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Dear Senator Knodl and Representative Krug:

Thank you for your continued attention to the topic of voter identification. WisDOT was happy to participate in the May 16, 2024, joint hearing.

After the hearing, two additional requests were made for information or actions on the topic of voter verification. I appreciate the patience of the committee members as we needed to take the time to research the requests fully for statutory authority. The June 4, 2024, memo, prepared by Legislative Council Attorney Katie Bender-Olson, was also very helpful in addressing the authority of the department to share citizenship information.

Based upon our research to date, I offer the following responses to the requests made.

Request 1 (May 31, 2024)

This letter humbly requests WisDOT and WEC to cooperatively share non-citizen information with each other to provide another layer of election integrity to our system.

As noted in the June 4, 2024, Wisconsin Legislative Council memo to members of the Senate Committee on shared revenue, elections, and consumer protection:

Federal and state law generally protect personal information of driver's license and state identification (ID) card holders and applicants but allow for sharing of data for certain government agency purposes. Current state law does not direct DOT to provide citizenship data to WEC, nor does it expressly authorize DOT to generate a list of non-citizens and transmit this to WEC. However, state law does provide several limited pathways for DOT to communicate citizenship information with WEC for voter registration-related purposes, if requested or directed to do so.

WisDOT and WEC have a current agreement to carry out the matching program described in Wis. Stat. 5.056 and 85.61. To ensure compliance with the Help America Vote Act, this matching program is statutorily limited to the personally identifiable information on the official registration list (s. 6.36(1)). Citizenship information is not included in this list, so it is ineligible for the matching program and not a part of the current agreement.

Additionally, WEC's online voter registration system (s. 6.34(2m)) requires WisDOT to electronically verify an elector's residential address. Absent statutory authority to verify citizenship data via the online registration system, WisDOT cannot share this information.

Identification card data cannot be provided without a change in Wisconsin Statutes. Wis. Stat. 343.50(8) prohibits the department from disclosing any record or other information concerning or relating to an applicant or identification card holder, unless specifically delineated. Wis. Stat. 343.50(8)(c) 3. indicates that the "department may, upon request, provide to the elections commission for the sole purpose of allowing the chief election officer to comply with the terms of the agreement under 6.36(1)(ae) any application or identification card holder information maintained by the department of transportation and identified in 343.14(2)." The terms of 6.36(1)(ae) relates specifically to the ERIC agreement. Therefore, while state law would permit DOT to release citizenship information to WEC if required under the ERIC agreement, the ERIC agreement specifically prohibits member states from transmitting a DOT record where the record contains documentation or other information indicating the individual is a non-citizen of the United States.

Request 2 (June 27, 2024)

I know your agency has a list of the permanent non-citizen residents of Wisconsin who have received ID cards or drivers' licenses from your agency. I write today to ask you to share this list with the Assembly Committee on Campaigns and Elections as well with the Senate Committee on Shared Revenue, Elections and Consumer Protection so that our two committees may properly and fully conduct our oversight duties we are tasked with.

The request avers that WisDOT possesses a "list" of permanent non-citizen residents of Wisconsin "who have received ID cards or drivers' licenses from your agency." This is incorrect. As part of her testimony, Deputy Secretary Boardman stated that WisDOT has such information, *not* that a "list" of the same exists. WisDOT driver record information is subject to the federal Driver Privacy and Protection Act (DPPA). Requesters authorized under the DPPA may submit an MV2896 to request driver records for certain permitted uses. The DPPA is enforced by the U.S. Department of Justice, which can seek civil and criminal penalties for improperly obtaining, disclosing, or using personal information from a motor vehicle record for a purpose not permitted by the DPPA. In addition, private citizens may also seek civil damages in Federal Court. Notwithstanding the cited cooperation statute, Wis. Stats. s. 13.45(7), WisDOT is bound by this Act and the aforementioned statutory provisions concerning ID applicant or card holder information. Given these restrictions on information sharing under Wisconsin law, WisDOT cannot collect and provide these records as with an open records request or under s. 13.45(7).

Sincerely,



Craig Thompson
Secretary