

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION**

**DAWN McCOLE
and
JEANETTE MERTEN**

Plaintiff(s),

v.

Civil Action No.: 24-CV-1348

WISCONSIN ELECTIONS COMMISSION

Defendant.

COMPLAINT FOR A CIVIL CASE

COMES NOW the plaintiffs, Dawn McCole and Jeanette Merten, by counsel, and for their Complaint against the defendant the Wisconsin Elections Commission (“WEC”), aver the following:

Introduction

- 1. This is an action to enjoin the WEC from using its online voter registration system to allow voters to register to vote, and request absentee ballots due to inadequate security measures that jeopardize the integrity of the electoral process and the personal data of Wisconsin voters.**

Jurisdiction and Venue

- 2. This Court has jurisdiction over this action pursuant to [28 U.S.C.](#) § 1331, as this case arises under the Constitution and laws of the United States.**

3. Venue is proper in this district pursuant to [28 U.S.C. § 1391](#) because a substantial part of the events or omissions giving rise to the claim occurred within this district; and because the plaintiff Dawn McCole resides within the Eastern District of Wisconsin.

Parties

4. Plaintiff, Dawn McCole, is a resident of Brown County, Wisconsin; an elector; and a Wisconsin registered voter residing at 935 Deerwood Court, Oneida, WI 54155, which is within the Eastern District of the State of Wisconsin. Plaintiff Dawn McCole's voter registration is maintained within the MyVote website system, rendering it vulnerable to the cybersecurity concerns enumerated below.
5. Plaintiff Jeanette Merten is a municipal election clerk for the Town of Oshkosh, Winnebago County, and she resides at 1076 Cozy Lane, Oshkosh, WI 54901; she is also a Wisconsin elector and registered voter. Plaintiff Dawn McCole's voter registration is also maintained within the MyVote website system, rendering it vulnerable to the cybersecurity concerns enumerated below.
6. Defendant, the WEC, is a Wisconsin governmental commission¹ responsible for the administration of elections within Wisconsin. The State of Wisconsin created the WEC legislatively, establishing the WEC as the Wisconsin governmental body empowered to administrate and oversee elections within the state of Wisconsin. Importantly, the Wisconsin state statutes which created the WEC did not authorize the WEC to create the MyVote online portal to permit voters (electors) to request absentee ballots online using MyVote.

¹ The WEC is tantamount to a state agency or quasi-agency.

7. According to its website, the defendant WEC “was established in 2016 by the Wisconsin Legislature to carry out a wide range of functions related to statewide elections administration”. This lawsuit seeks to enjoin the WEC from continuing to use the MyVote portal as a means for Wisconsin citizens to register to vote or request absentee mail-in ballots due to established cybersecurity vulnerabilities.

Factual Background

8. The WEC has implemented an online voter registration website and absentee ballot request portal (<https://myvote.wi.gov/en-us/>) (“MyVote” or “the MyVote portal”), ostensibly to facilitate the registration of voters, and fulfill their requests for absentee mail-in ballots, among other things. More specifically, the WEC created and maintains MyVote, but there are little, if any, cybersecurity safeguards built-into the website. Indeed, any person in the world can request MyVote mail an absentee ballot to any address in the world merely by inputting a voter’s name and providing his or her birthdate. The MyVote portal does not allow voters to create accounts with user-names and passwords to protect themselves against third parties requesting absentee ballots in their names, let alone provide any additional cybersecurity safeguards. Indeed, the state of Wisconsin has already acknowledged the same in their indictment of Harry Wait for using the personally identifying information of two Wisconsin voters (without their authorization) to commit election fraud—illegally requesting and obtaining absentee mail-in ballots in their names². To be sure, the MyVote portal lacks adequate cybersecurity measures to protect against unauthorized access, data breaches, and other cybersecurity threats.

² Exhibit 1, attached. Remarkably, the indictment notes Harry Wait has admitted to the criminal allegations set forth within the indictment, so although Wait has not pled guilty or been convicted yet, he admitted to the facts cited and relied upon herein.

9. The Harry Wait indictment includes the following important information, all of which was accomplished using the MyVote portal:

- a. Counts 1 and 3, “UNAUTHORIZED USE OF AN INDIVIDUAL’S PERSONAL IDENTIFYING INFORMATION”, for Individual #1 (Count 1) and for Individual #2 (Count 3), for misuse of a person’s “personal identifying information” in order to commit election fraud.
- b. Counts 2 and 4, “ELECTION FRAUD” because the defendant did “intentionally make a false statement” in requesting an absentee ballot for Individual 1 (Count 2) and Individual 2 (Count 4).
- c. Page 3 of the Harry Wait criminal indictment states, “Wait admitted that he had requested absentee ballots for Individual 1 and Individual 2 on the myvote.wi.gov website to be sent to his address” and “also admitted to requesting additional absentee ballots for others”. The special agent investigating these facts stated in the indictment: “I obtained information and records from the WEC. These records, which include audit history logs and web server logs, were provided to me by the WEC elections security lead. I learned that WEC discovered eight possibly fraudulent absentee ballot requests made through the MyVote Wisconsin system”. The defendant Wait also stated the ballots “were worth \$10.00 to \$80.00 per ballot.”³ Wait admitted he was able to order absentee ballots online in other people’s names, “all without providing a photo I.D. or identifying myself”.⁴ Remarkably, Wait stated he wanted to be charged for these crimes to unearth the

³ Indictment, Page 12, Paragraph g.

⁴ Indictment, Page 14 (last paragraph).

cybersecurity vulnerabilities present in the MyVote portal, but had Wait not admitted what he did publicly, he likely would not have been caught.

10. MyVote is currently being used to register voters to vote in the upcoming November 5, 2024 federal elections, and request absentee ballots to be cast in these federal elections. As such, use of the MyVote portal should be enjoined until the system and website can be redesigned and redeveloped, or retooled, and tested for cybersecurity vulnerabilities of the kind illustrated within the Harry Wait indictment. The inadequate cybersecurity safeguards present within the MyVote website pose significant risks to the integrity of the electoral process and the personal data of Wisconsin voters.
11. Because MyVote not only can be used to register voters (electors) fraudulently, but can also be used to obtain absentee ballots fraudulently, Plaintiff and other lawful voters and electors are subject to being irreparably harmed and disenfranchised by people and/or entities using MyVote for such untoward purposes, illegally voting via absentee ballots mailed to addresses not associated with their registered voters, diminishing the weight of lawfully cast votes. Moreover, the vulnerabilities of the MyVote portal may exceed the examples established within the Harry Wait indictment.
12. Upon information and belief, accessing the MyVote portal via a Virtual Private Network (“VPN”) may allow election fraud broader than that committed by defendant Harry Wait, including changing a registered voter's personally identifying information, voter history or address. A VPN is a service that creates a secure, encrypted connection between a device and the internet, enabling the following: (1) encrypting the user's IP address; (2) allowing the user to mask or change his or her location, allowing access to content that might be restricted geographically; and (3) masking the user's online activities from their internet

service provider (ISP) and other third parties; etc. Indeed, a person could login into the MyVote portal, change the voter registration address for Plaintiff Dawn McCole, request an absentee ballot in her name, and have the absentee ballot mailed to an address McCole does not reside at, nor use. Accordingly, the WEC should be enjoined from keeping the MyVote portal available to the public until these cybersecurity concerns can be ameliorated.

Legal Claims & Request for Injunctive Relief

13. The inadequate security measures of the MyVote portal violate the constitutional rights of Wisconsin voters and electors under the Fourteenth Amendment, which guarantees due process and equal protection under the law.
14. The WEC's failure to implement adequate cybersecurity measures constitutes a breach of its duty to ensure the integrity and security of the electoral process. As a municipal election clerk, the WEC's failures to ensure the integrity and security of the electoral process in Wisconsin prevent her from performing her official duties competently and with due regard to the integrity and security of the electoral process.
15. Plaintiffs seek a preliminary and permanent injunction enjoining the WEC from using the MyVote portal until it has been redesigned and redeveloped, or retooled, and tested to ensure adequate cybersecurity measures have been implemented.
16. Additionally, Plaintiffs request the Court order the WEC to conduct a comprehensive security audit of the MyVote portal and voter registration system to identify preexisting election fraud, and implement all necessary security and cybersecurity measures to protect against unauthorized access and data breaches; unlawful voter registration; and third parties

requesting absentee ballots in the names of Wisconsin registered voters, and having those absentee ballots mailed to wherever the untoward third party requests.

WHEREFORE, Plaintiffs Dawn McCole and Jeanette Merten, by counsel, respectfully request this Court:

- (1) Issue a preliminary and permanent injunction enjoining the WEC from using its current online voter registration system and the MyVote website <https://myvote.wi.gov/en-us/> until it has been redesigned and redeveloped, or retooled, and tested to ensure adequate cybersecurity measures have been implemented;
- (2) Order the WEC to conduct a comprehensive security audit of the MyVote online voter registration system and implement all necessary cybersecurity recommendations; and
- (3) Award Plaintiffs reasonable attorney fees.

DAWN MCCOLE

JEANETTE MERTEN

By Counsel:

Electronically signed by:

/s/ Wendy A. Patrickus, Esq.
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