

FOR IMMEDIATE RELEASE

Wisconsin Elections Commission Violates Federal Election Law Leading to the Dilution of Military Votes

October 2, 2023. *Madison, WI.* Erick Kaardal announced today that Wisconsin Voter Alliance (WVA) filed a complaint against the Wisconsin Elections Commission (WEC) alleging its policy not to verify the identity and eligibility of all overseas absentee voters violates federal election law. The Help America Vote Act of 2002 ([HAVA](#)) was passed to establish minimum standards for the administration of federal elections including the requirement for verification of identity and eligibility for individuals who seek to vote in a federal election. Many states exceed the low minimum verification requirements set by HAVA, but no state can legally implement a lesser standard. Wisconsin law requires clerks to provide a ballot to UOCAVA applicants only “upon receipt of a **valid application**.” Through unlawful guidance, WEC has instructed clerks to send ballots without first verifying that the application is valid. This is a violation of HAVA and risks the dilution of military votes by allowing ineligible individuals to receive and vote an absentee overseas ballot.

Wisconsin Voter Alliance complainants bring this case to protect the rights of military voters. As the US Supreme Court has stated, the right to vote “can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.” (*Reynolds v. Sims*, [377 U.S. 533, 555 \(1964\)](#)) WEC has a duty to ensure that military voters are not disenfranchised and to prevent the dilution of their votes.

Ron Heuer, the President of Wisconsin Voter Alliance, and a military veteran stated. “I am Captain, U.S. Army and a proud Vietnam combat veteran. I, along with hundreds of thousands of men and women who served in Vietnam were there to protect and defend our great Country and all the rights we take for granted every day. At the top of that list of rights is the right to vote. There is not another right that has greater priority than protecting that right for those men and women who serve in our military. Our filing today will hopefully reinforce and further protect that right.”

The Uniformed and Overseas Citizen Absentee Voting Act (UOCAVA) established the Federal Post Card Application (FPCA) as a standard form for use by members of the US military and their family members to both register to vote and to request an absentee ballot. The FPCA can also be used by non-military US citizens, including study abroad students, individuals who work outside of the US, and US citizens who reside abroad. The FPCA is a combined voter registration form and absentee ballot application in a single document. Therefore, HAVA’s minimum requirements for voter registration and minimum requirements for voters who vote by mail for the first time apply.

A critical component of HAVA is that the states are required to verify the accuracy of the identification information provided on applications for voter registration. HAVA also requires states to match the applicant’s identification numbers provided against information in official databases prior to voting in a federal election. All members of the military and their eligible family members possess required forms of identification. No persons are even permitted onto a military base without proper, valid, government issued photo ID. Non-military US citizens overseas must possess a passport to travel overseas, or US citizens who have never lived in the United States must possess a birth certificate indicating their citizenship. In 2022, [58%](#) of all UOCAVA ballots returned in Wisconsin were from non-military voters. The other 42% claimed to be from members of the military and their family members—but lack of verification creates the opportunity for invalid ballot requests—such as from people impersonating military voters.

There is reason to believe impersonation of military voters has already happened and may have occurred at scale. For example, in October 2022, WI State Representative Janel Brandtjen received three authentic military

(absentee) ballots at her home address. While those three ballots were not returned as voted, Representative Brandtjen’s receipt of the ballots exposes the vulnerability resulting from WEC’s HAVA-violating guidance not to verify identity and eligibility of UOCAVA voters. Ken Brown of WVA said, “the fact that applications were approved, and ballots were sent from multiple jurisdictions confirms that this is a statewide issue that must be corrected to protect the rights of real military voters.”

HAVA identification verification requirements are unambiguous. HAVA even has additional requirements for individuals who vote by mail for the first time in a jurisdiction and HAVA specifically exempts UOCAVA eligible voters from the requirement for first time voters who vote by mail to include a photocopy of their identification *with* their absentee ballot. The photocopy or copy of identification with the returned ballot is the **only** exemption for UOCAVA eligible voters. HAVA does **not** exempt these applicants from eligibility requirements or identity verification prior to voting (such as when requesting a ballot) in a federal election.

Section 20302 of UOCAVA requires states to “accept and process, with respect to any election for Federal office, **any otherwise valid voter registration application** and absentee ballot application from an absent uniformed services voter or overseas voter.” **However, the WEC provides no mechanism for clerks to perform this critical verification to determine if the overseas non-military applications are valid.** In fact, WEC admitted to representatives of the Legislative Audit Bureau that they make “no attempt to match personally identifiable information” provided by UOCAVA applicants.

In every case, military voters and their family members have valid ID that can and must be matched to data in government databases to verify identity and eligibility. Non-military UOCAVA applicants must be overseas at the time of the election and must provide verifiable proof of identity. Failure to do so violates HAVA and risks the dilution of military voters by allowing ineligible individuals to receive and vote an absentee ballot.

Attorney Erick Kaardal said, “Two years have past since the Legislative Audit Bureau identified that WEC was out-of-compliance with federal legal requirements to match the personal information on the overseas voter applications. WEC, in response, has done nothing. Wisconsin Voter Alliance files this complaint to legally compel WEC into compliance with federal law requiring WEC to verify the identify and eligibility for all overseas voter applications.”

Relief Requested

The relief requested is for an administrative determination, declaration or declaratory judgment: (1) that the Wisconsin Elections Commission’s guidance that exempts would-be UOCAVA-eligible voters from first meeting the HAVA identify-verification requirement violate HAVA; (2) that WEC’s directives must be corrected to a legally-compliant policy that meets the minimum HAVA identity verification requirements for voter applications; and (3) any other appropriate administrative relief.

About the Parties

Attorney Erick Kaardal, a partner of Mohrman, Kaardal & Erickson, P.A., has been representing people suing the government to improve it for over 30 years. For election integrity, Kaardal has listed 61 examples of election integrity counter-lawfare successes, including 2 U.S. Supreme Court victories, here: www.mklaw.com/wp-content/uploads/sites/1300759/2023/08/Election-Integrity-Successes.pdf

The Wisconsin Voter Alliance is a 501C 3 organization that since its founding in September of 2020 has been focused on election integrity issues in Wisconsin. The mission of the Wisconsin Voter Alliance is to effect changes to law and policies surrounding elections. We will accomplish this goal by creating multi-faceted objectives to restore voter confidence and integrity in the election process.

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