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STATE OF WISCONSIN
SUPREME COURT

WISCONSIN VOTER ALLIANCE
AND RON HEUER,

Appeal No.
2023AP0036

Plaintiffs-Appellants-Petitioners,

Circuit Court Case No.
2022CV000443

v.

KRISTINA SECORD,

Defendant-Respondent-
Respondent.

Appeal from a Judgment of District II of the Court of Appeals, on Remand,
Affirming the Judgment of the Circuit Court of Walworth County,
Case No. 2022CV443
The Honorable David W. Paulson, Presiding

PETITIONERS WISCONSIN VOTER ALLIANCE AND RON HEUER'S
PRINCIPAL BRIEF

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STATEMENT OF THE ISSUES

I.

Notices of Voting Eligibility are court communications to the Wisconsin Elections Commission informing it of the grant or the reinstatement of a qualified elector's right to vote previously found incompetent to vote or revoking that right. The WEC publicly announces an elector's eligibility or non-eligibility to vote through a state-wide voter registration system. The issue presented is:

Because the Notices Voting Eligibility are not a court's underlying determination "pertinent to a finding of [an individual's] incompetency," but communications regarding the individual's right to vote after a competency hearing, whether the Notices are subject to disclosure under the Wisconsin Public Records Act.

The trial court concluded: No, the Notices of Voting Eligibility are part "pertinent to a finding of [an individual's] incompetency" records.

On appeal: The Court of Appeals first concluded "yes," but on remand, concluded: no, aligning itself with a previously-published decision in *Wisconsin Voter Alliance v. Reynolds*, 2023 WI App 66, 410 Wis. 2d 335, 1 N.W.3d 748). However, two concurring opinions disagreed with the analysis in *Reynolds*, and concluded the Notices of Voting Eligibility not pertinent to the finding of incompetency.

II.

Whether the circuit court should have granted a petition for a writ of mandamus when documents sought under Wisconsin's Public Records Law, such as Notices of Voting Eligibility, are public information subject to disclosure.

The trial court concluded: No, the Notices of Voting Eligibility are not subject to the Public Records Law.

On appeal: The Court of Appeals first concluded "yes," but on remand, concluded no, aligning itself with a previous published decision in *Wisconsin Voter Alliance v. Reynolds*, 2023 WI App 66, 410 Wis. 2d 335, 1 N.W.3d 748. But, two judges explained why *Reynolds* was wrongly decided.

STATEMENT FOR ORAL ARGUMENT AND PUBLICATION

Oral argument should be granted. This case presents a matter of first impression regarding the Wisconsin Public Records Act and court communications to another state agency, the Wisconsin Elections Commission, which is responsible for ensuring Wisconsin's state-wide voter registration system accurately reflects whether a person is registered to vote and, thus, has a right to cast a ballot. Inaccuracies can deprive a registered voter of the right to receive and cast a ballot. The list is required by state and federal law, available publicly, and relied upon by election officials. The court communications, titled "Notice of Voter Eligibility," informs the WEC after a judicial determination whether a person is competent to register to vote and, thus, cast a ballot. Any discrepancies between the Notice and the WEC registration list can deprive a person of their fundamental right to vote.

STATEMENT OF THE CASE

- I. **The Notice of Voter Eligibility communicates the restoration or the loss of the right to vote to election officials or the agency responsible for determining challenges to registration and voting.**

The Petitioners Wisconsin Voter Alliance and Ron Heuer (collectively, WVA) filed a petition for a writ of mandamus under the Wisconsin Public Records Act to obtain one specific type of document from the Walworth County Register in Probate—Notices of Voting Eligibility. APP. 26. The Notice communicates to the Wisconsin Elections Commission (WEC) whether a court has found a person "not competent to exercise the right to vote or to vote in an election" or "has been restored the right to register to vote or to vote in an election:"

DATE SIGNED: December 2, 2019

Electronically signed by Lindsay Campbell
Register In Probate

STATE OF WISCONSIN	CIRCUIT COURT	TAYLOR COUNTY
In the Matter of		<input type="checkbox"/> Amended
- 1 -		Notice of Voting Eligibility
Date of Birth: _____	Case No. 2019GN000028	

The circuit court declared on December 2, 2019 that:

- is not competent to exercise the right to register to vote or to vote in an election.
- has been restored the right to register to vote and to vote in an election.

FOR OFFICIAL USE ONLY
Wisconsin Elections Commission
Date Processed _____
Staff _____

Example Form

GN-3180(CCAP), 06/2019 Notice of Voting Eligibility §§54.25(2)(c)1(g) and 54.64(2), Wisconsin Statutes
This form shall not be modified. It may be supplemented with additional material. Page 1 of 1

Id. APP. 26.

The Wisconsin Court System created the Notice as form “GN-3180.”

The Notice also cites Wis. Stat. § 54.25(2)(c) titled “*Declaration of incompetency to certain rights.*” (Original emphasis). Subdivision 1’s preamble is accurately quoted,

The court may, as part of a proceeding under s. 54.44 in which an individual is found incompetent and a guardian is appointed, declare that the individual has incapacity to exercise one or more of the following rights...[such as the] a. The right to consent to marriage...b. The right to serve on a jury...[and] The right to register to vote or to vote in an election, if the court finds that the individual is incapable of understanding the objective of the elective process.

Wis. Stat. § 54.25(2)(c)1.g.

The same provision includes other individuals who are not under the power of a guardian and who are incapable of understanding the objective of the elective process, accurately quoted as follows:

Also, in accordance with s. 6.03 (3), any elector of a municipality may petition the circuit court for a determination that an individual residing in the municipality is incapable of understanding the objective of the elective process and thereby ineligible to register to vote or to vote in an election. This determination shall be made by the court in accordance with the procedures specified in this paragraph. If a petition is filed under this subd. 1. g., the finding of the court shall be limited to a determination as to voting eligibility. The appointment of a guardian is not required for an individual whose sole limitation is ineligibility to vote.

Once a court makes a determination of a person as being “incapable of understanding the objective of the elective process,” a Notice is forwarded to the election official or agency charged with changes to registration and voting (*e.g.*, the WEC as an agency as reflected in the Notice):

The determination of the court shall be communicated in writing by the clerk of court to the election official or agency charged under s. 6.48, 6.92, 6.925, 6.93, or 7.52 (5) with the responsibility for determining challenges to registration and voting that may be directed against that elector. The determination may be reviewed as provided in s. 54.64 (2) and any subsequent determination of the court shall be likewise communicated by the clerk of court.

Wis. Stat. § 54.25(2)(c)1.g.

II. WVA requests Notices of Eligibility under the Public Records Act because its research found unexplained discrepancies in the state-wide voter registration system.

The Wisconsin Elections Commission is the responsible state agency that administers the state-wide voter registration database system, referred to as

“WisVote” when this litigation first commenced in 2022.¹ Wisconsin administers elections at the municipal level. There are 1,852 municipalities in the state. WisVote is used to administer elections at the state, county, and municipal levels.

The WVA’s research discovered that unexplained discrepancies existed between people having been found “not competent to vote” (the Notice’s phraseology²) and identified as “ineligible” to vote in WisVote. Logically, there were too few listed. And, some found “not competent to vote” by the circuit court were continually being sent absentee ballots to cast. APP. 26; APP. 36-37, ¶¶11-1; APP. 40-42, ¶¶31-39; APP. 53.

Indeed, one County Probate Registrar stated that the WEC was *not* entering all the “no vote” determinations sent to the WEC. APP. 40 ¶36. The research was the catalyst for the WVA’s Public Records requests to various registers in probate for copies of Notices of Eligibility. Obtaining the Notice from the court would allow WVA to continue an independent investigation to assess the WEC’s accountability and take appropriate action either administratively, legislatively, or judicially, if and as necessary. *E.g.*, APP. 34, Intro. (Obtaining Notices “will allow the [WVA] to administratively, legislatively, or judicially correct the problem...”), APP. 39, ¶¶27-28, 48-49.

The WVA sought data within the Notice identical to data found within publicly-available data in WisVote. This identical nature is shown when the Notice is compared to the Standard Data Elements in a WEC Voter Data File Request. The following information of a person found incompetent requiring a guardian (a ward), or another person found incapable of understanding the objective of the elective process, was available to the public until recently:

- The ward’s name;

¹ It is now referred to a “MyVote Wisconsin.” For the sake of consistency since the start of the lawsuit, the voter registration system will be referred to as “WisVote.”

² The phrase used in the standardized form “Determination and Order on Petition for Guardianship Due to Incompetency,” is “[t]he individual has the incapacity to exercise the right to...register to vote or to vote in an election.” APP. 28 (¶ 3.A.(3)). Form GN3170 (Another Wisconsin Court System created form.). APP. 27 (bottom of page).

- The ward’s address;
- The ward’s voter status; and
- The ward’s voter status reason (meaning the reason for the current status “including Registered, Movers, 4-Year Maintenance, Administrative Action, Deceased, Felon, *Incompetent*, Merged, Moved or Voter Request”).

Standard Data Elements in a Voter Data File Request,

<https://badgervoters.wi.gov/files/Voter%20Data%20Request%20Data%20Elements.pdf> (last visited Aug. 31, 2022) (emphasis added):



Wisconsin Elections Commission
212 East Washington Avenue | Third Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8005 | elections@wi.gov | elections.wi.gov

Standard Data Elements in a Voter Data File Request

Column Name	Data Type	Comments
Voter Reg Number	VarChar(50)	Alpha-numeric customer number encrypted with voter registration number
LastName	VarChar(50)	Voter last name
FirstName	VarChar(30)	Voter first name
MiddleName	VarChar(30)	Voter middle name or initial
Suffix	VarChar(30)	JR, SR, II, III, IV, etc.

* * *

Address1	VarChar(255)	Residential street address and unit
Address2	VarChar(150)	Residential city, state, and zip Code

* * *

Voter Status	VarChar(64)	This field indicates the current status of the voter record as Active, Inactive or Cancelled
Voter Status Reason	VarChar(100)	This field indicates the reason for the current status including Registered, Movers, 4-Year Maintenance, Administrative Action, Deceased, Felon, Incompetent, Merged, Moved or Voter Request

Id.

However, during appellate court proceedings, (and after the WVA's filing of similar petitions for a writ of mandamus in 12 other counties³), the WEC abruptly changed the "Voter Status Reason" category of "incompetent" found under "Comments," to "administrative action" without explanation.⁴ So, that voter status reason is no longer available to the public.

III. The Walworth County Circuit Court determines Notices as confidential, and on appeal is reversed, but on remand, the appellate court conforms decision to *Wisconsin Voter Alliance v. Reynolds*, 2023 WI App 66, 410 Wis. 2d 335, 1 N.W.3d 748.

Conflicting opinions identify a legal dispute regarding how a Notice of Eligibility should be treated under the Public Records Act despite the *Reynolds* holding.

After Kristina Secord, the Walworth County Register in Probate, refused to produce WVA's Public Records Act request for Notices of Eligibility, the WVA filed a petition for a writ of mandamus to have Secord disclose the Notices.⁵ APP. 33-52. The Circuit Court would deny the petition. *Alliance v. Kristina Secord, Register in Probate Walworth Cnty.*, 2022 WL 22488666 (Wis.Cir.).

³ See e.g., *Wisconsin Voter Alliance, et al. v. Linda Redman*, Crawford Cty. Cir. Ct., Case No. 2022cv0046 (Oct. 12, 2022); *Wisconsin Voter Alliance, et al. v. Brian M. Sheffler*, Kenosha Cty Cir. Ct., Case No. 22cv0771 (Sept. 9, 2022); *Wisconsin Voter Alliance, et al. v. Brenda Myer*, Langlade Cty Cir. Ct., Case No. 2022cv0086 (Sept. 27, 2022); *Wisconsin Voter Alliance, et al. v. Mariab Goodwin*, Marquette Cty Cir. Ct., Case No. 2022cv0047 (Oct. 10, 2022); *Wisconsin Voter Alliance, et al. v. Teresa Siegenthaler*, Lafayette Cty Cir. Ct., Case No. 2022cv0059 (Sept. 9, 2022); *Wisconsin Voter Alliance, et al. v. Mary Lu Mueller*, Ozaukee Cty Cir. Ct., Case No. 2022cv0256. This represents only six the 13 originally filed petitions for a writ of mandamus seeking the Notices of Voting Eligibility in which in all cases, the defendant filed a motion to dismiss. The fact that the WVA did not seek a Public Records Request upon the WEC, as a state agency, the argument remains the same. Moreover, going to the source of the Notice—the county court -- is sensical. As one court Registrar stated, as previously noted, the WEC did not record all court communications of "no vote," and the fact that the WEC refused to entertain filed administrative complaints regarding similar issues. See, APP. 34, Intro.

⁴ See also, APP. 5, n.5. Moreover, the finding of a person incompetent requiring a guardian and being incapable or not having the capacity to understand the objective of the election process, is a judicial action, and not "administrative." Wis. Stat. § 54.25(2)(c)1.g.

⁵ The original petition sought both the Notices and guardianship orders, but later narrowed the request for records to just the Notices (and redaction if necessary, such as date of birth).

In December 2023, the District II Court of Appeals issued an opinion that reversed the decision of the Walworth County Circuit Court. *Wisconsin Voter Alliance v. Secord*, 2024 WI App 6, 2023 WL 8910882 (Wis. App., 2023). The *Secord* court issued a split opinion, including a majority, a concurrence, and a dissent. The issued opinion found the WVA had met all prerequisites to support its petition for mandamus for the requested Notices and demonstrated its entitlement to the Notices in full or redacted form. However, in doing so, the court disagreed with the just published decision on the same issues, to the extent it was not distinguishable, in the matter of *Wisconsin Voter Alliance v. Reynolds*, 2023 WI App 66, 410 Wis.2d 335, 1 N.W.3d 748.

In *Reynolds*, a District IV Court of Appeals, in a unanimous, published opinion, held the Notice of Eligibility as exempt from disclosure under the first sentence of Wis. Stat. § 54.75. The court opined that the Notice is a court record “pertinent to the finding of incompetency.” *Reynolds*, 410 Wis. 2d 335, ¶34, 1 N.W.3d 748. The *Reynolds* court also found the Notice as having been created during proceedings where a court determines incompetency for purposes of establishing a guardianship, and contains information drawn directly from that proceeding. *Id.*, ¶¶28–29.

After the *Secord* decision, Secord filed a petition for review, which this Court granted. This Court reversed the *Secord* decision. While finding the appeal raised important issues related to the Wisconsin Public Records Act, this Court found the *Secord* appellate court had violated the precedent established under *Cook v. Cook*, 208 Wis. 2d 166, 560 N.W.2d 246 (1997) (The four districts of the appellate court comprise a unitary court; officially published opinions of the court of appeals are precedential and have statewide effect and must speak with a unified voice.). To that end, having reversed the court of appeals, this Court remanded the matter with instructions to follow *Cook*. *Wisconsin Voter Alliance v. Secord*, 15 N.W.3d 872, 879, 414 Wis.2d 348, 364, 2025 WI 2, ¶ 40 (Wis., 2025).

On remand, the District II Court of Appeals aligned its decision with *Reynolds*, as instructed, pursuant to *Cook*. The court determined that “we must affirm [the

circuit court decision] as we are bound by Reynolds, but we vehemently stand by our belief that the prior case was wrongfully decided.” *Wisconsin Voter Alliance v. Secord*, 2025 WI App 28, ¶ 10, 2025 WL 868546, at *3 (Wis.App., 2025). But, a concurrence opinion, authored by Judge Lazar (and joined by Judge Grogan), dissected the Reynolds opinion demonstrating why the decision was wrong. In summary, the concurrence discussed how the voter ineligibility determination is not pertinent to the finding of incompetency but a “consequence of such a finding.” *Id.* At ¶ 11.

Moreover, based upon the statutory framework found under Wis. Stat. § 54.25(2)(c)1.g, the concurrence found that the legislature independently designated the Notice as nonconfidential and subject to public disclosure. This is because the Notice as a communication to local officials or agencies, from the court to the WEC, contained the same information used by WEC publicly. The identical information was controlled in the public website WisVote (the state-wide voter registration system) and shared with voting precincts within the state to allow electors to challenge voter eligibility. “In other words, this information is publicly available.” *Id.*

However, in a second concurrence authored by Judge Neubauer, there was disagreement with Judge Lazar’s concurrence. While joining the per curiam opinion insofar as it affirmed the circuit court’s dismissal of WVA’s petition seeking a writ of mandamus, Judge Neubauer disagreed with Judge Lazar’s interpretation of the phrase “pertinent to the finding of incompetency.” *Secord*, 2025 WI App 28, ¶ 39, 2025 WL 868546, at *10. Judge Neubauer believed the Reynolds decision provided a more persuasive analysis of Wis. Stat. § 54.25(2)(c)1.g, finding the Notice as pertinent to the finding of incompetency, identifying the errors in Judge Lazar’s analysis. Hence, Judge Neubauer concluded the Notice of Eligibility not subject to the Public Records Act. *Id.*, at ¶ 40.

The WVA filed a petition for review, which this Court granted.

ARGUMENT

I. Because the Notices Voting Eligibility are not a court’s underlying determination “pertinent to a finding of incompetency” under Wis. Stat. § 54.25(2)(c)1.g, they are subject to disclosure under the Wisconsin Public Records Act.

A. The rules of statutory interpretation find the Notice, not a record or document relied upon to declare a person incompetent or a finding, but a consequence of a proceeding.

“[S]tatutory interpretation ‘begins with the language of the statute[,]’ ” and the “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.” *State ex rel. Kalal v. Circuit Ct. for Dane Cnty.*, 2004 WI 58, ¶¶45-46, 271 Wis. 2d 633, 681 N.W.2d 110 (citation omitted) (“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.”). “To determine common and approved usage, [this Court will] consult dictionaries.” *Sanders v. State of Wis. Claims Bd.*, 2023 WI 60, ¶14, 408 Wis. 2d 370, 992 N.W.2d 126; *State v. McKellips*, 2016 WI 51, ¶32, 369 Wis. 2d 437, 881 N.W.2d 258. “To determine the meaning of legal terms of art, [this Court will] consult legal dictionaries.” *Sanders*, 408 Wis. 2d 370, ¶14.

Until the *Reynolds* decision, no court had directly interpreted Wis. Stat. § 54.75 (access to court records) juxtaposed to the Public Records Act. Beginning with § 54.75, the statutory provision governs access to court documents determining a person’s competency in guardianship proceedings:

All 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. The fact that an individual has been found incompetent and the name of and

contact information for the guardian is accessible to any person who demonstrates to the custodian of the records a need for that information.

(Emphasis added).

The question presented is the meaning of the phrase “court records *pertinent* to the finding of incompetency.” To begin, following the principles of statutory interpretation, “pertinent” cannot be isolated from the text but in context. There is no evidence the Notice of Eligibility is a document *used* to assist a court in finding a person incompetent in guardianship proceedings. The Notice is created as a communication *after* a court finds a person incompetent.

“Pertinent” means “having some connection with the matter at hand; relevant; to the point.” *Webster’s New World College Dictionary* 1075 (Michael Agnes, ed., 4th ed., MacMillan 1999); “pertaining to the issue at hand; relevant.” *Pertinent, Black’s Law Dictionary* 1181 (Bryan A. Gardner ed., 8th ed., West 2004). As an order for guardianship declares, “[a]fter consideration of the *reports and other documents on file*, all factors required by the statutes and such additional information presented: THE COURT FINDS....” APP. 27, (Preamble)(emphasis added). The Notice is not a report or document on file for the court to rely upon to make of finding of incompetency. These facts should support a conclusion that the Notice itself is not information, data, testimony referenced in the judicial proceedings leading up to the court-ordered adjudication of incompetency.

Indeed, reviewing court-order adjudications, the State of Wisconsin created form GN-3170. This form also supports a conclusion that the Notice is not part of the court’s adjudication of incompetency. When the court determines that certain rights are to be removed from the ward, the court has *already determined* the person is in need of guardian. APP. 28. Under the subheading “GUARDIAN OF THE PERSON” it states, “The individual is in need of a guardian of the person.” *Id.* Immediately following the statement reads, “Rights to be removed in full...” listing three specific rights:

- execute a will;
- serve on a jury; and
- register to vote or to vote in an election.

Id. (original underlined emphasis).

Because the court, in a guardianship proceeding can remove a right (or restore it) from a ward, neither the guardian, nor the ward, can exercise that right. Literally, the right has been removed incidental to the finding of incompetency. Therefore, reading “pertinent” in the context of the phrase “to the finding of incompetency,” a Notice is not a document or record relied upon to find incompetency. Instead, the Notice records the loss (or restoration) of the voting right incidental to the finding of incompetency.

Moreover, this does not end the inquiry. After the court has made a finding of incompetency, any change to the right to register to vote or to vote in an election is communicated to election officials and the WEC through the Notice. The Notice cites to Wis. Stat. § 54.54.25(2)(c)1.g thereby giving the WEC, the viewers of WisVote, election officials in voting precincts, public notice of an “administrative action” that a person’s right to register or right to vote has been revoked for any election (unless restored). Whether the Notice is found within the person’s court file makes little difference regarding the nature of the Notice as a statutory mandated communication under Wis. Stat. § 54.54.25(2)(c)1.g:

The determination of the court shall be communicated in writing by the clerk of court to the election official or agency charged under s. 6.48, 6.92, 6.925, 6.93, or 7.52 (5) with the responsibility for determining challenges to registration and voting that may be directed against that elector. The determination may be reviewed as provided in s. 54.64 (2) and any subsequent determination of the court shall be likewise communicated by the clerk of court.

As the Wisconsin Attorney General has opined, interpreting § 880.33(6), the predecessor to § 54.75, “only the file containing the documents themselves are ‘record pertinent to the finding of incompetency.’” Only the documents themselves

provide the information that the court uses to find an individual is ‘substantially incapable of managing his property or caring for himself.... The index and docket are not pertinent to the court’s consideration.’ 67 Op. Atty Gen. 130, 131¶¶ 16, 18 (1978).

Indeed, while the Attorney General's opinion is only persuasive authority, here, it should be given considerable weight if the legislature later amends and revises a statute but makes no changes in response to the opinion. *State ex rel. North v. Goetz*, 342 N.W.2d 747, 750, 116 Wis.2d 239, 245 (Wis.App., 1983), citing *Town of Vernon v. Waukesha County*, 99 Wis.2d 472, 479, 299 N.W.2d 593, 598 (Ct. App.1980), *aff'd*, 102 Wis.2d 686, 307 N.W.2d 227 (1981). The law has been amended but not in response to the Attorney General’s opinion. Finding a Notice in a guardianship court file does not deem it confidential.

Notably, the same provision under § 54.25(2)(c)1.g, includes other individuals not subject to or under the authority of a guardian and are found incapable of understanding the objective of the elective process. The statutory provision is accurately quoted as follows:

Also, in accordance with s. 6.03 (3), any elector of a municipality may petition the circuit court for a determination that an individual residing in the municipality is incapable of understanding the objective of the elective process and thereby ineligible to register to vote or to vote in an election. This determination shall be made by the court in accordance with the procedures specified in this paragraph. If a petition is filed under this subd. 1. g., the finding of the court shall be limited to a determination as to voting eligibility. The appointment of a guardian is not required for an individual whose sole limitation is ineligibility to vote.

Id.

This separate proceeding and determination to remove the right to vote of a person (or restore the right) who is subjected to a non-guardianship adjudication is also communicated to the WEC and other election officials through the Notice. The

Notice is not a finding. Instead, it is—as Judge Lazar identified it—“a consequence.” APP. 7, ¶ 27.

As this Court would recognize, the confidentiality of the proceeding of *finding* a person incompetent is kept from public access. It is the legislature that has itemized the documents, records, proof, and procedural steps as inherently pertinent to the finding of incompetency. *See*, Wis. Stat. §§ 54.34(1), 54.10(2), 54.36(1), 54.54, 54.46. The court’s findings are memorialized in its final order. (GN-3170, APP. 27-32). So, to be sure, the Court’s final document is confidential.

But, the legislature has also enacted law narrowly requiring that the removal of the right to register or the right to vote (or restoration) be communicated to election officials. Wis. Stat. § 54.25(2)(c)1.g. Thus, the Notice is a consequence—a mandatory communication—to convey to others that the person is ineligible to vote (or restored). And as stated, the Notice is used in non-guardianship instances. In this regard, the *Reynolds* decision, as adopted in *Secord*, is incorrect.

While it might be true that “[m]any court records that are pertinent to a court’s decision—such as court forms, written opinions, and transcripts of proceedings in which decisions are made—are created after the court has made a decision,” there is a distinction between a finding of incompetency and a statutorily-required communication of the right to vote to election officials as explained. *Reynolds*, 1 N.W.3d at 756, 410 Wis.2d at 352, 2023 WI App 66, ¶ 26. The Notice remains a consequence of the finding.

Indeed, the WEC (through county election officials) republishes the Notice information in the WisVote database. There, the person is identified by name, address, voter status, and voter status reason. Although the WEC has recently changed the voter status reason of “incompetency” to “administrative action,” the content of the Notice is still information publicly accessible in the WisVote database.

B. The Notice can also play a part in non-guardianship voter challenges.

In addition, this Court should consider how the Notice can play a role in the

context of registration or voter challenges. Under Wis. Stat. § 54.25(2)(c), 1.g, the Notice of Voting Eligibility is forwarded to the election official responsible for determining challenges to registration and voting:

The determination of the court shall be communicated in writing by the clerk of court to the election official or agency charged under s. 6.48, 6.92, 6.925, 6.93, or 7.52 (5) with the responsibility for determining challenges to registration and voting that may be directed against that elector.

Wisconsin Statutes § 6.48(1) describes the registration challenge process. For example, any registered elector of a municipality, including a municipal clerk who received the Notice from the court officials, may challenge the registration of any other registered elector by submitting an affidavit to the municipal clerk or executive director of the board of election commissioners. Wis. Stat. § 6.48(1)(a). The appearance of the parties is before the municipal clerk or the board of election commissioners. Wis. Stat. § 6.48(1)(b). While the statutory provision relies upon questioning by the clerk or board with the ultimate decision based upon sworn testimony, the statute does not prevent anyone, including a municipal clerk who received the Notice from the court officials, from presenting evidence. In addition, the registration challenge hearing is public because nothing statutorily suggests otherwise. *See* Wis. Stat. § 6.48(1). Moreover, because the clerk would be in receipt of the Notice to verify the ineligibility of the challenged individual, via § 54.25(2)(c), 1.g, the Notice becomes part of the underlying public record.

The same reasoning applies to voter registration challenges based on incompetency under Wis. Stat. § 6.49(3):

Challenge based on incompetency. Section 6.03 (3) applies to any challenge which is made to registration based on an allegation that an elector is incapable of understanding the objective of the elective process and thereby ineligible for registration.

This law is of particular interest when read in context with referenced § 6.03(3). Under this provision, references are made to a person already having been found incompetent to vote under guardianship proceedings as previously described:

No person may be denied the right to register to vote or the right to vote by reason that the person is alleged to be incapable of understanding the objective of the elective process unless the person has been adjudicated incompetent in this state. *If a determination of incompetency of the person has already been made, or if a determination of limited incompetency has been made that does not include a specific finding that the subject is competent to exercise the right to vote, and a guardian has been appointed as a result of any such determination, then no determination of incapacity of understanding the objective of the elective process is required unless the guardianship is terminated or modified under s. 54.64.*

Emphasis added.

Once again, the Notice plays a role in the public hearing process and in the ultimate registration determination. The Notice provides the evidence required for a definitive disposition of the registration dispute. The Notice provides the determination of a person being incapable of understanding the election process to register to vote. WisVote data is mere hearsay (and considering the deficiencies WVA found). *See e.g.*, APP. 40-42, ¶¶ 31-39.

So, the Notice, as a mandatory reporting requirement, serves a purpose “outside of” or not “pertinent to” the incompetency determination of guardianship proceedings, contrary to the decisions in *Reynolds* and as adopted in *Secord*.

II. Notices of Voter Eligibility are subject to disclosure under the Public Records Act.

Wisconsin has a tradition of “jealously guard[ing] and protect[ing]” the

fundamental right to vote. *Milwaukee Branch of NAACP v. Walker*, 851 N.W.2d 262, 265-266, 357 Wis.2d 469, 476, 2014 WI 98, ¶ 5 (Wis., 2014). When an eligible elector has their right to vote re-instated when previously lost, for the government to deny the right—even for one election cycle—means the protection of the right so jealously guarded and protected are hollow words. Likewise, when the right to vote is revoked, and an ineligible elector is provided with a ballot and the ballot later counted, it can affect the outcome of an election or ballot question, however rare that might be. *See e.g., Town of Burke v. City of Madison*, 17 Wis.2d 623, 117 N.W.2d 580 (1962) (Annexation vote resulting 19-19 tie where a challenge found one voter to be ineligible after election that could have affected the outcome, but challenge later reversed on procedural grounds).

Indeed, “[n]o person may be denied the right to register to vote or the right to vote by reason that the person is alleged to be incapable of understanding the objective of the elective process unless the person has been adjudicated incompetent in this state....” Wis. Stat. Ann. § 6.03 (West). Consistent with Wisconsin’s tradition to protect the right to vote, it is in line with the WVA’s purpose to hold the government accountable to the people. Here, the WVA seeks to obtain investigative data to analyze if the WEC is complying with their legal responsibilities, certainly an important objective in our time of election controversies.

Simply put, because the Notice of Voter Eligibility is not “pertinent to the finding of incompetency,” it is a public record. Any data within the Notice that is confidential, such as the birth date of the person, the WVA has not objected to its redaction. Does it make it more difficult to identify the person if two people have the same names? Indeed, that is true. However, that is not an issue for this Court to decide.

Because the Notice is not relevant to guardianship proceedings, it is a public record. As a public document, the WVA has a *right* to its disclosure, a right identified by this Court: “Public policy and public interest favor the public’s right to inspect

public records.” *Hathaway v. Jt. Sch. Dist. No. 1, City of Green Bay*, 342 N.W.2d 682, 684 (Wis. 1984). As the Legislature stated under Wis. Stat. § 19.31:

[I]t is declared to be the public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government... To that end, ss. 19.32 to 19.37 shall be construed in every instance with a presumption of complete public access, consistent with the conduct of governmental business. The denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied.

Linzmeier v. Forcey, 646 N.W.2d 811, 815, 254 Wis.2d 306, 318, 2002 WI 84, ¶ 14 (Wis., 2002). This Court has “consistently recognized, the clearly stated, general presumption of our law is that all public records shall be open to the public.” *Id.* (citation omitted). The presumption “reflects the basic principle that the people must be informed about the workings of their government and that openness in government is essential to maintain the strength of our democratic society.” *Id.* at ¶15.

However, even if the presumption of openness applies to the Notice, this Court must “next decide whether that presumption can be overcome by a public policy favoring non-disclosure of the [Notice]. The fundamental question we must ask is whether there is harm to a public interest that outweighs the public interest in inspection of the [Notice].” *Linzmeier*, 646 N.W.2d at 818.

To be sure, the underlying issue is not the disclosure of the person as “incompetent” requiring a need for a guardian per se, but the *court’s determination* of the loss of the right to register or the right to vote (or the reinstatement of that right). It is because of the court’s determination of the loss or reinstatement of the franchise that has significant subsequent consequences.

As explained, after WEC receives a Notice of Voting Eligibility from the court, the WEC is to ensure WisVote reflects the loss or reinstatement of the franchise by itself or by another election official. Failure to do so, means that

person—whether a ward or challenged elector—is either able to cast a ballot when by court order they cannot, or continue to lose the franchise if the right is not reinstated because the WEC failed to act on the Notice. This can potentially affect thousands of people. *E.g.*, APP. 44, ¶ 44.

For example, Dane County reviewed about 1,000 records and “found 95 individuals who had voted, many in multiple elections, after being adjudicated incompetent to vote, plus another 23 who were still listed as a registered voter but hadn’t voted.”⁶ To put it bluntly, as Dane County Clerk Scott McDonell stated, “The system for identifying those voters and getting them out of the voter rolls is not working.”⁷ In the WVA’s own limited investigation, similar discrepancies were found. Just in Walworth County, only 16 of 120 people identified as incompetent were found in the WisVote database. APP. 44, ¶¶44-47.

Here, the Notice serves a public purpose like what the WVA seeks to accomplish: resolving registration disputes among the electorate regarding the loss of the right or reinstatement of the right to register to vote. It appears neither the WEC nor county election officials have taken any interest to ensure the Notice information is correctly recorded in WisVote. *See e.g.*, APP. 44-45, ¶¶47, 48. But, ultimately, it is the WEC’s responsibility to ensure any change of a voter’s status is made:

However, the “commission” may delegate changing of registration statuses “to a municipal clerk or board of election commissioners of a municipality.” § 6.50(2g). Ultimately, the statutory responsibility to change the registration status for non-voting electors is squarely placed on the Commission.

State ex rel. Zignego v. Wisconsin Elections Commission, 957 N.W.2d 208, 214, 396 Wis.2d 391, 404, 2021 WI 32, ¶ 23 (Wis., 2021).

⁶ “Dane County election review finds dozens of ineligible voters who cast ballots,” Wisconsin Watch, (Mar. 27, 2023), <https://pbswisconsin.org/news-item/dane-county-election-review-finds-dozens-of-ineligible-voters-who-cast-ballots/> (last visited Apr. 27, 2023).

⁷ *Id.*

The Notice indicates that the court communicates directly with the WEC. APP. 26. There, a box designated “For Official Use Only” specifically identifies the WEC. *Id.* Regardless of which election official or agency receives the Notice of the eligibility to vote, the Notice provides the documentation necessary for the WVA to search WisVote to determine if the registration or voter status reflects the court’s ordered determination. *See e.g.*, APP.39-42, ¶¶27-39. Because there would be little doubt the Register in Probate or clerk of court would communicate the court’s determination, obtaining the Notices from the source would be more accurate than the recipient as it has already been shown discrepancies exist.

However, this Court may also weigh whether the presumption of openness under the open records law is overcome by any other public policy. *Linzmeier*, 646 N.W.2d at 814, 254 Wis.2d at 316, 2002 WI 84, ¶ 11. Wisconsin law does recognize three types of exceptions to this general policy of open access: (1) statutory exceptions; (2) common law exceptions; and (3) public policy exceptions. *Democratic Party of Wisconsin v. Wisconsin Department of Justice*, 888 N.W.2d 584, 589, 372 Wis.2d 460, 471, 2016 WI 100, ¶ 10 (Wis., 2016) (citation omitted). The Notice of Voter Eligibility has neither an outright statutory exception nor common law exception, to this point. However, since the Notice is not pertinent to the finding of incompetency proceedings to appoint a guardian, its disclosure does not jeopardize the policy governing guardianship proceedings and the confidentiality of those records.

The Notice does provide for the reason a person has lost the right to vote (or its reinstatement). APP. 26 (“The circuit court declared on ____that:”). But that information provides the basis for the lost right which, until this litigation started, the WEC identified the person’s status as “incompetent” in the publicly-available WisVote. Now the WEC changed the status to “administrative action.” But the Notice itself does not state “the person is incapable of understanding the objective of an election;” it states the person as “not *competent* to exercise the right to register to vote or to vote in an election.” APP.26. Emphasis added. Hence, the Notice is declaring merely the court’s determination relating only to that person, without

disclosing that it arises from a guardianship proceeding, even if any statement made after “[t]he court declared on ___ that: ...” is redacted. APP. 26. And of course, the Notice is used as a communication to the WEC in non-guardianship proceedings which challenge whether a person is capable of understanding the objective of an election. Wis. Stat. § 54.25(2)(c), 1.g.

Therefore, the Notice’s disclosure would not cause public harm. The Notice of Voter Eligibility is a public record under the Wisconsin Public Records Act and, thus, should be disclosed to the WVA or any other requester.

III. The WVA’s petition for a writ of mandamus filed in the circuit court for the Notices of Voting Eligibility in Walworth Court should have been granted.

This Court will review a decision regarding a petition for a writ of mandamus under the erroneous exercise of discretion standard. *Watton v. Hegerty*, 751 N.W.2d 369, 374, 311 Wis.2d 52, 62, 2008 WI 74, ¶ 6 (Wis., 2008) citing *State ex rel. Lewandowski v. Callaway*, 118 Wis.2d 165, 171, 346 N.W.2d 457 (1984).

As this Court has explained, “a petition for a writ of mandamus is a proper means by which to challenge a refusal to disclose documents sought under the open records law.” *Watton*, 751 N.W.2d at 75, 311 Wis.2d at 62–64, 2008 WI 74, ¶¶ 7-8 citing *State ex rel. Greer v. Stabowiak*, 2005 WI App 219, ¶ 7, 287 Wis.2d 795, 706 N.W.2d 161. “Mandamus is an ‘extraordinary writ’ that may be employed to compel public officers to perform a duty that they are legally obligated to perform. *Id.*, ¶ 6. The presumption of access is not absolute. *Id.*, ¶10. And again, disclosure may be denied for any record “where there is a specific statutory exemption to disclosure, Wis. Stat. § 19.36, or where there is a common law or public policy exception.” *Id.* (citations omitted).

If a Notice of Voter Eligibility is a public record under the Public Records Act, the WVA’s writ of mandamus is valid as the means to obtain those records. As previously demonstrated, the Notice is a public record and it falls within this Court’s mindfulness “of the policies underlying the open records law...” *Id.*, ¶ 9. The Probate

Registrar of Walworth County should be directed to produce the requested Notice of Voter Eligibility under what should have been granted—WVA’s writ of mandamus.

CONCLUSION

This case presents important public document access issues that have consequences and implications to an individual’s right to vote. It involves the interpretation of a statute regarding court communications, never before interpreted, which has created differing opinions among appellate court judges. It also involves the methodology of obtaining those documents through a writ of mandamus. The Wisconsin Voter Alliance and Ron Heuer respectfully request this Court to reverse the Court of Appeals decision in *Alliance v. Kristina Secord Register in Probate Walworth Cnty.*, 2022 WL 22488666 (Wis.Cir.). Such a decision would judicially abrogate the decision in *Wisconsin Voter Alliance v. Reynolds*, 2023 WI App 66, 410 Wis. 2d 335, 1 N.W.3d 748. The decision would declare a Notice of Voter Eligibility as a public record, subject to Wisconsin’s Public Records Act. The Court should also remand the matter to the Walworth County Circuit Court with instructions to grant the Wisconsin Voter Alliance and Ron Heuer their petition for writ of mandamus against the Walworth County Register in Probate.

Dated: February 6, 2026

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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b), (bm) and (c) for a brief produced with a proportional serif font. The length of this brief is 6,791 words.

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