

STATE OF WISCONSIN  
BEFORE THE ELECTIONS COMMISSION

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Kenneth Brown  
610 Main Street  
Racine, WI 53403,

Complainant,

v.

Tara McMenamin  
Office of the City Clerk  
730 Washington Ave  
Racine, WI 53403,

Respondent.

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**COMPLAINT**

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The Complainant, Kenneth Brown alleges as follows:

1. Complainant is a registered Wisconsin voter and qualifies as an elector within the meaning of Chapters 5 and 6 of the Wisconsin Statutes. Complainant resides in the City of Racine, Racine County.

2. The Respondent, Tara McMenamin, is the City Clerk of the City of Racine. Ms. McMenamin is an “election official” within the meaning of Chapters 5 and 6 of the Wisconsin Statutes and is sued in that capacity.

**JURISDICTION**

3. This case is brought against Ms. McMenamin under Wisconsin Statute § 5.06 which provides that:

Whenever any elector of a jurisdiction or district served by an election official believes that a decision or action of the official or the failure of the official to act with respect to any matter concerning nominations, qualifications of candidates, voting qualifications,

including residence, ward division and numbering, recall, ballot preparation, election administration or conduct of elections is contrary to law, or the official has abused the discretion vested in him or her by law with respect to any such matter, the elector may file a written sworn complaint with the commission requesting that the official be required to conform his or her conduct to the law, be restrained from taking any action inconsistent with the law or be required to correct any action or decision inconsistent with the law or any abuse of the discretion vested in him or her by law.

## **THE COMPLAINT**

4. Wis. Stat. § 6.855 provides that the office of the municipal clerk is the default location “to which voted absentee ballots shall be returned by electors for any election.”

5. If a clerk determines that, for some reason, the clerk’s office is unavailable for in-person absentee voting, then the clerk may designate an alternate absentee ballot site or sites, but any other location must be designated in the manner set forth in § 6.855 and “The designated site shall be located as near as practicable to the office of the municipal clerk or board of election commissioners and no site may be designated that affords an advantage to any political party.”

6. Further, if the governing body of a municipality makes an election to designate an alternate site to the clerk’s office under this section, then “no function related to voting and return of absentee ballots that is to be conducted at the alternate site may be conducted in the office of the municipal clerk or board of election commissioners.”

7. As set forth in more detail below, Ms. McMenamin allowed voters to cast absentee ballots at alternate absentee ballot sites in the City of Racine during in-person absentee voting for the August 9, 2022 primary without complying with the requirements of Wis. Stat. § 6.855.

8. Instead of complying with Wis. Stat. § 6.855, Ms. McMenamin authorized both in-person absentee voting at City Hall and authorized in-person absentee voting at an “election van” that would move from place to place throughout the city, with the van staying in no single place for more than 3 hours and moving to 21 different locations during the two-week period allowed

for early in-person absentee voting. Conducting an election in this fashion leads to voter confusion, creates opportunities for partisan advantage and directly contradicts the statutory language of Wis. Stat. § 6.855.

9. Ms. McMenamín, in her role as City Clerk of Racine (or through her designated representatives), has created and maintained an internet site for providing information to voters regarding elections in the City of Racine at <https://www.voteracine.org/voteracine.org>

10. Attached hereto as Exhibit A is a pdf printout of the section of voteracine.org regarding in-person absentee voting in the City of Racine for the August 9, 2022 primary. The print out was created on July 27, 2022.

11. The content of the website listing sites for absentee voting for the August 9<sup>th</sup> primary was first posted on July 7, 2022 according to information received from Ms. McMenamín's office in response to an Open Records Request (*See*, Exhibit B attached hereto).

12. The website informs voters that "You may also request and vote an absentee ballot in the clerk's office or other specified location during the days and hours specified for casting an absentee ballot in person." The website then specifies 21 alternate sites in addition to the clerk's office where voters may request and vote an absentee ballot.

13. Each of the 21 alternate sites designated is designated for a limited 3 hour period of time on a single day with two different sites per day, except for the Racine Art Museum which is designated for three hour periods on two different days; Friday, July 29<sup>th</sup>, 2022, 4:30 to 7 p.m. and Saturday, July 30<sup>th</sup>, 2022, 4:30 to 7 p.m.. Also, there is only one site designated for Sunday, August 7<sup>th</sup>.

14. For example, the first designated alternate absentee ballot site is the Martin Luther King Community Center at 1134 Dr. Martin Luther King Dr, Racine WI 53404 on Tuesday, July 26<sup>th</sup>, 2022 from 9 a.m. to noon.

15. But in-person absentee voting was not actually conducted inside any of the buildings identified on the website. For example, voters could not cast absentee ballots inside the Martin Luther King Community Center on Tuesday, July 26<sup>th</sup> from 9 a.m. to noon.

16. Instead, in-person absentee voting at these varying locations was accomplished by use of an “election van” which traveled from location to location, parked nearby these buildings, and was equipped to allow in-person absentee voting. *See*, [https://journaltimes.com/news/local/govt-and-politics/elections/early-voting-underway-heres-where-to-cast-your-ballot-in-racine-county/article\\_a1db8bf2-0d21-11ed-b953-076508494963.html](https://journaltimes.com/news/local/govt-and-politics/elections/early-voting-underway-heres-where-to-cast-your-ballot-in-racine-county/article_a1db8bf2-0d21-11ed-b953-076508494963.html)

17. During the same period of time that in-person absentee voting was permitted at these alternate absentee voting sites, the voteracine.org website stated that “you may also request and vote an absentee ballot in the clerk’s office” and stated that in-person absentee voting was allowed at City Hall on all regular business days from 8 a.m. to 4:30 p.m., July 26<sup>th</sup>, 2022 – August 5<sup>th</sup>, 2022 and on Saturday, July 30<sup>th</sup>, 2022, from 9 a.m. to noon and Saturday, August 6<sup>th</sup>, 2022, from 9 a.m. to noon.

18. Complainant Brown personally observed at least one voter casting in-person absentee ballots at the election van on the afternoon of August 3, 2022. The election van was parked near the Regency Mall which is the location listed on voteracine.org as an alternate absentee ballot site for that date and time.

19. That same afternoon, Complainant Brown personally observed voters casting in-person absentee ballots at City Hall. If a voter went to the clerk's office in City Hall to cast a ballot as indicated on the web site, they were directed by signage within City Hall to proceed to Room 207.

20. Allowing in-person absentee voting at these temporary, alternate absentee voting sites violates Wis. Stat. § 6.855 in several ways.

21. First, Wis. Stat. § 6.855 provides that alternate absentee ballot sites "shall be located as near as practicable to the office of the municipal clerk or board of election." Here, the 21 alternate sites are not as near as practicable to the office of Ms. McMenammin.

22. In December, 2021, the Racine City Council pre-approved over one hundred fifty locations as alternate absentee ballot sites for all elections to be conducted during calendar year 2022. *See*, the Common Council Resolution attached hereto as Exhibit C and incorporated herein by reference.

23. Attached hereto as Exhibit D is a map. The red marker on the map is City Hall. The green markers on the map are the 21 alternate absentee ballot site used by Ms. McMenammin for the August 9<sup>th</sup> primary. The gold markers on the map are alternate sites that were also pre-approved by the Racine Common Council in its December, 2021 resolution. Although the City Council pre-approved over 150 locations, the attached map only shows 50 such locations because showing them all made the map too cluttered, and the 50 locations displayed sufficiently show that Ms. McMenammin had many sites that she could have used that were nearer to her office than the ones she actually used.

24. Thus, Ms. McMenammin had options for alternate absentee ballot sites that were nearer to her office than the sites she permitted for in-person absentee voting for the August 9,

2022 election, and by failing to only use locations as near as practicable to her office, she violated Wis. Stat. § 6.855.

25. Second, Wis. Stat. § 6.855 provides that “no site may be designated that affords an advantage to any political party.”

26. Per the report attached hereto as Exhibit E and incorporated herein by reference, the majority of the alternate sites designated by Ms. McMenammin afford an advantage to a political party.

27. Many of the 21 alternate sites advantage the Democratic Party and some advantage the Republican Party. Collectively, however, the sites used by Ms. McMenammin afforded an advantage to the Democratic Party

28. In addition, as reflected in the attached report, that is true for both the 150+ sites which had been pre-approved in the December 2021 Racine Common Council Resolution and the 21 alternate ballot sites used by Ms. McMenammin for in-person absentee voting for the August 9<sup>th</sup> primary.

29. Third, Wis. Stat. § 6.855 provides that if “the governing body of a municipality makes an election under this section, no function related to voting and return of absentee ballots that is to be conducted at the alternate site may be conducted in the office of the municipal clerk or board of election commissioners.”

30. Ms. McMenammin violated this provision of the statute by permitting in-person absentee voting at both 21 different alternate absentee ballot sites and at City Hall. The City of Racine clerk’s office is located in City Hall, which has the street address 730 Washington Avenue. Ms. McMenammin’s office is in Room 103 of City Hall, whereas absentee voting was permitted in Room 207 of City Hall.

31. It is no defense for Ms. McMEnamin to argue that the in-person absentee ballot voting at City Hall was in a different room than her office. Any such argument is contradicted by the statement on the website that “You may also request and vote an absentee ballot in the clerk’s office.”

32. Further, as alleged above, if voters went to the clerk’s office to cast an absentee ballot – as the Clerk’s website stated they could – they were directed to Room 207. Room 207 was simply an extension of the clerk’s office.

33. Furthermore, if such gamesmanship is permitted, it would make a mockery of the statutory requirement. The statute is meant to have in-person absentee voting at one centralized location – the clerk’s office – which is virtually always in the City Hall, Village Hall or Town Hall of the relevant municipality. If that location is unavailable or undesirable the Clerk may designate alternate locations, but she may not then permit voting at City Hall.

34. Fourth, Wis. Stat. § 6.855 provides that “An election by a governing body to designate an alternate site under this section shall be made no fewer than 14 days prior to the time that absentee ballots are available for the primary under s. 7.15 (1) (cm), if a primary is scheduled to be held, or at least 14 days prior to the time that absentee ballots are available for the election under s. 7.15 (1) (cm), if a primary is not scheduled to be held, **and shall remain in effect until at least the day after the election.**” (Emphasis added.)

35. Under this provision each location designated must be designated for the period 14 days prior to the time absentee ballots are available and the alternate site must remain in place until the day after the election. This provision requires a fixed location for the entire period of time and does not permit the temporary shifting locations permitted by Ms. McMEnamin.

36. Fifth, Ms. McMenamain is permitting in-person absentee voting, not in the buildings at the addresses designated, but at a van parked somewhere near those addresses. The statute does not permit that sort of temporary, unfixed location, and the notice to voters and the designation of the site does not reflect the actual location where ballots will be available and can be cast by the voter.

37. Specifically, Wis. Stat. § 5.25 which governs “polling places” states that “public buildings” shall be used as polling places “unless the use of a use of a public building for this purpose is impracticable or the use of a nonpublic building better serves the needs of the electorate.” The plain language of the statute contemplates that “polling places” shall be in buildings and not in a transitory vehicle such as a van. Other statutory provisions also support this plain language, common-sense interpretation. For example, Section 5.80, governing demonstration of the electronic voting system, permits the clerk to provide a demonstration of electronic voting equipment “in any public building within the municipality in which the election occurs.”

38. Similarly, Wis. Stat. § 6.55(2)(c)1, governing registration at the polling place, provides that a person who qualifies as an elector and who is not registered and desires to register on election day shall be provided the opportunity to do so at the polling place or “at another readily accessible location *in the same building as the polling place serving the elector’s residence* or at an alternate polling place assigned under s. 5.25 (5) (b), instead of at the polling place serving the elector’s residence.” Again, the statute contemplates that a polling place will be a building and not at a vehicle.

39. Further, Wis. Stat. § 12.03(2)(b)2 provides, “No person may engage in electioneering during the hours that absentee ballots may be cast on any public property within 100 feet of an entrance to *a building* containing the municipal clerk’s office or an alternate site



under s. 6.855.” Yet again, the statute contemplates that voting will be done in a building and not on the street.

40. The statute does not permit alternate absentee ballot sites such as the sidewalk in front of the clerk’s house from 5 to 7 p.m., or the trunk of the clerk’s car, or the inside of a van.

41. This is important for ballot security purposes. At the clerk’s office, and presumably at any other alternate site, absentee ballots that are cast in advance of the election are kept in the clerk’s office or an alternate site until delivered, via carrier envelope and in person, to the individuals who will count them. *See*, Wis. Stat. § 6.88.

42. Under this provision, the ballots are to be kept at the alternate site from the time they are cast until they are counted on election day.

43. That does not occur with the Racine Election Van. The ballots do not stay at the 21 sites designated by the Clerk.

44. Nor is it consistent with the statute to deliver them to the clerk’s office each time the Election Van changes location or at the end of each day. That would violate Wis. Stat. § 6.855’s prohibition that no function relating to absentee voting occur at the clerk’s office if the Clerk is using an alternate site or sites.

45. Nor is it consistent with the statute to keep them in the Election Van for the entire period of in-person absentee voting. That is equivalent to having someone driving completed absentee ballots around the City in the trunk of their car for 14 days prior to the election and leaving the vehicle parked in various locations throughout the days and nights. That is completely inconsistent with the ballot security measures set forth in Wis. Stat. § 6.88

46. As set forth in the preceding paragraphs, Ms. McMenammin has allowed in-person absentee ballots to be cast in a manner inconsistent with Wis. Stat. § 6.855 in a number of different

ways. Such conduct is contrary to law and/or amounts to an abuse of discretion by Ms. McMenammin. Ms. McMenammin should be required to conform her conduct to the law and be restrained from administering the November 2022 general election and all future elections in a similar fashion.

47. The Complainant seeks an order from the Wisconsin Election Commission directing that in her administration of the November 2022 general election and all future elections, that Ms. McMenammin conform her conduct to the law and ensure that if alternate in-person absentee ballot sites are used that: (a) they be located as near as practicable to the office of the municipal clerk, (b) that they be in locations that confer no partisan advantage, (c) that no in-person absentee voting be done at City Hall, (d) that any in-person alternate absentee ballot locations be in fixed locations and available for the entire period established by statute, and (e) that no in-person absentee voting be permitted at a mobile location such as an RV, van, truck, automobile, etc.

#### **PRAYER FOR RELIEF**

WHEREFORE, the Complainant request the following relief:

A. That Ms. McMenammin be directed to conform her conduct to the law as described above.

B. That Ms. McMenammin be restrained from permitting in-person alternate absentee ballot sites other than as allowed under § 6.855 an specifically (a) that any such sites be located as near as practicable to the office of the municipal clerk, (b) that any such sites be in locations that confer no partisan advantage, (c) that if alternate absentee ballot sites are used that no in-person absentee voting be permitted at City Hall, (d) that any in-person alternate absentee ballot locations be in a fixed locations and available for the entire period established by statute, and (e) that no in-

person absentee voting be permitted at a mobile location such as an RV, van, truck, automobile, etc.

C. Such equitable or other relief as is just and appropriate.

Respectfully submitted this 10th day of August, 2022.

WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.



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The Complainant, Kenneth Brown, being first duly sworn, state that he has personally read the above complaint, and that the above allegations are based on information and belief and the complainant believes them to be true.



Kenneth Brown

Subscribed and sworn to before me  
this 8<sup>th</sup> day of August, 2022.



Notary Public, State of Wisconsin

My Commission expires is permanent