



WISCONSIN

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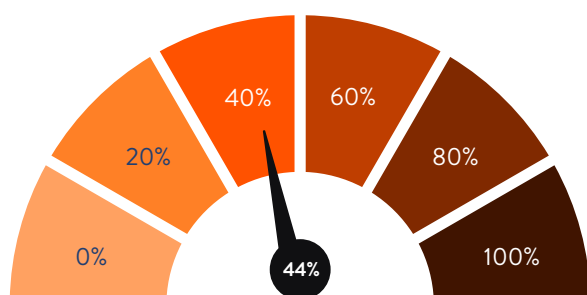
Protecting Voter Registration

An Assessment of Voter
Purge Policies in Ten States

Removal Practices

FIGURE 41

Wisconsin Removal Practices



Wisconsin scored 44% for its removal practices. Among its positive practices, Wisconsin does not appear to allow private parties to make mass challenges to other voters' eligibility, although it does allow individualized challenges supported by an affidavit.²⁵³ For such challenges, the burden of proof is on the challenger to prove the person's ineligibility beyond a reasonable doubt.²⁵⁴ Wisconsin also notifies voters when their eligibility is restored following disenfranchisement based on a felony conviction²⁵⁵ or adjudication of mental incapacity,²⁵⁶ and informs election officials when a person's eligibility is restored following disenfranchisement for adjudication of mental incapacity.²⁵⁷ Removals for non-citizenship apparently occur only as a result of the individualized challenge process described above, which provides for notice and a procedure to contest the removal.²⁵⁸

However, neither statute nor regulation ensures that election officials are informed when a person's eligibility has been restored following felony disenfranchisement.²⁵⁹ Further, Wisconsin initiates a removal process when a

²⁵³ Wisc. Stat. § 6.48(1). The challenger must reside in the same municipality as the challenged voter, Wisc. Stat. § 6.48(1)(a), and must appear in person before the municipal clerk in order to support the challenge, Wisc. Stat. § 6.48(1)(b). Wisconsin allows individualized challenges at the polling place as well. Wisc. Stat. §§ 6.92, 6.925.

²⁵⁴ Wisc. Stat. § 6.325. Together, these safeguards appear to discourage mass challenges.

²⁵⁵ Wisc. Stat. § 304.078(3).

²⁵⁶ Wisc. Stat. § 54.25(2)(c)(4).

²⁵⁷ Wisc. Stat. § 54.25(2)(c)(1)(g).

²⁵⁸ Wisc. Stat. §§ 6.325, 6.48.

²⁵⁹ Wisc. Stat. § 301.03(20m)(requiring election officials to be given notice on an ongoing basis of those individuals who have lost the right to register and vote, with no mention of notice of restoration); see Wisc. Admin. Code EL 3, generally, on voter registration.

person does not vote for four years—a problematic “use it or lose it” policy.²⁶⁰ Such voters are mailed a form to confirm their registration, and those who do not respond within 30 days are marked “ineligible” and are required to re-register when they appear at the polls, even if nothing about their eligibility has changed.²⁶¹ Wisconsin statutes and regulations generally do not establish which identifying criteria must be used when clerks attempt to match records on felony convictions, deaths, or findings of mental incapacity with individuals listed on the voting rolls or how to investigate and confirm accurate matches.²⁶² Wisconsin statutes and regulations do not require notice to a voter before their registration is canceled based on death or felony conviction.²⁶³ Finally, Wisconsin appears to grant “catch-all” authority to election officials to remove ineligible voters, although the grounds for such removals must be established beyond a reasonable doubt.²⁶⁴

Table 41: Removal Practices

Reason for Removal	Felony Conviction	Death	Citizenship Status	Adjudication of Mental Incapacity	Other Reasons for Removal
Matching Criteria	0	0	4	0	Inactivity 0
Notice of Removal	2	0	4	0	Catch-all Removal Authority 0
Procedures to Contest	4	0	4	0	Caging / Mass Challenges 20
Notice of Restoration to Voter	2	n/a	n/a	2	Total 44/100 = 44%
Notice of Restoration to Elec. Official	0	n/a	n/a	2	

²⁶⁰ Wisc. Stat. § 6.50(1), (2).

²⁶¹ Id. at (10). A municipal clerk may opt out of this process, however, if they instead use NCOA data to identify and remove individuals who have moved. Id. at (8).

²⁶² Wisc. Stat. § 6.325; Wis. Stat. § 6.50 (2), (4); Wis. Stat. § 54.25(2)(c)(1)(g), (4).

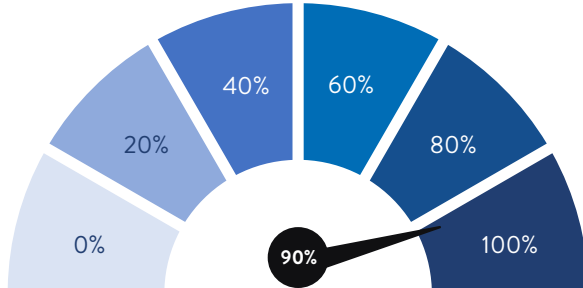
²⁶³ Regarding removals based on death, see Wisc. Stat. § 6.50(4) (providing that “no notice need be sent” to persons whose registrations are canceled because they are believed to have died); regarding removals based on felony conviction, see Wisconsin Election Administration Manual (2022), at 87: “Voter notification occurs at the point of inactivation in WisVote”; see also § 6.325 (regarding clerks’ powers to remove registration records, with no mention of providing advance notice to voters).

²⁶⁴ Wisc. Stat. § 6.325. The law allows municipal clerks or board of election commissioners to require naturalized registration applicants to show their naturalization certificates if challenged.

Safeguards Against Erroneous Removal

FIGURE 42

Wisconsin Safeguards from Removal



Although Wisconsin scored poorly for its removal practices, it scored 90% for its safeguards to protect voters who do not learn that their registrations have been canceled or marked inactive until they attempt to vote in an election. Wisconsin offers same-day registration during early voting and on Election Day.²⁶⁵ Further, except in rare circumstances, people who register during early voting or on Election Day generally cast regular ballots instead of provisional ones.²⁶⁶ Similarly, people whose registrations were erroneously marked ineligible because they allegedly moved will generally be able to cast regular ballots rather than provisional ones by using the same-day registration process.²⁶⁷

Wisconsin received a less than perfect score in this category because when people use same-day registration to correct an erroneous removal, they must provide documentary proof of residency, and not all of the photo IDs that voters can use to meet Wisconsin's ID requirement also meet its residency requirement.²⁶⁸ Thus, some people who discover that they unexpectedly need to re-register at the polls may not have the required documentation on hand to complete the process, such as a utility bill or paycheck.²⁶⁹ However, voters are allowed to show proof of residency electronically, e.g., a photo of a proof of residency on their phones, which makes this requirement relatively easier to meet.²⁷⁰

²⁶⁵ Wisc. Stat. §§ 6.28, 6.29, 6.55.

²⁶⁶ See § 6.55(2)(b); Wisc. Admin. Code EL 3.04.

²⁶⁷ Wisc. Stat. § 6.50(10).

²⁶⁸ Wisc. Stat. §§ 6.29; 6.34(2),(3); 6.55(2). See Election Administration Manual, Sept. 2022, at 78-81.

²⁶⁹ Wisc. Stat. § 6.34(3); Election Administration Manual, Sept. 2022, at 78-81.

²⁷⁰ *Id.*, at 81.

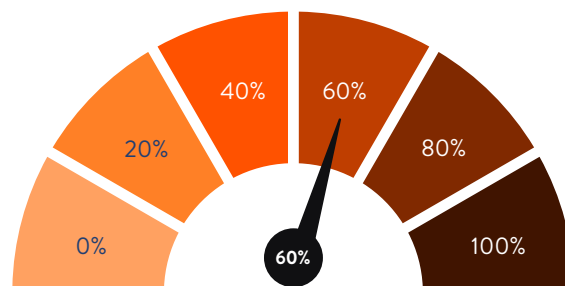
Table 42: Safeguards Against Erroneous Removal

Safeguard	
Same-Day Registration (SDR)	40
SDR Identification Requirements	10
Regular or Provisional Ballot for SDR Voter	20
Regular or Provisional Ballot for Correcting Inactive Status	20
Total	90/100 = 90%

Data Accessibility

FIGURE 43

Wisconsin Data Accessibility



Wisconsin scored 60% for data accessibility. The voter file is open to public inspection and can be downloaded immediately in an electronic format after payment is received.²⁷¹ However, the cost of the complete file is exceptionally expensive; it can cost up to \$12,500.²⁷²

Table 43: Data Accessibility

Indicator of Accessibility	
Complete File Publicly Available	0
Who Can Request File	20
Cost	0
Timeline	20
Format	20
Total	60/100 = 60%

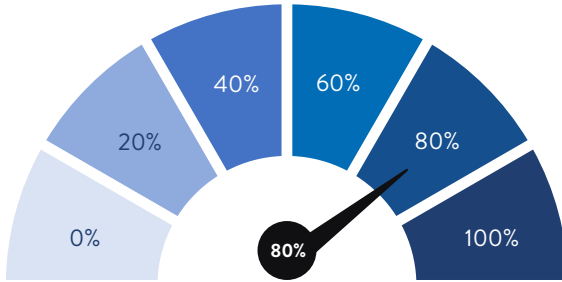
²⁷¹ Wisc. Admin. Code EL 3.50(4); Wisconsin Elections Commission, “Public Records Requests”, available at <https://elections.wi.gov/statistics-data/public-records-requests>

²⁷² Wisc. Admin. Code EL 3.50(4).

Data Transparency

FIGURE 44

Wisconsin Data Transparency



Wisconsin scored 80% for data transparency. The file does not include race, but it does include voter identification or registration number, voter status, voter reason code, and voting history.²⁷³

Table 44: Data Transparency

Indicator of Transparency	
Race	0
Voter ID Number	20
Voter Status	20
Status Reason Code	20
Date Last Voted	20
Total	80/100 = 80%

Current Political Context

Wisconsin has long been a battleground over voting procedures.²⁷⁴ In recent sessions, the Republican-controlled legislature has passed several anti-voter bills, several of which were successfully vetoed by the Democratic Governor. Examples included WI SB 943, which would have required legislative oversight of the Wisconsin Elections Board,²⁷⁵ and another, WI SB

²⁷³ Wisconsin Elections Commission, “Standard Data Elements in a Voter Data File Request,” available at <https://badgervoters.wi.gov/img/Voter%20Data%20Request%20Data%20Elements.pdf>.

²⁷⁴ See, e.g., Shawn Johnson and Laurel White, “As Voting Begins, A Look Back At The Fight Over Wisconsin’s Voter ID Law,” Wisconsin Public Radio, September 26, 2016 (tracing court battles over ID legislation since 2011), available at <https://www.wpr.org/voting-begins-look-back-fight-over-wisconsins-voter-id-law> (last visited April 21, 2023).

²⁷⁵ WI SB 943 (2021-2022 Session), available at <https://docs.legis.wisconsin.gov/2021/related/proposals/sb943> (last visited April 18, 2023).

938, which would have required the Board to verify the citizenship of all registered voters 60 days before absentee ballots are sent out without any guidance on what data points must match before removing individuals from the rolls.²⁷⁶

In its 2023 session, the legislature is considering another bill likely to lead to flawed purges of voters based on citizenship status if enacted. WI AB 93 would require the Wisconsin Elections Commission to use information from the Department of Transportation to identify alleged non-citizens who are on the voting rolls.²⁷⁷ DMV data are notoriously inaccurate when used for this purpose because an individual flagged as a non-citizen on the DMV rolls may have become naturalized before registering to vote. A similar removal process was attempted in Texas, but it was so riddled with errors that it was halted after litigation, and the Secretary of State who had implemented the program was forced to leave office.²⁷⁸

Another 2023 bill, WI SB 26, would also make voter list maintenance more restrictive.²⁷⁹ Under current practice, when Wisconsin officials obtain information indicating a voter may be ineligible, they mark the registration as such in the statewide database, but they do not remove the registration record. WI SB 26 would change this practice and immediately remove alleged ineligible voters from the system while maintaining a record of the removal and the reason for it. This means that anyone who has failed to vote in recent elections will not appear on the registration rolls and thus will not receive voting-related information from elections officials in the future and will have to re-register in order to continue voting, even if nothing has changed concerning their residence or eligibility.²⁸⁰ Similar bills were defeated in the 2022 legislative session.²⁸¹

²⁷⁶ WI SB 938, available at <https://docs.legis.wisconsin.gov/2021/related/vetoedinfull/sb938> (last visited April 18, 2023).

²⁷⁷ WI SB 93 (2023-2024 session), available at <https://docs.legis.wisconsin.gov/2023/related/proposals/ab93.pdf>.

²⁷⁸ *Texas League of United Latin Citizens v. Whitley*, 2019 WL 7938511 (W. Dist. Texas 2019); Alexa Ura, “Texas Secretary of State David Whitley departs as legislative session ends,” Texas Tribune, available at <https://www.texastribune.org/2019/05/27/texas-secretary-state-david-whitley-forced-leave-office/> (last visited April 18, 2023). Note, Demos, along with numerous partners, served as counsel in this litigation.

²⁷⁹ WI SB 26 (2023-2024 Session), available at <https://docs.legis.wisconsin.gov/2023/related/proposals/sb26> (last visited April 18, 2023).

²⁸⁰ *Id.*

²⁸¹ WI SB 804 (2021-2022 Session), available at <https://docs.legis.wisconsin.gov/2021/related/proposals/sb804> (last visited April 18, 2023).

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