



# Wisconsin Elections Commission

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October 16, 2020

Anne E. Atherton  
1195 N. Lost Woods Rd.  
Oconomowoc, WI 53066

Debra Michael, Clerk  
Village of Summit  
37100 Delafield Rd.  
Summit, WI 53066

**Sent via USPS and email to:**

[aeatherton@gmail.com](mailto:aeatherton@gmail.com) and [administrator@summitvillage.org](mailto:administrator@summitvillage.org)

Re: In the Matter of: Anne Atherton v. Village of Summit, Debra Michael  
Case No. EL 20-17

Dear Ms. Atherton and Ms. Michael:

This letter is in response to the verified complaint filed by Anne Atherton with the Wisconsin Elections Commission ("Commission") on August 18, 2020, in response to actions taken by election officials at the Summit Village Hall voting location during the August 11, 2020, Partisan Primary election. The complaint alleges that the elections officials violated Ms. Atherton's rights under Wisconsin Statutes pertaining to elections and the Americans with Disabilities Act of 1990.

The Commission has reviewed Ms. Atherton's complaint, Ms. Michael's response on behalf of the Village of Summit Clerk's Office, and all supporting documentation. The Commission provides the following analysis and decision. In short, the Commission finds that the Village of Summit did not violate Wis. Stat. § 6.82(1) or the polling place accessibility requirements of the Americans with Disabilities Act. Additionally, it is noted that the ongoing public health emergency, *see* 2020 Wis. Exec. Order No. 72 & 2020 Wis. Exec. Order No. 90, has created a need to adapt certain polling place procedures within the confines of statutory requirements. The Village of Summit did not exceed statutory requirements in utilizing a modified version of curbside voting procedures.

**Complaint Allegations and Response**

On August 18, 2020, Ms. Atherton filed a complaint with the Commission pursuant to Wis. Stat. § 5.06 alleging that the Village of Summit violated "...the applicable sections of law in chs. 5 to 10 and 12 and other laws relating to elections and election campaigns, other than laws relating to campaign financing," as well as the Americans with Disabilities Act.

*Commissioners*

Ann S. Jacobs, chair | Marge Bostelmann | Julie M. Glancey | Dean Knudson | Robert Spindell | Mark L. Thomsen

*Administrator*  
Meagan Wolfe

The complaint specifically alleges that Ms. Atherton's voting rights were not upheld, and that she was forced into a modified curbside voting procedure that may not have met statutory requirements. Ms. Atherton also asserts that she was discriminated against based on a failure to meet certain required accommodations under the Americans with Disabilities Act. Ms. Atherton is an individual living with several visible and invisible disabilities which impede mobility and standing for sustained periods. These disabilities also restrict her ability to wear a mask without risking injury or other medical concerns.

The undisputed facts provided in the complaint, as well as the village's verified response on September 4, 2020, show that the Village of Summit had updated its Village Hall polling station with a separate voting kiosk in the lobby area of the building, distinct from the main polling area. Summit created two distinct zones due to concerns over the ongoing COVID-19 pandemic. Specifically, this was noted to be an attempt to protect poll workers from the risk of the disease despite the use of masks, partitions, and other protections. Ms. Michael also asserts that signage was placed in the Village Hall indicating that voters who cannot, or choose not to, wear a mask should report to the administration counter to be assisted.

After following pre-voting procedures, Ms. Atherton was asked to utilize the voting kiosk in the lobby area. There was another voter utilizing the station at that time, but verbal and photographic evidence shows that there was adequate seating in this area. Ms. Atherton voiced concerns over the lack of a handicap accessible booth, the requirement that she vote in a less conspicuous and separate area, and the fact that she could not personally feed, or witness her ballot being fed into the DS200 voting machine.

Ms. Michael provided statements and photographic evidence addressing these specific allegations. Ms. Michael had explained to Ms. Atherton that the polling station had two handicap accessible booths, and that she would be given the opportunity to use an accessible booth if necessary. It was also explained to Ms. Atherton that the village had set up a modified version of curbside voting to accommodate voters that would not, or could not, wear a mask. Ms. Atherton was then provided with a copy of a "Curbside Voting Wis. Stat. § 6.82(1)" summary document explaining the process. It was also noted to Ms. Atherton that the modified procedure was being utilized to ensure poll worker safety and health, but that she would not be prohibited from using accessible booths or feeding her own ballot into the tabulator simply because she could not wear a mask.

The Village of Summit was following the mask protocols provided to election officials by the Commission on July 31, 2020, (*i.e.* it was instructed that voters could not be forced to wear a face covering while voting). This document was attached as Exhibit 4 in the Village of Summit's verified response. Ultimately, Ms. Atherton did personally feed her ballot into the DS200 voting machine without being required to wear a mask.

#### 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 Ms. Atherton'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

#### *Curbside Voting*

Wisconsin Statute § 6.82 provides as follows:

§ 6.82(1). When any inspectors are informed that an eligible elector is at the entrance to the polling place who as a result of disability is unable to enter the polling place, they shall permit the elector to be assisted in marking a ballot by any individual selected by the elector, except the elector's employer or an agent of that employer or an officer or agent of a labor organization which represents the elector. Except as authorized in s. 6.79 (6) and (7), the individual selected by the elector shall present to the inspectors proof of identification and, if the proof of identification does not constitute proof of residence under s. 6.34, shall also provide proof of residence under s. 6.34 for the assisted elector and all other information necessary for the elector to obtain a ballot under s. 6.79 (2). The inspectors shall verify that the name on the proof of identification presented by the person assisting the elector conforms to the elector's name on the poll list or separate list, shall verify that any photograph appearing on that document reasonably resembles the elector, and shall enter both the type of identifying document submitted by the assisted elector as proof of residence and the name of the entity or institution that issued the identifying document in the space provided on the poll list or separate list. The inspectors shall then issue a ballot to the individual selected by the elector and shall accompany the individual to the polling place entrance where the assistance is to be given. If the ballot is a paper ballot, the assisting individual shall fold the ballot after the ballot is marked by the assisting individual. The assisting individual shall then immediately take the ballot into the polling place and give the ballot to an inspector. The inspector shall distinctly announce that he or she has "a ballot offered by .... (stating person's name), an elector who, as a result of disability, is unable to enter the polling place without assistance". The inspector shall then ask, "Does anyone object to the reception of this ballot?" If no objection is made, the inspectors shall record the elector's name under s. 6.79 and deposit the ballot in the ballot box, and shall make a notation on the poll list: "Ballot received at poll entrance".

The evidence submitted in both the complaint and response supports the Village of Summit's contention that all voting procedures were properly administered, particularly when the evidence is viewed through the lens of a public health emergency creating the need for a unique hybrid of the curbside voting processes where the elector is actually in the polling station (e.g. voter ID was checked, a copy of the Poll Book was provided as Exhibit 5, the exhibits indicate that privacy at the modified curbside voting kiosk was sufficient, curbside voting may not have been per se "requested" but the voter was present in the polling station like any other in-person voter, etc.).

The lone procedural exception is that Summit election officials had removed privacy sleeves from the facility as a COVID-19 precaution. This is negated by the fact that Ms. Atherton was

allowed to feed her own ballot into the DS200 voting machine. The curbside voting statute also provides for other methods of confidentiality such as folding the ballot. Additionally, Exhibit 2 of the response supports Ms. Michael's contention that any modified curbside voter would have had the ability to monitor an election official transporting their ballot to the DS200 voting machine.

Current Commission guidance does recommend the use of privacy sleeves, and many of Ms. Atherton's concerns do represent a training opportunity for upcoming elections, as was requested in her complaint. The Commission will continue to assess its guidance to elections officials and clerks regarding COVID-19 and curbside procedures. Ms. Michael also affirmed in the verified response document that the Village of Summit will "...re-assess the status of COVID, our procedures, set up and [sic] best practices based on direction from WEC" before the November election.

#### *ADA Polling Place Accessibility*

Ms. Atherton's complaint alleged that disabled or elderly voters may become disenfranchised by having to wait for a single, separate booth that may be in use at a higher rate than other voting kiosks, and that the Village of Summit polling place did not meet the accessibility requirements of the Americans with Disabilities Act.

The record reflects that the Village of Summit only had 13 individuals use the modified curbside voting process for voters without a mask, and other municipalities employed similar practices during the August 11, 2020, Partisan Primary. Nothing in the record indicates that the Village of Summit would not have counteracted a hypothetical crowd by allowing the voter into the main polling area. This includes the fact that Ms. Atherton herself was given the opportunity to feed her own ballot into the DS200 voting machine and was offered a chance to use the handicap accessible booth in the main voting area. The response specifically details that many of the other 12 modified curbside voters seemed pleased that their desire/need to vote without a mask was accommodated by safely allowing them to vote in another location within the polling place.

It is not inherently discriminatory to ask a voter without a mask during a public health emergency to use a specific voting kiosk, particularly when alternatives were not denied upon request, and it was not only disabled voters being asked to use this process. Local officials did not act contrary to applicable election laws or abuse their discretion in administering applicable election laws. Voters without masks were simply asked to consider the health of election officials, in light of a public health emergency, by voting at a second, appropriate location within the same building. This is not to say that a different fact set relating to modified curbside voting would not have yielded a different result.

Nothing else in the record is alleged to be a violation of the Americans with Disabilities Act. All other photos, sworn statements, and provided evidence appear to show compliance with polling station accessibility requirements. There was adequate seating, access, and the verified response also details various steps that the Village of Summit takes to further accommodate disabled voters (e.g. holding a place in line for voters who prefer in-person to curbside voting). It is important to note, however, the Commission conducts polling place accessibility audits to ensure Wisconsin's compliance with the Americans with Disabilities Act requirements. The Village of Summit was audited as recently as November 6, 2018, and no accessibility violations were found. That said, the facts at issue here will certainly assist in ensuring future elections and

audits are managed in an increasingly fair and equitable manner, taking into account all perspectives, and not just public health.

Commission Decision

Based upon the above review and analysis, the Commission finds that the Village of Summit did not violate Wis. Stat. § 6.82 or the polling place accessibility requirements associated with the Americans with Disabilities Act by asking voters without a mask to utilize a separate voting kiosk for the protection of election officials.

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

Sincerely,

COMMISSION

A handwritten signature in black ink that reads "Meagan R.M. Wolfe". The signature is written in a cursive, flowing style.

Meagan Wolfe  
Administrator

cc: Anne E. Atherton  
Debra Michael, Clerk, Village of Summit  
Commission Members