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**State Supreme Court hears arguments in lawsuits over voter list , IDs for absentee ballots**

*By WisPolitics.com*

Two of the three justices from the Wisconsin state Supreme Court’s liberal wing asked pointed questions about a complaint brought by a conservative law firm asking for more than 100,000 voters to be removed from the state’s rolls.

The remaining five members of the high court — four conservatives and one liberal — peppered attorneys during oral arguments on Sept. 29 with questions about the extent of the state Elections Commission’s powers and whether commissioners were correctly held in contempt by an Ozaukee County judge.

Experts say a decision is unlikely before the Nov. 3 election.

The hearing was the latest development in a legal battle that stretches back to last fall. The case was brought by the Wisconsin Institute for Law and Liberty seeking to force the state Elections Commission to deactivate the registrations of voters who may have moved and failed to confirm their current address.

Rick Esenberg, WILL’s president and general counsel, argued state law gave the Elections Commission clear authority to maintain voter rolls. But liberals Jill Karofsky and Rebecca Dallet appeared largely unconvinced by that argument.

Karofsky accused Esenberg of “saying two things” — arguing for a plain reading of law when it fit his argument and asking for the court to make interpretations about the law to fit WEC within the definition of “board of election commissioners.” Dallet advanced a similar criticism, telling Esenberg he was “reading out language” in order to get to the conclusion he was trying to reach.

Conservative Rebecca Bradley, meanwhile, asked Esenberg if the state Elections Commission had an “independent obligation” to perform voter roll maintenance even if the court decided “board of election commissioners” was a reference to panels in the Milwaukee area.

Esenberg said WEC did, arguing that obligation “flows from the structure” of state statutes giving the agency authority to administer election law.

The case centers on a decision the commission unanimously made last summer to postpone until 2021 the deactivation of so-called “movers” who did not respond to a mailing asking for confirmation of their addresses.

Those voters were identified by the Electronic Registration Information Center as having a transaction with a government agency that listed an address different from their voting address.

An Ozaukee County judge initially sided with WILL, but after the Supreme Court deadlocked on taking an appeal directly, a three-judge panel in the Madison-based 4th District Court of Appeals overturned Judge Paul Malloy’s ruling. WILL appealed that decision to the Supreme Court, which agreed to take the case in June.

Conservative Justice Brian Hagedorn sided with the court’s two liberals to create the initial deadlock after former Justice Daniel Kelly recused himself. Hagedorn has split from conservatives in other high-profile cases during his short tenure and could represent the swing vote in the case now that conservatives only hold a 4-3 advantage on the court.

He led the court’s questioning of Democratic Attorney General Josh Kaul, who represented the Elections Commission. Hagedorn was joined by fellow conservatives Annette Ziegler and Pat Roggensack, the chief justice, in quizzing Kaul on the extent of WEC’s powers.

It doesn’t appear the court’s decision in the case will have an impact on the upcoming election. When the court passed on taking the appeal directly, Bradley lamented it was unlikely a decision would be issued before Nov. 3.

The court also heard a second election-related case brought by the state Republican Party asking for a more precise definition of who can request an absentee ballot without submitting a photo ID.

The case was brought after Dane County Clerk Scott McDonell in a Facebook post ahead of the state’s April election said all voters could indicate they were “indefinitely confined” when requesting an absentee ballot. That status allows a voter to bypass photo ID requirements.

David Gault, an attorney for Dane County, argued the point was now moot after the court in March ordered McDonell to make sure advice he gives on indefinitely confined status aligns with the guidance published by the Elections Commission ahead of the April election.

That guidance says the status is only appropriate for voters who are confined due to age, physical illness or infirmity or are disabled for an indefinite period.

Eric McLeod, an attorney representing the state GOP, urged the court to make a declaratory judgment on the status ahead of the November election. McLeod said failure to do so could lead to “all sorts of challenges” and “throw the election into crisis.”

*The Capitol Report is written by editorial staff at WisPolitics.com, a nonpartisan, Madison-based news service that specializes in coverage of government and politics, and is distributed for publication by members of the Wisconsin Newspaper Association.*

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