

# Setting the Record Straight: Fact Checks About Wisconsin Election Administration

## WEC Fact Checks

Over the last five years, WEC has taken each claim or rumor about election administration seriously and provided comprehensive answers to questions. Below is a summary of some of the current claims, and we encourage you to view our full list of FAQ's and use them to answer constituent questions.

<https://elections.wi.gov/news-events/wisconsins-election-fact-checks>

Our agency and the administration of elections is not above fair and honest criticism. As a matter of fact, WEC staff recognizes this as an essential part of our agency's function. We are always glad to answer questions about our processes, whether the questions are from Commissioners, legislators, or members of the public. In return, we ask that those who have questions about elections will engage with those facts before perpetuating unsubstantiated rumors.

### Issue 1: Who maintains Wisconsin voter registration lists?

#### Response 1:

In the majority of cases, Wisconsin municipal clerks are the ones authorized by state statute to maintain the voter registration list. Local clerks use the voter registration list to create poll books, which is the official list of active, lawfully registered voters who are eligible to receive and cast a ballot at a given election. Municipal clerks also possess the statutory authority to deactivate voter records for reasons such as death, moving to a new address, or adjudication of incompetence. However, when a voter registration is "deactivated" Wisconsin Statute § 6.50(7) mandates that rather than deleting the registration from the database, the registration is changed "from eligible to ineligible status" and information is added "giving the date of and reason for the change." These statutory roles are provided in Chapters 5 and 6 of the Wisconsin Statutes. A clerk's authority to manage the voter rolls, in most instances, was solidified by the Wisconsin Supreme Court in a 2021 case, *Zignego v. WEC*.

WEC does have a role in list maintenance. Namely, Wis. Stats. §§ 6.50(1) and (2) prescribe that after every General Election (November of even-numbered years) the WEC should examine the voter list for voters who have not participated in an election for four years. Those voters then receive a postcard. If the voter's postcard is undeliverable or if the voter does not respond to the postcard affirming their information, they are deactivated. The statute does provide that voters can return a signed affirmation, swearing that their information has not changed, and they would like to remain registered. Those individuals then stay actively registered.

WEC also maintains the [badgervoters.wi.gov](http://badgervoters.wi.gov) data request website to comply with the mandate in Wis. Stat. 6.36(6) that information from the registration list be publicly available for purchase. Through this website, members of the public, media, political parties, and anyone interested can easily purchase official registration list data. The data comes from each local municipal clerk and is the data each clerk entered when managing local elections. The statute requires that WEC charge for this data, and the price was established in Wis. Admin. Code § EL 3.50. In 2022, the WEC Commissioners considered in a public meeting whether to modify the administrative rule and the cost for the list. The staff made recommendations to the Commission on potential lower cost offerings. The Commission did not have the four requisite votes to make this modification. The Commission may decide to revisit this issue at a later time.

## **Issue 2: What is the Electronic Registration Information Center (ERIC) and why is Wisconsin a member?**

**Response 2:** The Electronic Registration Information Center (ERIC) is a nonprofit, nonpartisan membership organization created by and comprised of state election officials from around the United States. Founded in 2012, ERIC is funded and governed by states that choose to join. ERIC is the most effective tool available to help election officials maintain more accurate voter rolls and detect possible illegal voting. ERIC also helps states reach out to potentially eligible but not yet registered individuals with information on how best to register to vote.

Wisconsin joined ERIC in 2016 as part of legislation signed by former Gov. Scott Walker that enacted online voter registration and other changes to voting laws. Walker said the bill "brings Wisconsin elections into the 21st century." Regarding ERIC, the law, Wis. Stat. § 6.36(1)(ae)1., states that, "[t]he chief election officer shall enter into a membership agreement with Electronic Registration Information Center, Inc., for the purpose of maintaining the official registration list under this section." In recognition of this legislative directive, the Commission entered into an ERIC membership agreement in 2016. Since that time, ERIC has provided invaluable information relating to list maintenance and identifying potential voter fraud or duplicate participation.

The WEC has a comprehensive overview of ERIC available on our website at <https://elections.wi.gov/statistics-data/voter-list-maintenance/electronic-registration-information-center-eric>

## **Issue 3: Decisions of the Administrator**

Critics say WEC Administrator Meagan Wolfe is responsible for major decisions of the agency, including decisions regarding nursing home voting, use of drop boxes, allowing the acceptance of private grant funds, and more.

### **Response 3:**

Major decisions of the Commission are made by its six bipartisan Commissioners, who are appointed by legislative leaders and the governor. The WEC Administrator serves at the pleasure of the bipartisan Commission, on which she does not have a vote. The administrator's role as chief election official is to implement the decisions of the Commission and to provide Commissioners with expert advice on questions of election administration. Commission meetings are conducted in public, all materials prepared by the staff are available publicly, and the minutes of each meeting are available for review at <https://elections.wi.gov/news-events/events>.

## **Issue 4: Nursing home voting**

Critics say Administrator Wolfe wrongly authorized sending absentee ballots to residents of nursing homes and care facilities for the 2020 General Election, rather than utilizing Special Voting Deputies in those facilities, as is normally the case.

### **Response 4:**

A comprehensive overview of the Special Voting Deputy (SVD) process can be found here: <https://elections.wi.gov/node/1276>

The WEC's bipartisan Commissioners – not Administrator Wolfe – authorized the SVD decision. Early in the pandemic, the six Commissioners determined that the Governor's Executive Order #72 and directives of the Department of Health Services prevented voting with SVDs in nursing homes for the Spring Election. Due to these health care restrictions, SVDs and observers were not able to visit nursing homes and qualified care facilities.

During their March 12, 2020, public meeting, Commissioners voted unanimously to instruct clerks to follow the statutorily provided procedure for when residents or facilities are not available for SVD voting. If unavailable, absentee ballots were then mailed to voters in those facilities who had an active absentee ballot request on file, which is the next step in the statutory SVD process. This guidance was applicable to both the April 7 election and the May 12 special election in Congressional District 7. In the original staff memo (available at [elections.wi.gov](https://elections.wi.gov)) prepared for the March, 2020 meeting, the staff actually recommended sending SVDs. The Commission's deliberations and decision are reflected in the minutes and the video recording.

The Commission reconsidered its guidance prior to both the August 2020 Partisan Primary and the November 3 General Election but did not substantively change recommendations for how to administer voting in nursing homes and care facilities.

The issue of restricted access to facilities served by SVDs was not new in 2020, as other public health concerns, such as influenza and MRSA, have previously caused access issues. Clerks have always been advised to follow the process prescribed by Wis. Stat. § 6.875(6)(e) of mailing ballots to voters normally served by SVDs if any voters were not able to vote with SVDs.

### **Issue 5: Expanded use of drop boxes in 2020**

Critics say Administrator Wolfe authorized the use of drop boxes for the return of absentee ballots during the November 2020 General Election.

#### **Response 5:**

Drop boxes have been used in Wisconsin elections for years, predating Wolfe's appointment. In 2020, the Commission did not take a specific vote to "approve" drop boxes because they had already been in use by municipal clerks, using their own statutory authority. Some jurisdictions had used drop boxes for more than 10 years. Rather, when dealing with pandemic-related federal funds that were available, the Commission voted on how the federal funds could be used by municipalities and authorized that clerks could use federal funds to establish additional, secure drop boxes for the general election. The Commission met on how to use the CARES funds in March and April of 2020.

The WEC administrator had no role in authorizing the expanded use of drop boxes due to the historic surge in absentee voting. Her role was in implementing the Commission's directive to relay U.S. Department of Homeland Security best practices regarding how to establish drop boxes in a secure manner.

In a subsequent court case, a judge ruled that drop boxes could no longer be used in Wisconsin unless the boxes were staffed and located in the clerk's office. How that decision was then communicated to clerks and incorporated into training was voted on by the Commission and was communicated effectively by WEC staff to election officials around the state. The court decision was forward looking and did not find fault with ballots that were returned to clerks via drop boxes in 2020 or other past elections.

### **Issue 6: Private grant money to municipalities**

Critics say Administrator Wolfe promoted and supported private grant money from the Center for Tech and Civic Life, and that she encouraged municipalities around Wisconsin to apply for and use CTCL grants.

#### **Response 6:**

A comprehensive overview on this topic is available here <https://elections.wi.gov/node/1272>. On March 31, 2022, Administrator Wolfe testified to the Assembly Committee on Campaigns and Elections on this topic. The video can be found here <https://wiseye.org/2021/03/31/assembly-committee-on-campaigns-and-elections-14/%C2%A0>.

Neither the WEC nor Administrator Wolfe were involved in municipalities applying for or receiving CTCL grant funds. WEC did not inform clerks about the private grants, did not promote them, and did not authorize or opine on if municipalities could engage with the grants.

Meanwhile, courts before and after the 2020 election considered complaints against the acceptance of CTCL grants in Wisconsin's five largest cities, and those complaints were dismissed. One federal judge concluded there is no prohibition in state law on local governments accepting private money to run elections. Further, CTCL has reported that more than 200 cities, towns, and villages in Wisconsin applied for grants and received the full amount of money they requested. A ban on private grants would require a new law to be passed.

#### **Issue 7: Who authorized the correcting witness addresses on absentee envelopes**

Critics say the Administrator Wolfe provided incorrect guidance to clerks regarding the necessary requirements for an address to be considered valid on an envelope containing an absentee ballot.

#### **Response 7:**

The agency's longstanding policy on the "curing" of absentee ballot envelopes was established by the six Commissioners in 2016, three years before Administrator Wolfe took on her current role. That policy – allowing clerks to fix minor omissions in witness addresses on certificate envelopes or to contact the voter to do so if time allows – was established by the Commissioners following the passage of Wis. Stat. § 6.87(6d) in 2015. The guidance was challenged in the Waukesha County Circuit Court case *White V. WEC*. In September 2022, the court ruled that the WEC needed to end its guidance regarding corrections to absentee certificate envelopes that are missing a witness address or have an insufficient witness address, while upholding the Commission's definition of a sufficient address. Further, the court ordered the WEC to withdraw two memos on the topic. The WEC complied with the ruling via a Commission vote on Sept. 13, 2022, and followed with a communication to clerks on the topic on Sept. 14, 2022. Administrator Wolfe had no role in making those decisions.

#### **Issue 8: Legislative Audit Bureau examination of WEC**

Critics claim the LAB report in 2021 called out critical issues or that the WEC did not respond to or implement the recommendations of the LAB.

#### **Response 8:**

In reality, despite containing 30 LAB recommendations for potential WEC action, the report was largely supportive and favorable in its findings. WEC went to great lengths to comply with LAB requests and cooperate on many levels with the LAB auditors. The vast majority of LAB recommendations related to minor procedural items, promulgation of rules that had previously been ignored by the Legislature or governor, clarifying existing relationships with data partners, and addressing clerk training and communication. There were no findings of impropriety of any type in the LAB audit, and no evidence of any findings that could have affected election results.

Further, the Commission addressed each of the 30 recommendations in the required timeframe, and shared follow-up action steps with the Legislature regarding each item. WEC staff does not have the authority to implement the recommendations without the Commission's direction. The Commission met and voted on every recommendation in <https://elections.wi.gov/news/initial-response-legislative-audit-bureaus-report-2020-general-election>

The Commission then took action on the recommendations and provided this final report to the Legislature on the actions they took to implement the recommendations <https://elections.wi.gov/news/wec-implements-legislative-audit-bureau-recommendations>

### **Issue 9: Returning someone else's absentee ballot**

Critics claim Administrator Wolfe personally approved allowing others to return someone's absentee ballot to the clerk's office.

#### **Response 9:**

The Commission actually considered the question of who may return someone else's absentee ballot in 2017. Then at their June 17, 2020, meeting, Commissioners considered a petition requesting that the Commission pursue the creation of an administrative rule regarding "ballot harvesting," which they defined as a third party requesting an absentee ballot for an elector, and/or returning an absentee ballot on behalf of the elector after it has been completed. The petitioners requested that the Commission make it clear that Wisconsin law does not permit so-called ballot harvesting. The Commission ultimately voted to deny the petition for rulemaking but did determine that state law prohibits any individual or group from requesting an absentee ballot for a voter. State and federal courts later clarified questions surrounding so-called ballot harvesting. In 2022, the Wisconsin Supreme Court ruled that an absentee ballot must be returned by mail or the voter must personally deliver it to the municipal. Federal courts provided some clarifications to this ruling for voters with disabilities as part of the 2022 Carey v. WEC case.

### **Issue 10: Proceeds from the sale of voter data**

What happens to the money that WEC makes on the sale of voter data?

#### **Response 10:**

Wisconsin Statute § 6.36(6) requires the Commission to "establish by rule the fee for obtaining a copy of the official registration list, or a portion of the list" from the statewide voter registration system, WisVote, and dictates that the "fee shall be set . . . at an amount estimated to cover both the cost of reproduction and the cost of maintaining the list at the state and local level." Further, Wis. Stat. § 20.510(1)(jn) states that "all moneys received from requesters from the sales of copies of the official registration list" must be used "for the purpose of election security and system maintenance." The fee for obtaining the data from the registration list has been established in Wis. Admin. Code § EL 3.50.

The Commission factors the revenue generated from the sale of voter data into its biennial budget requests, and the Legislature has given the authority to make use of the funds generated from voter data. Essentially, the money is used to offset the amount of state funds needed to maintain the system. Use of these funds, along with any WEC revenue or grant use must first be approved by the Commission in its biennial budget, which must then be approved by the Legislature and governor through the biennial budget process. For the upcoming 2023-2025 biennial budget, the commission met on August 31, 2022 to approve the agency budget <https://elections.wi.gov/event/special-meeting-teleconference-only>.

### **Issue 11: National Voter Registration Form**

Critics claim Administrator Wolfe personally allowed for the unlawful acceptance of the national voter registration form by Wisconsin clerks.

#### **Response 11:**

Administrator Wolfe was not involved in any decision to allow the use of the national voter registration form by local clerks. The national voter registration form appears to have first been recommended for acceptance by a WEC predecessor agency – the State Board of Elections – as early as 1994.