State of Wisconsin
Before the Elections Commission

Matt Roeser, Case No. EL 22-37

Complainant,

v.

Celestine Jeffreys

Respondent.

Reply Memorandum

Instead of first directly addressing the legitimacy of the underlying Matt Roeser complaint, Respondent Celestine Jeffreys finds it necessary to attack Roeser's counsel of record to suggest an "intentional[ ] undermining [of] public confidence in legitimately-run elections in the process." Jeffreys Resp. at 2; *see also* 1 n.1. Jeffreys fails to appreciate that attorneys have an ethical obligation to vigorously represent their clients, and when it comes to unpopular views, Roeser takes umbrage to the *ad hominem* attack. *See* Stephen Jones, *"A Lawyer's Ethical Duty to Represent the Unpopular Client,"*, 1 Chapman L. R. Vol. 105 (1998); "*Representing the Unpopular Client,*" Denise Lieberman, American Civil Liberties Union/Eastern Missouri, Legal Dir., Liberties (Fall 2001), https://deniselieberman.com/articles/unpopularclient.htm (last visited May 19, 2022); "'Lawyers Know Better': Criticizing Lawyers for Defending Unpopular Clients Is Risky, 'Disturbing,'" Eric H. Holder Jr., Nat. L. J., (Dec. 29, 2020), ("Without able lawyers willing to represent both sides of a legal dispute, our legal system cannot function at its best."),

https://www.law.com/nationallawjournal/2020/12/29/lawyers-know-better-criticizing-lawyers-for-defending-unpopular-clients-is-risky-disturbing/?slreturn=20220419122747 (last visited May 19, 2022); "To Kill A Mockingbird: Representing Unpopular Clients in the Modern World," Steph Stradley (Commentary, Sept. 27, 2011), https://www.stradleylaw.com/blog/to-kill-a-mockingbird-representing-unpopular-clients/ (last visited May 19, 2022).

The Roeser complaint is not about undermining the integrity of an election process. Roeser observed a questionable process in the Green Bay City Clerk's that he understood to be contrary to election laws. And, if one were to read the statute under the guidance of the rules of statutory interpretation, Roeser had a right to be concerned. Wisconsin Statutes § 6.87(4)(b)(1), would be unambiguous to Roeser if the plain meaning of words has any significance:

> The [absentee] ballot shall be mailed by the elector, or delivered in person, to the municipal clerk issuing the ballot or ballots.

In Wisconsin, "'the purpose of statutory interpretation is to determine what the statute means so that it may be given its full, proper, and intended effect." *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶ 44, 271 Wis.2d 633, 681 N.W.2d 110. This court begins statutory interpretation with the language of a statute. *Id.*, ¶ 45. If the meaning of the statute is plain, we ordinarily stop the inquiry and give the language its 'common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning.' *Id.* Context and structure of a statute are important to the meaning of the statute. *Id.*, ¶ 46. 'Therefore, statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in

relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results.'" *Id. State v. MacArthur,* 750 N.W.2d 910, 914 (Wis. 2008).

Here, Jeffreys readily admits to accepting absentee ballots delivered by electors of others than the elector him or herself. But, now explains that her office had a "policy" regarding how those delivered ballots would be handled: "[H]er staff would inform voters that the Clerk's office could only accept the ballot of the individual elector personally delivering their ballot." Jeffreys Resp. at 3. Jeffreys further elaborated that "if the individual volunteered, on their own and without provocation, that they were submitting a ballot on behalf of a voter who was sick or otherwise disabled, staff would accept that person's ballot as well." *Id.* at 4.

However, in her interactions with Roeser, according to the allegations in his complaint which Jeffreys does not dispute, she merely responded with the statement, "It's my discretion on whether I take the ballots." Roeser Compl. ¶ 19. Roeser makes no mention of an adopted policy. Notably, we were unable to find in Jeffreys voluminous record attached to her Response, the policy itself or any training material she might have conducted with her staff. While we do not challenge the validity of her verified Response, likewise, she cannot challenge the validity of Roeser's observations and allegations. In other words, Jeffreys brought the underlying issue upon herself by not publishing the policy *prior* to the April election.

In addition, Jeffreys appears to accuse Roeser of targeting people with disabilities: "Even if one were to accept the Complainant's extreme—and incorrect—view that no one other than the elector may return the absentee ballot to the municipal clerk, various

exceptions must apply." Jeffreys Resp. at 8. Yet, Jeffreys acknowledges that the complaint "repeatedly and accurately points out that an absentee ballot should be returned by mail or in person 'unless there is a statutory exception.' (Compl. ¶¶ 5–6, 8–9.)." Nothing in the complaint suggests any attempt to deprive a person's right to cast a legal ballot, especially a person with a disability. But again, it is only now we learn of an unpublished policy regarding the acceptance of receiving absentee ballots delivered by electors other than the elector, himself or herself.

Notably, Jeffreys has nothing in place to test the validity of the statement of the elector-messenger, such as a follow-up telephone call to the person claiming a disability. She claims in a footnote that she was "also prohibited from imposing any sort of criteria, as she may not 'impose or apply eligibility criteria that screen out or tend to screen out' people with disabilities from 'fully and equally enjoying' the programs, services, or activities of state and local governments," citing 28 C.F.R. § 35.130(b)(8)." Jeffreys Resp. at 10 n.6. This is an extreme reading of the regulation as applied to election laws. By her interpretation, if would mean that her office would accept a person's absentee ballot who has a disability and living in an adult care facility or at an elector's home, but was otherwise ineligible to vote. *See e.g.,* Wisc. Stat. § 6.03.

Again, for the lack of a published policy, Jeffreys brought onto herself the Roeser complaint, which on its face has legitimate allegations of an observer of the election process. And, as alleged, the complaint meets all requirements, when filed, to prompt the WEC to act. In other words, the complaint established "probable cause" as defined under § 20.03(3),

"The complaint shall specify the statutory basis for the complaint and shall set forth the facts which are alleged to establish probable cause."

Under EL 20.02(3), the complaint is to specify the "statutory basis and shall set forth facts which are alleged to establish probable cause." The same provision guides the complainant as to what may establish probable cause: "[i]nformation which may establish probable cause includes *allegations* that set forth which persons are involved; what those persons are alleged to have done; where the activity is believed to have occurred and who are the witnesses to the events."

The Roeser complaint is sufficient to establish probable cause and for the WEC to investigate the alleged illegalities of election law.

Meanwhile, Jeffreys takes note of the present status of the *Teigen v. Wisconsin Elections Commission,* No. 2022AP91 (Wis. Cir. Ct. Waukesha Cty. Jan. 20, 2022). Indeed, she acknowledges the decision does not apply to Brown County or to her. *See e.g.,* Jeffreys Resp. at 3, 7. And, only now do we learn that "in an abundance of caution, City staff made the decision not to utilize drop boxes for that [April 2022] election; [Jeffreys] also developed a policy pursuant to which her staff would inform voters that the Clerk's office could only accept the ballot of the individual elector personally delivering their ballot...." *Id.* at 3, 4. We do not see that policy. We do not see its publication. We see no training materials for staff. *See* Jeffreys Exs. A–G.

Jeffreys also requests the instant matter be held in abeyance. Jeffreys Resp. at 11. However, with Jeffreys acknowledging *Teigen* is not applicable to her or the City of Green Bay, with the absence of any published policy, and with the absence of any WEC rule or

regulation governing the issue present in the Roeser compliant, the WEC can still act. Without an established published policy, Jeffreys can, as she apparently did so previously, verbally express a policy that is not subject to review because the public doesn't know what the policy might be as Roeser's complaint exemplifies. As vehement as Jeffreys expresses her obligations to disabled electors, it is subject to wavering when it comes to what the public should know regarding how she conducts and administers the election process in the City of Green Bay. The public does not know because she has kept her policies private.

Conclusion

The Roeser complaint should be found to have met the probable cause requirements to have the WEC conduct an evidentiary hearing and issue an order requiring the City of Green Bay, through its City Clerk, Celestine Jeffreys to comply with Wisconsin's election laws regarding the acceptance of absentee ballots consistent with the arguments presented above in the absence of any published policy.

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