

STATE OF WISCONSIN

CIRCUIT COURT

RACINE COUNTY

KENNETH BROWN
610 Main Street
Racine, WI 53403,

Plaintiff,

v.

Civil - Unclassified
Case Code: 30703
Case No. 22-CV-

WISCONSIN ELECTIONS COMMISSION
201 West Washington Avenue, Second Floor
Madison, WI 53703, and

TARA McMENAMIN, in her official capacity as
City Clerk of the City of Racine
730 Washington Avenue
Racine, WI 53403,

Defendants.

COMPLAINT

Plaintiff, Kenneth Brown, by his undersigned attorneys at the Wisconsin Institute for Law & Liberty, pursuant to Wis. Stat. §§ 5.06(8) and 227.40, hereby appeals the dismissal of his complaint against the Defendant Tara McMEnamin by the Wisconsin Elections Commission:

INTRODUCTION

1. Wisconsin Stat. § 6.855 provides that a municipal clerk may set up alternate sites for in-person absentee voting but only under the conditions specified by the Legislature. These conditions include that the site a) be at a location other than the municipal clerk's office; b) be located as near as practicable to the office of

the municipal clerk; and c) not afford an advantage to any political party. Further, once the clerk elects to use an alternate site, then under § 6.855 “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.” Finally, the alternate sites are subject to other statutory requirements relating to locations used for voting.

2. Defendant McMenammin violated each of these requirements for alternate absentee voting sites in 2022.

3. Pursuant to Wis. Stat. § 5.06 the Plaintiff complained about Defendant McMenammin’s conduct to the Defendant Wisconsin Elections Commission (“WEC”) but WEC has refused to do anything about it and has dismissed Mr. Brown’s complaint. This appeal follows pursuant to Wis. Stat. § 5.06(8) and, to the extent necessary, pursuant to § 227.40.

PARTIES

4. Plaintiff Kenneth Brown is a registered Wisconsin voter and qualifies as an elector within the meaning of Chapters 5 and 6 of the Wisconsin Statutes. He resides in the City of Racine in Racine County. As an elector, Mr. Brown has an interest and a statutory right, under Wis. Stat. § 5.06(1), in ensuring that Wisconsin’s elections laws are followed.

5. Defendant Wisconsin Elections Commission is a governmental agency created under Wis. Stat. § 5.05 and charged with the responsibility for the administration of Chapters 5 through 10 and 12 of the Wisconsin Statutes. WEC is responsible for hearing and resolving complaints alleging election law violations by

local officials, and for ordering local elections to conform their conduct to the law if such violations are found. WEC has its offices and principal place of business at 201 West Washington Avenue, Second Floor, Madison, WI 53703.

6. Defendant Tara McMenamain (the “Clerk”) is the City Clerk for the City of Racine and served in this role during the timeframe applicable to the Plaintiff’s complaint. The Clerk is an “election official” within the meaning of Chapters 5 and 6 of the Wisconsin Statutes and is being sued in that capacity.

JURISDICTION AND VENUE

7. This is an appeal of the decision dismissing Mr. Brown’s complaint against the Clerk, pursuant to Wis. Stat. § 5.06(8) and, to the extent necessary, pursuant to § 227.40. WEC issued its decision on November 4, 2022, and this appeal of that decision is timely filed. This Court has jurisdiction pursuant to Wis. Stat. § 5.06(8) and, because this appeal potentially implicates issues of administrative law, Wis. Stat. § 227.40.

8. Venue is proper in this Court pursuant to Wis. Stat. §§ 5.06(8) and/or 227.40(1).

FACTUAL BACKGROUND

Governing Law on Alternate Absentee Voting Sites

9. Wisconsin 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.”

10. 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 “[t]he 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.”

11. Further, if an election is made 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.”

The August 9, 2022 Primary

12. As explained in detail below, the Clerk 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.

13. Specifically, instead of complying with Wis. Stat. § 6.855, the Clerk authorized both in-person absentee voting at City Hall—the same building in which the Clerk’s office is located—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. During the August primary, the van moved to 21 different locations during the two-week period allowed for early in-person absentee voting.

14. 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.

15. The Clerk (herself 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>.

16. 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 and was submitted to WEC as part of Mr. Brown's complaint.

17. The content of the website listing sites for absentee voting for the August 9 primary was first posted on July 7, 2022 according to information received from the Clerk's office in response to an Open Records Request. That information is attached hereto as Exhibit B and was submitted to WEC as part of Mr. Brown's complaint.

18. The website informed 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 specified 21 alternate sites in addition to the clerk's office where voters may request and vote an absentee ballot.

19. Each of the 21 alternate sites for the August primary designated was 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 was designated for three hour

periods on two different days; Friday, July 29th, 2022, 4:30 to 7 p.m. and Saturday, July 30th, 2022, 4:30 to 7 p.m. Also, there was only one site designated for Sunday, August 7th.

20. For example, the first designated alternate absentee ballot site was the Martin Luther King Community Center at 1134 Dr. Martin Luther King Drive, Racine WI 53404 on Tuesday, July 26, 2022 from 9 a.m. to noon.

21. But in-person absentee voting was not actually conducted inside any of the buildings identified on the website. For example, if a voter entered the Martin Luther King Community Center on Tuesday, July 26th from 9 a.m. to noon, he or she could not actually cast a ballot in the building.

22. 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.

23. 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 26th, 2022 – August 5th, 2022, on Saturday, July 30th, 2022, from 9 a.m. to noon, and on Saturday, August 6th, 2022, from 9 a.m. to noon.

24. Plaintiff 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 was the location listed on voteracine.org as an alternate absentee ballot site for that date and time.

25. That same afternoon, Mr. 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.

26. As explained in detail below, allowing in-person absentee voting at these temporary, alternate absentee voting sites violates Wis. Stat. § 6.855 in several ways.

The November 8, 2022 General Election

27. Following the August 2022 primary, WEC determined that the mobile election van that the Clerk had used for the August primary was illegal because it was not ADA-compliant.

28. Consequently, the voting van used in the August 2022 partisan primary was replaced by the Clerk with a converted small Type A school bus for the November General Election.

29. However, on information and belief, the Clerk conducted the November, 2022 general election in precisely the same fashion as the August, 2022 primary except that she authorized some different locations in November than in August and, as noted, she used a different vehicle.

30. During the November 2022 general election, the bus moved to 21 different sites during the 13-day early voting period. Attached hereto as Exhibit F is

a copy of the section of the City of Racine website regarding in-person absentee voting in the City of Racine for the November 8, 2022 general election.

31. Most, but not all, of the alternate sites used for the November General Election were the same sites used in the August Primary. For example, one of the new locations used by the Clerk for the November 2022 General Election was Racine North Beach. Upon information and belief, the Clerk simply parked the small bus at the beach and made that a voting site.

32. The Clerk also permitted early in-person absentee voting at City Hall for the November, 2022 general election at the same time voting took place at the 21 alternate sites.

33. As explained in detail below, allowing in-person absentee voting at these temporary, alternate absentee voting sites violates Wis. Stat. § 6.855 in several ways. The manner in which the Clerk administered the November, 2022 election was illegal for all of the same reasons as alleged herein with respect to the August Primary.

PROCEDURAL BACKGROUND

34. On August 8, 2022, the Plaintiff filed a complaint against the Clerk with WEC under Wis. Stat. § 5.06. The Plaintiff specifically requested that WEC decide the complaint prior to the November 2022 General Election so that the general election was administered in a lawful fashion.

35. On August 10, 2022, WEC informed the Clerk that she had until August 29, 2022 to respond to the complaint and that the Plaintiff could file a reply within 13 business days of the date that WEC transmitted the Clerk's response to him.

36. On September 8, 2022, having not received an answer to the Complaint from the Clerk, Plaintiff's counsel contacted WEC to inquire as to the status of the matter. In response, WEC transmitted to the Plaintiff the Clerk's response dated August 29, 2022 and one of WEC's employees acknowledged WEC's delay in forwarding the answer and stated that the delay was due in part to an employee being out on vacation.

37. In order to still try to get a decision before the November General Election, rather than use his allotted 13 business days to reply, the Plaintiff filed his reply on September 13 (three business days later). The Plaintiff reiterated via cover letter that he was requesting relief in advance of the November election and added that he had sacrificed his briefing time for that reason.

38. WEC issued its decision on the Plaintiff's complaint after close of business (5:45 p.m.) on November 4, 2022. This happened to be the last business day for early in-person absentee voting for the November 2022 general election. A true and correct copy of the decision is attached hereto as Exhibit H.

39. In its decision, WEC concluded that there was "no probable cause to believe that a violation of law or abuse of discretion occurred."

40. The timing of WEC's decision meant that the Plaintiff could take no action in court to challenge and restrain the Clerk's conduct in the November 2022 general election.

41. As explained above, the Clerk repeated her illegal conduct in the November 2022 election.

CAUSES OF ACTION

CLAIM I – Review under Wis. Stat. § 5.06(8) (against both Defendants)

42. Plaintiff realleges and incorporates by reference the preceding allegations of the complaint.

43. The Clerk’s actions in the August and November elections violate Wis. Stat. § 6.855 in five different ways.

Alternate Sites Were Not “As Near as Practicable” to the Clerk’s Office

44. 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 commissioners.”

45. Here, the 21 alternate sites for the August primary were not as near as practicable to the office of the Clerk. 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* Exhibit C, incorporated herein by reference.

46. These locations included not only churches and schools that are often used as polling places, but also the “State Street Bridge,” the “Train Platform,” the “Pershing Boat Ramp,” and the “Old Tavern Rooming House,” among others.

47. Attached hereto as Exhibit D and incorporated herein by reference is a map. The red marker on the map is City Hall. The green markers on the map are the 21 alternate absentee ballot sites used by the Clerk for the August 9 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.

48. 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.

49. Thus, the Clerk 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.

50. This illegal conduct continued for the November 2022 election. Most of the alternate sites used were the same sites used in the August primary, and practicable locations nearer to the Clerk's office were pre-approved by City Counsel and available.

Alternate Sites Afforded Political Advantage

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

52. By establishing alternate in-person absentee voting sites in wards other than the ward in which the Clerk's office was located—something the Clerk did for both the August and November elections—the Clerk afforded an advantage to one or more political parties.

53. Each ward in Racine has a different political makeup; moving voting sites outside of the ward in which the Clerk's office is located therefore necessarily

benefits those parties with a greater concentration of voters in the new ward. *See* Exhibits E and G (attached hereto and incorporated herein by reference) (providing Democratic vote share and mobile voting unit locations by ward for the August primary and November general elections).

The Clerk Improperly Permitted In-Person Absentee Voting in City Hall

54. 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.”

55. The Clerk 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. The Clerk’s office is in Room 103 of City Hall, whereas absentee voting was permitted in Room 207 of City Hall for both the August and November elections.

56. It is no defense for the Clerk 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 for the August election that “You may also request and vote an absentee ballot in the clerk’s office.”

57. Further, 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.

58. 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.

Designating an Alternate Site for Three Hours Does Not Comply with the Statute

59. 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.)

60. 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 the Clerk for the August and November elections.

Mobile Voting Sites are Not Authorized by Statute

61. Fifth, for the August and November elections the Clerk permitted in-person absentee voting, not in the buildings at the addresses designated, but at a van

parked somewhere near those addresses or landmarks. 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.

62. Specifically, Wis. Stat. § 5.25 which governs “polling places” states that “public buildings” shall be used as polling places “unless the use of a public building for this purpose is impracticable or the use of a nonpublic building better serves the needs of the electorate.”

63. The plain language of the statute contemplates that “polling places” shall be in buildings and not in a transitory vehicle such as a van or bus. 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.”

64. 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.” (Emphasis added.) Again, the statute contemplates that a polling place will be a building and not at a vehicle.

65. 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.” (Emphasis added.) Yet again, the statute contemplates that voting will be done in a building and not on the street.

66. 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 a van parked on a bridge or at a beach.

67. Among other things, 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 securely until delivered, via carrier envelope and in person, to the individuals who will count them. *See* Wis. Stat. § 6.88.

68. Under Section 6.88, the ballots are to be kept at the alternate site from the time they are cast until they are counted on Election Day.

69. That did not occur with the Racine Election Van. Upon information and belief, the ballots did not stay at the 21 sites designated by the Clerk. Notably, when responding to Mr. Brown’s complaint before WEC, the Clerk did not raise any dispute as to this point.

70. Nor is it consistent with the statute to deliver the absentee ballots 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.

71. 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.

72. In sum, the Defendants' illegal actions—the Clerk's multiple violations of Wis. Stat. § 6.855 and other related statutes and WEC's approval of such conduct—harm the Plaintiff as a Wisconsin voter. The Defendants' "Green Eggs and Ham" approach to voting—that it can take place in a car, or at a bar, or on the beach with a giant peach—renders the text of Section 6.855 a nullity.

73. As set forth in the preceding paragraphs, the Clerk has allowed in-person absentee ballots to be cast in a manner inconsistent with Wis. Stat. § 6.855 (and related statutes) in a number of different ways. Such conduct is contrary to law and/or amounts to an abuse of her discretion. The Clerk should be required to conform her conduct to the law and be restrained from administering all future elections in a similar fashion.

74. In upholding the Clerk's conduct, WEC's decision memorialized at Exhibit H contains numerous legal and factual errors that are likewise contrary to law and/or amount to an abuse of discretion.

**CLAIM II – Review under Wis. Stat. §§ 5.06(8) and/or 227.40
Violation of Wis. Stat. §§ 5.05(1e) and 5.06 (against Defendant WEC)**

75. Plaintiff realleges and incorporates by reference the preceding allegations of the complaint.

76. The previous count pertains to the substance of WEC’s resolution of the Plaintiff’s administrative complaint—in other words, the Plaintiff alleges that WEC’s interpretation of Wis. Stat. § 6.855 (and related statutes) is incorrect.

77. However, the procedure by which WEC disposed of the Plaintiff’s complaint also violated the law. That violation is the subject of this second count.

78. The decision to dismiss the Plaintiff’s complaint was made by WEC Administrator Meagan Wolfe and not by the WEC Commissioners, or any of them. Administrator Wolfe is the sole signatory on the decision, with a “cc” line to “the Commissioners.”

79. On information and belief, Administrator Wolfe decided this case, rather than the Commissioners, because the WEC Commissioners have delegated the duty and power to decide complaints under Wis. Stat. § 5.06 to Administrator Wolfe.

80. As explained below, both this delegation and Administrator Wolfe’s unilateral resolution of the Plaintiff’s complaint are illegal.

81. Specifically, on February 27, 2020, WEC issued a document which delegated its authority to review and resolve complaints under Wis. Stat. § 5.06 to the Administrator and, to an extent, to the WEC Chair. A true and accurate copy of this order (the “Delegation Order”) is attached hereto as Exhibit I.

82. The Delegation Order provides the Administrator with WEC's power to issue compliance review orders under the provisions of Wis. Stat. § 5.06.

83. It also states, "*If time permits, as determined by the Administrator in consultation with the Chair, [WEC] staff shall provide draft decisions to all Commissioners prior to their issuance.*" (Emphasis added.)

84. The Delegation Order further provides the "Administrator and Chair" the power to "determine whether it is feasible to permit Commissioners to submit comments regarding the draft decision."

85. If the Administrator and Chair decide to allow comments by the Commissioners, the Delegation Order gives the Administrator the further power to "determine whether any comments or input provided by Commissioners will be incorporated into the final decision."

86. Thus, the Delegation Order makes the Administrator the boss of the Commissioners rather than vice versa. The Administrator can prohibit the Commissioners from commenting on her decisions and, even if she permits comment, she can veto those comments.

87. The Delegation Order prohibits Commissioners from discussing the case with other Commissioners, but requires them to contact the Administrator with any comments on the draft decision.

88. In short, the Delegation Order confers the following powers on the Administrator: a) to rule on complaints, with or without advance input or knowledge by the Commissioners; and b) to determine whether and under what circumstances

the state officials *to whom the Legislature actually provided this authority* can have any say about those decisions.

89. Delegation of this statutory duty from the Commission, itself, to Administrator Wolfe is unlawful.

90. Wisconsin Stat. § 5.06 requires “*the Commission*” to “decide” complaints filed under that section. Wis. Stat. § 5.06(6) (emphasis added); *see also, e.g.*, § 5.06(8) (referring to “the decision of the commission”). Nowhere do the Wisconsin statutes authorize the Commission to delegate its quasi-judicial role under this section to the Administrator, WEC staff, or to one of the commissioners alone.

91. Furthermore, Wis. Stat. § 5.05(1e) provides that “[a]ny action by the commission, except an action relating to procedure of the commission, requires the affirmative vote of at least two-thirds of the members.”

92. The Wisconsin Supreme Court has held that “[w]here authority to do an act of public nature is given by law to more persons than one, or a majority of them, if the act is one which requires the exercise of discretion and judgment, unless the law provides for some exception, the members of the board to whom the authority is given must meet and confer when the act is performed.” *State ex rel. Mayer v. Schuffenhauer*, 213 Wis. 29, 250 N.W. 767, 768 (1933).

93. Similarly, in *State v. Haugen*, the Supreme Court recognized that this non-delegation principle applies with special force to the quasi-judicial functions of a multi-member body: “The very nature of the authority thus granted, repels the idea that it was intended to authorize the [tax] commission to delegate to one of its

members, or its secretary or engineer, quasi-judicial duties. ... [W]e have no hesitancy in saying that the requirement clearly indicates that the commission, as a quasi-judicial tribunal, is required to act.” *State v. Haugen*, 160 Wis. 494, 152 N.W. 176, 178-179 (1915).

94. Thus, Administrator Wolfe was without power to dispose of the Plaintiff’s complaint on her own and to the extent the Delegation Order purported to grant her that authority, it is also unlawful.

95. Even if WEC otherwise had the power to issue the Delegation Order, which it does not, it is required to promulgate that Order as administrative rule but did not do so.

96. On information and belief, WEC contends that Wisconsin Administrative Code EL 20.04(10) allows WEC to abdicate its duties and powers under Wis. Stat. 5.06 and turn those powers over to the Administrator.

97. WEC is incorrect about Wisconsin Administrative Code § EL 20.04(10), but if it is correct, then Mr. Brown intends this complaint to include a challenge to the lawfulness of that rule under Wis. Stat. § 227.40.

98. WEC failed to follow the prescribed procedure required by statute and its decision was impaired by a material error in procedure because WEC’s decision is not actually WEC’s decision at all, but rather the decision of Administrator Meagan Wolfe.

99. WEC’s actions, the Delegation Order, and/or § EL 20.04(10) harm the Plaintiff as a Wisconsin voter and interfere with and impair the legal rights and

privileges of the Plaintiff. WEC's conduct is contrary to law and/or amounts to an abuse of its discretion.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

A. Enter an order reversing WEC's decision dismissing the Plaintiff's complaint against Defendant McMenamain;

B. Enter a declaratory judgment that: (1) Defendant McMenamain used alternate absentee ballot sites that were not "as near as practicable to the office of the municipal clerk," in violation of Wis. Stat. § 6.855; (2) Defendant McMenamain used alternate absentee ballot sites that "afford[ed] an advantage to [a] political party," in violation of Wis. Stat. § 6.855; (3) Defendant McMenamain allowed "function[s] related to voting and return of absentee ballots . . . conducted at the alternate site [to] be conducted in the office of the municipal clerk," in violation of Wis. Stat. § 6.855; (4) Defendant McMenamain used mobile alternate absentee ballot sites, in violation of Wis. Stat. § 6.855 and other related Wisconsin statutes; and (5) Defendant McMenamain used alternate absentee ballot sites that were not available for use through the relevant election, in violation of Wis. Stat. § 6.855;

C. Enter a permanent injunction prohibiting Defendant McMenamain (or any successor) from engaging in the unlawful conduct just described;

D. Enter a declaratory judgment that (1) WEC's delegation to the Administrator and/or Chair to resolve § 5.06 complaints instead of the Commissioners

is unlawful; and (2) WEC's disposition of the Plaintiff's complaint without a vote by the Commissioners was unlawful;

E. Enter a permanent injunction prohibiting the Defendant WEC from engaging in the unlawful conduct just described;

F. Award the Plaintiff such costs as allowed by law; and

G. Grant the Plaintiff such other and further relief as the Court deems appropriate.

Dated this 1st day of December, 2022.

WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.

Electronically signed by Anthony F. LoCoco

Richard M. Esenberg (WI Bar No. 1005622)

Anthony F. LoCoco (WI Bar No. 1101773)

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