Hagopian Outline of Argument-Restoration of Ward’s Right to Vote-No New Medical Opinion

* 54.64-the statute this case is brought under does not mandate a new medical exam; but does require the appointment of a GAL
* Contrast this with 54.10(3)(c)2.-which requires a medical /psychological exam prior to initial imposition of a guardianship of the person
* But even under that statute, the medical report is not dispositive on any point—it is one piece of information the court “considers” before making any finding of incompetency
* It is one consideration among 15 specified “considerations” and a 16th one-which encompasses any “other relevant evidence”
* The first consideration is the “report of the guardian ad litem”
* Determining a person’s capacity to understand “the purpose of the elective process” does not require any medical expertise; there is no medical exam or psych test that objectively measures a person’s understanding of “the elective process”
* There is no statutory definition-anywhere-which defines “the purpose of the elective process” (See Wis. Stats. Chs. 5, 6, 7, 8, 9, 10, 11 and 12)
* The inquiry is straightforward, simple and concrete; any lay person who understands the elective process would likely be able to quickly determine if the ward also did; for example, if the ward said the purpose of the elective process is to keep aliens at bay or to decide which color to paint his garage, it could easily be concluded that the person did not understand the purpose of the elective process. Likewise, if the ward can express that the purpose of elections is to choose the people who make government decisions, it can be concluded that he understands the purpose of the elective process.
* If any type of expertise is required it would be expertise in the form and function of government-a substantive area where the GAL, an attorney, actually has vastly more expertise than any physician or psychologist possesses
* So the GAL is the appropriate person to examine the ward on this point and offer an expert opinion to the court
* Contrast this inquiry with another right that a ward may lose and which may not be exercised by another: the right to consent to sterilization:
* May be taken away “if the court finds that the individual is incapable of understanding the nature, risk, and benefits of sterilization, after the nature, risk, and benefits have been presented in a form that the individual is most likely to understand.” 54.25(3)(c)(1)e.
* In an inquiry into the ward’s understanding of that decision the opinion of a medical professional would be quite useful to the court
* Purpose of guardianship is to protect the ward from abuse, neglect and exploitation. The right to vote carries no risk of these. Therefore, the amount of proof necessary to reestablish the right to vote does not have to be voluminous or excessive.
* Wisconsin has a proud history of encouraging people to exercise their franchise and expanding the electorate. We have never had poll taxes or literacy exams or any of the mechanisms other states have used to disenfranchise certain voters. Requiring people, even those deemed incompetent in other areas of decision-making, to undergo a medical exam as a condition of regaining their right to vote in the face of other, reliable, evidence that the person is competent to vote, would be a significant imposition on the franchise.
* In this case, the ward has engaged in a colloquy with his guardian, and, more important, the GAL, about his understanding of the elective process. Both the guardian and the GAL found that the ward demonstrated the requisite understanding of “the elective process” to have his right to vote restored. Conversations occurred on different dates and at different times, meaning that his capacity extended over a period of time.
* No further inquiry or evidence is required by statute.