**Wisconsin’s battle over voter rolls puts 129,000 registrations in peril**

*By Michael Parsky, Kynala Phillips and Dana Munro, Wisconsin Watch*

In February 2019, Chris Cascio changed apartments in anticipation of the birth of his daughter.

Cascio, an assistant journalism professor at the University of Wisconsin-Madison, moved one floor down in his building to a two-bedroom apartment. Aside from his unit number, Cascio’s Madison street address and ZIP code stayed the same.

One year later, as he planned to participate in Wisconsin’s April 2020 primary, a reporter notified him he was on a list of voters set to be removed from the state’s rolls — news Cascio called upsetting.

During a hectic year of balancing his teaching duties with his responsibilities as a new parent, Cascio forgot to update the slight change in his address — which Wisconsin requires voters to do whenever they move to a different residence to maintain their eligibility.

While Cascio eventually re-registered and cast his ballot, the initial prospect of losing his franchise  — his right “as a citizen of this state and country” — maddened him.

“(Re-registering was) the last thing on my mind,” Cascio said. “It’s a little frustrating from the point of view that it’s not like I moved from Madison to Milwaukee and I would be in a different voter area. I’m in the same building, literally.”

The list that triggered the need for Cascio to re-register is at the heart of a raging legal battle between those who insist that Wisconsin deactivate voters en masse if they are on the list of registrants who may have moved — and those who argue such a move is tantamount to voter suppression.

In February, the Wisconsin Court of Appeals [reversed](https://www.wicourts.gov/ca/opinion/DisplayDocument.pdf?content=pdf&seqNo=255587) a lower-court order to deactivate 232,579 Wisconsin voters.

Since then, 57,088 voters have registered at new addresses, and 4,709 voters verified they have not moved, the [Wisconsin Elections Commission says](https://elections.wi.gov/sites/elections.wi.gov/files/2020-05/May%2020%2C%202020.Final_.pdf). Another 41,637 are considered “in-active.” But as of late May, the status of 129,151 remained unknown, as those registrants had not responded to a mailing asking them to re-register, the report said.

On June 1, the conservative-leaning Wisconsin Supreme Court [agreed to hear the lawsuit](https://assets.documentcloud.org/documents/6934643/WI-Supreme-Court-grants-cert-voter-roll-case.pdf) filed by the Wisconsin Institute for Law and Liberty, a conservative public interest law firm. It is unclear whether the closely watched decision would come [before the November election](https://www.jsonline.com/story/news/politics/2020/06/01/wisconsin-supreme-court-decide-removing-150-000-voter-rolls/5309596002/), when Wisconsin is expected to play a pivotal role in the race for president.

Meanwhile, multiple court cases filed in Wisconsin and across the United States ahead of the 2020 presidential election illustrate the tension between maintaining clean and accurate voter rolls and promoting accessibility for all.

The Wisconsin voter purge follows a widening trend of private activists and groups seeking to remove thousands of individuals from state voter rolls, claiming they are dead or duplicates. The Brennan Center for Justice [reported](https://www.brennancenter.org/our-work/analysis-opinion/wisconsin-voter-purge-bad-idea) between 2008 and 2018, “more than half of all federal lawsuits on (voter) purges brought by private activists were actions to pressure states into purging more voters from the rolls.” The Brennan Center works for broad access to the ballot box for eligible voters.

Conservative interest groups, including Judicial Watch and the Public Interest Legal Foundation, have spearheaded the movement. They are pressuring local and state election officials to engage in more stringent purging practices by threatening legal action or filing lawsuits in Colorado, California, North Carolina, Pennsylvania and Virginia.

Wisconsin’s voter purge fight, however, remains unique for a variety of reasons. Because it has same-day registration, the state is not bound by the federal law that requires regular voter roll maintenance. Nonetheless, those who oppose mass deactivation say some voters may not have the required documentation to re-register on Election Day. And in Wisconsin, a homegrown interest group is spearheading the legal challenge.

**Foundations of the purge**

Rick Esenberg, president and general counsel of WILL, said he filed the lawsuit after being approached by concerned individuals, including Robert Spindell, who was later appointed to the Wisconsin Elections Commission. Spindell had said the agency “wasn’t following the law” in its operation of WisVote, the statewide voter database.

In 2019, the Elections Commission had declined to automatically remove voters who it believed may have moved without updating their addresses until 2021.

But WILL [filed a lawsuiit](https://assets.documentcloud.org/documents/6928427/WILL-Lawsuit.pdf) in Ozaukee County to hasten the process, arguing the Elections Commission is required to deactivate voters within 30 days of notifying them they need to re-register because they have moved. In an interview, Esenberg said such voter roll cleansing improves accuracy and prevents the potential for voter fraud.

WILL argued on behalf of three Wisconsin taxpayers that the commission failed to heed state law that requires them to remove voters if they receive “reliable information” that the voters have moved. The lawsuit seeks to force election officials to remove any of the 232,579 voters who did not respond to the mailing asking them to update their registration.

“If you have moved, you cannot vote at that (address),” Esenberg said. “That’s the full law. And your registration should be deactivated because you can’t use it to vote. You have to re-register at a new address.”

According to Elections Commission spokesman Reid Magney, that is the wrong interpretation. Magney said the law clearly states that this requirement to deactivate voters applies to municipal clerks and the Milwaukee Election Commission — not his agency.

[That law](https://docs.legis.wisconsin.gov/statutes/statutes/6/II/50/3) mandates that individual voters be removed from the rolls if they do not respond to a notice asking them to update or confirm their current address within a 30-day period. Whether that law applies to the state Elections Commission remains a point of contention.

The Elections Commission argued in [an appeal](https://assets.documentcloud.org/documents/6928446/Wisconsin-Elections-Commission-Appeal.pdf) of Ozaukee County Judge Paul Malloy’s order to immediately remove the voters that “there is simply no basis for a mass-deactivation writ against the commission.”

Beyond that, the commission’s postcards mailed to more than 200,000 Wisconsin voters in October 2019 did not specify that a lack of response would render them ineligible to vote. A [federal lawsuit](https://assets.documentcloud.org/documents/6928563/League-of-Women-Voters-Lawsuit-on-Voter-Roll.pdf) filed by the League of Women Voters of Wisconsin — later dismissed — claimed that vagueness violates voters’ right to due process. The league opposes laws, such as Wisconsin’s photo ID requirement, that add barriers to voting.

Meanwhile, the commission says it is following the decision it made earlier calling for deactivation of voters listed as having moved or died after 12 or 24 months.

**Finger-pointing begins**

But Esenberg called the commission’s self-imposed deadline illegitimate.

“It’s important for people to understand that rules matter and ad hoc departures from the rules are the type of thing that undermine public confidence,” Esenberg said. “They allow one set of partisans to accuse another set of partisans of cheating.”

The lawsuit has generated just such finger-pointing. An [analysis](https://www.jsonline.com/story/news/politics/2019/12/12/wisconsin-voter-roll-purge-would-hit-democrat-leaning-areas/4388832002/) by the Milwaukee Journal Sentinel found that Democratic-leaning strongholds made up nine of the top 10 locations that would be most affected by the purge. Such findings prompted critics to call the lawsuit an attempt by conservatives to unfairly exclude Democratic voters.

Another investigation conducted by [The Guardian](https://www.theguardian.com/us-news/2020/apr/06/wisconsin-voter-purges-black-student-populations-risk) determined that individuals who resided in ZIP codes densely populated by students or African-Americans were twice as likely to be removed from the rolls. Those groups also tend to vote Democratic.

The Guardian interviewed many people who said they had moved within their communities and did not realize they needed to re-register.

“There’s nothing legitimate about (the deactivations),” said Jay Heck, the executive director of Common Cause Wisconsin, which seeks to ensure that elected officials serve the interest of the public and not special interests. “The only people that would support that would be the hardcore who want to have a certain outcome of an election, who want to make sure that people disproportionately who might vote for Democratic candidates are disenfranchised.”

Heck also disputed WILL’s assertion that the voter purge would deter voter fraud. Esenberg acknowledged the true extent of electoral fraud cannot be determined.

Wisconsin [does have a handful of suspected fraud cases](https://madison.com/wsj/news/local/govt-and-politics/state-finds-two-dozen-possible-cases-of-voter-fraud-over/article_856de2c6-2692-53c2-be4d-a0ed1fefffa3.html) among the [roughy 3 million votes cast](https://docs.google.com/viewer?url=https%3A%2F%2Felections.wi.gov%2Fsites%2Felections.wi.gov%2Ffiles%2Fpage%2Fgeneral_election_voter_registration_and_absentee_s_40046.xlsx) in state general elections. A [friend of the court brief](https://acefiling.wicourts.gov/document/eFiled/2020AP000112/258472) filed on behalf of WILL in the Supreme Court cited four cases of multiple-voting and one case of voting in the wrong jurisdiction prosecuted in Wisconsin since 2012.

Heck called concerns about fraud a ruse.

“It (fraud) is non-existent. I would say it’s a great myth and yet it still remains a very salient argument in all these people’s arguments,” he said. “So disenfranchisement is their real goal, and that’s what this whole voter fraud myth is all about.”

**State not subject to federal registration law**

The ongoing litigation highlights Wisconsin’s unique position as one of six states exempt from the [National Voter Registration Act](https://www.justice.gov/crt/national-voter-registration-act-1993-nvra) due to same-day voter registration. As an exempt state, Wisconsin is not required to follow NVRA guidelines, which put the responsibility on state governments to develop policies for voter maintenance and voter registration practices.

Passed in 1993, the NVRA protects voters who may have moved or who vote infrequently from being taken off voter rolls without notification.

It prohibits participating states from removing voters within 90 days before an upcoming federal election. However, Wisconsin is not bound by that limit, and the [original court order](https://assets.documentcloud.org/documents/6928577/Voter-Roll-Purge-Order.pdf) to immediately purge voters from the rolls came just two months prior to the Feb. 18 primary election.

In states subject to the NVRA, “If someone moved within a state, they cannot just be removed from the voter list,” said David Becker, executive director of the Center for Election Innovation and Research, which works to improve election administration. “Even if they screw up, if the voter screws up, if the state screws up, there is a period of time where they’re called inactive voters, and at worst you send them a note.”

But in Wisconsin, even switching apartment units within the same building necessitates voters to update their voter information, as Cascio found.

“If I move within any state other than Wisconsin, there’s never a moment where I am not an eligible voter in that state,” Becker said. “In Wisconsin, if you move across the street, they’re saying you’ve lost your registration and have to re-register.”

**Group at center of dispute**

Wisconsin is a member of the Electronic Registration Information Center, a voluntary multi-state consortium founded to reduce long lines at the polls by encouraging citizens to register early and to keep those registrations current.

Under ERIC, 30 states share information with ERIC from their voter files, from the state Division of Motor Vehicles and other sources, and in return receive data on people who potentially moved from the address listed on the voter roll. ERIC also sorts out individuals who potentially died by using the Social Security Administration’s death data, said Becker, a board member and one of the founders of ERIC.

“We (ERIC) have a really sophisticated data center,” Becker said. “It can take a record on someone named David Becker on one file and information on a David Becker on another file and can say with a high degree of confidence this is the same human being or these are two different David Beckers.”

Becker said the state should share more information among state agencies and local governments to ensure addresses are current. Magney said about 84% of address changes are people moving within Wisconsin.

“I don’t think any of us expect in this digital age to have to tell the government the same information five, 10, 15 times. We expect them to get their act together and share that information,” Becker said. “Wisconsin has a real problem with keeping up with people who are moving between localities in Wisconsin and making sure the voter record is still up to date.”

In even-numbered years, ERIC requires states to contact eligible voters who are not registered and invite them to do so. In the odd-numbered years, the Elections Commission sends mailings to people who appear to have moved and asks them to update or confirm the current address.

Magney said Wisconsin sent out 1.6 million postcards between 2016 and 2018 urging eligible voters to register and more than half a million notices since 2017 to people who appeared to have moved.

**Have voters received the postcards?**

However, Cascio does not recall getting a postcard. Neither does UW-Madison senior Carissa DeLain.

DeLain, who has lived at only two addresses her entire life, said she checked with her parents at her home in Appleton, Wisconsin, and her roommates at her apartment in Madison to see if she received the mailing. But in the end, she could not find it. She finds the episode “deeply upsetting.”

“It’s not something I would have ignored,” DeLain said. “I’m pretty politically engaged and so is my mom, and neither of us would ever have thrown anything out. It’s deeply upsetting I didn’t get (the postcard).”

Cascio says his mailing could have gotten sent to his old mailbox — or maybe he ignored it.

“If I did see it, I probably just assumed it was junk mail and threw it out, like I doubt I read it,” Cascio said.

DeLain registered in Madison during the spring 2019 and changed her registration back to her Appleton residence in the fall. DeLain voiced her anger on Twitter and texted her friends to check their registration statuses. She said there should be a better way to inform voters of  deactivation.

“I don’t think a single notification for voter registration is enough. You should get at least an initial warning and get a final warning,” DeLain said. “Like it’s not that hard to register to vote but it’s also a pretty important part of democracy and not a lot of people think about it often enough to fix it.”

Rick Banks, political director for Black Leaders Organizing for Communities in Milwaukee, said these voter roll purges disproportionately affect minority communities. The solution, according to Banks, is automatic voter registration for all eligible voters. Banks’ group works to “improve the quality of life and economic wellbeing of the black community in Milwaukee.”

“This current system,” he said, “it just facilitates voter suppression.”

Jahana Azodi of Madison was accurately targeted by the Elections Commission because she has moved twice within the past six months. However, Azodi disagrees with mass deactivations.

“I mean bottom line — it’s ridiculous, and I really wish all of these groups of people, whoever they are, whether they’re legislatures or not, would stop trying to make it harder to vote,” said Azodi, who tends to vote Democratic.

Being threatened with deactivation “just makes me want to vote more. It also makes me want to donate more to voting rights groups and anti-gerrymandering groups.”

**Lessons from the 2017 purge**

The letter sent in October 2019 also did not give voters a deadline to change or verify their addresses. And Elections Commission figures show a significant number of people on the deactivation list in 2017 should not have been listed.

In November 2017, the commission sent out letters based on ERIC data and gave voters 30 days to respond. The agency deactivated more than 300,000 voters suspected of moving without updating their addresses, but later reactivated 24,270 individuals who were mistakenly put on the list.

After receiving complaints from aggrieved voters who attempted to vote in February 2018, the commission created a [supplemental poll](https://elections.wi.gov/node/5746) list — implemented in April 2018 — to allow people who did not move to re-register and not be completely deactivated.

This time around, the commission decided to take a slower approach, and Elections Commission lawyers convinced the state Court of Appeals that the law in question applies only to municipal clerks — not the state.

“The reason we know now that we shouldn’t (remove voters with ERIC data) is because state law doesn’t tell us to do that,” Magney said. “And we can’t go doing things that state law doesn’t give us authorization to do.”

**Attorney: Postcard too vague**

The League of Women Voters of Wisconsin also sued over the proposed mass voter deactivation pushed by WILL — but that case was dismissed in early April.

That lawsuit argued the [postcards](https://assets.documentcloud.org/documents/6935254/WI-voter-purge-postcard-2019.pdf) sent to voters in October 2019 did not explicitly provide a deadline and failed to inform voters of the consequences of not re-registering or updating their information, said Doug Poland, a Madison attorney who represented the League of Women Voters.

“Whether they received it, whether they ripped it up and threw it out doesn’t really matter,” Poland said. “There was nothing on the letter itself that said that if you don’t respond within 30 days, your registration will be removed from the rolls.”

But a U.S. District Court judge in Madison has dismissed the lawsuit, saying it was not yet “ripe,” since there are no current plans to immediately cull voters from Wisconsin’s voter database, Poland said.

“It’s important for us to make sure that the rolls are up to date,” Poland said. “But again, there’s this balance between trying to ensure that the rolls are up to date, that the rolls are accurate, and trying to make sure that everybody who wants to vote is able to do so.”

Meanwhile, the Ozaukee County lawsuit will be decided by the Wisconsin Supreme Court, which deadlocked 3-3 earlier this year about whether to bypass the appeals court and take the case.

Conservative Justice Daniel Kelly — who recently lost his bid for a 10-year term on the court — earlier recused himself from the vote but now plans to participate before vacating his seat in August.

Poland said if the high court sides with the trial court and orders an immediate purge — without sending a “new and constitutionally proper letter” warning voters — then the group would likely re-file the federal complaint and seek an injunction.

Magney said ERIC’s data, while good, has not been reliable enough to unilaterally remove voters from the roll.

“The purpose of the ERIC mailing is not to deactivate people or not to do what’s known as list maintenance,” Magney said. “If the Legislature thinks that ERIC information should be considered reliable information, then the process would be for them to change the law to specifically say that, because according to the Court of Appeals, that’s not what the law says right now.”

Esenberg of WILL says unless voter rolls are kept up to date, “This can have the effect of undermining public confidence in the integrity of the outcome and can raise the risk of the election being affected by fraud or improperly casted votes.”

Wisconsin residents like Banks and DeLain are more concerned with losing the right to vote.

“Voter suppression in general is really bad in Wisconsin and this is just another example,” DeLain said. “And it definitely feels weird to be included in that because I never thought that I would be included in voter suppression. There should be no reason to try to trick people into not being able to vote.”

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