

IN THE SUPREME COURT OF WISCONSIN
No. 2023-AP-36

Wisconsin Voter Alliance and
Ron Heuer,

Petitioners-Appellants,

v.

Kristina Secord,

Respondent-Respondent-Petitioner.

**DISABILITY RIGHTS WISCONSIN AND THE GREATER
WISCONSIN AGENCY ON AGING RESOURCES, INC.'S
BRIEF *AMICI CURIAE***

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INTERESTS OF *AMICI CURIAE*

Disability Rights Wisconsin (“DRW”) is a nonprofit organization organized and located in Wisconsin. DRW’s mission is to address the issues facing, and to advance the dignity, equality, and self-determination of, people with disabilities in Wisconsin. DRW is designated, under federal and state law, as the protection and advocacy system for Wisconsin citizens with mental illness, developmental disabilities, and other physical impairments. *See* Wis. Stat. § 51.62; 29 U.S.C. § 794e; 42 U.S.C. §§ 15041 *et. seq.*; 42 U.S.C. §§ 10801 *et. seq.*

DRW advocates for voting rights in Wisconsin. This includes ensuring that people with disabilities have equal access to the polls; public education about voting rights; and working one-on-one with clients to resolve individual problems with the voting process. DRW educates its constituents and the public about voting issues and regularly engages in policy and legal advocacy to advance civil rights and election access for people with disabilities.

DRW has also engaged in other litigation to protect voting rights, including *City of Green Bay v. Bostelmann*, No. 20-cv-479, 2020 WL 1492975 (E.D. Wis. Mar. 27, 2020); *Democratic Nat’l Comm. v. Bostelmann*, 488 F. Supp. 3d 776 (W.D. Wis. Sep. 21), *stay denied*, 976 F.3d 764 (7th Cir. Sept. 27), *question certified on reconsideration*, 973 F.3d 764 (7th Cir. Sept. 29), *certified question answered*, 2020 WI 80, 394 Wis. 2d 33, 949 N.W.2d 423, *stay granted after certified answer*, 977 F.3d 639 (7th Cir. Oct. 8), *motion to vacate denied*, 141 S. Ct. 644 (U.S. Oct. 26, 2020); *Jefferson v. Dane Cnty.*, 2020 WI 90, 394 Wis. 2d 602, 951 N.W.2d 556; *Fabick v. Wis. Elections Comm’n*, 2022 WI 88, 989 N.W.2d 764; *Teigen v. Wis. Elections Comm’n*, 2022 WI 64, 403 Wis. 2d 607, 976 N.W.2d 519, *reconsideration denied*, 2022 WI 104; *Archambault v. Wis.*

Elections Comm’n, No. 2021CV1620 (Waukesha Cnty. Cir. Ct. Apr. 24, 2023); *Oldenberg v. Wis. Elections Comm’n*, No. 2024CV43 (Marinette Cnty. Cir. Co. Aug. 19, 2024), *Disability Rights Wisconsin v. Wis. Elections Comm’n*, No. 2024CV1141 (Dane Cnty. Cir. Ct., filed Apr. 16, 2024), *temp. injunction rev’d*, 2025 WI App 27, 416 Wis. 2d 151, 20 N.W.2d 790, *intervention vacated*, No. 2024AP1347 (Wis. Ct. App. Jul. 1, 2025) (per curiam), *denial of intervention appealed*, No. 2026AP535 (Wis. Ct. App., filed Mar. 2, 2026); *Wis. Voter Alliance v. Secord*, 2024 WI App 6, 3 N.W.3d 513 (unpublished), *rev’d and remanded*, 2025 WI 2, 414 Wis. 2d 348, 15 N.W.3d 872.

The Greater Wisconsin Agency on Aging Resources, Inc. (“GWAAR”) is a nonprofit agency organized and located in Wisconsin. GWAAR’s mission is to support lead aging agencies and to promote, protect, and enhance the well-being of older people in Wisconsin. As part of that mission, GWAAR advocates on behalf of, and seeks to protect, the right to vote of every eligible older adult and adult with disabilities, including by supporting: increased funding for specialized transportation programs for voting related activities; increased funding for the Wisconsin Elections Commission’s Polling Place Accessibility Audits; enhanced election inspector/special voting deputy training; expanding access to photo ID; and improving access to secure, equitable, and private absentee voting.

Among its many other programs, GWAAR operates the Wisconsin Guardianship Support Center (“GSC”) which provides neutral information and assistance regarding adult guardianship, protective placement, advance directives, and supportive decision-making. GSC is

a leading expert on Wisconsin’s guardianship law and how it impacts the right to vote.

DRW co-leads and GWAAR is a member of the Wisconsin Disability Vote Coalition (“DVC”), a non-partisan effort to help ensure full participation in the entire electoral process of Wisconsin voters with disabilities, including registering to vote, casting a vote, and accessing polling places. With a membership of more than 40 community agency partners, self-advocates, and other community members, DVC conducts outreach and education across Wisconsin, including on guardianship and voting rights. DRW also implemented a limited-term Voting Rights & Guardianship Project in 2022–23 which resulted in the development, in consultation with GSC, of resources for attorneys, guardians, individuals under guardianship, and the public.

INTRODUCTION

All qualified Wisconsinites have a legally protected right to vote. Wis. Const. art. III, § 1. “The right to vote is ... guaranteed by the declaration of rights and by sec. 1, art. III, of the constitution. It has an element other than that of mere privilege. It is guaranteed both by the bill of rights; and the exclusive entrustment of voting power, contained in sec. 1, art. III, of the constitution; and by the fundamentally declared purpose of government.” *State ex rel. McGrauel v. Phelps*, 144 Wis. 1, 14–15, 128 N.W. 1041 (1910). The right to vote “is a right which has been most jealously guarded and may not under our constitution and laws be destroyed or even unreasonably restricted.” *State ex rel. Barber v. Cir. Ct. for Marathon Cnty.*, 178 Wis. 468, 473, 190 N.W. 563 (1922). Older Wisconsinites and Wisconsinites with disabilities are no exception. Wis. Const. art. I, § 1. But for the limited circumstances in which a person’s right to vote is removed by a court upon a specific finding under

Chapter 54, *see* Wis. Stat. § 6.03(1)(a),¹ our laws forbid discrimination against the voting rights of older voters or voters with disabilities.

Amici DRW and GWAAR advocate for and work on behalf of Wisconsinites with disabilities, including with respect to the right to vote implicated in this case and the rights afforded by Wisconsin’s guardianship laws, including the right to confidentiality. This brief discusses Wisconsin’s limited guardianship laws and how they interact with 1) the right to vote, 2) the existing safeguards to prevent voting by individuals whose rights have been removed, and 3) other policy fixes to improve the process without the invasion of privacy urged by Petitioners-Appellants (“WVA”). This Court should reject WVA’s attempts to circumvent the clear protections of Wisconsin law.

ARGUMENT

Wisconsin’s guardianship laws simultaneously protect individuals under guardianship and the public.

I. Individuals under guardianship retain their right to vote unless a court specifically removes the right based on clear and convincing evidence.

The Wisconsin Constitution guarantees “[a]ll people are born equally free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness; to secure these rights, governments are instituted, deriving their just powers from the consent of the governed.” Wis. Const. art. I, § 1. Consistent with this fundamental promise, Wisconsin guardianship law shifted away from default removal of all rights in favor of *limited* guardianship, in which an individual

¹ The statutes also provide for a procedure by which a court may remove the right to vote, even if a guardian is not appointed, based on a finding that an individual does not “understand the objective of the elective process” without a guardianship. Wis. Stat. § 54.25(2)(c)1.g.

under guardianship² retains all rights not expressly removed or modified by court order. Wis. Stat. § 54.18(1). Prior versions of the statute presumed that all rights would be removed unless a court specifically retained certain rights for the individual. Jane E. Raymond, *Landmark Guardianship and Adult Protective Services Reforms Signed into Law*, Wisconsin Lawyer (Aug. 2006); *see also* Wis. Stat. § 880.33(3) (2005–06).

The law protects the rights of the individual. A petitioner must petition the Court to remove the right to vote, and the Court must then make a specific, evidence-based determination that the individual lacks the evaluative capacity to exercise their right to vote. To adjudicate that issue, the circuit court must determine whether the individual “understand[s] the objective of the elective process.” Wis. Stat. §§ 6.03(1)(a), 54.25(2)(c)1.g. The decision to remove the right must be based on clear and convincing evidence that the individual lacks the evaluative capacity to exercise the right to vote; otherwise, the individual retains the right by default. Wis. Stat. §§ 54.25(2)(c)2, 54.44(2). The court must also consider the recommendations of a guardian ad litem (“GAL”), who advocates for the best interests of the individual. Wis. Stat. § 54.40(3), (4)(f).

In short, since 2006, Wisconsin law no longer automatically removes an individual’s right to vote whenever a guardian is appointed; rather, the right is removed *only* after a court specifically evaluates the individual’s capacity and makes the requisite finding based on clear and convincing evidence.³

² The statutes refer to this individual as a “ward.” Wis. Stat. § 54.01(37).

³ Indeed, this framework has become axiomatic, such that Wisconsin Court of Appeals District III recently issued as a per curiam unpublished decision an order to restore

II. Guardianship proceedings are confidential.

In any guardianship proceeding, confidentiality is mandated by the plain text of the statutes and is central to those statutes' purpose. Wis. Stat. § 54.75. While it has long been the case that guardianship records are confidential, the Legislature strengthened this protection two decades ago by reversing the then-existing default rule that a guardianship petition hearing be open unless the proposed ward or the proposed ward's counsel moved for the hearing to be closed. Wis. Stat. § 880.33(2)(e) (2003–04). In 2006, the Legislature renumbered and amended the guardianship statutory chapter providing, in part, that “[e]very hearing under this chapter shall be closed, unless the proposed ward or ward or his or her attorney acting with the proposed ward’s or ward’s consent or the attorney for a foreign ward moves that it be open.” Wis. Stat. § 54.44(5). If a record is statutorily exempt from disclosure, the analysis ends. Wis. Stat. § 19.35(1)(a); *Wis. Voter Alliance v. Reynolds*, 2023 WI App 66, ¶¶20, 22, 34, 410 Wis. 2d 335, 1 N.W.3d 748.

In clear and unambiguous language, the Legislature expressly provided that the type of records at issue in this action are to be kept confidential, and for good reason. The mere fact that an individual is the subject of a petition under Chapter 54, or is under guardianship, may lead to improper and incorrect assumptions about that person, including their capacity to exercise their rights, even where the law recognizes that individuals retain any rights not removed. This is, unfortunately, true

an individual’s right to vote where the record lacked any evidentiary support for the removal and the circuit court had failed to explain its reasoning for removing the individual’s right to vote. *In re the Condition of T.W.Z., Burnett Cnty. v. T.W.Z.*, No. 2024AP2024 (Wis. Ct. App. Feb. 3, 2026) (per curiam) (App. 16–18, ¶¶36–39).

for many individuals with disabilities. The confidentiality of guardianship proceedings helps address this concern.

Enforcing the statutorily mandated confidentiality also mitigates the risk that individuals under guardianship might be exploited. Guardianship proceedings involve inherently sensitive information, including medical and financial information, derived from an inherently sensitive population of Wisconsinites (those who may be subject to guardianship). If exposed, this information may be misused or abused to manipulate, impersonate, or otherwise victimize these individuals.

Further, confidentiality protects against a chilling effect that might otherwise cause someone not to petition for guardianship, even where it is warranted, for fear of the (unfortunate, but real) stigma towards the individual who may be placed under guardianship.

The existing express statutory exceptions to confidentiality the Legislature chose to enact underscore the importance of the rule. For example, only the individual subject to the petition, or their attorney acting with their consent, may move for a hearing under Chapter 54 to be open to the public. Wis. Stat. § 54.44(5). Individuals who seek information regarding a guardianship must demonstrate a “need” and, even if they show such a need, are limited to discovering only whether a person has been found incompetent and the guardian’s name and contact information. Wis. Stat. § 54.75.⁴ Reflecting the real dangers of misuse of personal information, the general rule that guardianship information

⁴ While WVA relies on this statute, it is plainly inapplicable as WVA is seeking information beyond the scope of permissible disclosure. WVA seeks to discover whether individuals under guardianship have had their right to vote removed, which likely entails learning the evidentiary basis for that decision as well. *Reynolds*, 2023 WI App 66, ¶3.

should be kept confidential is so broad as to include *even the fact* that an individual is under guardianship. *Id.*

III. Wisconsin law already contains safeguards to avoid ineligible voting, and those safeguards do not require self-appointed watchdogs.

Unqualified individuals may not vote in Wisconsin elections. Wis. Stat. § 12.13(1)(a). By requiring circuit courts to inform affected individuals and appropriate election officials of removed voting qualifications, existing Wisconsin’s guardianship law already addresses WVA’s purported concern about ineligible voting.⁵

First, the process ensures that the individual and their guardian are aware of the status of the right to vote, including by specifying the “specific rights” that may be removed, requiring personal service, and providing the right to have counsel and be present at the hearing. Wis. Stat. §§ 54.34(1)(m), 54.38(2), 54.42(1), (5)–(6), 54.44(4)(a); *Racine Cnty. v. P.B.*, 2022 WI App 62, 405 Wis. 2d 383, 983 N.W.2d 721. The circuit court also appoints a GAL, who advocates for the individual’s best interest and whose duties include explaining the petition and hearing procedure. Wis. Stat. § 54.40(4)(a). If guardianship is ordered and the right to vote is removed, the Court makes a specific finding on form GN-3170,⁶ which is then distributed to, among others, the individual’s attorney and the GAL. In short, both the guardian and the individual,

⁵ These purported concerns are misplaced. WVA suggests that the fact that “only” a limited subset of individuals under guardianship were found in the WisVote database is somehow evidence that WEC (or others) is not performing its statutory duty. (WVA First Brief-Supreme Court 11, 25) But WisVote contains information only about individuals who have registered to vote. Wis. Stat. § 6.36(1)(a)1. It would not include, for example, a minor under guardianship, or an individual who never registered.

⁶ <https://www.wicourts.gov/formdisplay/GN-3170.pdf?formNumber=GN-3170&formType=Form&formatId=2&language=en>

throughout the proceedings, are informed of the status of the individual's right to vote.

Second, election officials are notified when a voter's right to vote is removed. State law specifies that a court's determination "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." Wis. Stat. § 54.25(2)(c)1.g.

The statutes thus prescribe a procedure by which a court adjudicates, then communicates to election officials, when a person's right to vote is removed. No part of that statutory procedure suggests a role for self-appointed "watchdogs" to do the work assigned to the individual, their guardian, the courts, and municipal clerks to perform. Nor is the existence of this statutory procedure evidence of legislative intent that the forms used to communicate a court's determination to election officials are not inherently confidential, as the majority opinion below incorrectly asserts. *Wis. Voter Alliance v. Secord*, 2025 WI App 28, ¶5, n.4, 21 N.W.3d 115 (unpublished).

Third, challenge procedures do not automatically entitle WVA or anyone else to these records. The law provides for challenging registration and voting because the voter is allegedly incapable of understanding the objective of the elective process and is thereby ineligible to vote. *See* Wis. Stat. §§ 6.48(3), 6.925, 6.93, 6.935; Wis. Adm. Code § EL 9.02. Nothing about those provisions suggests that challengers are privileged to learn otherwise confidential information, and none of the provisions reference accessing records protected by Wis. Stat. § 54.75. Rather, challenges must be made upon the challenger's

personal knowledge. Wis. Admin. Code § EL 9.02. Although a considerable amount of voter-registration information is publicly available, it does not necessarily follow that all information that may be relevant to a voter’s qualifications—including citizenship status, how long they have lived at their address,⁷ whether they have wagered on the election outcome, and their age—is, *per se*, a public record. See Wis. Stat. § 6.36(1)(b)1. Certain information, like dates of birth, are not publicly accessible, even though they could be relevant to voting eligibility. Wis. Stat. § 6.36(1)(b)1.a. So, the mere *ability* to challenge does not entitle would-be challengers to otherwise confidential information—that is simply not how these laws generally work.

On the contrary, individuals under guardianship enjoy a clear right to have records pertaining to their guardianship kept confidential. Wis. Stat. § 54.75. And the right to public records under Wis. Stat. § 19.35 does not reach records, like the Notice of Voting Eligibility (“NVE”) forms, exempted by statute. Wis. Stat. §§ 19.35(1)(b), 54.75. Neither the open records law nor Wisconsin election law envisions or permits free-floating access to such private and sensitive information, let alone a “clear legal right” to access it, such that a writ of mandamus would be appropriate. *Reynolds*, 2023 WI App 66, ¶20. Indeed, liability (including “[a] reasonable amount for attorney fees”) would attach to *anyone* responsible for effecting such a clear invasion of private information. Wis. Stat. § 995.50.

⁷ Certain public records may indicate when properties are bought and sold but would not necessarily reflect a person’s residency. See Wis. Stat. § 6.10(1).

IV. Improvements in voter-eligibility reporting should come through legislative change.

To the extent there remains an issue with the procedure created by Wis. Stat. § 54.25, the answer is legislative, not empowering would-be challengers by improperly making that which is private a matter of public record.

2023 Assembly Bill 572 (“AB 572”), included language that would have changed the way by which a court communicates its determination, and would have required the circuit court to notify WEC, by email, of the determination that an individual is not eligible to vote. WEC, in turn, would then have been required to change the voter’s status to ineligible within three business days. The same procedure would apply to a restoration of the right. The bill also required WEC to inform the voter when their right has been restored, and that they are required to complete a new registration. 2023 Wis. AB 572.

GWAAR⁸ and DRW⁹ supported the sections of AB 572 that would have provided additional notification and clarification around this procedure. It is particularly critical to ensure that restoration is promptly and effectively communicated to both the relevant elections officials and the voter, and the registration list updated, so no one loses their constitutional right to vote.

⁸ GWAAR, *Written testimony regarding AB 572* (Oct. 31, 2023), https://lobbying.wi.gov/Data/PositionFileUploads/11012023_084229_Assembly-Campaigns-Elections-Committee_Testimony-AB%20572_JZander-GWAAR_Oct-31-2023.pdf.

⁹ DRW, *Written testimony regarding AB 572* (Oct. 31, 2023), https://lobbying.wi.gov/Data/PositionFileUploads/11142023_020713_2023%20AB572%20testimony.pdf.

However, the helpful language in AB 572 was accompanied by other parts of the bill that would have degraded the rights of residents of qualified retirement homes and residential care facilities to vote privately and without undue interference. Governor Evers vetoed the bill because of these additional intrusive measures.^{10,11}

While administrative fixes may make the existing process work better, the additional communications required by AB 572 would have dramatically improved the current statutes, particularly by requiring that each individual voter receive notice if their right to vote had been removed or reinstated. To the extent concerns persist about proper eligibility notification, the Legislature could institute common-sense reforms to improve communications whenever an individual's right to vote is either removed or restored, thereby protecting every individual's sacred and fundamental right to vote, as guaranteed by the Wisconsin Constitution.

CONCLUSION

For the foregoing reasons, this Court should affirm the decision of the Court of Appeals.

¹⁰ Governor Evers, *Letter to the Wisconsin Assembly* (Mar. 21, 2024), https://content.govdelivery.com/attachments/WIGOV/2024/03/21/file_attachments/2821423/Signed%20Veto%20Message%20-%20AB%20572.pdf.

¹¹ Substantially similar language was included in another bill introduced during the 2025-26 legislative session (2025 Assembly Bill 617). But, again, the helpful language was packaged with other amendments to Wisconsin's election code. The bill was passed by the Assembly and, to date, has not received even a public hearing in the Senate.

Respectfully submitted this 26th day of March, 2026.

Electronically signed by Scott B. Thompson

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CERTIFICATION REGARDING FORM AND LENGTH

I hereby certify that this brief conforms to the rules contained in s. 809.19(8) (b), (bm), and (c) for a brief. The length of this brief is words 2,604.

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