



# Wisconsin Elections Commission

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December, 20 2023

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Celestine Jeffreys  
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Re: Matt Roeser v. Celestine Jeffreys (EL 22–37)

Dear Mr. Roeser and Clerk Jeffreys,

This decision letter is in response to the verified Complaint submitted by Matt Roeser (Complainant) to the Wisconsin Elections Commission (Commission). The Complaint alleges that the City of Green Bay Municipal Clerk, Celestine Jeffreys (Respondent), failed to properly follow Wis. Stat. § 6.87(4)(b)1. when accepting by-mail absentee ballots returned in-person to her office.

Complaints “...shall set forth such facts as are within the knowledge of the complainant to show probable cause to believe that a violation of law or abuse of discretion has occurred or will occur.” Wis. Stat. § 5.06(1). Probable cause is defined in Wis. Admin. Code § EL 20.02(4) to mean “the facts and reasonable inferences that together are sufficient to justify a reasonable, prudent person, acting with caution, to believe that the matter asserted is probably true.”

The Commission has reviewed the Complaint, Response, Reply, and all supporting documentation. The Commission provides the following analysis and decision. In short, the Commission has determined that the Complainant has shown probable cause that the Respondent violated Wis. Stat. § 6.87(4)(b)1. The Commission’s order, however, seeks only to prevent the Respondent from permitting ballot return assistance to voters who are not disabled.

## Summary of Complaint

The Complaint argues that the “only legally authorized methods of delivery of absentee ballots are personally delivering your absentee ballot to the clerk or personally mailing it—unless there is a statutory exception.” The complaint cites Wis. Stat. § 6.87(4)(b)1., which states in relevant part that, “[t]he envelope shall be mailed by the elector, or delivered in person, to the municipal clerk issuing the ballot or ballots.” The complaint further cites the Order Granting Summary Judgement for Plaintiffs in *Teigen v. Wisconsin Elections Commission*, No. 21-CV-958 (Wis. Cir. Ct. for Waukesha Cnty. June 28, 2021), which held in relevant 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

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Don M. Millis, chair | Marge Bostelmann | Ann S. Jacobs | Carrie Riepl | Robert Spindell | Mark L. Thomsen

Administrator  
Meagan Wolfe

envelope containing the ballot in the mail or for the elector to deliver the ballot in person to the municipal clerk.”

The Complainant then alleges that he, along with two other individuals who provided sworn affidavits for the Complaint, witnessed the Respondent “many times, based on a claimed ‘discretion’ accept[ing] multiple absentee ballots for the April 5, 2022, election from an individual voter without a statutory exception applying—in violation of Wisconsin Statutes § 6.87(4)(b)1.” The Complaint alleges that, when questioned about receiving multiple absentee ballots from a single individual, the Respondent stated “[i]t’s my discretion on whether I take the ballots” and “I have determined that I can take both ballots.”

### Summary of Response

The Response alleges that:

[T]he City fulfilled its equal protection obligation to accept ballots on behalf of voters who were unable to personally deliver their own as a result of a disability or impairment. Clerk Jeffreys is not permitted to violate federal law or the constitutional right to vote of qualified electors who are incapable of personally delivering their ballots. Likewise, she may not violate the privacy rights of those electors by requiring details as to the reasons they cannot bring in their own ballots.

Regarding federal law requirements, the Response alleges that:

The federal Voting Rights Act (“VRA”) and Americans with Disabilities Act (“ADA”) require Clerk Jeffreys to accept absentee ballots returned on behalf of voters with disabilities. Specifically, the VRA states, “[a]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter’s choice, other than the voter’s employer or an agent of that employer or officer or agent of the voter’s union.” 52 U.S.C. § 10508.

The Response asked the Commission to hold the Complaint in abeyance until the Wisconsin Supreme Court issued a decision in the appeal of *Teigen v. Wisconsin Elections Commission*. The Response alleges that “[e]ven though the City was not a party to the *Teigen* case, in an abundance of caution, City staff made the decision to comply with the judge’s ruling” and that the Respondent “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.” The Response alleges that:

In situations in which an elector brought more than one ballot to the counter, the following type of exchange would occur:

Staff member: “Which ballot is yours?”

Voter: *Indicates which ballot is their own; asks to be able to submit someone else’s ballot for them.*

Staff member: “I’m sorry, I can only take your ballot.”

The interaction ceased there, and the Clerk’s office only accepted the elector’s own ballot. Staff did not ask any additional questions or offer any prompts or

suggestions. However, 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.

The Response alleges that when voters indicated they were delivering someone else's ballot for convenience "without exception, the Clerk's office staff would not accept any ballot from that person other than their own." The Response further alleges that:

staff would not ask any follow-up questions in an effort to determine the extent of the non-present voter's inability to bring in their own ballot in order to protect the privacy rights of voters with disabilities. Similarly, she also determined that ballots brought in on behalf of disabled voters would not be marked, set aside, or otherwise treated differently from all other absentee ballots received in person in the Clerk's office so as to avoid singling out differently abled voters and potentially raising equal protection issues.

The Response states that during the April 5, 2022, election the Respondent did accept multiple ballots from a single individual as determined by the procedures established by the Respondent.

#### Summary of Reply

The Reply first argues that the grounds of the Complaint are valid under a plain reading of Wis. Stat. § 6.87(4)(b)1. combined with the Respondent's admission of accepting more than one ballot from a single voter on at least some occasions. The Reply then addresses the policy described in the Response and argues that the Respondent did not describe any policy during her interactions with the Complainant, and only stated that accepting the ballots was in her discretion. The Reply states that the Respondent did not provide any written materials describing the policy or any training conducted to implement the policy and alleges that this Complaint is the first time the policy has become publicly known.

The Reply also disputes that the Complaint called into question the right of a disabled voter to return an absentee ballot. The Reply argues that the Respondent's policy does not include a mechanism to "test the validity" of an agent's claim to be returning a ballot on behalf of an elector with a disability.

#### Commission Authority and Role in Resolving Complaints Filed Under Wis. Stat. § 5.06

Under Wis. Stat. §§ 5.05(1)(e) and 5.06(6), the Commission is provided with the inherent, general, and specific authority to consider the submissions of the parties to a complaint and to issue findings. In instances where no material facts appear to be in dispute, the Commission may summarily issue a decision and provide that decision to the affected parties. This letter serves as the Commission's final decision regarding the issues raised by Matt Roeser's complaint.

The Commission's role in resolving verified complaints filed under Wis. Stat. § 5.06, which challenge the decisions or actions of local election officials, is to determine whether a local official acted contrary to applicable election laws or abused their discretion in administering applicable election laws.

### Commission Findings

#### *Alleged Violations of Wis. Stat. § 6.87(4)(b)1.*

Wis. Stat. § 6.87(4)(b)1. provides rules for voting absentee and states in relevant part that, “[t]he envelope shall be mailed by the elector, or delivered in person, to the municipal clerk issuing the ballot or ballots.”

After this Complaint had been filed, the Wisconsin Supreme Court considered *Teigen v. WEC* (976 N.W.2d 519), and the Western District of Wisconsin heard the matter of *Timothy Carey et al. v. Wisconsin Elections Commission et al.* (22-cv-402jdp). In *Teigen v. WEC*, the Wisconsin Supreme Court held that Wis. Stat. § 6.87(4)(b)1. necessitates that, without a statutory exemption, only the voter is permitted to return his or her own ballot but declined to determine if the ADA or VRA provide an exemption to this rule. *Teigen*, 2022 WI 64 at PP 85–86. In *Carey v. WEC*, the United States District Court in the Western District of Wisconsin held that the VRA preempts Wis. Stat. § 6.87(4)(b)1. to the extent it prevents third parties from returning ballots on behalf of people with disabilities. *Carey v. Wis. Elections Comm'n*, 624 F. Supp. 3d 1020, 1025 (W.D. WI 2022). In summary, a single voter may not return multiple ballots without a statutory exemption unless they are assisting a person with a disability or are a registered agent of a hospitalized voter returning their ballot.

As in all cases, any person who commits voter fraud or violates any statutory voting requirement may be subject to legal remedies in a criminal or civil proceeding. Wis. Stat. § 5.05(2m)(c)2.a.; § 12.13. Specifically, it is a Class I felony for any person to intentionally “make[] false statements to the municipal clerk, board of election commissioners or any other election official whether or not under oath.” Wis. Stats. §§ 12.13(1)(b), 12.60(1)(a). Accordingly, a voter who intentionally attempts to return a voted ballot they are not permitted to return may face legal consequences.

Here, the response outlines a policy of accepting ballots from those that, “were submitting a ballot on behalf of a voter who was sick or otherwise disabled” and admits specifically to accepting an absentee ballot from a third party when the third party, “volunteered the information that her husband was physically unable to personally deliver his ballot to the Clerk’s office.” The Commission does not find an abuse of discretion concerning this specific example as a voter or agent may use various terms to describe a disability and the context of this example and the phrase “physically unable” strongly supports the election official’s conclusion that the voter required assistance returning their ballot due to their disability.

However, the Commission does find an abuse of discretion to the extent that the policy described by the Respondent allows ballot return assistance if a voter is merely reported to be “sick.” Sickness alone may or may not constitute a disability, and thus it cannot be a qualification to receive ballot return assistance. Though the Commission does not find an abuse of discretion or violation of law in the Respondent’s policy of not directly asking about any disability, the Respondent should ensure that voters who qualify for ballot return assistance under the Voting Rights Act are able to receive such assistance. .

### Commission Decision

Based upon the above review and analysis, the Commission finds probable cause to believe that a violation of law or abuse of discretion occurred under Wis. Stat. § 6.87(4)(b)1. due to the

Respondent's policy that could allow accepting a voter's ballot that was returned to a clerk by a third party when the voter was "sick" but not necessarily disabled. The Commission hereby orders Celestine Jeffreys to amend the policy described in the Response or any current or future policy in a manner consistent with this decision.

The Commission understands that this decision may not provide an answer to what specific actions, if any, municipal clerks should take to be fully compliant with the *Teigen* decision and the reasoning in the *Carey* decision. This decision solely affirms that a single voter may not return multiple ballots without a statutory exemption unless they are assisting a person with a disability or are a registered agent of a hospitalized voter returning their ballot. Accordingly, to the extent that the Respondent's policy accepted ballots from voters who are "sick," but not disabled, it is contrary to law.

Right to Appeal – Circuit Court

This letter constitutes the Commission's resolution of this complaint. Wis. Stat. § 5.06(2). Pursuant to Wis. Stat. § 5.06(8), any aggrieved party may appeal this decision to circuit court no later than 30 days after the issuance of this decision.

If any of the parties have questions about this letter or the Commission's decision, please feel free to contact me.

Sincerely,

A handwritten signature in black ink that reads "Megan L.M. Wolfe". The signature is written in a cursive style with a large, looped 'M' and 'W'.

Meagan Wolfe

Wisconsin Elections Commission Administrator

cc: Commission Members