

WISCONSIN ELECTIONS COMMISSION

Eugene Wojciechowski,

Complainant,

v.

Case No. _____

REBECCA GRILL,
CITY CLERK FOR THE CITY
OF WEST ALLIS, WISCONSIN

Respondent.

COMPLAINT

Pursuant to Wis. Stat. § 5.06, Eugene Wojciechowski, alleges under oath as follows:

1. The Wisconsin Constitution vests the authority to create and amend election laws, including laws pertaining to the absentee ballot process, in the Legislature, subject to the Governor's veto. Wis. Const. art. III, § 2; Wis. Const. art. V, § 10; *State ex rel. La Follette v. Kohler*, 200 Wis. 518, 548, 228 N.W. 895 (1930). Those laws prescribe a comprehensive system for requesting, returning, and counting absentee ballots. *See generally* Wis. Stat. ch. 6, subch. IV; *Teigen v. Wis. Elec. Comm'n*, 2022 WI 64, ¶178, ___ Wis.2d ___, 976 N.W.2d 519 (Hagedorn, J. concurring) (referring to Wisconsin's 1915 "comprehensive absentee voting law"). The Wisconsin Elections Commission (WEC) has previously instructed election officials, which include municipal clerks, that they cannot add "additional requirements not

provided by state or federal law that impact the civil and constitutional rights of voters.”¹

2. This case is about one city clerk’s understandable, but ultimately erroneous, creation of an additional voting requirement in contravention of various statutes administered by the Wisconsin Elections Commission (WEC).

PARTIES

3. Complainant Eugene Wojciechowski is a qualified elector who resides in the City of West Allis, Wisconsin. Wis. Stat. § 6.02. Mr. Wojciechowski has voted in Wisconsin for over 50 years, including several times by absentee ballot.

4. Respondent Rebecca Grill is the City Clerk for the City of West Allis Wisconsin. Clerk Grill’s principal place of business is located at 7525 W. Greenfield Avenue, Room 108 to 110, West Allis, Wisconsin 53214. Clerk Grill is an election official as defined by Wis. Stat. § 5.02(4e). Wis. Stat. §§ 7.15(1), 5.02(10).

BACKGROUND

5. Pursuant to long-standing Wisconsin Supreme Court precedent, prior to 2022, all absentee voters in Wisconsin could have a third party return their absentee ballot in person to their municipal clerk prior to election day, and those ballots would be counted. *Sommerfeld v. Bd. of Canvassers of the City of St. Francis*, 269 Wis. 299, 301, 69 N.W.2d 235 (1955).

¹ WEC, *Face Coverings on Election Day*, available at <https://elections.wi.gov/node/1221>; see also WEC, *Face Coverings While Voting and Conducting Elections* (July 31, 2020), available at <https://elections.wi.gov/media/11301/download>.

6. WEC guidance reflected this long-held understanding of Wisconsin law, including guidance to clerks issued in the Spring of 2020 that stated, “[a] family member of another person may ... return the [absentee] ballot on behalf of a voter.” *Teigen*, 2022 WI 64, ¶16.

7. Nonetheless, on January 20, 2022, following an oral ruling the week before, the Circuit Court of Waukesha County issued a written order, holding in part that, “the only lawful methods for casting an absentee ballot pursuant to Wis. Stat. § 6.87(4)(b)1. are for the elector to place the envelope in containing the ballot in the mail or for the elector to deliver the ballot in person to the municipal clerk.” *Teigen v. Wis. Elec. Comm’n*, No. 2022AP91 (Wis. Cir. Ct. Waukesha Cty. January 20, 2022).

8. Although the Court of Appeals stayed the ruling, that stay expired on February 15, 2022. *Teigen v. Wis. Elec. Comm’n*, No. 2022AP91, Order at 3 (Wis. Feb. 11, 2022) (denying motion to extend stay).

9. The Circuit Court also ordered WEC to rescind two guidance documents, which WEC did on February 16, 2022.

10. The uncertainty created by the circuit court order created widespread confusion for voters and clerks during the April 5, 2022 Spring Election.²

11. On July 8, 2022, the Wisconsin Supreme Court issued its decision in *Teigen*, which also held that “[a]n absentee ballot must be returned by mail or the voter must personally deliver to the municipal clerk at the clerk’s office or a

² See Emilee Fannon, “If you put your ballot in here, it won’t be counted”: Court order creates confusion for clerks, voters ahead of April 5, CBS 58 (March 30, 2022), available at <https://www.cbs58.com/news/if-you-put-your-ballot-in-here-it-wont-be-counted-court-order-creates-confusion-for-clerks-voters-ahead-of-april-5th>.

designated alternate site.” 2022 WI 64, ¶4. The decision did not address whether a voter may have assistance in mailing their absentee ballot, or how the ruling can be reconciled with federal protections for voters with disabilities. *Id.*, ¶¶5, 84-86.

12. As the election officials with “charge and supervision of elections” in their municipalities, municipal clerks are responsible for implementing Wisconsin election law. Wis. Stat. § 7.15(1)

PROCEDURES IN WEST ALLIS

13. Mr. Wojciechowski requested and received by mail an absentee ballot to vote in Wisconsin for the August 9, 2022 primary election. As part of his request, Mr. Wojciechowski was required to provide a copy of his photo identification and did so. Wis. Stat. § 6.86(1)(ac).

14. On August 1, 2022, in the early afternoon, Mr. Wojciechowski attempted to return his absentee ballot in the office of the municipal clerk at City Hall in West Allis, Wisconsin.

15. A woman staffing the clerk’s office informed Mr. Wojciechowski that the municipal clerk required a voter to show photo identification to return their own completed absentee ballot.

COUNT I

VIOLATION OF WIS. STAT. § 6.87(4)(b)3.

16. Paragraphs 1 through 16 are incorporated by reference.

17. Wisconsin’s absentee voting law contains specific procedures, including a requirement that voters who are not indefinitely confined within the meaning of Wis. Stat. § 6.79 provide a copy of their photo identification (if requesting an absentee

ballot by mail, facsimile, or electronically) or present their photo identification to the municipal clerk or other election official if absentee voting in person. Wis. Stat. §§ 6.86(1)(ac), (ar), 6.87(1).

18. Wisconsin's requirement that absentee electors present a photo identification extends even to hospitalized electors and, with minor exceptions, those electors living in residential care facilities and qualified retirement homes who vote through the Special Voting Deputies program. Wis. Stat. §§ 6.86(3)(a)1., 6.875(6)(c).

19. Once an absentee elector has provided their photo identification and received an absentee ballot from their municipal clerk, election officials may not require them to provide that photo identification again unless they change their name or address. Wis. Stat. § 6.87(4)(b)3.

20. By requiring electors, including Mr. Wojciechowski, to provide or present photo identification again during the absentee voting process, Clerk Grill violated Wis. Stat. § 6.87(4)(b)3., which expressly entitles voters who have already provided photo identification as part of the absentee ballot application process from having to do so again.

21. No other provision of Wis. Stat. ch. 6, subch. IV permits or requires an election official from requiring an elector to present or provide photo identification when returning an absentee ballot to the office of the municipal clerk or to an alternate site under Wis. Stat. § 6.855.

COUNT II

VIOLATION OF WIS. STAT. 6.02

22. Paragraphs 1 through 22 are incorporated by reference.

23. Wis. Stat. § 6.02(1) provides that, “Every U.S. citizen age 18 or older who has resided in an election district or ward for 28 consecutive days before any election where the citizen offers to vote is an eligible elector.” Wis. Stat. § 6.02(1). The Wisconsin Supreme Court has held that, while voting is a right, it is subject to regulation: “While it is incompetent for the legislature to add any new qualifications for an elector, it is clearly within its province to require any person offering to vote, to furnish such proof as it deems requisite, that he is a qualified elector.” *State ex rel. Cothren v. Lean*, 9 Wis. 279, 283–84 (1859); *see also League of Women Voters of Wis. Educ. Network v. Walker*, 2014 WI 97, ¶¶19-21, 357 Wis.2d 360, 851 N.W.2d 302.

24. The Legislature, by passing bills subject to the signature or veto of the Governor, has established the uniform process by which a person, including someone who wishes to vote via absentee ballot, confirms that they are a qualified elector. *See generally* Wis. Stat. ch. 6, subch. II (voter registration); Wis. Stat. §§ 6.79(2)(a) (requirement for photo identification for voting at polling place); Wis. Stat. §§ 6.86(1)(ac), (ar), 6.87(1) (requirements for photo identification for voting by absentee ballot).

25. These requirements are to be applied uniformly across the state. For example, WEC, pursuant to statute, provides uniform instructions for municipalities to provide to absentee electors, including information regarding requirements of photo identification. Wis. Stat. § 6.869.

26. WEC has also repeatedly advised municipal clerks that they cannot create additional qualifications or procedures for electors beyond what is provided in law.³

27. By requiring electors, including Mr. Wojciechowski provide photo identification again during the absentee voting process, Clerk Grill violated Wis. Stat. § 6.02 by imposing an additional qualification requirement on electors in the City of West Allis.

WHEREFORE, Complainant requests relief pursuant to Wis. Stat. § 5.06 as follows:

- A. Issue an order requiring Clerk Grill and any other election official in the City of West Allis to stop requiring that electors present or provide their photo identification when returning their absentee ballot to the office of the municipal clerk or to an alternate site under Wis. Stat. § 6.855.
- B. Issue an order requiring Clerk Grill to update any policies or procedures for the City of West Allis that require electors present or provide their photo identification when returning their absentee ballot to the office of the municipal clerk or to an alternate site under Wis. Stat. § 6.855.
- C. Take any other action that has the effect of restraining Clerk Grill from acting contrary to law as described in this Complaint.

Dated this 9th day of August, 2022.

³ WEC, *Face Coverings on Election Day*, available at <https://elections.wi.gov/node/1221>; see also WEC, *Face Coverings While Voting and Conducting Elections* (July 31, 2020), available at <https://elections.wi.gov/media/11301/download>.

Electronically Signed By: /s/ Mel Barnes

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