

# 10 Subject Areas of Election Officials' Legal Violations In The 2020 Election

By Thomas More Society Special Counsel Erick Kaardal  
[thomasmoresociety.org](http://thomasmoresociety.org)

## Client—Attorney Relationship

- Thomas More Society attorneys have represented Wisconsin Voter Alliance on Wisconsin's election integrity issues.
- Wisconsin Voter Alliance has over 1,200 members.
- The President of Wisconsin Voter Alliance is Ron Heuer. Mr. Heuer is a retired travel industry executive, a Vietnam War veteran and a former Kewaunee County Board chair.
- Wisconsin Voter Alliance's Thomas More Society Special Counsel is Erick Kaardal, an attorney who has made a career out of suing the government.
- Kaardal has practiced law in Wisconsin and Minnesota for over 20 years.

# Government Investigations and Private Investigations Election Officials' Illegalities in the 2020 Election

## Government Investigations:

- Legislative Audit Bureau (October 2021)—WEC violations
- Racine County Sheriff (November 2021)—WEC violations
- Waukesha County Circuit Court (January 2022)—WEC and municipal clerks' violations
- Office of Special Counsel (February 2022)—WEC and municipal clerks' violations

## Private Investigations:

- Thomas More Society (February 2022)—WEC and municipal clerks' violations
- Others

# 1. Wisconsin Election Officials' Use of Absentee Ballot Drop Boxes Violated Wisconsin Law

- Cities of Milwaukee, Madison, Green Bay, Racine and Kenosha used Center for Tech and Civic Life (CTCL)-paid absentee ballot drop boxes.
- Waukesha County Circuit Court held that the absentee ballot drop boxes are legally unauthorized.
- Review is pending in Wisconsin Supreme Court
- Meanwhile, April primary will be without drop boxes.
- Wisconsin Election Commission has adopted no rule in favor of absentee ballot drop boxes.

## 2. Center for Tech and Civic Life's Safe Voting Plan for Wisconsin 5 Cities is Election Bribery

- Wisconsin Statutes section 12.11 on election bribery
- 3 elements for election bribery
  - “Anything of value”
  - “Person” includes “body politic”
  - “Induce” elector “to go to polls”
- All three elements satisfied for election bribery
  - CTCL gave \$8,800,000 under Wisconsin Safe Voting Plan to Milwaukee, Madison, Green Bay, Racine and Kenosha
  - The Wisconsin Safe Voting Plan required the cities to facilitate increased in-person and absentee voting in targeted areas and demographic groups.

### 3. Unauthorized Influence of Special Interest Groups on Election Administration

- Wisconsin law on election administration is WEC's Election Administration Manual for Wisconsin Municipal Clerks—no mention of special interest groups engaging in election administration.
- WEC's WisVote security policies make special interest groups receiving government information unauthorized users making unauthorized uses
- CTCL as part of \$8,800,000 WSVP pushed its "partners" onto Milwaukee, Madison, Green Bay, Racine and Kenosha.
- CTCL's plan was to have cities participate in private get-out-the-vote plan to facilitate increased in-person and absentee voting

#### 4. Racine County Sheriff's Report: WEC violated special voting deputies law

- Racine County Sheriff recommended to Racine County District Attorney that criminal charges be brought against WEC members because WEC violated law by not sending in special voting deputies to nursing homes for November 2020 election.
- Racine County District Attorney concluded she did not have jurisdiction.
- The claims have been referred.

## 5. Nursing Home 100% Registered Resident Voting Rates—A Problem

- The total nursing homes reviewed was 93 facilities.
- The nursing homes reviewed were in Brown, Dane, Milwaukee, Racine and Kenosha Counties.
- The 93 facilities had 3,230 registered voters for the 2020 election.
- Of those 3,230 registered voters, 3,189 voted in the 2020 election.
- So, the registered resident voting rate in the 93 facilities was 99% for the 2020 election.
- Typically, a county has about 90% registered resident voting rate.

## 6. Wards Under Guardianship—A Problem in Need of Correction

- Wisconsin law makes ineligible wards under guardianship and those incapable of understanding the election process.
- The Help America Vote Act requires Wisconsin to maintain WisVote to ensure ineligibility data is up to date.
- Neither WEC nor the Clerks obtained the guardianship orders from the circuit courts for the 2020 election.
- HAVA requires Wisconsin to obtain the guardianship orders from circuit court to put in WisVote data.

## 7. Non-Citizens—A Problem In Need of Correction

- Wisconsin law makes non-citizens ineligible in the election process.
- The Help America Vote Act requires Wisconsin to maintain WisVote to ensure ineligibility data is up to date.
- Neither WEC nor the Clerks obtained the non-citizens information from the Department of Transportation.
- The Department of Transportation has non-citizens information because non-citizen on green cards and work permits can obtain drivers licenses there.
- HAVA requires Wisconsin to obtain the non-citizen data from Department of Transportation to put in WisVote data.

## 8. Equal Protection Clause Violations in Wisconsin 5 Cities (Obama case)

- The federal Equal Protection Clause requires that all voters be treated the same in the same election.
- In *Obama for America v. Husted*, 697 F.3d 423 (6th Cir. 2012), the Sixth Circuit held that it was unconstitutional for the state of Ohio to allow only domestic military voters to cast ballots in person over the weekend before Election Day. *Id.* at 437. The Sixth Circuit noted that, although military voters can face unexpected emergencies that prevent them from voting in person on Election Day, other voters may face similar contingencies:

At any time, personal contingencies like medical emergencies or sudden business trips could arise, and police officers, firefighters and other first responders could be suddenly called to serve at a moment's notice. There is no reason to provide these voters with fewer opportunities to vote than military voters ....” *Id.* at 435. The court concluded that the Equal Protection Clause therefore prohibited the state from making special accommodations only for military voters. *Id.* at 436. The court added that it would be “worrisome ... if states were permitted to pick and choose among groups of similarly situated voters to dole out special voting privileges.” *Id.* at 435.
- Similarly, CTCL’s WSVP with Milwaukee, Madison, Green Bay, Racine and Kenosha is constitutionally “worrisome ... [because cities] were permitted to pick and choose among groups of similarly situated voters to dole out special voting privileges.” And, for those voters in those cities who did not receive the benefits of CTCL-funded increased opportunities to vote, “[t]here is no reason to provide these voters with fewer opportunities to vote than [CTCL’s chosen] voters.”

## 9. Legislative Audit Bureau Report—Problems in Need of Correction

- WisVote database problems
- Rule-making problems
- Administrative complaint problems

# 10. Federal Electoral Count Act— problems in need of correction

- U.S. Constitution Article I empowers state legislatures to regulate Congressional elections subject to Congressional control.
- U.S. Constitution Article II empowers state legislatures to control appointment of Presidential Electors; there is no constitutional role for Congress to select a President except to count the electors' votes—unless there is a tie.
- In contrast, Federal Electoral Count Act (FCA), 3 USC section 15, provides a role for Congress in certifying state election results.
- Legal commentators have described this section as constitutionally dubious.
- Newspapers are editorializing for amendments to FCA.
- Congress is debating amendments to the FCA.