states that share data about voters to help member states improve the accuracy and efficiency of their voter registration systems. ERIC helps its member states identify people who may be eligible to vote but are not registered, voters who may have moved since their last registration date, voters who are deceased, and voters who may no longer be eligible to vote. ERIC does this by comparing data about registered voters with information from other sources, like the Division of Motor Vehicles (DMV) and the United States Postal Service (USPS). (R. 23:4.)

The ERIC Membership Agreement requires member states to transmit data relating to registration of electors in the state to ERIC for sharing within the state and with other member states. (R. 23:4; 24:1–2.) The Agreement also requires member states to use data provided by ERIC to improve the accuracy of the voter rolls by contacting voters and informing them of their status and possible inaccuracies.

Upon receiving data from ERIC, member states must initiate contact with electors who may be eligible to vote but are unregistered and inform them how to register to vote. (R. 23:5; 24:4–5.) And member states must also initiate contact with voters whose records may be inaccurate. While the Agreement requires member states to reach out to voters appearing on the list maintenance reports, it does not mandate a process or timeframe for removal of the person from the voter registration list. (R. 23:5; 24:5.)

Every two years, Wisconsin receives a report from ERIC regarding persons who are sometimes referred to as "Movers." (R. 23:4–6.) ERIC Movers are Wisconsin residents who, in an official government transaction with, for example, the DMV or the USPS, reportedly have stated an address different from their voter registration address. (R. 23:4–5.)

After receiving the first report on ERIC Movers data in 2017, the Commission mailed postcards to the identified electors directing them to reregister if they had moved or to sign and return the card to the municipal clerk or board of elections commissioners to keep their registration current. (R. 23:5–6.) The Commission stated that the voters had 30 days in which to respond to keep their registration active. (R. 23:6.)

Based on its experience with the 2017 Movers mailing, the Commission learned that some percentage of that ERIC data was not a reliable indicator of whether an elector changed her voting residence, although the precise percentage is not currently established. (R. 4:8–12; 23:5–10.) For example, the Commission learned that some voters flagged as ERIC Movers had simply registered a vehicle or obtained a driver license at an address other than their voting address and did not intend to change their voting residence. (R. 4:9; 23:7.) The deactivation of elector registrations under these circumstances caused numerous problems and resulted in the Commission having to reactivate the registrations of

electors who may have been deactivated in error. (R. 4:8–12; 23:5–10.)

In 2019, the Commission received another report on Movers data from ERIC. (R. 23:10.) Based on what the Commission learned from the 2017 Movers data and its subsequent mailing, the Commission decided to revise its process for the 2019 Movers data. (R. 23:10.) In October 2019, the Commission sent letters to approximately 230,000 "Movers." (R. 23:10.) The letters asked electors to affirm whether they still lived at that address. If the voter affirmed that she had not moved, then the voter would remain in active status on the voter rolls at that address. (R. 23:10–11.) Because the Commission had no immediate plans for deactivation, the letter did not include notice that the elector's registration would be deactivated as a result of a non-response. (R. 23:10.) To the contrary, the letter told recipients that simply voting in the next election would maintain their status. (R. 23:10–11.)

For the electors who do not respond to the October 2019 mailings, the Commission decided that it would take no immediate action, but rather would seek guidance from the Legislature to the extent further action was contemplated. (R. 23:11; 52:1–2.)

III. Litigation history

On November 13, 2019, three Wisconsin voters—Timothy Zignego, David Opitz, and Frederick Luehrs, III—filed suit against the Commission and five of its six commissioners in their official capacities. (R. 1:4–5.) Plaintiffs alleged the Commission violated Wis. Stat. § 6.50(3) by not deactivating the registrations of those electors who did not respond within 30 days after the October 2019 mailing. They sought declaratory and injunctive relief or, in the alternative, a writ of mandamus. (R. 1:3–18.)

Before the Commission's answer deadline, Plaintiffs filed a motion for a temporary injunction or, in the alternative, a writ of mandamus, along with a brief and affidavit containing exhibits. (R. 2–4.) After briefing on the motion, the circuit court held oral argument and issued an oral ruling on December 13, 2019. (R. 22–24; 45; 96.) The circuit court orally ruled that a writ of mandamus would issue to compel the Commission to comply with Wis. Stat. § 6.50(3) and deactivate the registration of the electors who did not respond within 30 days after the mailing of the October 2019 notices. (R. 131 (Mot. Hr'g. 76:12–16, Dec. 13, 2019), Resp. App. 111.)

On December 17, 2019, the circuit court entered a written writ of mandamus, which ordered: "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." (R. 77.)

The Commission immediately filed a notice of appeal and a motion for expedited stay,[1] and then repeatedly sought a ruling on the stay while it was pending. (R. 79; 103; 105–9.) Despite these efforts, Plaintiffs returned to the circuit court and filed a motion for contempt and remedial sanctions against the Commission and certain commissioners for not immediately deactivating the electors who did not respond to the October 2019 mailing. (R. 93.) On January 13, 2020, the circuit court found the Commission and three commissioners in contempt of court and issued a written contempt order

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[1] That same day, December 17, 2019, the League of Women Voters of Wisconsin and two electors filed a federal lawsuit alleging that deactivating registrations without prior notice would violate due process. *League of Women Voters of Wis. v. Knudson*, No. 19-CV-1029 (W.D. Wis.), (R. 111.).

imposing a remedial sanction of $250 per day against the three commissioners and $50 per day against the Commission until they complied with the writ. (R. 132 (Mot. Hr'g. 32:23–34:19, Dec. 13, 2019), Resp. App. 128–30.) The Commission immediately filed notice of appeal and a motion for expedited stay of the contempt order. (R. 117.)

The next day, this Court granted the Commission's motions to stay the writ of mandamus entered on December 13 and the contempt order issued on January 13. (R. 124; 125.) The Court later explained that it granted the stay motions because the Commission demonstrated a strong likelihood of success on the merits—particularly because Wis. Stat. § 6.50(3) does not apply to the Commission or to these circumstances—and that "the likely harm to some voters in the absence of a stay outweighs the speculative harm to other voters that the respondents argue may occur if a stay is granted." (R. 128:3, 6–17.) After it stayed the writ of mandamus, this Court further concluded "the Commission is not in contempt at this time" because "it is not possible to 'disobey' an order that does not have current legal effect." (R. 128:18.) This Court consolidated the two appeals and ordered expedited briefing. (R. 127.)

SUMMARY OF THE ARGUMENT

There is no basis for the writ of mandamus requiring the Commission to comply with Wis. Stat. § 6.50(3) and deactivate voter registrations on a large scale. Section 6.50(3) does not impose a clear, unequivocal, non-discretionary duty on the Commission, as required for a writ of mandamus. In fact, on its face, section 6.50(3) has no application to either the circumstances or defendants here.

First, Wis. Stat. § 6.50(3)'s deactivation of an elector's registration is triggered *only* when there is "reliable information that a registered elector has changed his or her residence to a location outside of the municipality." Wis. Stat.

§ 6.50(3). This standard requires a judgment-based determination applied on a voter-by-voter basis. It does not permit mass-deactivation of voter registrations without looking at specific data about particular voters and without analyzing what is "reliable" in light of any particular evidence. The circuit court here took *one* source of data (ERIC Movers data) *that is demonstrably inaccurate* as to some voters and applied it without differentiation to hundreds of thousands of voters. That was wrong. There is no clear, unequivocal, non-discretionary statutory directive to deactivate voter registrations under the circumstances presented here.

Relatedly, Plaintiffs have no right to even request deactivations under that statute, much less mass deactivations based on ERIC data. Rather, when individual electors wish to challenge another elector's eligibility, they must follow the statutory path for such challenges, which comes with a beyond-a-reasonable-doubt burden of proof.

Second, the Commission has no positive and plain duty under Wis. Stat. § 6.50(3) because that statute does not apply to the Commission. The only government entities directed to change an elector's registration status under Wis. Stat. § 6.50(3) are municipal clerks and municipal boards of election commissioners. Other subsections of Wis. Stat. § 6.50 make express reference to the defendant "commission," but subsection (3) does not. Because the Commission is not even mentioned in Wis. Stat. § 6.50(3), it has no clear duty to deactivate voter registrations pursuant to the statute, and a writ of mandamus cannot issue.

These fundamental statutory errors also create other problems: the circuit court's writ improperly gave the October 2019 mailing the status of a deactivation notice, even though that mailing informed the recipient of no such thing. The writ was also overbroad in that it purported to apply to everyone who received the October 2019 mailing, even though that

mailing included intra-municipality movers who are not even subject to deactivation under Wis. Stat. § 6.50(3). These collateral problems go away with a correct reading of the statute.

Lastly, although it falls away given the invalidity of the underlying order, it also is worth noting that the contempt ruling was not appropriate for additional reasons. The writ of mandamus was not a specific and unequivocal directive. Relatedly, the Commission and three Commissioners did not intentionally disobey the writ because it made repeated efforts to obtain a stay of the writ, which this Court correctly granted.

STANDARD OF REVIEW

This Court reviews a decision to issue a writ of mandamus for an erroneous exercise of discretion. *Law Enf't Standards Bd. v. Vill. Of Lyndon Station*, 101 Wis. 2d 472, 493–94, 305 N.W.2d 89 (1981).

This Court reviews questions of statutory interpretation de novo. *League of Woman Voters of Wis. v. Evers*, 2019 WI 75, ¶ 13, 387 Wis. 2d 511, 929 N.W.2d 209. This Court also reviews questions of standing, jurisdiction, and competency de novo. *Krier v. Vilione*, 2009 WI 45, ¶ 14, 317 Wis. 2d 288, 766 N.W.2d 517; *Vill. of Trempealeau v. Mikrut*, 2004 WI 79, ¶ 7, 273 Wis. 2d 76, 681 N.W.2d 190.

This Court reviews the circuit court's use of its contempt power for an erroneous exercise of discretion. *State ex rel. N.A. v. G.S.*, 156 Wis. 2d 338, 341, 456 N.W.2d 867 (Ct. App. 1990).

ARGUMENT

I. Plaintiffs are not entitled to a writ of mandamus.

This appeal is of a writ of mandamus, which may only issue when a public official has violated a clear and express

statutory duty. Mandamus is a writ used "to compel a public officer to perform a duty of his office presently due to be performed." *State ex rel. Marberry v. Macht*, 2003 WI 79, ¶ 27, 262 Wis. 2d 720, 665 N.W.2d 155. It is an extraordinary remedy. *Lake Bluff Hous. Partners v. City of South Milwaukee*, 197 Wis. 2d 157, 170, 540 N.W.2d 189 (1995). "In order for a writ of mandamus to be issued, four prerequisites must be satisfied: '(1) a clear legal right; (2) a positive and plain duty; (3) substantial damages; and (4) no other adequate remedy at law.'" *Voces De La Frontera, Inc. v. Clarke*, 2017 WI 16, ¶ 11, 373 Wis. 2d 348, 891 N.W.2d 803 (citation omitted).

"[M]andamus will not lie to compel the performance of an official act when the officer's duty is not clear and requires the exercise of judgment and discretion." *Beres v. City of New Berlin,* 34 Wis. 2d 229, 231–32, 148 N.W.2d 653 (1967). "[I]t is an abuse of discretion to compel action through mandamus when the duty is not clear and unequivocal and requires the exercise of discretion." *Law Enf't Standards Bd.*, 101 Wis. 2d at 494 (citations omitted).

This appeal of the writ of mandamus presents a question of statutory interpretation. Statutory interpretation begins with the language of the statute. If the language is plain, the inquiry stops. *State ex rel. Kalal v. Circuit Court for Dane Cty.*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110. "Statutory language is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning." *Id.* "Context is important to meaning. So, too, is the structure of the statute in which the operative language appears. Therefore, statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results." *Id.* ¶ 46.

The circuit court misinterpreted the plain text of Wis. Stat. § 6.50(3), causing numerous legal and practical problems. Construed properly, Wis. Stat. § 6.50(3) does not impose a clear, unequivocal, non-discretionary duty on the Commission. In fact, it does not apply to the present circumstances, or the Commission, at all.

A. Mandamus was improper based on Wis. Stat. § 6.50(3)'s "reliable information" standard and also because Plaintiffs have no right to use that statute for mass deactivations.

1. Wisconsin Stat. § 6.50(3) requires a judgment-based determination about a particular voter.

Wisconsin Stat. § 6.50(3)'s deactivation of an elector's registration is triggered *only* when there is "*reliable information* that *a* registered elector has changed his or her residence to a location outside of the municipality." Wis. Stat. § 6.50(3). This standard requires a judgment-based determination applied on a case-by-case basis to a particular voter. Mandamus was improper based on such a standard, much less a mass-deactivation mandamus order.

As a basic matter, a writ of mandamus cannot issue under a statute that is triggered by a judgment-based inquiry about "reliability." *Beres,* 34 Wis. 2d at 231–32. Although not defined in the statute, as a general matter, ""Reliable" means something that "can be depended upon with confident certainty." *State v. Champlain*, 2008 WI App 5, ¶ 28, 307 Wis. 2d 232, 744 N.W.2d 889 (citing The Random House Dictionary of the English Language 1628 (2d ed. 1987)).

Thus, determining whether information is "reliable" requires an exercise of judgment or discretion and, in particular, it must be on a case-by-case basis under Wis. Stat.

§ 6.50(3). A duty is not plain if it requires discretion. Therefore, mandamus is inappropriate here.

In any event, Plaintiffs and the circuit court did not meaningfully address or apply the substantive standard in Wis. Stat. § 6.50(3). The "reliable information" standard applies on a case-by-case basis to "*a* registered elector"—in other words, to a particular voter. To further illustrate, in other statutes in chapter 6 where the term "reliable information" is used, it always applies to an individual elector. *See, e.g.*, Wis. Stat. §§ 6.32(2), (4) (verification of the qualifications of a "proposed elector" based on "reliable information"), 6.87(3)(b) (municipal clerk shall not send absentee ballot when there is "reliable information that an address given by an elector" is not eligible to receive such a ballot), 6.86(2)(b), 6.22(4)(f).

Here, neither Plaintiffs nor the circuit court even attempted to make that kind of determination on a voter-by-voter basis, as would be required. Rather, the court simply took wholesale one data set—the ERIC Movers data—and assumed it was reliable for hundreds of thousands of people, even though that data is known to be an inaccurate indicator of a permanent change of residence for some percentage of voters.

ERIC Movers data is not collected or reported as a foolproof indicator that someone has actually permanently changed his or her voting residence. Far from it. Rather, it is simply a database that seeks to identify Wisconsin residents who, in some sort of official government transaction, have reported an address different from their voter registration address. However, because the source data was collected for purposes *other than voter registration* and because of anomalies inherent in the data-matching process, it is undisputed that the ERIC Movers data is not always an accurate reflection of an individual's voting residence; only the percentage of inaccuracy is in dispute. (R. 131 (Mot. Hr'g.

44:14–45:12, 55:20–23, Dec. 13, 2019), 23:4–5.) A record of a government transaction revealing a different address than the elector's registration address does not necessarily mean that the elector has moved or intended to establish a new, permanent voting residence—for instance, the person may have just registered a vehicle or obtained a driver license at a different address.[2] (R. 23:4–5, 7.) In other words, it unquestionably is not something that "can be depended upon with confident certainty." *Champlain*, 307 Wis. 2d 232, ¶ 28 (citation omitted).

Here, however, neither Plaintiffs nor the circuit court attempted to glean more information to potentially weed out voters who, for example, reported a different address for a business purpose, a temporary purpose, or some other purpose, but yet still permanently resided in their registered address. Likewise, they did not attempt to glean more information to help discern whether there was simply a mistake in some ERIC data. And no voter affected by the court's purported "reliable information" determination was allowed a chance to demonstrate that it was not reliable.

This is not a mere hypothetical. It is undisputed that some ERIC data in the past has inaccurately flagged a person as having moved to a different municipality. (R. 4:8–12; 23:5–10.) And there is every reason to believe that is true of the most recent data set, as well. To give just one example, in

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[2] "Elector residence" is defined in statute and includes consideration of the person's physical presence and intent regarding their voting residence: "The residence of a person is the place where the person's habitation is fixed, without any present intent to move, and to which, when absent, the person intends to return." Wis. Stat. § 6.10(1). The statute then describes various determinations of residence. Wis. Stat. § 6.10(2)–(13). Notably, no person loses residence when he or she leaves home and goes to another state or another municipality within Wisconsin "for temporary purposes with an intent to return." Wis. Stat. § 6.10(5).

the related federal lawsuit, *League of Women Voters of Wisconsin v. Knudson*, No. 19-CV-1029 (W.D. Wis.), one of the plaintiffs reports having received an ERIC Movers mailing in 2019, despite living at the same address in Milwaukee for over 16 years. (R. 111:15–16.)

To properly apply the statute, there would have to be an actual legal and factual analysis of whether data supports a finding of "reliable information" as to each particular voter, which would necessarily need to consider other information to meaningfully assess "reliability." Plaintiffs have not even attempted to do that.

Nor have they attempted to explain how their mass-deactivation premise is consistent with surrounding statutes. For example, and as discussed more below, the elector-challenge provision in chapter 6 states that "[n]o person may be disqualified as an elector unless the municipal clerk, board of election commissioners or a challenging elector under s. 6.48 demonstrates *beyond a reasonable doubt* that the person does not qualify as an elector or is not properly registered." Wis. Stat. § 6.325. It cannot be that Plaintiffs' casual view of what is "reliable" is correct when related statutes giving an individual elector the right to challenge another's registration require a robust "beyond a reasonable doubt" showing.

None of these kinds of analyses have occurred, nor does it make sense to take on that kind of task for hundreds of thousands of people at the *state* level.

Rather, as explained more below, Wis. Stat. § 6.50(3) and its "reliability" standard applies to municipal election bodies who, unlike the Commission, are privy to local information that might inform whether information is truly reliable as to a particular voter. *See* Wis. Stat. § 6.50(3) ("All municipal departments and agencies receiving information that a registered elector has changed his or her residence

shall notify the clerk or board of elections commissioners.") And, even on that local and individual basis, those decisions would not be subject to the kind of mandamus relief issued here, as second-guessing judgment calls is not what mandamus is for. *See Beres,* 34 Wis. 2d at 231–32.

2. Wisconsin Stat. § 6.50(3) provides no statutory right, or standing, for Plaintiffs' challenge.

A related reason that Plaintiffs' efforts fail is that section 6.50(3), and its "reliability" determination, does not provide a right of action for individual electors. Rather, to the extent individuals may challenge another elector's eligibility, that challenger must use separate statutory procedures and standards.

The lack of a statutory right and a lack of standing are, here, related. Under Wisconsin's law of standing, the Court "must determine whether the party seeking standing was injured in fact, and whether the interest allegedly injured is arguably within the zone of interests. . . protected or regulated by the statute." *Milwaukee Deputy Sheriff's Ass'n v. City of Wauwatosa*, 2010 WI App 95, ¶ 31, 327 Wis. 2d 206, 787 N.W.2d 438 (citation omitted).

Here, Plaintiffs have suffered no cognizable injury. They have made no showing that when another person's voter registration is not deactivated that affects *their* individual rights. *See, e.g., Town of Baraboo v. Vill. of W. Baraboo*, 2005 WI App 96, ¶ 35, 283 Wis. 2d 479, 699 N.W.2d 610 (citation omitted) (In deciding whether a party has standing to seek declaratory relief, among other things, courts "inquire whether the plaintiff has 'a personal stake in its outcome.'"). Similarly, Plaintiffs also have no general taxpayer standing. Rather, that requires a showing "that the complaining taxpayer and taxpayers as a class have sustained, or will sustain, *some pecuniary loss*; otherwise the action could only

be brought by a public officer." *S.D. Realty Co. v. Sewerage Comm'n of City of Milwaukee*, 15 Wis. 2d 15, 21–22, 112 N.W.2d 177 (1961) (emphasis added). That is not supported by Plaintiffs' general allegation that any agency staff time devoted to a supposed improper activity equates to an "illegal expenditure of [public funds]." There is no authority for applying taxpayer standing theory to such agency staff action. (R. 3:13.)

Further, even if Plaintiffs could show a cognizable injury, they still would have no standing because they are not within Wis. Stat. § 6.50(3)'s "zone of interests." The statute provides no cause of action for an individual voter to challenge another voters' registration status, much less on a large-scale as Plaintiffs seek in this lawsuit.

Tellingly, different statutes are specifically designed for electors (like Plaintiffs here) to challenge another electors status. Those come with different procedures and more protection for the challenged voter—notably, proof "beyond a reasonable doubt"—and those statutes are more limited, allowing an individual elector to challenge the individual registration status of a particular elector. *See* Wis. Stat. §§ 6.48 ("[a]ny registered *elector* of a municipality may *challenge* the registration of any other registered elector"), 6.325 ("No person may be disqualified as an elector unless the municipal clerk, board of election commissioners *or a challenging elector* under s. 6.48 demonstrates beyond a reasonable doubt that the person does not qualify . . . ."). This Court has recognized as much: "Section 6.48, *which governs pre-election registration challenges*, provides that the challenging elector must demonstrate beyond a reasonable doubt that the person does not qualify or is not properly registered." *Logerquist v. Bd. of Canvassers for Town of Nasewaupee*, 150 Wis. 2d 907, 917, 442 N.W.2d 551, 555–56

(Ct. App. 1989) (emphasis added).[3] In addition, the challenged elector is entitled to be heard before her registration is deactivated. *See* Wis. Stat. § 6.48(1)(b).

That process governs pre-election registration challenges by an elector, not section 6.50(3). And, likewise, it certainly does not allow *mass* registration challenges, much less based on one data set that is not always an accurate indicator of whether an elector has changed her voting residence, like the ERIC data here.

Plaintiffs have claimed their standing derives from a Commission decision denying their administrative complaint. (R. 3:10–12.) However, Plaintiffs cannot back into standing via an administrative complaint, when the statutes do not provide a right to a challenge in the first place. Further, Wis. Stat. § 227.57 is the exclusive method of review of a Commission decision, and because that process was not followed here, the circuit court lacked competency to hear the merits of Plaintiffs' challenge to it, let alone issue a writ. Wis. Stat. § 5.06(8), (9); *Kuechmann v. Sch. Dist. of LaCrosse*, 170 Wis. 2d 218, 223–24, 487 N.W.2d 639 (Ct. App. 1992).

Wisconsin Stat. § 6.50(3) contains no language allowing an individual elector to challenge the registration of another elector, much less on a mass scale without meaningful inquiry into an individual elector's circumstances or an opportunity for that elector to be heard. Plaintiffs, therefore, have no statutory right, or standing, to bring their mass deactivation challenge under Wis. Stat. § 6.50(3).

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[3] That also would be true no matter when in the process an elector seeks to bring a challenge: "the burden of proof rests on the challenger, and the requisite standard of proof is beyond a reasonable doubt, whether the challenge occurs prior to the election, at the polls, or after the election." *Logerquist v. Bd. of Canvassers for Town of Nasewaupee*, 150 Wis. 2d 907, 917, 442 N.W.2d 551 (Ct. App. 1989)

B. In addition, the Commission has no positive and plain duty under Wis. Stat. § 6.50(3) because that statute does not apply to it.

There is another fundamental statutory flaw with Plaintiffs' theory. The subsection in question does not even apply to the Commission. It thus cannot form the basis for an order against the Commission, much less a mandamus order.

Unlike other subsections in Wis. Stat. § 6.50 that expressly apply to the Commission, subsection (3) governs only the acts of two other government entities: "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 . . . . 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." Wis. Stat. § 6.50(3).

Those terms—including the "board of elections commissioners"—have specific statutory definitions and descriptions that do not include the Wisconsin Elections Commission. That, alone, is dispositive: mandamus cannot issue against an entity that is not even covered by a statute.

As discussed above, Wis. Stat. § 6.50(3) contemplates an individualized finding of whether there is "reliable information" that a particular voter in a particular municipality has changed residence. In that big-picture view, it makes sense that subsection (3) does not apply to the statewide Wisconsin Elections Commission. Rather, this subsection applies only to a "municipal clerk or board of election commissioners," the only two entities referenced in that subsection, which are better situated to make the individualized determination required by that law.

Section 6.50(3) makes explicit what entities it covers, and they do not include the Commission. The Wisconsin Elections Commission is not a "board of election commissioners" under Wis. Stat. § 6.50(3). The term is explained in Wis. Stat. § 7.20, which refers to "[a] municipal board of election commissioners" and "[a] county board of election commissioners," which are established in every city over 500,000 population and county over 750,000 population. Wis. Stat. § 7.20(1). "Each board of election commissioners" is comprised of several members who must reside in the municipality or county. Wis. Stat. § 7.20(2)–(3). These commissioners are selected by the mayor and county executive. Wis. Stat. § 7.20(2). A board of election commissioners is, therefore, a local entity comprised of local officials.[4]

The Wisconsin Elections Commission has a wholly separate statutory definition. By statute, the Wisconsin Elections Commission is an independent state agency consisting of members appointed by various state officials, such as the governor, speaker of the assembly, and senate majority leader. *See* Wis. Stat. §§ 15.02(2), 15.61(1)(a)1.–6.

Further, the Legislature has assigned the Commission specific duties. *See* Wis. Stat. § 7.08. And, notably, when referring to the Wisconsin Elections Commission, the statutes tell us that "[i]n chs. 5 to 10 and 12, 'commission' means the elections commission." Wis. Stat. § 5.025. Thus, the

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[4] Plaintiffs claimed that the "board of election commissioners" does not have a statutory definition because that term is only in the caption, not the text, of Wis. Stat. § 7.20. But that misses the point. The language of Wis. Stat. § 7.20 illustrates that the "board of election commissioners" is a *local* entity, separate and distinct from the *state* entity that is "the commission" under Wis. Stat. § 5.025. That "technical or special definitional meaning" controls. *Kalal*, 271 Wis. 2d 633, ¶ 45.

Legislature has specifically instructed that, when used in the statutes, the term "commission," alone, means the Wisconsin Elections Commission.[5]

Chapter 6 and Wis. Stat. § 6.50 bear that out. For example, Wis. Stat. § 6.50(1)–(2)'s four-year voter maintenance process is done by "*the commission,*" not any other entity. In subsection (1), "*the commission* shall examine the registration records of each municipality" and "mail a notice to the elector." Wis. Stat. § 6.50(1). Under subsection (2), if an elector who was mailed a "notice of suspension" under the four-year maintenance process in subsection (1) does not respond, "*the commission* shall change the registration status . . . from eligible to ineligible." Wis. Stat. § 6.50(2).[6] Subsections (1) and (2) show that the Legislature knows how to give the Commission a directive related to changing an elector's registration status: it uses the statutory term, "the commission." Wisconsin Stat. § 6.50(3) contains no such directive to "the commission," as it says nothing about "the commission."

Further demonstrating that "the commission" is not the same as the "board of election commissioners" are subsections (2g) and (7) of Wis. Stat. § 6.50. There, the Legislature uses the terms "the commission," "municipal clerk," and "board of election commissioners" *in the same sentence. See* Wis. Stat.

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[5] Plaintiffs argued that the Commission is literally a "board of elections commissioners." It is not. While some independent agencies are headed by boards, the Wisconsin Elections Commission is headed by a commission. *See* Wis. Stat. §§ 15.57–15.94. The statutory process for selecting a board to head an independent agency is entirely different that the process for selecting commissioners for the Commission. *Compare* Wis. Stat. § 15.07, *with* Wis. Stat. §15.61.

[6] Importantly, subsection (3) has no relation to the four-year maintenance process set forth in subsections (1) and (2) of Wis. Stat. § 6.50.

§ 6.50(2g), (7) ("When an elector's registration is changed from eligible to ineligible status, the commission, municipal clerk, or board of election commissioners shall make an entry on the registration list, giving the date of and reason for the change."). The simultaneous use of these three different terms in the same subsection of Wis. Stat. § 6.50 again demonstrates that they are three different bodies. Other election statutes in chapter 6 further confirm this. For example, Wis. Stat. §§ 6.275 and 6.56(3) describe communications *between* the "board of election commissioners" and "the commission."

To conclude that the Wisconsin Elections Commission (i.e., "the commission") has any duty, much less an unequivocal one, under Wis. Stat. § 6.50(3) means one must ignore the plain text of the statute entirely. Of course, that is not an option.

Plaintiffs' argument below, and the circuit court's decision, ignored this. Rather than apply that express language, they relied on the Commission's past conduct and different statutes and duties, like the duty to maintain the registration list pursuant to Wis. Stat. § 5.05(15). None of these assertions change the mandate in Wis. Stat. § 6.50(3).

First, the Commission's past conduct is irrelevant to whether Wis. Stat. § 6.50(3) requires it to act now.[7] Conduct does not amend or augment an administrative agency's statutory authority. *Dames & Moore v. Regan*, 453 U.S. 654, 686 (1981) (stating that "[p]ast practice does not, by itself, create power"); *Koschkee v. Taylor*, 2019 WI 76, ¶ 20, 387 Wis. 2d 552, 929 N.W.2d 600 ("As we have explained, an agency's

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[7] In one instance in the past using ERIC Movers data, the Commission decided to give the electors 30 days in which to respond to keep their registration active. (R. 23:6.) As noted in the background, the Commission ultimately had to reverse course for many of those deactivations. Those decisions were not challenged in court.

'powers, duties and scope of authority are fixed and circumscribed by the legislature . . . .'" (citation omitted)). It remains the case that the statute applies only to municipal clerks and boards of elections commissioners, which are empowered to make changes to the registration list when the statute is satisfied.

Second, Petitioners cited the Commission's duty to *maintain* the registration list under Wis. Stat. § 5.05(15). But the duty to *maintain* the master list does not dictate when, and by whom, particular *changes* must be made to voters' eligibility

Rather, Wis. Stat. § 6.50 specifically addresses that topic and mandates "[r]evision[s]" to the registration list when certain circumstances are present. Some of the subsections in section 6.50 require the Commission to make those revisions—for example, subsections (1) and (2)'s four-year maintenance process requires revision in conjunction with that four-year audit process. And, as discussed above, other provisions provide authority to other local government entities—for example, subsection (3) directs a municipal clerk or board of election commissioners to make revisions when they determine there is "reliable information" about a voter's permanent move out of a municipality.[8]

In contrast, Wis. Stat. § 5.05(15) simply recognizes that "[t]he commission is responsible for the design and maintenance of the official registration list." Wis. Stat. § 5.05(15). That does not *mandate* that the Commission make *a change to* an individual voter's registration status. The discretion afforded to the Commission to "maintain" the list

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[8] Contrary to Plaintiffs' assertion in previous briefs, both clerks and boards of elections commissioners are authorized to make changes to the registration list. *See* Wis. Stat. §§ 6.36(1)(b)1.b., (1)(c), 7.20(1).

cannot support mandamus and does nothing to change the coverage of the subsections in Wis. Stat. § 6.50.

C. The misreading of the statute creates additional problems

The foregoing explains errors in the circuit court's use of Wis. Stat. § 6.50(3) when it failed to properly apply its "reliable information" standard and ignored its express coverage. Those errors, in turn, create other problems that would resolve with a correct reading of the statute.

1. The circuit court writ conflicts with the October 2019 mailing.

In October 2019, the Commission sent a letter to electors flagged as ERIC Movers. (R. 23:10.) The letter did not indicate that the recipients' registration would be deactivated as a result of a non-response to the letter. To the contrary, it told recipients that simply voting in the next election would maintain their status. (R. 23:10–11.) That made sense because, as discussed above, Wis. Stat. § 6.50(3)'s standard and its coverage does not apply to the Commission or this kind of mass deactivation attempt. The Commission properly did not provide a deactivation notice. However, the circuit court's decision here retroactively gave that October 2019 letter the status of a deactivation notice *even though* that mailing, as a matter of fact, informed its recipients of no such thing.

The circuit court took no account of that mismatch. If Wis. Stat. § 6.50(3) and its "reliable information" standard could actually be applied here, this deactivation notice issue would need to be addressed. Indeed, that prospect is not hypothetical. Currently pending is a federal lawsuit alleging that this mismatch violates federal due process principles. *See League of Women Voters of Wis. v. Knudson*, No. 19-cv-01029-jdp (W.D. Wis.). (R. 111.) This constitutional

question could be avoided with a correct reading the plain language of the statute.

2. The circuit court writ was overbroad in additional ways.

There also is a significant scope problem: the writ seemingly applies overbroadly to intra-municipality movers who are not even subject to registration deactivation under Wis. Stat. § 6.50(3).

The deactivation process starts with a determination by a municipal entity that there is "reliable information that a registered elector has changed his or her residence *to a location outside of the municipality*." Wis. Stat. § 6.50(3). If triggered, a notice stating the source of the information is mailed to the elector. *Id.* If the elector does not change her registration or respond to the notice within 30 days, the elector's registration shall be changed "from eligible to ineligible." *Id.* But upon the "receipt of reliable information that a registered elector has changed his or her residence *within the municipality*," officials "shall change the elector's registration" and "mail the elector a notice of change." *Id.*

The statute does not require or permit deactivation of all electors' registrations. Deactivation is only permitted and required when the municipal clerk or board of election commissioners receives reliable information that an elector has permanently moved *outside* of the municipality. On the other hand, when reliable information shows a permanent move *within* the municipality, the elector's registration is merely changed, not deactivated. The writ ignores this important distinction and requires deactivation in both circumstances.

Now seemingly aware of that problem, Plaintiffs seek removal of only those who may have moved to a different municipality, which is narrower relief than what they asked for in the circuit court and also is narrower than the group

identified by the October mailing. (R. 105:3.) This error in the scope of the circuit court's ruling would disappear if the threshold errors applying the subsection to the Commission were corrected.

II. The writ of mandamus cannot form the basis for a contempt finding.

The foregoing explains why, for multiple reasons, the writ must be reversed. There also is a second issue in this consolidated appeal, regarding a contempt ruling based on that writ. However, the forgoing should resolve both appeals: The Commission cannot be in contempt of a reversed order.

Further, this Court stayed the contempt ruling the morning after it issued, meaning at most the contempt decision imposed sanctions for one day. Under no circumstances was the contempt finding appropriate. The contempt order should be vacated.

Remedial contempt may be "imposed for the purpose of terminating a continuing contempt of court." Wis. Stat. § 785.01(3). Plaintiffs, as the moving party, have the initial burden of proving that the Commission failed to comply with the court order. *In re Adam's Rib, Inc.*, 39 Wis. 2d 741, 747, 159 N.W.2d 643 (1968).

Contempt is the "intentional . . . [d]isobedience, resistance or obstruction of the authority, process or order of a court." Wis. Stat. § 785.01(1)(b); *Frisch v. Henrichs*, 2007 WI 102, ¶ 33, 304 Wis. 2d. 1, 736 N.W.2d 85. Contempt is a "drastic and extraordinary" remedy. *Joint Sch. Dist. No. 1 v. Wis. Rapids Educ. Ass'n.*, 70 Wis. 2d 292, 317, 234 N.W.2d 289 (1975).

For a party's action or inaction to be punishable by contempt, a circuit court's order must be a *specific* directive to that party to act or refrain from acting. *Carney v. CNH Health & Welfare Plan*, 2007 WI App 205, ¶ 17, 305 Wis. 2d 443,

740 N.W.2d 625. Only an "order or judgment which requires specific conduct (either to do, or to refrain from, specific actions) can be enforced by contempt." *Id.* A court's order must be an "unequivocal" directive. *State v. Dickson*, 53 Wis. 2d 532, 541, 193 N.W.2d 17 (1972). This requirement exists so "the person being enjoined [knows] what conduct must be avoided." *Welytok v. Ziolkowski*, 2008 WI App 67, ¶ 24, 312 Wis. 2d 435, 752 N.W.2d 359.

Here, the writ of mandamus issued by the circuit court cannot, under any circumstances, support a contempt finding because there was no intentional obedience and also it is not a specific and unequivocal directive.

First, there was no intentional disobedience under the circumstances. Rather, from the moment the writ issued, and continually until the stay was imposed, the Commission sought a stay ruling from this Court and the supreme court, as both the circuit court and Plaintiffs (at least sometimes) asserted was appropriate as a first step. (R. 105–109; 112:9, 10, 16; 131 (Mot. Hr'g. 78:24–25, Dec. 13, 2019), Resp. App. 113.) These circumstances should not support contempt as a basic matter especially where, as here, there was a real risk of confusion and other collateral effects on the voting public.

Second, the writ of mandamus was not sufficiently clear to support contempt. It ordered the Commission 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." (R. 77:2.) This general language was not a clear directive to the Commission as to when, how, or who to deactivate. *Carney*, 305 Wis. 2d 443, ¶ 17; *Dickson*, 53 Wis. 2d at 541.

For example, the writ did not clearly direct the Commission *when* to deactivate electors' registrations. Because the writ instructed the Commission "to comply with

the provisions of § 6.50(3) *and* deactivate the registrations of those electors," the statute itself must be consulted regarding the timing of any deactivations. But the statute provides no guidance on deactivation timing. It simply reads that "[i]f 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." Wis. Stat. § 6.50(3). The condition for being changed from eligible to ineligible status is "fail[ing] to apply for continuation of registration within 30 days of the date the notice is mailed." *Id.* Once that 30-day period passes, an elector's registration status "shall" be changed—but the statute does not say how soon that must occur. *Id.* Put differently, the 30-day period governs how long an *elector* has to respond to the notice mailed, not when the relevant *government entity* shall change an elector's status. The writ is, therefore, not a clear and unequivocal directive for the Commission to *immediately* deactivate electors.[9] Thus, for example, it did not violate a directive when seeking an expedited stay before taking immediate action.

In addition, the writ did not clearly direct the Commission *how* it must "comply with the provisions of § 6.50(3) and deactivate" electors' registrations. Specifically, it did not address the notice, if any, that electors should receive before being deactivated. Wisconsin Stat. § 6.50(3) contains a notice provision, which reads: "Upon receipt of reliable information that a registered elector has changed his or her residence to a location outside of the municipality, the

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[9] Another subsection in Wis. Stat. § 6.50 makes this lack of a specific deadline clear. In subsection (2), the Legislature directs that "the commission shall change the registration status of [the] elector from eligible to ineligible *on the day that falls 30 days after the date of mailing*." Wis. Stat. § 6.50(2). Subsection (3), however, contains no "on the day" language.

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.*" The writ requires the Commission to "comply with" Wis. Stat. § 6.50(3), which could very well mean providing another notice *before* deactivating the registrations of any electors. Indeed, the circuit court's ruling from the bench seemed to leave open that possibility: "I'm going to issue the writ of mandamus. *I'm going to compel the Elections Commission to comply with the thirty-day notice.* I can't tell them how to do that. I don't know how to do that. They'll have to figure that out." (R. 131 (Mot. Hr'g. 76:12–16, Dec. 13, 2019), Resp. App. 111 (emphasis added).) Simply put, contempt was not proper where the Commission had to "figure out" how to comply with the circuit court's directive.

Further, the writ did not clearly notify the Commission whose registrations it must deactivate. Although, when applicable, Wis. Stat. § 6.50(3) may require deactivation for some electors, it only potentially applies to an elector who has moved *outside* his registered municipality. An elector who has simply moved *within* her registered municipality is not deactivated under that provision. In fact, section 6.50(3) requires the municipal clerk or municipal board of election commissioners to change the elector's registration to the new address, not to deactivate the registration. That requirement to change the elector's registration would seem to also be part of the mandate "to comply with the provisions of § 6.50(3)." The writ was thus unclear regarding which electors should be deactivated.

Thus, for multiple reasons, these circumstances cannot support a contempt finding.[10]

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[10] In any event, there is no basis for contempt and remedial sanctions against the individual commissioner defendants. First,

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The circuit court writ creates a host of intractable legal and practical problems that go away if the statute is simply applied as written and if mandamus' requirements are given effect: it only applies to unequivocal statutory duties, free of judgment and discretion, which are wholly absent here.

Plaintiffs' premise requires ignoring the statute's "reliable information" standard, its scope, and its target. It also requires the counterfactual assumption that the 2019 ERIC Movers data is completely accurate. That is not so. The circuit court's writ risks removing properly registered voters, doing so based on an unworkable reading of the statute's coverage and legal standard, and carrying this out in a way that does not correspond to how voters were told the data was being used in October 2019. The circuit court's decision is unjustified under any standard, much less under mandamus, and should be reversed.

CONCLUSION

This Court should reverse the writ of mandamus and vacate the contempt order of the circuit court.

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the individual defendants were not ordered to comply with the writ; only "Defendant Wisconsin Election Commission" was directed to act. (R. 77.) Second, individual commissioners cannot act separately from the Commission as an entity. Any action by the Commission requires the affirmative vote of two-thirds of the members. Wis. Stat. § 5.05(1e). Thus, by law it is impossible for the individual commissioners to deactivate electors' registrations. And the "inability to obey that order is a defense to contempt." *Ash Park, LLC v. Alexander & Bishop, Ltd.*, 2010 WI 44, ¶ 79, 324 Wis. 2d 703, 783 N.W.2d 294.

Dated this 4th day of February 2020.

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 9169 words.

Dated this 4th day of February 2020.

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CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § 809.19(12).

I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 4th day of February 2020.

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