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STATE OF WISCONSIN
SUPREME COURT

WISCONSIN VOTER ALLIANCE
AND RON HEUER,

Appeal No. 2023AP000036
Case No. 2022CV000443

PETITIONERS-APPELLANTS-RESPONDENT,

v.

KRISTINA SECORD,

RESPONDENT – RESPONDENT-PETITIONERS.

Appeal from a Judgment of District II of the Court of Appeals, reversing the Judgment of the Circuit Court of Walworth County,
Case No. 2022CV443

RESPONDENT-RESPONDENT-PETITIONER KRISTINA SECORD'S PETITION FOR REVIEW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES iv

ISSUES PRESENTED FOR REVEIW.....1

STATEMENT OF CRITERIA FOR REVIEW.....1

STATEMENT OF THE CASE.....3

STATEMENT OF FACTS.....6

I. Background Facts 6

II. Relevant Procedural History 8

STANDARD OF REVIEW 11

ARGUMENT.....11

I. THE COURT OF APPEALS' DECSION IN THIS CASE IS IN DIRECT CONFLICT WITH THE *REYNOLDS* DECISON 12

A. Whether The Issues are Identical to One Another in Two Separate Cases Issued by the Court of Appeals is Not the Proper Standard for Determining Whether the Court is Speaking With a Unified Voice 14

B. The Issues Raised in This Case Are Identical to The Issues in Reynolds.....15

II. THE CIRCUIT COURT IN THIS CASE AND THE COURT OF APPEALS IN *REYNOLDS* CORRECTLY APPLIED WISCONSIN PUBLIC RECORDS LAW 17

A. The Notice of Voting Eligibility Form is A Court Record Pertinent to the Finding of Incompetency Under Chapter 54 18

B. Because the Requested Forms are Pertinent to the Finding of Incompetency, There is No Clear Legal Right to the Forms or a Positive and Plain Duty to Disclose Them to the Public 21

C. There is No Substantial Damage or Injury Should the Relief Not be Granted as the WVA is Not Directly Affected 26

D. The WVA Failed to Exhaust All Other Legal Remedies Before Filing its Petition 26

E. Even if this Court Determines there is No Statutory Exemption, the Balancing Test Weights in Favor of Nondisclosure 27

CONCLUSION.....29

TABLE OF AUTHORITIES

Page(s)

Cases

Cook v. Cook,
208 Wis. 2d 166W.2d 246 (1997) 12, 13, 14

In re Court of Appeals,
82 Wis. 2d 369, 263 N.W.2d 149 (1978) 12

In re Disciplinary Proceedings Against Bach,
2016 WI 95, 372 Wis. 2d 187, 887 N.W.2d 335.....24, 28

State ex rel. Kalal v. Circuit Court for Dane Cnty.,
2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110.....18

Milwaukee Journal Sentinel v. Wisconsin Dep't of Admin.,
2009 WI 79, 319 Wis. 2d 439, 768 N.W.2d 700.....27

Pasko v. City of Milwaukee,
2002 WI 33, 252 Wis. 2d 1, 643 N.W.2d 72.....4

State v. Schumacher,
144 Wis. 2d 388, 424 N.W.2d 672 (1988) 13, 26

State v. White,
2004 WI App 237, 277 Wis. 2d 580, 690 N.W.2d 880.....13

Voces De La Frontera, Inc. v. Clarke,
2017 WI 15, 373 Wis. 2d 348, 891 N.W.2d 803.....4, 26

Watton v. Hegerty,
2008 WI 74, 311 Wis. 2d 52, 751 N.W.2d 369.....11

Wis. Newspress, Inc. v. Sch. Dist. of Sheboygan Falls,
199 Wis. 2d 768, 546 N.W.2d 143 (Wis. 1996).....28

Wisconsin Voter Alliance v. Reynolds,
2022 WI App 66, ___ Wis. 2d ___, ___ N.W.2d ___..... *passim*

State ex rel. Zignego v. WEC,
2021 WI 32, 396 Wis. 2d 391, 957 N.W.2d 208.....11

Statutes

Wis. Stat. § 51.30 .....17, 27

Wis. Stat. § 54.25(2)(c)1.g 19

Wis. Stat. § 54.25(2)(d)(3)(a)-(b) 28

Wis. Stat. § 54.75 ..... *passim*

Wis. Stat. § 809.62 .....1, 2, 3, 12

Wis. Stat. § 51.30 23

Wis. Stat. § 808.10 1

Kristina Secord respectfully petitions the Wisconsin Supreme Court for review of the December 27, 2023, decision of the Court of Appeals in this case, pursuant to Wis. Stats. §§ 808.10 and 809.62.

ISSUES PRESENTED FOR REVIEW

Pursuant to Wisconsin Statutes Section 809.62(a), Respondent-Respondent-Petitioner, Kristina Secord, respectfully requests the Court review the following issues:

Issue 1: Whether the Court of Appeals was bound to apply its own precedent established in *Wisconsin Voter Alliance v. Reynolds*, 2022 WI App 66, ___ Wis. 2d ___, ___ N.W.2d ___?

TRIAL COURT ANSWERED: Not answered by the Trial Court.

ANSWERED BY THE COURT OF APPEALS: No.

Issue 2: Whether the Notices of Voting Eligibility forms are subject to public disclosure?

TRIAL COURT ANSWERED: No.

ANSWERED BY THE COURT OF APPEALS: Yes.

STATEMENT OF CRITERIA FOR REVIEW

Wisconsin Statutes Section 809.62(1r) sets forth the criteria for evaluating a petition for review. This case clearly falls within the criteria identified in Wis. Stat. § 809.62(1r)(c): "[a] decision by the supreme court will help develop, clarify or harmonize the law . . . and the question presented is not factual in nature but rather

is a question of law of the type that is likely to recur unless resolved by the supreme court."

Petitioners filed the Petition for Writ of Mandamus to obtain confidential information related to "no vote" guardianship orders pursuant to Chapter 54 of Wisconsin Statutes. Specifically, Petitioners sought access to completed circuit court forms GN-3180 (notice of voting eligibility) from January 1, 2016, to the present. Registers in Probate throughout the State of Wisconsin have long concluded that these completed forms are confidential and not subject to public disclosure.

This case meets the criteria for a petition for review because:

1. This case presents the Court with the opportunity to clarify Wisconsin Public Records Law regarding whether the completed GN-3180 notice of voting eligibility form is subject to public disclosure or whether these forms—and the information they contain—are confidential and should not be released to the general public. Additionally, it is likely that the question of voter eligibility status will recur each election cycle, especially during presidential elections. The issues are not factual in nature, but are purely questions of law of the type that will recur unless resolved by the Supreme Court. Wis. Stat. § 809.62(1r)(c)3.

2. This case also presents this Court with an opportunity to address the fact that the Court of Appeals failed to apply its own published precedent, as held in *Wisconsin Voter Alliance v. Reynolds*, 2022 WI App 66, ___ Wis. 2d ___, ___ N.W.2d ___. Through accepting review of this case, the Court will have the

opportunity to rectify conflicting decisions within the Court of Appeals. Wis. Stat. § 809.62(1r)(d).

STATEMENT OF THE CASE

The Wisconsin Voter Alliance and Ron Heuer (collectively, "the WVA") seek access to completed notice of voting eligibility forms—form GN-3180—which contain the name of the individual declared incompetent, date of birth, address, guardianship case number and whether the individual is competent to exercise the right to register to vote or to vote in an election. By statute, all court records pertinent to the finding of incompetency in a guardianship proceeding in Wisconsin are confidential. *See* Wis. Stat. § 54.75.

While the law does allow for access to those documents in some limited circumstances, it is undisputed that none of those exceptions to the presumption of confidentiality apply here. In addition to those limited exceptions, Section 54.75 provides that "[t]he fact that an individual has been found incompetent and the name of and contact information for the guardian is accessible," but *only* to a "person who demonstrates to the custodian a need for that information." Because the completed forms are pertinent to the finding of incompetency and because the WVA is not seeking information accessible under Wis. Stat. § 54.75, the completed forms are not subject to public disclosure.

Mandamus is an extraordinary remedy, which should only be used in exceptional circumstances of peculiar emergency or public importance. The Court

of Appeals incorrectly determined that the WVA met all the "factors"[1] for a writ of mandamus and it also failed to follow the controlling published precedent set by *Wisconsin Voter Alliance v. Reynolds*, 2022 WI App 66, ___ Wis. 2d ___, ___ N.W.2d ___.

The Court of Appeals attempted to dispel the imputation that its decision directly conflicts with the Court of Appeals' decision in *Reynolds* by claiming the procedural posture of *Reynolds* was distinguishable from this case because the trial court in *Reynolds* dismissed the petition for writ of mandamus before the WVA filed a response to Reynolds's motion to dismiss. Specifically, the Court of Appeals notes that the *Reynolds* court did not have the benefit of a fully briefed, fully argued underlying case. The Court of Appeals reached this finding despite the fact that *Reynolds* was fully briefed with ample argument on appeal.

The *Reynolds* court addressed "two primary arguments" on appeal. 2022 WI App 66, ¶ 15. First, the court discussed whether the circuit court "erroneously exercised its discretion when it dismissed [the WVA's] petition for a writ of mandamus." *Id*. Second, the court addressed whether the court was biased against the WVA and that this bias requires reversal. *Id*. Thus, while the *Reynolds* court did address an issue that is not raised on appeal in this case—judicial bias—the remainder of its decision was dedicated to analyzing and clarifying the law

[1] Rather than "factors," there are four prerequisites for granting mandamus: (1) the clear legal right; (2) a plain and positive duty; (3) substantial damages; and (4) no other adequate remedy at law.'" *Voces De La Frontera, Inc. v. Clarke*, 2017 WI 15, ¶ 11, 373 Wis. 2d 348, 891 N.W.2d 803 (citations omitted). *All* prerequisites must be met before a mandamus may be granted. *See Pasko v. City of Milwaukee*, 2002 WI 33, ¶ 24, 252 Wis. 2d 1, 643 N.W.2d 72.

regarding whether the circuit court properly dismissed the petition *on the merits* of Reynolds's motion to dismiss.

The *Reynolds* decision was published on December 21, 2023. The Court of Appeals issued its decision in this case on December 27, 2023. (Dkt. No. 52). Therefore, the portion of the *Reynolds* decision which finds that the circuit court properly dismissed the petition and that the notice of eligibility forms are not subject to disclosure under Wisconsin Public Records Law was binding on the Court of Appeals in this case.

However, even if the *Reynolds* decision was not binding on the Court of Appeals in this case, it is evident that the law requires clarification in light of two districts of the Court of Appeals issuing directly conflicting decisions on the same issue. The Court of Appeals erred in reversing the trial court's decision because the WVA failed to establish exceptional circumstances of peculiar emergency or public importance required to warrant mandamus. There is also no clear legal right to access confidential and closed court records, there is no duty to disclose such confidential information, and there is no substantial damage or injury should that relief not be granted as the WVA is not directly impacted by the guardianship proceedings.

Finally, the WVA has neither established a need for the requested information, nor would it be entitled to even if it had successfully demonstrated a need for it. The records potentially available pursuant to Wis. Stat. § 54.75 are not the notice of eligibility forms. Rather, the statutory exception merely allows the

disclosure of only the fact that an individual has been found incompetent and the name of and contact information for the individual's *guardian*. As such, the WVA is not entitled to the relief it seeks.

For these reasons, Kristina Secord petitions the Supreme Court for review.

STATEMENT OF FACTS

I. Background Facts.

On June 15, 2022, the WVA sent a public records request to Walworth County requesting that the County provide it with information under the Wisconsin public records law. (*See* App. 062). On June 24, 2022, Walworth County stated that the probate office does not maintain documents or statistical reports which contain the information sought, and thus did not have records that would be responsive to the request. (App. 064-065).

On June 28, 2022, the WVA sent another public records request to Walworth County, this time seeking the "Names, Addresses, Date of Birth and a copy of all wards under the guardianship" in Walworth County. (App. 062). Walworth County was preparing to respond to the request when the WVA wrote again on July 26, 2022, to clarify the request in that it actually sought the notice of voting eligibility forms (GN-3180) for wards under guardianship. (App. 066). However, on that same day, the WVA filed its Petition against Secord, seeking to compel production of the completed GN-3180 forms. (Dkt. No. 2).[2]

[2] The WVA simultaneously filed identical lawsuits against at least twelve other Wisconsin registers in probate. *See Wisconsin Voter Alliance v. Young*, Brown County Circuit Court Case No. 22-CV-

The WVA sought highly confidential information subject to privacy rights, such as: name, address, and date of birth of the individual declared incompetent. (*Id*.) The WVA sought additional information such as caption of the order; court file number; date of guardianship order restricting voting rights; date of guardianship order restoring voting rights, if any; and date of death, if any. (*Id*.) At oral argument in the trial court, the WVA clarified that it would, at a minimum, require a name and address for the guardianship ward to review voter eligibility lists.[3]

The Petition for Writ of Mandamus was described as "an action to enforce Wisconsin's exception to its confidentiality requirement for guardianship court files relating to ineligible wards under 'no vote' guardianship orders, Wisconsin Statute § 54.75, if the law applies at all because the requested information is already intended to be publicly available." (Dkt. No. 2 at 1). Essentially, the WVA sought a

882; *Wisconsin Voter Alliance v. Redman*, Crawford County Circuit Court Case No. 22-CV-46; *Wisconsin Voter Alliance v. Reynolds*, Juneau County Circuit Court Case No. 22-CV-128; *Wisconsin Voter Alliance v. Sheffler*, Kenosha County Circuit Court Case No. 22-CV-771; *Wisconsin Voter Alliance v. Siegenthaler*, Lafayette County Circuit Court Case No. 22-CV-59; *Wisconsin Voter Alliance v. Mayr*, Langlade County Circuit Court Case No. 22-CV-86; *Wisconsin Voter Alliance v. Goodwin*, Marquette County Circuit Court Case No. 22-CV-47; *Wisconsin Voter Alliance v. Mueller*, Ozaukee County Circuit Court Case No. 22-CV-256; *Wisconsin Voter Alliance v. Anderson*, Polk County Circuit Court Case No. 22-CV-199; *Wisconsin Voter Alliance v. Campbell*, Taylor County Circuit Court Case No. 22-CV-53; *Wisconsin Voter Alliance v. Halverson*, Vilas County Circuit Court Case No. 22-CV-66; *Wisconsin Voter Alliance v. Peterson*, Vernon County Circuit Court Case No. 22-CV-082.

[3] Within briefing at the Court of Appeals, the WVA changed its position and indicated that its request was for the completed GN-3180 form, which contain the name of the individual declared incompetent, date of birth, address, guardianship case number and whether the individual is competent to exercise the right to register to vote or to vote in an election. (Brief of Appellant at 5).

writ of mandamus directing Ms. Secord to produce completed circuit court forms GN-3180, notice of voting eligibility.[4] (Dkt. No. 2 at 2).

II. Relevant Procedural History.

The circuit court issued a written decision granting Secord's motion to dismiss the Petition on December 21, 2022. (App. 057-061). In its decision, the circuit court held that the WVA failed to "identify a positive and plain duty of the Register in Probate to produce the requested records." (App. 059). The court noted that the only potentially disclosable information is the name and contact information of the *guardian*—however, even that information is restricted based upon a demonstrated need for that information. (*Id.*) Therefore, the court held that the WVA failed to establish a clear legal right to access guardianship information through any statutory exceptions. (App. 060). Additionally, the court held that the WVA failed to allege a "need" for the requested information, as the WVA is not a party to any of the effected guardianships, and that the WVA also failed to show "substantial damage by non-performance of duties." (*Id.*)

On appeal, the Court of Appeals recognized the need to "apply, to analyze and balance interplay between various competing rights while, at the same time, protecting both an individual citizen's right to privacy in a matter of utmost

[4] Notably, not even the blank GN-3180 forms are accessible to the public through the Wisconsin state court (www.wicourts.gov) website, located at: https://www.wicourts.gov/forms1/circuit/ccform.jsp?FormName=&FormNumber=&beg_date=&end_date=&StatuteCite=&Category=17&SubCat=All (last accessed 1/26/24). Upon information and belief, all other form pleadings and orders related to guardianship proceedings are available for viewing on the state court website. However, it appears that even the *incomplete* GN-3180 form is excluded from the list of guardianship forms that are available to the general public.

importance to the individual's dignity as well as the right of every Wisconsin citizen to the constitutional guarantee of fair elections." (App. 009, Dkt. No. 52 at ¶ 14). However, the Court of Appeals also noted that the confidentiality protections afforded to these individuals are not absolute, especially when they come into conflict with other "basic rights," which include the right to vote and to have only eligible votes considered in any election. (*Id*. at ¶ 15).

The Court of Appeals recognized that another district issued an opinion that addressed the first issue (with respect to the definition of "pertinent to the finding of incompetency") and recognized that it is bound by that decision. (*Id*. at ¶ 3). The court instead noted that it disagreed with the *Reynolds* court's conclusion on the first issue, and absent the *Reynolds* decision, it would have issued an opinion agreeing with WVA on the first issue. (*Id*. at ¶ 4).

Despite that initial finding, the Court of Appeals then went on to find that the WVA still met all the elements for a writ of mandamus. "Even though the *Reynolds* court recently determined that the Notices of Voter Eligibility are 'pertinent to the finding of incompetency,' they may still be subject to the Public Records Law." (*Id*. at ¶ 25 (citing *Reynolds*, ___ Wis. 2d ___, ¶ 28)). The court also found that the policy of protecting the dignity and privacy of individuals who are determined to be incompetent is "expressly outweighed by the legislature's mandate that voting ineligibility determinations are to be publicly communicated to the local officials or agencies through WEC (as directed by the Court System) and the public in general." (*Id*. at ¶ 28). The court found no statutory exception in the Public Records Law for

these notices. (*Id*.) The court also concluded that the notice of voting eligibility forms are released, by express statutory mandate, to the local officials or agencies through WEC and; without reference, that the WEC then allegedly publishes the information obtained from those notices to the world by including that data on WisVote. (*Id*. at ¶ 29). According to the court, this meant that it was unreasonable for Secord to assert that the notices are "closed" public records that may never be released to the public. (*Id*.)

In three paragraphs of its decision, the court concluded that all four prerequisites for a petition for writ of mandamus were satisfied: that there is a clear legal right; a positive and plain duty to communicate that information to the public; that damages lie with the WVA with respect to their efforts to improve WisVote's database but also for "all qualified voters in Wisconsin whose constitutional right to vote in fair elections where only valid votes are counted is at risk;" and finally that "respondents have failed to adequately counter WVA's contention that there is no other adequate remedy at law." (*Id*. at ¶¶ 31-33).

Finally, the court concluded that, in the alternative, WVA demonstrated a public need for the notices, which bolsters the release of the other information by order of the court. (*Id*. at ¶ 35). In determining that the WVA demonstrated a need for the information, the court concluded that it was "not required to determine what underlying motives rest beneath a legitimate 'need' for information." (*Id*. at ¶ 36). In conclusion, the court held that because WVA had demonstrated that disclosure

of these records is appropriate under the Public Records Law, WVA is entitled to the requested forms. (*Id*. at ¶ 41).

Secord now files this Petition for Review seeking reversal of the Court of Appeals decision and clarification of the Wisconsin Public Records Law related to disclosure of notice of eligibility forms.

STANDARD OF REVIEW

This Court evaluates a circuit court's grant or denial of a writ of mandamus utilizing the abuse of discretion standard. *State ex rel. Zignego v. WEC*, 2021 WI 32, ¶38, 396 Wis. 2d 391, 957 N.W.2d 208. A circuit court's discretion in issuing a writ of mandamus is erroneously exercised if it is based on an erroneous understanding of the law. *Id*. This Court also interprets statutes independently, including their application to undisputed facts in a petition for mandamus. *Watton v. Hegerty*, 2008 WI 74, ¶ 6, 311 Wis. 2d 52, 751 N.W.2d 369.

ARGUMENT

The Court of Appeals' decision in this case is in direct conflict with its prior published decision in *Wisconsin Voter Alliance v. Reynolds*, 2022 WI App 66, ___ Wis. 2d ___, ___ N.W.2d ___. State law requires the Wisconsin Court of Appeals to act with one voice. Despite this requirement, the Court of Appeals—by its own admission—issued a conflicting decision because it "disagree[d]" with the *Reynolds* court's conclusion on the very same issues that are involved in this case—whether the notice of voting eligibility forms are subject to public disclosure. Moreover, even if this Court finds that the Court of Appeals' decision in this case does not

directly conflict with *Reynolds*, at the very least the two decisions show the necessity for clarification in the law.

I. THE COURT OF APPEALS' DECISION IN THIS CASE IS IN DIRECT CONFLICT WITH THE *REYNOLDS* DECISION.

This case is ripe for review by this Court because the Court of Appeals' decision is in conflict with the controlling opinion of *Reynolds*. Wis. Stat. § 809.62(1r)(d).[5] The Court of Appeals is constrained by its prior published decisions and does not have the power to overrule, modify, or withdraw any language from those opinions. *Cook v. Cook*, 208 Wis. 2d 166, 189-90, 560, N.W.2d 246 (1997).

The Wisconsin Constitution and statutes provide that the judges of the Court of Appeals are elected from districts, and that the districts of the Court of Appeals sit in different parts of the state. *Id.* at 185-86 (citing Wis. Const. art. VII, § 5). Despite its division into districts, the Court of Appeals functions as a unitary court and must speak with one voice under a chief judge and not function as four separate courts. *In re Court of Appeals*, 82 Wis. 2d 369, 371, 263 N.W.2d 149 (1978). "If the constitution and statutes were interpreted to allow it to overrule, modify or withdraw language from its prior published decisions, its unified voice would become fractured, threatening the principles of predictability, certainty and finality relied upon by litigants, counsel and the circuit courts." *Cook*, 208 Wis. 2d at 189.

Further, as this Court held in *Cook*, "with the ability to rely on the rules set out in precedent thus undermined, aggrieved parties would be encouraged to litigate

[5] The WVA did not file a petition seeking review of the decision in *Reynolds*.

issues multiple times in the four districts . . . .” *Id*. That warning bears a striking resemblance to the strategy employed by the WVA in filing petitions in 13 separate counties, throughout the geographic districts of the Court of Appeals.

In contrast, the Supreme Court’s primary function is that of law defining and law development. *Id*. The Supreme Court, “unlike the Court of Appeals, has been designated by the constitution and the legislature as a law-declaring court.” *Id*. (quoting *State ex rel. La Crosse Tribune v. Circuit Court*, 115 Wis. 2d 220, 229-30, 340 N.W.2d 460 (1983)). The purpose of the Supreme Court is “‘to oversee and implement the statewide development of the law.’” *State v. Schumacher*, 144 Wis. 2d 388, 405, 424 N.W.2d 672 (1988) (quoting *State v. Mosley*, 102 Wis. 2d 636, 307 N.W.2d 200 (1981)).

Even though the Court of Appeals disagreed with its prior published decision in *Reynolds*, it was limited to signaling its disfavor rather than correcting any perceived error. *State v. White*, 2004 WI App 237, ¶ 7, 277 Wis. 2d 580, 690 N.W.2d 880. As this Court held in *Cook*, the Court of Appeals may signal its disfavor to litigants, lawyers and the Supreme Court by certifying the appeal to the Supreme Court and explaining that it believes a prior case was wrongly decided. *Cook*, 208 Wis. 2d at 190. Despite this guidance, the Court of Appeals did not certify the appeal to this Court. Instead, it issued a decision that directly conflicts with—and effectively overrules—its prior published decision in *Reynolds*.

A. Whether The Issues are Identical to One Another in Two Separate Cases Issued by the Court of Appeals is Not the Proper Standard for Determining Whether the Court is Speaking With a Unified Voice.

In this case, the Court of Appeals found that issuing a decision in this case despite the publication of *Reynolds* was appropriate because it believed that the issues varied between the two cases. (App. 003, Dkt. No. 52 at ¶ 3 n.4). However, beyond being inaccurate, this is not the standard for determining whether the Court of Appeals is speaking with a single, unified voice under *Cook*. Rather than focusing on whether the issues raised in the two cases are the same, the question is whether the substance of the later opinion overrules, modifies, or withdraws language from its prior published decision. *Cook*, 208 Wis. 2d at 189. Here, there is no question that the Court of Appeals—at the very least—modified language from its decision in *Reynolds*. Even modification of a prior Court of Appeals decision is inappropriate when that modification is coming from the Court of Appeals itself. In fact, the *only* circumstance in which a published Court of Appeals decision may be modified, overruled, or withdrawn is if the Supreme Court does so.

By way of example of the Court of Appeals' modification of its prior ruling, it is clear from reading the Court of Appeals' decision in this case that it intended to circumvent the *Reynolds* decision by focusing on (1) whether the WVA established all four prerequisites for a writ of mandamus and (2) that the WVA demonstrated a "need" for the requested information, rather than explicitly overruling the *Reynolds* holding that the notice of eligibility forms are "pertinent to

the finding of incompetency." However, although a large portion of the *Reynolds* decision is focused on determining whether the notice of eligibility forms are "pertinent to the finding of incompetency," the *Reynolds* decision concludes that because the forms are "pertinent to the finding of incompetency" and therefore barred from disclosure under Wis. Stat. § 54.75, the WVA *does not have a clear legal right to obtain them and Reynolds does not have a plain legal duty to disclose them*. 2022 WI App 66, ¶ 34.

Despite this finding, the Court of Appeals in this case found that the WVA *does* have a clear legal right to the notice of eligibility forms and that Secord does have a plain legal duty to disclose them. There can be little question that the Court of Appeals' decision in this case overrules key aspects of the *Reynolds* decision.

B. The Issues Raised in This Case *Are* Identical to The Issues in *Reynolds*.

In a footnote, the Court of Appeals conceded that "the *very same records* sought by WVA are at issue in Reynolds and this [case]," but found "that is neither dispositive nor a basis upon which to avoid ruling on an issue previously not decided. (App. 003, Dkt. No. 52 at ¶ 3 n.4) (emphasis added). Instead, the court believes that the question is whether the issues vary, and found that, because they do, "[a]t no point is the unified voice of this court fractured by this opinion." (*Id*.)

In *Reynolds*, the WVA filed a petition for writ of mandamus—which is effectively identical to the Petition filed in this case—seeking to require the Juneau County Register in Probate to produce the notice of eligibility forms which include

personally identifiable information on wards who were found incompetent to vote. 2022 WI App 66, ¶ 7.[6] In both cases, the circuit courts dismissed the petitions after determining Wis. Stat. § 54.75 presumes that the requested information is not subject to public disclosure and finding that the WVA did not establish the prerequisites for a writ of mandamus. The WVA appealed both decisions to the Court of Appeals.

In both *Reynolds* and this case, the Court of Appeals analyzed whether the circuit court erroneously exercised its discretion in dismissing the petitions for a writ of mandamus. In fact, the Court of Appeals in both cases analyzed whether the WVA had met the four prerequisites for a writ of mandamus—but came to opposite conclusions. The Court of Appeals for District IV affirmed the dismissal in a published decision, whereas District II in this case reversed and remanded.

In sum, there are two cases that are identical in all material aspects, but that garnered conflicting decisions from the Court of Appeals. There was no material basis for the Court of Appeals to not follow its own published holding in *Reynolds*. The circuit courts in both cases determined that the forms sought are "pertinent to the finding of incompetency" and therefore barred from public disclosure. The *Reynolds* Court held that the Notices of Voting Eligibility forms *are* confidential under Wis. Stat. § 54.75 and not subject to disclosure. Further, the *Reynolds* court

[6] Also like in this case, the WVA in *Reynolds* had originally sought a list of information in its petition that it later conceded on appeal that it was not entitled to. 2022 WI App 66, ¶ 6. On appeal in the *Reynolds* case, just as occurred in this case, the WVA argued that it was entitled to the notice of voting eligibility forms generated as a result of guardianship proceedings. *Id.* ¶ 7.

held that the § 54.75 exception was not met because the WVA did not demonstrate a need for the two key pieces of information requested: (1) the fact that an individual was found incompetent and (2) the contact information for the legal guardian. *Reynolds,* 2022 WI App 66, ¶ 33.

This Court should accept review to provide clarification on the Public Records Law now that there are two conflicting Court of Appeals decisions on whether the notice of eligibility forms are subject to public disclosure.

II. THE CIRCUIT COURT IN THIS CASE AND THE COURT OF APPEALS IN *REYNOLDS* CORRECTLY APPLIED WISCONSIN PUBLIC RECORDS LAW.

The documents that the WVA seeks in this matter, the completed notice of voting eligibility forms, are confidential documents that are not subject to public disclosure.[7] The records and information that the WVA desires are specifically protected by statutes. *All* court records pertinent to the finding of incompetency are closed, but subject to limited access as provided in §§ 51.30 or 55.22 or under an order of a court under Chapter 54. *See* Wis. Stat. § 54.75. Interpreting the relevant statutes with their plain meaning confirms that the requested court documents should not be accessible to the public.

[7] As stated in Judge Neubauer's dissent, "[t]he majority's analysis largely rests on its application of a public interest balancing test. It does so despite *Reynolds'* holding that NVE forms sought by WVA in this case are confidential under Wis. Stat. § 54.75 and therefore categorically exempt from disclosure under the Public Records Law." (App. 043).

A. The Notice of Voting Eligibility Form is A Court Record Pertinent to the Finding of Incompetency Under Chapter 54.

The first step in determining whether the notice of voting eligibility forms are subject to public disclosure is to consider whether they are "pertinent to the finding of incompetency" under Wis. Stat. § 54.75. The WVA argues that the requested forms are "not pertinent to the finding of incompetency" because they are "created after" the proceedings, and therefore "could not have played a role in the court's finding" of incompetency. As the Court of Appeals found in *Reynolds*, this is incorrect.[8]

Whether the requested forms are "pertinent to the finding of incompetency" requires statutory interpretation. Analysis of a statute begins with the language of the adopted text. *State ex rel. Kalal v. Circuit Court for Dane Cnty*., 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110. "Statutory language is given its common, ordinary, and accepted meaning, except technical or specially-defined words or phrases are given their technical or special definitional meaning." *Id*. ¶ 45. This 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 statute; and reasonably, to avoid absurd or unreasonable results." *Id*.

The Court of Appeals in *Reynolds* disagreed with the WVA's interpretation of the statute, finding that it appeared to read words into the statute—namely, that

[8] The Court of Appeals in this case acknowledged that it was constrained by the *Reynolds* holding that the forms are "pertinent to the to the finding of incompetency." (Dkt. No. 52 at ¶ 25). Thus, the Court did not discuss this issue.

the notice forms must have "played a role" or been part of the underlying basis for the circuit court's finding of incompetency. 2022 WI App 66, ¶ 26. The Court also noted that the statute does not include such language, but rather uses much broader language, stating that the court records are closed if they are *pertinent* to the finding of incompetency.

On their face, these forms directly relate to competency proceedings: they contain the name of the subject ward, their date of birth, address, and the guardianship proceeding case number, and they identify the date the ward was either declared incompetent to register to vote or had their voting rights restored. Further, Wis. Stat. § 54.25(2)(c)1.g. provides that the determination of the court regarding voting in a guardianship order "shall be communicated in writing by the clerk of the court to the election official or agency . . . with responsibility for determining challenges to registration and voting that may be directed against that elector." This mandatory reporting is inextricably linked with guardianship proceedings and is even governed by Chapter 54, which is entitled "Guardianships and Conservatorships."

The WVA offered two dictionary definitions of "pertinent," which confirm that the forms are pertinent to the finding of incompetency as long as they are "relating to" or "involving" the particular issue at hand. *See Reynolds*, 2022 WI App 66, ¶ 27. As the Court of Appeals found in *Reynolds*, the requested forms "hav[e] some connection with" and "relat[e] to," the finding of incompetency because they are created in the context of proceedings in which incompetency is determined for

purposes of establishing guardianship. *Id*. at ¶ 28 (citing Wis. Stat. § 54.25(2)(c)1.g.). The Court also explained the intricate relationship between the forms and the guardianship proceedings as follows:

> Recall that each NVE form is a document signed by the Register in Probate and becomes a part of the circuit court's file. It contains information drawn directly from the guardianship proceedings, including the case caption; the guardianship case number (which includes the designation "GN"); the individual's name, address, and date of birth; the court's determination of whether the individual "is not competent to exercise the right to register to vote or to vote in an election" or "has been restored the right to register to vote and to vote in an election"; and the date on which the court's determination was made. The NVE form also references Wis. Stat. § 54.25(2)(c)1.g., and Wis. Stat. § 54.64(2), both of which address issues related to an incompetency finding and guardianship proceedings and both of which are found in Chapter 54 of the Wisconsin Statutes governing "Guardianships and Conservatorships." Additional information regarding the subject individual or proceedings may also appear after the language, "The circuit court declared on [date] that:" in the blank space that follows. Thus, these forms, generated as a result of the court's finding of incompetency during a guardianship proceeding, clearly "[h]ave[] some connection with the matter at hand"—i.e., the finding of incompetency—and "relat[e] to" such a finding.

Id. at ¶ 29.

The *Reynolds* Court also stated that the pertinence of the form to the incompetence determination "is reflected in its mandatory nature, once a circuit court determines that a person deemed incompetent lacks the capacity to exercise voting rights." *Id*. at ¶ 30. "Reporting the court's determination about a ward's capacity to vote or register to vote in the manner prescribed by the guardianship statutes can only be reasonably described as being 'connected with,' 'related to,' or

'relevant [to]' the court's finding of incompetency in the guardianship proceeding." *Id*. at ¶ 30.

Additionally, if the reviewing court were to later find the ward competent, the box labeled "has been restored the right to register to vote and to vote in an election" would then be checked. In doing so, the court would merely be continuing the prior "proceedings" in which the original determination of incompetency was made.

Based on the above, the *Reynolds* decision holding that the notice of voting eligibility forms are pertinent to the finding of incompetency should be upheld.

B. Because the Requested Forms are Pertinent to the Finding of Incompetency, There is No Clear Legal Right to The Forms or a Positive and Plain Duty to Disclose Them to the Public.

If this Court agrees that the forms are pertinent to the finding of incompetency, then the forms are statutorily closed to the public. That should be the end of the public records analysis. There is no clear legal right to the forms or a positive and plain duty to disclose them to the public due to this presumption of confidentiality under Wis. Stat. § 54.75. Further, the WVA has not demonstrated a need for these documents, as required by the statute.

Despite this logical conclusion, the Court of Appeals in this case held that there was a clear legal right to access the requested forms and that there was a positive and plain duty to disclose them to the public. (App. 019, Dkt. No. 52 at ¶ 31). It is unclear how the Court of Appeals came to this conclusion despite being bound by the *Reynolds* decision holding that the forms are pertinent to the finding

of incompetency, and the Court of Appeals does not elaborate on its conclusion. In fact, its analysis on whether the WVA met the four prerequisites for the petition for writ of mandamus lasts all of three paragraphs—the first two prerequisites were addressed in a single paragraph.[9]

In determining whether there is a clear legal right to access the forms, it is not enough for the WVA to demonstrate that there is a "need" for the requested forms, because the statutes do not even grant access to the requested information *even if* there is a need for that information. Only "[t]he fact that an individual has been found incompetent" and "the name of and contact information for" the individual's guardian is statutorily permitted for disclosure. Wis. Stat. § 54.75. However, this information is conditional upon a showing of need by the requestor. *Id.* As the Court of Appeals noted in *Reynolds*, the second sentence of the statute is inapplicable here, because the WVA has not requested the information referenced in this sentence. Specifically, the WVA neither requested "the fact that an individual has been found incompetent" unrelated to the information contained on the notice of voting eligibility, nor the name and contact information for the individual's *guardian*—WVA seeks the name and contact information for the ward.

The Court of Appeals in this case held that the WVA demonstrated a public need for the notices, which "bolsters the release of the other information by 'order

[9] As stated in Judge Neubauer's dissent, "[t]he Wisconsin Supreme Court has made clear that courts are not to weigh the interests for and against disclosure unless and until they determine that no statutory, common law, or public policy exception categorically exempts a record from disclosure." (App. 045).

of the court.'" (App. 021, Dkt. No. 52 at ¶ 35). The Court apparently relied on the following language in the statute in concluding that any court may order access to the requested information: "All court records pertinent to the finding of incompetency are closed but subject to access as provided in [Wis. Stat. §§] 51.30 or 55.22 or under an order of a court under this chapter." Wis. Stat. § 54.75.

While there are numerous exceptions to the presumption that the records under this chapter are presumed closed, none of them are applicable to the present case. *See* Wis. Stats. §§ 51.30(3)(b)-(d).

The statutory language is clear: only those with a personal and identifiable need for the information should have access to it. The WVA has not demonstrated such a need because its interests are not remotely related to the underlying guardianship proceedings—rather, its interests are limited to the finding of incompetency itself. When reading Chapter 54 as a whole, it is clear that it does not permit any individual to access information under the chapter without a specific need to do so *related to that particular guardianship proceeding*. That "need" simply does not exist here. Indeed, Wisconsin courts have held that persons who are not a "guardian, guardian ad litem, or adversary counsel" in litigation have "no standing in the guardianship case, no right to review [a ward's] confidential legal or medical records, and no right to assert any legal claims on [a ward's] behalf." *In re Disciplinary Proceedings Against Bach*, 2016 WI 95, ¶ 12, 372 Wis. 2d 187, 887 N.W.2d 335.

There is also no dispute that the WVA is not a party to any of the guardianship proceedings from which it requests the records. Further, it is not a government agency with any legal authority to investigate or police the election process. The Court of Appeals essentially finds that the WVA has the authority to investigate voter lists "as statutorily required by law" but does not indicate any authority the WVA has for doing so.

The Court of Appeals determined that maintaining accurate voter lists is a sufficient "need" for this information. While there is unquestionable importance in maintaining accurate voter lists, the WVA has not established its individual need or right to obtain the confidential information sought. The Court of Appeals decision failed to include any analysis when ruling that maintaining accurate voter lists proves sufficient need, particularly by a private entity like the WVA. While election integrity is undeniably an important objective, the WVA does not have the administrative, legislative, judicial or police power to collect confidential records. If this Court were to agree with the Court of Appeals' assessment that the WVA, showed a "need" for the requested information by demonstrating its intent on verifying elections, Wisconsin Public Records Law would essentially grant unfettered access to these documents for any organization or corporation who demonstrates a desire for election integrity. The foregoing would defeat the intent of maintaining privacy of wards and would likely have a chilling effect within guardianship proceedings.

The Court of Appeals in this case also noted that the notice of voting eligibility forms are already released, by express statutory mandate, to the local officials or agencies through WEC with no restrictions or additional requirements of continued confidentiality. (App. 018, Dkt. No. 52 at ¶ 29). The Court of Appeals held, without any support within the record, that the WEC then publishes the statutorily mandated information obtained from those notices to the world by including that data on WisVote.[10] (*Id*.) Given the "public" status of the notices, the Court of Appeals reasoned that it was unreasonable for Secord to assert that the notices are "closed" public records that may never be released to the public.[11] (*Id*.)

Thus, there is no clear legal right to the requested information, and there is no positive and plain duty to provide access to the requested information.

C. There is No Substantial Damage or Injury Should the Relief Not be Granted as the WVA is Not Directly Affected.

The WVA must show that it will be substantially damaged by nonperformance of the clerk's positive and plain duty. *See Vretenar* v. *Hebron*, 144

[10] Secord is not aware of a website called "WisVote" and it is not supported by the record. To the extent that the Court of Appeals was referring to the website "My Vote WI," it is also does not appear that a database with the published forms is located on that website. In fact, as far as Secord is aware, there is no way to generate a list of *ineligible* voters. Instead, the only way to determine whether someone is listed as an eligible voter is by using the search function at the top right corner of the home page. However, the searcher is required to know the individual's first and last names and his or her date of birth.

[11] It is also unclear why the WVA would be requesting the completed notice of eligibility forms at all if they were truly publicly available in the first place.

Wis. 2d at 662. Not only has WVA failed to show that denying the writ would cause substantial harm, releasing the requested information would actually cause proportionally more harm to the wards protected by Chapter 54, were the writ to be granted.

Here, as the Circuit Court stated, unsubstantiated allegations of voter record issues were made, but no substantial damage is shown to exist in Walworth County. There are no specific allegations that ineligible voters in Walworth County have voted. In fact, disclosure of the requested information would cause proportionally more substantial damage to protected Walworth County wards than withholding the information for a perceived voter registration issue.

D. The WVA Failed to Exhaust All Other Legal Remedies Before Filing its Petition.

Like other civil actions, all legal remedies must be exhausted before petitioning for said writ. *Voces De La Frontera, Inc*. 2017 WI 15, ¶ 11. Mandamus cannot be a proper remedy to control a Register in Probate while she is acting "within the scope of [her] legal powers on matters of which [she] is vested with discretion. *Beres*, 34 Wis.2d at 229. As stated previously, Ms. Secord was vested with discretion in her role as Register in Probate to safekeep documents and information that may not be subject to Public Records Law. Therefore, Mandamus cannot be the proper remedy granted here.

The WVA had an alternative legal remedy under Chapter 54 itself, without the use of a drastic remedy such as a Writ of Mandamus. Wis. Stat. § 54.75 states,

"[a]ll court records pertinent to the finding of incompetency are closed but subject to access as provided in s. 51.30 or 55.22 or under an order of a court under this chapter." As discussed in detail above, the WVA has not established a right to access the requested information or records under either Wis. Stat. §§ 51.30 or 55.22. This leaves one alternative route available to the WVA, which it does not allege to have attempted: requesting a court order from a court under Chapter 54 granting access to the records sought.

Because the WVA did not first attempt to request the records under Wis. Stat. §§ 51.30 or 55.22, or request a court order granting access to the records, it has failed to show that it has exhausted all legal remedies available to it.

E. Even if this Court Determines there is No Statutory Exemption, the Balancing Test Weighs in Favor of Nondisclosure.

Even in the absence of a statutory exemption, Secord has no duty to provide the requested information because the balancing test applicable under the Public Records Law supports her decision to restrict access to protected information and records. "The balancing test involves balancing the public interest in disclosure against the public interest in non-disclosure." *Milwaukee Journal Sentinel v. Wisconsin Dep't of Admin.*, 2009 WI 79, ¶ 55, 319 Wis. 2d 439, 768 N.W.2d 700 (citing *Wis. Newspress, Inc. v. Sch. Dist. of Sheboygan Falls*, 199 Wis. 2d 768, 786-88, 546 N.W.2d 143, 150-51 (Wis. 1996)). "[T]he balancing test must be applied in every case in order to determine whether a particular record should be released." *Wis. Newspress, Inc.*, 199 Wis. 2d at 780, 546 N.W.2d at 147.

In this case, the public interest in guarding against the risks of disclosure substantially outweighs any public interest in disclosure. Proceedings in guardianship cases are "confidential by statute." *In re Disciplinary Proceedings Against Bach*, 2016 WI 95, ¶ 12, 372 Wis. 2d 187, 887 N.W.2d 335 (quoting *Bach v. Life Navigators*, No. 2013AP1758, unpublished order (Wis. Ct. App. Dec. 30, 2014)). The confidential nature of guardianship proceedings is consistent with the intensely personal interests at issue when an individual loses all or part of his or her autonomy. For that reason, Wisconsin's guardianship statute expressly provides, "[i]n exercising powers and duties delegated to the guardian of the person under this paragraph, the guardian of the person shall, consistent with meeting the individual's essential requirements for health and safety and protecting the individual from abuse, exploitation, and neglect . . . [m]ake diligent efforts to identify and honor the individual's preferences with respect to . . . personal liberty and mobility, choice of associates, communication with others, [and] personal privacy . . . ." Wis. Stat. § 54.25(2)(d)(3)(a)-(b) (emphasis added).

The confidentiality afforded by the legislature to guardianship proceedings would fail to serve its purpose and there would likely be a chilling effect if individuals and entities with no demonstrated interest in a specific guardianship proceeding were granted wholesale access to every guardianship court file based solely on a desire to use that information for some unrelated reason, even one the requester believes serves an important general public purpose. Thus, the public interest in protecting the confidential nature of individual guardianship proceedings

clearly outweighs the WVA's purported interest in attempting to enforce Wisconsin's election laws.

CONCLUSION

For the foregoing reasons, Kristina Secord, respectfully requests that the Court grant her petition for review.

Dated this 26th day of January, 2024.

Electronically signed by Samuel C. Hall, Jr.

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FORM AND LENGTH CERTIFICATION

I certify that this Petition for Leave to Appeal conforms to the rules contained in § 809.50(1), Stats., for a petition produced with a Times New Roman font. The length of this petition is 7,772 words.

Dated this 26th day of January, 2024.

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