



sub nom. *Wisconsin Voters All. v. City of Racine*, No. 20-3002, 2020 WL 9254456 (7th Cir. Nov. 6, 2020).

5. Attached hereto as Exhibit D is a true and correct copy of the original Summons, Motion for a Temporary Restraining Order, and Memorandum in Support of the motion in *All. v. City of Racine*, No. 20-CV-1487 in the United States District Court for the Eastern District of Wisconsin, without the originally attached exhibits.
6. Attached hereto as Exhibit E is a true and correct copy of the Amended Complaint in *All. v. City of Racine*, No. 20-CV-1487 in the United States District Court for the Eastern District of Wisconsin.
7. Attached hereto as Exhibit F is a true and correct copy of an email I sent to Attorney Jon Axelrod on May 13, 2021 and a true and correct copy of a responsive email from Attorney Deborah Meiners on May 15, 2021.

I, Bryan A. Charbogian, being first duly sworn on oath state that I personally read the above affidavit, and that the above statements are true based on my personal knowledge and, as to those stated on information and belief, I believe them to be true.

Dated this 15<sup>th</sup> day of June, 2021.

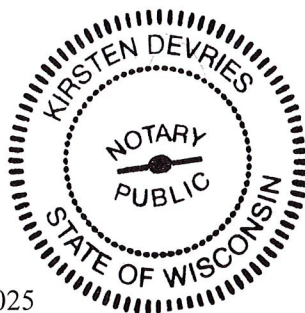
*Bryan A. Charbogian*

\_\_\_\_\_  
BRYAN A. CHARBOGIAN  
Assistant City Attorney  
City of Kenosha

Subscribed and sworn to before me  
this 15<sup>th</sup> day of June, 2021

*Kirsten DeVries*

\_\_\_\_\_  
Kirsten DeVries  
Notary Public, Kenosha County, WI.  
My Commission expires on March 27, 2025





2021 WL 179166

Only the Westlaw citation is currently available.  
United States District Court, E.D. Wisconsin.

Wisconsin Voters  
ALLIANCE, et al., Plaintiffs,

v.

CITY OF RACINE, et al., Defendants.

Case No. 20-C-1487

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Signed 01/15/2021

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Filed 01/19/2021

**Attorneys and Law Firms**

Gregory M. Erickson, William F. Mohrman, Erick G. Kaardal, Mohrman Kaardal & Erickson PA, Minneapolis, MN, for Plaintiffs.

Scott R. Letteney, City of Racine City Attorney's Office, Racine, WI, for Defendant City of Racine.

James M. Carroll, Kathryn Z. Block, Milwaukee City Attorney's Office, Milwaukee, WI, Scott R. Letteney, City of Racine City Attorney's Office, Racine, WI, for Defendant City of Milwaukee.

Bryan A. Charbogian, Christine M. Genthner, Edward R. Antaramian, City of Kenosha, Kenosha, WI, Scott R. Letteney, City of Racine City Attorney's Office, Racine, WI, for Defendant City of Kenosha.

Vanessa R. Chavez, Lindsay Mather, City of Green Bay, Green Bay, WI, Scott R. Letteney, City of Racine City Attorney's Office, Racine, WI, for Defendant City of Green Bay.

Michael R. Haas, Steven C. Brist, Madison City Attorneys Office, Patricia A. Lauten, City of Madison, Madison, WI, Scott R. Letteney, City of Racine City Attorney's Office, Racine, WI, for Defendant City of Madison.

**DECISION AND ORDER GRANTING DEFENDANTS' MOTION TO DISMISS**

William C. Griesbach, United States District Judge

\*1 Plaintiffs Wisconsin Voters Alliance and seven of its members filed this action for injunctive and declaratory relief against five Wisconsin cities (Green Bay, Kenosha, Madison, Milwaukee, and Racine) that received grants totaling \$6,324,527 from the Center for Tech and Civic Life (CTCL), a private non-profit organization, to help pay for the November 3, 2020 general election. Plaintiffs allege that, in accepting conditional grants from a private corporation to conduct federal elections, the defendant Cities violated the Elections Clause and the First, Ninth, and Fourteenth Amendments to the United States Constitution. Plaintiffs allege that, in unconstitutionally pursuing and using "private conditional moneys to conduct federal elections," the Cities undermined the integrity of "the election process as a social contract to maintain our democratic form of government." Am. Compl. at 1, Dkt. No. 39.

On October 14, 2020, the Court denied Plaintiffs' motion for preliminary relief enjoining the defendant Cities from accepting or using "private federal election grants" on the ground that they failed to show a reasonable likelihood of success on the merits. Order Denying Motion for Preliminary Relief at 1, Dkt. No. 27. The case is now before the Court on the defendant Cities' motion to dismiss Plaintiffs' Amended Complaint for lack of standing. For the following reasons, the motion will be granted and the case will be dismissed.

**BACKGROUND**

Plaintiffs consist of the Wisconsin Voters Alliance organization and residents of the various defendant Cities. Am. Compl. ¶¶ 5–11. The Wisconsin Voters Alliance is an organization that seeks to ensure "public confidence in the integrity of Wisconsin's elections, in election results and election systems, processes, procedures, and enforcement, and that public officials act in accordance with the law in exercising their obligations to the people of the State of Wisconsin." *Id.* ¶ 4. "The Wisconsin Voters Alliance also works to protect the rights of its members whenever laws, statutes, rules, regulations, or government actions ... threaten or impede implied or expressed rights or privileges afforded to them under our constitutions or laws or both." *Id.*

The CTCL is a private non-profit organization, funded by private donations of approximately \$350 million, that provides federal election grants to local governments. *Id.* ¶¶

20–21. The CTCL distributed approximately \$6.3 million of federal election grants to the defendant Cities. *Id.* ¶ 23. The CTCL grants provided conditions governing the use of those private moneys, including that each city report back to the CTCL regarding the moneys used to conduct federal elections. *Id.* ¶¶ 89, 35. The local government entities accepted the conditions and agreed to adhere to the CTCL's conditions. *Id.* ¶ 90. Plaintiffs allege that the conditions, as adopted by each defendant City, are additional regulations in the conduct of federal elections. *Id.* ¶ 96.

Plaintiffs allege that the local governments unconstitutionally pursued and used private conditional moneys to conduct federal elections, which undermined the “integrity of the election process as a social contract to maintain our democratic form of government.” *Id.* at 1. Plaintiffs claim that the use of conditional grants of private moneys violates the United States Constitution, namely the Elections Clause under Article 1, Section 4, Clause 1 as well as the First, Ninth, and Fourteenth Amendments.

## ANALYSIS

\*2 Defendants assert that the amended complaint must be dismissed because Plaintiffs do not have Article III standing to assert claims against them. Standing is not an esoteric doctrine that courts use to avoid difficult decisions. Our system of government is designed to place the power to enact laws and implement policy in the hands of the people and their elected representatives, not unelected federal judges. Article III of the United States Constitution limits the jurisdiction of federal courts to actual “cases” or “controversies” brought by litigants who demonstrate standing. *Groshek v. Time Warner Cable, Inc.*, 865 F.3d 884, 886 (7th Cir. 2017). The doctrine of standing “serves to prevent the judicial process from being used to usurp the powers of the political branches.” *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013). “In light of this ‘overriding and time-honored concern about keeping the Judiciary's power within its proper constitutional sphere, we must put aside the natural urge to proceed directly to the merits of an important dispute and to “settle” it for the sake of convenience and efficiency.’” *Hollingsworth v. Perry*, 570 U.S. 693, 704–05 (2013) (quoting *Raines v. Byrd*, 521 U.S. 811, 820 (1997)) (alterations omitted). “In order to have standing, a litigant must prove that he has suffered a concrete and particularized injury that is fairly traceable to the challenged conduct, and is likely to be redressed by a favorable decision.” *Remijas v. Neiman Marcus Grp., LLC*,

794 F.3d 688, 691–92 (7th Cir. 2015) (citation omitted). The plaintiff bears the burden of pleading sufficient factual allegations that “plausibly suggest” each element. *Groshek*, 865 F.3d at 886 (citation omitted). “A case becomes moot when it no longer presents a case or controversy under Article III, Section 2 of the Constitution. ‘In general a case becomes moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome.’” *Eichwedel v. Curry*, 700 F.3d 275, 278 (7th Cir. 2012) (quoting *Murphy v. Hunt*, 455 U.S. 478, 481 (1982)).

### A. Individual Plaintiffs

The court concludes that the individual plaintiffs have failed to demonstrate that their injury is likely to be redressed by a favorable decision. “A plaintiff's remedy must be tailored to redress the plaintiff's particular injury.” *Gill v. Whitford*, 138 S. Ct. 1916, 1934 (2018) (citing *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 353 (2006)). “Relief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court; that is the very essence of the redressability requirement.” *Steel Co.*, 523 U.S. at 107. The plaintiff must demonstrate that it is “likely,” not merely “speculative,” that the injury he alleges will be “redressed by a favorable decision.” *Lujan*, 504 U.S. at 561 (citation omitted).

Plaintiffs assert that they have suffered an injury as a party to the “social contract” entered into between the government and the voter. Plaintiffs explain the social contract as follows: the government has agreed to protect the fundamental right to vote and maintain the integrity of an election as fair, honest, and unbiased, through federal and state election laws, and the voters agree to accept the government's announcement of the winner of an election. Plaintiffs allege that each individual voter resides within the boundaries of a city that has added another regulatory level to elections, by a nongovernmental corporation, by accepting conditions for moneys in the conduct of elections and that they are harmed by the loss of the uniformity in the election process. They claim that, if a congressional house rejects the elected representatives after a finding that the election results are invalidated, the votes of each member of the Wisconsin Voters Alliance and the individual Plaintiffs will not count and they will lose representation in their individual districts. Am. Compl. ¶¶ 127–28. They maintain that, as a result, each voter from the local governmental entities that accepted private grant moneys is disadvantaged and will suffer an injury. *Id.* ¶ 130. Plaintiffs assert that their disadvantage is not shared by all American people; it arises from the boundary within the city in which they reside and is not shared with voters

residing in other cities that did not accept the conditions of nongovernmental corporate entities for conducting the election.

Plaintiffs have not established that any purported harm is likely to be redressed by a favorable decision. Plaintiffs' alleged harm is that the votes in their district may not count if the congressional house invalidates the election results in their districts because the municipalities in which they reside accepted CTCL grants. They request that the Court declare that the defendant Cities' acceptance of private funds through federal election conditional grants is unconstitutional under the Elections Clause, the First and Ninth Amendments of the United States Constitution, and the Equal Protection Clause and issue an injunction enjoining the defendant Cities from accepting or using the CTCL's private federal election grants.

\*3 It is unclear whether Plaintiffs have suffered an injury, let alone an injury that may be repeated in the future. A case becomes moot "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Murphy*, 455 U.S. at 481 (citation omitted). A congressional house did not invalidate the election results or reject Wisconsin's elected representatives. These circumstances forestall any occasion for meaningful relief. In addition, enjoining the defendant Cities from using the funds it has already received and spent will not redress Plaintiffs' purported injuries. The court is unable to grant relief that would effectively redress the alleged injury Plaintiffs claim to suffer.

Plaintiffs' amended complaint raises issues concerning a municipality's acceptance of funds from private parties to help pay for the increased costs of conducting safe and efficient elections. The receipt of private funds for public elections may give an appearance of impropriety. While this concern may merit a legislative response, the "Federal Judiciary [must respect] 'the proper—and properly limited—role of the courts in a democratic society.'" *Gill*, 138 S. Ct. at 1929 (quoting *Allen v. Wright*, 468 U.S. 737, 750 (1984)). The individual Plaintiffs have not established standing.

#### B. Wisconsin Voters Alliance

As an organizational plaintiff, the Wisconsin Voters Alliance must demonstrate that it has standing "in its own right"

because the organization itself has suffered a legally sufficient harm or "as the representative of its members." *Warth v. Seldin*, 422 U.S. 490, 511 (1975). Wisconsin Voters Alliance asserts that it has associational standing. "[S]uch standing exists when: (a) the organization's members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Com. Cause Indiana v. Lawson*, 937 F.3d 944, 957 (7th Cir. 2019) (internal quotation marks, alterations, and citations omitted). Wisconsin Voters Alliance cannot establish associational standing because its members cannot establish standing. Therefore, Wisconsin Voters Alliance lacks standing.

#### CONCLUSION

Though this is a federal lawsuit seeking relief in a federal court, Plaintiffs have offered only a political argument for prohibiting municipalities from accepting money from private entities to assist in the funding of elections for public offices. They do not challenge any specific expenditure of the money; only its source. They make no argument that the municipalities that received the funds used them in an unlawful way to favor partisan manner. Their brief is bereft of any legal argument that would support the kind of relief they seek. They cite Article I, section 4, of the United States Constitution, but that section governs the election of senators and representatives, and they fail to explain how, even if they had standing, the Cities' use of funds donated by a private party could have affected any such election. For these reasons, Defendants' motion to dismiss Plaintiffs' complaint for lack of standing (Dkt. No. 23) is **GRANTED**. This case is dismissed. The Clerk is directed to enter judgment accordingly.

**SO ORDERED** at Green Bay, Wisconsin this 15th day of January, 2021.

#### All Citations

Slip Copy, 2021 WL 179166



2020 WL 6591209

Only the Westlaw citation is currently available.  
United States District Court, E.D. Wisconsin.

Wisconsin Voters  
ALLIANCE, et al., Plaintiffs,

v.

CITY OF RACINE, et al., Defendants.

Case No. 20-C-1487

Signed 10/21/2020

**Attorneys and Law Firms**

Gregory M. Erickson, William F. Mohrman, Erick G. Kaardal, Mohrman Kaardal & Erickson PA, Minneapolis, MN, for Plaintiffs.

James M. Carroll, Kathryn Z. Block, Milwaukee City Attorney, Milwaukee, WI, Bryan A. Charbogian, Christine M. Genthner, Edward R. Antaramian, Vanessa R. Chavez, Patricia A. Lauten, Lindsay Mather, City of Kenosha, Kenosha, WI, Michael R. Haas, Madison City Attorneys Office, Madison, WI, Steven C. Brist, Madison City Attorneys Office, Madison, WI, Scott R. Letteney, City of Racine City Attorney's Office, Racine, WI, for Defendants.

**ORDER**

William C. Griesbach, United States District Judge

\*1 Plaintiffs Wisconsin Voters Alliance and six of its members filed this action against the Cities of Green Bay, Kenosha, Madison, Milwaukee, and Racine seeking to enjoin the defendant Cities from accepting grants totaling \$6,324,527 from The Center for Tech and Civic Life (CTCL), a private non-profit organization, to help pay for the upcoming November 3, 2020 election. On October 14, 2020,

the court denied Plaintiffs' motion for a temporary restraining order and other preliminary relief because Plaintiffs failed to show a reasonable likelihood of success on the merits. Dkt. No. 27. Plaintiffs subsequently appealed the court's October 14, 2020 order under 28 U.S.C. § 1292. Plaintiffs also filed a motion for an injunction pending appeal. For the following reasons, Plaintiffs' motion will be denied.

Requests for stays or injunctions pending appeal are governed by Rule 62(c) of the Federal Rules of Civil Procedure, which provides that "[w]hile an appeal is pending from an interlocutory order ... that grants, dissolves, or denies an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights." In determining whether to grant an injunction pending appeal, a court must consider (1) whether the movant has made a strong showing that it is likely to succeed on the merits on appeal; (2) whether the movant will be irreparably injured absent an injunction; (3) whether issuance of the injunction will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. *See Hilton v. Braunskill*, 481 U.S. 770, 776 (1987) (citations omitted).

The court concludes that Plaintiffs' arguments are insufficient to establish a strong likelihood of success on the merits. In denying Plaintiffs' motion for a temporary restraining order, the court considered and rejected many of the same arguments Plaintiffs now assert. The court's reasoning is set out in the court's October 14, 2020 order and need not be repeated here. Because Plaintiffs have failed to demonstrate a likelihood of success on the merits, no further analysis as to whether to grant an injunction is necessary and their motion for an injunction pending appeal (Dkt. No. 31) is **DENIED**.

**SO ORDERED** at Green Bay, Wisconsin this 21st day of October, 2020.

**All Citations**

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2020 WL 6129510

Only the Westlaw citation is currently available.

United States District Court, E.D. Wisconsin.

Wisconsin Voters

ALLIANCE, et al., Plaintiffs,

v.

CITY OF RACINE, et al., Defendants.

Case No. 20-C-1487

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Signed 10/14/2020

**Attorneys and Law Firms**

Gregory M. Erickson, William F. Mohrman, Erick G. Kaardal, Mohrman Kaardal & Erickson PA, Minneapolis, MN, for Plaintiffs.

Scott R. Letteney, City of Racine City Attorney's Office, Racine, WI, James M. Carroll, Kathryn Z. Block, Milwaukee City Attorney's Office, Milwaukee, WI, Bryan A. Charbogian, Christine M. Genthner, Edward R. Antaramian, City of Kenosha, Kenosha, WI, Vanessa R. Chavez, Lindsay Mather, City of Green Bay, Green Bay, WI, Michael R. Haas, Patricia A. Lauten, Steven C. Brist, Madison City Attorneys Office, Madison, WI, for Defendants.

**ORDER DENYING MOTION FOR PRELIMINARY RELIEF**

William C. Griesbach, United States District Judge

\*1 Plaintiffs Wisconsin Voters Alliance and six of its members filed this action against the Cities of Green Bay, Kenosha, Madison, Milwaukee, and Racine seeking to enjoin the defendant Cities from accepting grants totaling \$6,324,527 from The Center for Tech and Civic Life (CTCL), a private non-profit organization, to help pay for the upcoming November 3, 2020 election. Plaintiffs allege that the defendant Cities are prohibited from accepting and using "private federal election grants" by the Elections and Supremacy Clauses of the United States Constitutions, the National Voters Registration Act (NVRA), 52 U.S.C. §§ 20501–20511, the Help America Vote Act (HAVA), 52 U.S.C. §§ 20901–21145, and Section 12.11 of the Wisconsin Statutes, which prohibits election bribery. The case is before

the Court on Plaintiffs' Motion for a Temporary Restraining Order. The defendant Cities oppose Plaintiffs' motion and have filed a motion to dismiss for lack of standing. Having reviewed the affidavits and exhibits submitted by the parties and considered the briefs and arguments of counsel, the Court concludes, whether or not Plaintiffs have standing, their Motion for a Temporary Restraining Order should be denied because Plaintiffs have failed to show a reasonable likelihood of success on the merits.

It is important to note that Plaintiffs do not challenge any of the specific expenditures the defendant Cities have made in an effort to ensure safe and efficient elections can take place in the midst of the pandemic that has struck the nation over the last eight months. In other words, Plaintiffs do not claim that the defendant Cities are using funds to encourage only votes in favor of one party. It is the mere acceptance of funds from a private and, in their view, left-leaning organization that Plaintiffs contend is unlawful. Plaintiffs contend that CTCL's grants have been primarily directed to cities and counties in so-called "swing states" with demographics that have progressive voting patterns and are clearly intended to "skew" the outcome of statewide elections by encouraging and facilitating voting by favored demographic groups.

The defendant Cities, on the other hand, note that none of the federal laws Plaintiffs cite prohibit municipalities from accepting funds from private sources to assist them in safely conducting a national election in the midst of the public health emergency created by the COVID-19 pandemic. The defendant Cities also dispute Plaintiffs' allegations concerning their demographic make-up and the predictability of their voting patterns. The defendant Cities note that municipal governments in Wisconsin are nonpartisan and that, in addition to the five cities that are named as defendants, more than 100 other Wisconsin municipalities have been awarded grants from CTCL. The more densely populated areas face more difficult problems in conducting safe elections in the current environment, the defendant Cities contend, and this fact best explains their need for the CTCL grants.

\*2 Plaintiffs have presented at most a policy argument for prohibiting municipalities from accepting funds from private parties to help pay the increased costs of conducting safe and efficient elections. The risk of skewing an election by providing additional private funding for conducting the election in certain areas of the State may be real. The record before the Court, however, does not provide the support

needed for the Court to make such a determination, especially in light of the fact that over 100 additional Wisconsin municipalities received grants as well. Decl. of Lindsay J. Mather, Ex. D. Plaintiffs argue that the receipt of private funds for public elections also gives an appearance of impropriety. This may be true, as well. These are all matters that may merit a legislative response but the Court finds nothing in the statutes Plaintiffs cite, either directly or indirectly, that can be fairly construed as prohibiting the defendant Cities from accepting funds from CTCL. Absent such a prohibition, the Court lacks the authority to enjoin them from accepting such assistance. To do so would also run afoul of the Supreme Court's admonition that courts should not change electoral rules close to an election date. *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205, 1207 (2020).

The Court therefore concludes that Plaintiffs have failed to show a reasonable likelihood of success on the merits. Plaintiffs' Motion for a Temporary Restraining Order and other preliminary relief is therefore **DENIED**. A decision on the defendant Cities' motion to dismiss for lack of standing will await full briefing.

**SO ORDERED** at Green Bay, Wisconsin this 14th day of October, 2020.

**All Citations**

Slip Copy, 2020 WL 6129510

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E-MAILED SEP 29 2020

AO 440 (Rev. 06/12) Summons in a Civil Action



UNITED STATES DISTRICT COURT

for the Eastern District of Wisconsin



Wisconsin Voters Alliance, David Tarczon, Elizabeth Clemens-Tarczon, Jonathan Hunt, Paula Perez, Maria Eck, Douglas Doeran, and Navin Jarugumilli,

Plaintiff(s)

v.

City of Racine, City of Milwaukee, City of Kenosha, City of Green Bay, City of Madison

Defendant(s)

Civil Action No. 20-CV-1487

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

City of Kenosha
625 52nd St #105
Kenosha, WI 53140

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you receive it) - or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12(a)(2) or (3) - you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or the plaintiff's attorney, whose name and address are:

Erick G. Kaardal, #1035141
Mohrman, Kaardal & Erickson, P.A.,
150 South Fifth Street, Suite 3100, Minneapolis, Minnesota 55402

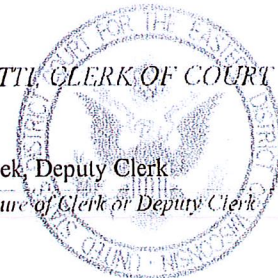
If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: 09/25/2020

GINA M. COLLETTI, CLERK OF COURT

s/ Terri Lynn Ficek, Deputy Clerk

Signature of Clerk or Deputy Clerk



**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4(l))*

This summons and the attached complaint for *(name of individual and title, if any):*

were received by me on *(date)* \_\_\_\_\_

I personally served the summons and the attached complaint on the individual at *(place):*

\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons and the attached complaint at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_, a person of suitable age and discretion who resides there, on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons and the attached complaint on *(name of individual)* \_\_\_\_\_

who is designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify):* \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00

I declare under penalty of perjury that this information is true.

Date:

*Server's signature*

*Printed name and title*

*Server's address*

Additional information regarding attempted service, etc.:

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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Wisconsin Voters Alliance, David Tarczon,  
Elizabeth Clemens-Tarczon, Jonathan  
Hunt, Paula Perez, Maria Eck, Douglas  
Doeran, Navin Jarugumilli.

**Court File No. 20-cv-01487**

Plaintiffs,

**Motion for Temporary  
Restraining Order**

vs.

City of Racine, City of Milwaukee, City of  
Kenosha, City of Green Bay, City of  
Madison,

Defendants.

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Plaintiffs Wisconsin Voters Alliance, David Tarczon, Elizabeth Clemens-Tarczon, Jonathan Hunt, Paula Perez, Maria Eck, Douglas Doeran, Navin Jarugumilli, by and through undersigned counsel, hereby move this Court to issue a temporary restraining order enjoining the City of Racine, City of Milwaukee, City of Kenosha, City of Green Bay, and City of Madison from accepting or using CTCL's private federal election grant and other similar private federal election grants.

The motion for temporary restraining order is supported by the Plaintiffs' memorandum of law filed in support of their motion, a declaration and attached exhibits, and arguments of counsel.

Dated: September 24, 2019

/s/ Erick G. Kaardal  
Erick G. Kaardal, No. 1035141  
Special Counsel for Amistad Project of  
Thomas More Society  
Mohrman, Kaardal & Erickson, P.A.  
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Email: kaardal@mklaw.com  
*Attorneys for Plaintiffs*

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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Wisconsin Voters Alliance, David Tarczon,  
Elizabeth Clemens-Tarczon, Jonathan  
Hunt, Paula Perez, Maria Eck, Douglas  
Doeran, Navin Jarugumilli,

Case No. 20-CV-1487

Plaintiffs,

vs.

**Memorandum in Support of  
Plaintiffs' Motion for a  
Temporary Restraining Order**

City of Racine, City of Milwaukee, City of  
Kenosha, City of Green Bay, City of  
Madison,

Defendants.

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**Introduction**

Plaintiffs Wisconsin Voters Alliance, David Tarczon, Elizabeth Clemens-Tarczon, Jonathan Hunt, Paula Perez, Maria Eck, Douglas Doeran, and Navin Jarugumilli seek preliminary injunctive relief against the Defendant cities of Racine, Milwaukee, Kenosha, Green Bay, and Madison, Wisconsin. The Cities sought and accepted a combined grant of over \$6.3 million from a private non-profit corporation, the Center for Tech and Civic Life for the up-coming November federal elections. The \$6.3 million of private moneys are to be distributed among the cities for election purposes.

CTCL has a nationwide pattern of providing private federal election grants to cities and counties with demographics showing progressive voting patterns. A government violates federal and state election law "if it skews the outcome of an election by encouraging

and facilitating voting by favored demographic groups.”<sup>1</sup> Notably, Wisconsin has not approved any acceptance or use of private federal election grants as it would disrupt the lawfulness, uniformity, and fairness of federal elections as federal moneys are provided for election processes and procedures. Elections are core public responsibilities. Federal and state election laws in the context of federal elections, create regulatory or statutory mechanisms designed to deter corruption of individuals or corporations from having an undue influence on those elections. Cities may not supersede the will of Congress or the Legislature to create, either directly or indirectly an imbalance to fair elections.

Federal and state law preempt private federal election grants to Wisconsin’s political subdivisions: U.S. Constitution’s Elections Clause and Supremacy Clause, National Voters Registration Act (NVRA), 52 U.S.C. §§ 20501-20511, Help America Vote Act, 52 USC §§ 20901-21145, and Wisconsin Statutes § 12.11. On every level, because of the preemptive effects of these laws, the five Wisconsin cities have acted ultra vires, without legal authority, to accept and use CTCL’s private federal election grant.

For example, the Help America Vote Act (HAVA) gives discretion to the “states,” not municipalities, on how to implement federal elections:

The specific choices on the methods of complying with the requirements of this subchapter shall be left to the discretion of the State.<sup>2</sup>

Federal election law defines the word “state”:

In this chapter, the term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands.<sup>3</sup>

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<sup>1</sup> *Young v. Red Clay Consol. Sch. Dist.*, 122 A.3d 784, 858 (Del. Ch. 2015)

<sup>2</sup> 52 U.S.C. § 21085, Pub. L. 107–252, title III, § 305 (Oct. 29, 2002), 116 Stat. 1714.

<sup>3</sup> 52 USC § 21141.

The Cities are not a “state” and therefore, do not have the legal authority to accept and use CTCL’s private federal election grant.

Plaintiffs Wisconsin Voters Alliance, David Tarczon, Elizabeth Clemens-Tarczon, Jonathan Hunt, Paula Perez, Maria Eck, Douglas Doeran, and Navin Jarugumilli are entitled to a temporary restraining order enjoining each Defendant city using their respective portion of the CTCL private federal election grant.

### Statement of Facts

#### **The Defendant cities sought and obtained private federal election grant moneys to conduct federal elections.**

All of the Defendant Wisconsin cities, Racine, Milwaukee, Kenosha, Green Bay, and Madison sought and received a combined grant from Center of Tech and Civic Life of over \$6.3 million:

- Green Bay: \$1,093,400;
- Kenosha: \$862,779;
- Madison: \$1,271,788;
- Milwaukee: \$2,154,500; and
- Racine: \$942,100.<sup>4</sup>

CTCL is a Chicago based non-profit organization<sup>5</sup> that received \$250 million from Mark Zuckerberg (creator of Facebook) and his wife Dr. Priscilla Chan<sup>6</sup> to provide funding for city and county election officials to perform election operations. CTCL’s mission, in part,

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<sup>4</sup> CTCL Grant Request 5 (June 15,2020); Kaardal Ex. C-5. “Wisconsin’s five largest cities awarded \$6.3 million in effort to make elections safer amid coronavirus pandemic,” Milwaukee Journal Sentinel, Sept. 24, 2020; Kaardal Ex. H.

<sup>5</sup> *Id.* Ex. A-3.

<sup>6</sup> *Id.* Ex. B-2.

includes the training of public election officials in communication and technology and to inform and mobilize voters.<sup>7</sup>

Notably, CTCL can be characterized as a progressive organization.<sup>8</sup> While the organization seeks to “foster a more informed and engaged democracy, and help[] modernize elections” with its team of “civic technologists, trainers, researchers, election administration and data experts,” it is using millions of dollars to target certain cities in certain states, which have progressive voting patterns, with private federal election grants for what is normally core government responsibilities—conducting federal elections—funded normally with federal and state moneys.

#### **I. CTCL’s 2020 private federal elections grant application process.**

On its website, CTCL markets to election offices the federal election grants as “COVID-19 response grants”:

We provide funding to U.S. local election offices to help ensure they have the critical resources they need to safely serve every voter in 2020.

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<sup>7</sup> *Id.* Ex. A-4–5.

<sup>8</sup> A critic of CTCL identified it as a “bunch of Democratic operatives using donations from left-of-center groups...” *Center for Tech and Civic Life* “Democratic election operatives masquerading as concerned voters’ group, critic says,” W.J. Kennedy, *Legal Newsline* (Aug. 24, 2020) Kaardal Ex. D. The article identified one of CTCL’s founders, Tiana Epps-Johnson as the former administration director of the now-defunct New Organizing Institute, a Democratic grassroots election training group, and CTCL board member Tammy Patrick as a senior advisor to the elections program at Pierre Omidyar’s Democracy Fund. In 2016, Omidyar, founder of e-Bay, apparently donated \$100,000 to an anti-Trump PAC. *Id.* Likewise, key funders include the Skoll Foundation, the Democracy Fund, the John S. and James L. Knight Foundation, the Rockefeller Brothers Foundation, and Rock the Vote. <https://www.techandcivicle.org/key-funders-and-partners/> (last visited Sept. 21, 2020).



CTCL stated that it intends to award \$250 million of private federal election grants to local election offices for the November 3, 2020 elections. Any U.S. election office that is responsible for administering election activities may apply for a private grant through a minimal grant application process.<sup>9</sup> The grant application questions include:

- The number of active registered voters in the election office jurisdiction as of September 1, 2020;
- The number of full-time staff (or equivalent) on the election team as of September 1, 2020.
- The election office 2020 budget as of September 1, 2020;
- The election office's W-9;
- the local government body who approves the grant funding, if any; and
- who should the grant agreement be addressed to.<sup>10</sup>

Meanwhile, CTCL states the purpose of the grants as to “directly help election offices administer safe and secure elections in November”<sup>11</sup> but the grants also include uses to support and promote elections. The private grants are to “to cover certain 2020 expenses incurred between June 15, 2020 and December 31, 2020. These include, but are not limited to, the costs associated with the administration of the following examples of election responsibilities”:

**Ensure Safe, Efficient Election Day Administration**

- Maintain open in-person polling places on Election Day

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<sup>9</sup> Kaardal Decl. Ex. A-5.

<sup>10</sup> Kaardal Decl. Ex. A-6. *See also* <https://form.jotform.com/202445110530135> (last visited Sept. 20, 2020).

<sup>11</sup> Kaardal Decl. Ex. A-3.

- Procure Personal Protective Equipment (PPE) and personal disinfectant to protect election officials and voters from COVID-19
- Support and expand drive-thru voting, including purchase of additional signage, tents, traffic control, walkie-talkies, and safety measures

#### **Expand Voter Education & Outreach Efforts**

- Publish reminders for voters to verify and update their address, or other voter registration information, prior to the election
- Educate voters on safe voting policies and procedures

#### **Launch Poll Worker Recruitment, Training & Safety Efforts**

- Recruit and hire a sufficient number of poll workers and inspectors to ensure polling places are properly staffed, utilizing hazard pay where required
- Provide voting facilities with funds to compensate for increased site cleaning and sanitization costs
- Deliver updated training for current and new poll workers administering elections in the midst of pandemic

#### **Support Early In-Person Voting and Vote by Mail**

- Expand or maintain the number of in-person early voting sites
- Deploy additional staff and/or technology improvements to expedite and improve mail ballot processing.<sup>12</sup>

Minimum grants are \$5,000, but the actual amount awarded is “based on a formula that considers the citizen voting age population and other demographic data of [the] jurisdiction.”<sup>13</sup> Further, combined local government applications are encouraged for those who share election responsibilities.<sup>14</sup>

## **II. CTCL’s 2020 private federal election grants have gone to local governments with demographics showing progressive voting patterns.**

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<sup>12</sup> Kaardal Decl. Ex. A4–5.

<sup>13</sup> *Id.* A-5.

<sup>14</sup> *Id.* A-6.

So far, CTCL has provided private federal election grants to urban cities and counties in at least five of the “swing states”<sup>15</sup>: Minnesota (10), Pennsylvania (20), Wisconsin (10), Michigan (16), and Georgia (16). Depending on a person’s source, the other three “swing states” include Arizona (11), Florida (29), and North Carolina (15). For all eight states, they represent 127 total electoral votes for presidency. Although CTCL refers to itself as bipartisan, the founders and members of its board have roots in progressive politics.<sup>16</sup>

The voting patterns of the local governments that CTCL have funded are overwhelmingly progressive. For example, Wayne County, Michigan, voted in 2016 for Hillary Clinton at 94.95% rate. As the chart below shows, CTCL’s private federal election grants are targeting cities with demographics showing high rates of progressive voters.

Jurisdiction/City	Grant Amount (in dollars)	Trump 2016	Clinton 2016	Clinton Percentage
Green Bay City, WI	1,093,400	19,821	21,291	70.88%
Kenosha City, WI	862,779	15,829	22,849	58.98%
Madison City, WI	1,271,788	23,053	120,078	83.89%
Milwaukee City, WI	2,154,500	45,167	188,653	80.68%
Racine City, WI	942,100	8,934	19,029	68.05%
Philadelphia City, PA	10,000,000	108,748	584,025	84.30%

<sup>15</sup> “The 8 states where 2020 will be won or lost: A POLITICO deep dive,” Sept. 8, 2020. The “selection of these swing states is based on a variety of factors — polling, demography, past and recent election history, voter registration, interviews with state and local party officials, strategists and pollsters.” <https://www.politico.com/news/2020/09/08/swing-states-2020-presidential-election-409000> (last visited Sept. 22, 2020).

<sup>16</sup> CTCL founders include Tiana Epps-Johnson, Donny Bridges, and Whitney May who previously worked at the now defunct New Organizing Institute (NOI), a center that was dedicated to training progressive groups and Democratic campaigns in digital campaigning strategies. Wellstone Action took over NOI’s training programs. NOI’s current executive director, Ethan Roeder, led the data departments for the Obama presidential campaigns of 2008 and 2012. Likewise, CTCL funders include other groups such as the Skoll Foundation, the Democracy Fund, the John S. and James L. Knight Foundation, and the Rockefeller Brothers Foundation.

Wayne County, MI-Detroit	3,512,000	7,682	234,871	94.95%
Flint City, MI	475,625	4,572	24,790	84.42%
East Lansing, MI	8,500	4,147	13,073	75.9%
Lansing, MI	440,000	11,219	32,716	74.46%
Minneapolis City, MN	3,000,000	25,693	174,585	87.17%
Fulton County, GA - Atlanta	6,000,000	110,372	281,875	69.2%
Richland County, SC	730,000	52,469	108,000	67.2%
Delaware County, PA	2,200,000	110,667	177,402	61.58%
Totals		548,373	2,003,237	78.50%

The CTCL private federal election grants to Racine, Milwaukee, Kenosha, Green Bay, and Madison<sup>17</sup> are moneys to facilitate voting of a specific demographic group: progressive voters in the five major cities in Wisconsin. Meanwhile, Wisconsin received \$7.9 million for appropriations to support programs under the Help America Vote Act, with the state contribution of \$1.6 million,<sup>18</sup> and another \$7.3 million in federal moneys under the 2020 CARES Act Grant (with the state match of \$1.5 million).<sup>19</sup> Using these federal and state moneys, the Wisconsin Elections Commission allocates the moneys through a grant process.<sup>20</sup>

### **Argument**

**Plaintiffs are entitled to a temporary restraining order.**

**The Plaintiffs satisfy the factors for a temporary restraining order.**

The standards of issuing a temporary restraining order are analogous to the

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<sup>17</sup> The Defendants Racine, Milwaukee, Kenosha, Green Bay, and Madison will be referred to as “the Cities” unless specifically identified.

<sup>18</sup> Kaardal Decl. Ex. I-3.

<sup>19</sup> *Id.* Ex. J.

<sup>20</sup> *Id.* e.g. Ex. K and L.

standards applicable when determining whether preliminary injunctive relief is appropriate. Injunctive relief is an extraordinary and drastic remedy that should not be granted unless the movant, by a clear showing, carries the burden of persuasion. *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997). Five factors figure into the determination of whether a preliminary injunction or TRO should be granted. *Roland Mach. Co. v. Dresser Indus., Inc.*, 749 F.2d 380, 385–88 (7th Cir.1984). As a threshold matter, the plaintiff must show (1) a likelihood of success on the merits, (2) irreparable harm if the preliminary injunction is denied, and (3) the inadequacy of any remedy at law. Once this threshold showing is made, the court will balance (4) the harm to plaintiff if the preliminary injunction were wrongfully denied against the harm to the defendants if the injunction were wrongfully granted, and (5) the impact on persons not directly concerned in the dispute (the “public interest”). *Cooper v. Salazar*, 196 F.3d 809, 813 (7th Cir.1999).

**I. The Plaintiffs are likely to succeed on the merits.**

**A. The acceptance of private moneys to conduct federal elections lends to the prospect of undue influence on a core public government responsibility funded through federal and state appropriations.**

Congress and state legislatures fund election processes to conduct federal elections to support, improve, and implement election systems. Normally, government moneys fund federal elections because they are a core government responsibility. Principally, the State has the “power to regulate [its] own elections[,]” relying on the constitutional authority for states to regulate “[t]he Times, Places and Manner of holding Elections for Senators and Representatives.” U.S. Const., art. I, § 4. The Elections Clause provides the state with legal authority over elections for congressional offices subject to Congressional enactments.

Similarly, Article II of the United States Constitution governs presidential elections, distributing authority between the states and Congress. U.S. Const. art. II, § 1, cls. 2, 4. The Electors Clause provides that states appoint presidential electors and Congress determines the timing of the election and the day of electoral voting.

Federal election laws create regulatory mechanisms which are designed to deter corruption, prevent particular individuals or organizations from having an undue influence on federal elections, and assist in enforcement of laws prohibiting foreign contributions in federal elections, while also protecting the exercise of political speech so crucial to the functioning of this country's vibrant democracy. *Citizens for Resp. and Ethics in Washington v. Fed. Election Comm.*, 316 F. Supp. 3d 349, 368 (D.D.C. 2018), *aff'd*, 971 F.3d 340 (D.C. Cir. 2020) *citing Citizens United v. Fed. Election Comm.*, 558 U.S. 310, 366–67 (2010). Hence, the federal government and the states have “important regulatory interests” in fair, honest, and orderly elections. *See Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983). Thus, the conduct of elections is a core government responsibility of government entities because of the public interest in ensuring the fairness and integrity of Wisconsin’s elections. *Madison Teachers, Inc. v. Scott*, 906 N.W.2d 436, 444 (Wis. 2018) (“The public has a significant interest in fair elections, where votes are freely cast without voter intimidation or coercion.”) Because federal elections are a core government responsibility, federal elections are normally funded with federal and state moneys.

HAVA ensures that in the disbursement of federal moneys for federal elections, each state receives a proportionate balance based upon specific criteria. The state then uses those moneys in a manner directed by law, including in the support of various county, city, town,

or village governmental entities are required to conduct federal elections as a core government responsibility.

But, when private organizations provide grant moneys to specific cities based on favoring demographic groups with progressive voting patterns, there is an imbalance to the federal scheme under HAVA. Here, CTCL and the Cities have created public-private partnerships in the conduct of federal elections, almost akin to privatization of the election process. And, because of the targeting of those cities in so-called key “swing states,” the influence of private moneys is apparent on the election process. Thus, the issues brought before this Court *are* an inherent case of public interest.

**1. The Wisconsin Voters Alliance have a private cause of action and legal standing.**

The Wisconsin Voters Alliance<sup>21</sup> has a private cause of action and legal standing to seek a pre-election injunction against the Cities accepting and using CTCL’s \$6.4 million in private federal election grants for the November 3 election. The Supremacy Clause and HAVA confer a private cause of action and legal standing.

**a. The Supremacy Clause provides a citizen’s private cause of action and legal standing to bring preemption lawsuits against local governments regarding federal elections.**

The Supremacy Clause of the United States Constitution, Article VI, clause 2, provides a federal jurisdictional basis for a suit brought to enforce the provisions of federal election law. In *League of Women Voters v. Blackwell*, 340 F.Supp.2d 823 (N.D. Ohio 2004), the

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<sup>21</sup> For convenience, “Wisconsin Voters Alliance” includes all named Plaintiffs unless otherwise specifically identified.

court held that the Supremacy Clause of the U.S. Constitution (U.S. Const. Art. VI, cl. 2) provides a basis for federal court jurisdiction of the League's suit that challenged an election official's actions relating to balloting procedures in federal elections as violative of HAVA, which has preemptive effect:

It is clearly established that the Supremacy Clause grants the federal courts jurisdiction over such claims; conflict with a federal law raises a federal question pursuant to 28 U.S.C. § 1331. In *Verizon Md., Inc. v. Public Serv. Comm'n of Md.*, 535 U.S. 635 || (2002), Verizon sued the Maryland Public Service Commission alleging that the commission's order that Verizon make payments under a negotiated interconnection agreement violated the Telecommunications Act of 1996. The district court dismissed the action for lack of jurisdiction. The Fourth Circuit affirmed. The Supreme Court reversed, finding that, where state action is preempted by federal law, § 1331 provides jurisdiction....

While *Verizon* did not speak to the question of whether the Supremacy Clause created a cause of action as well as a grant of jurisdiction, “[t]he best explanation of *Ex Parte Young* and its progeny is that the Supremacy Clause creates an implied right of action for injunctive relief against state officers who are threatening to violate the federal Constitution or laws.”

Because plaintiffs' claim is that defendant's actions in his official duties violate a federal law which has preemptive effect, the Supremacy Clause provides the cause of action and federal jurisdiction.

340 F.Supp.2d at 827–28 (citations omitted).

Similarly, in this case, the Supremacy Clause provides the private cause of action and § 1331 provides federal issue jurisdiction. Like *League of Women Voter*, the Wisconsin Voters Alliance asserts that the Cities actions violate a federal law which has preemptive effect. Specifically, the Wisconsin Voters Alliance's claim is that federal law preempts the Cities and its officials from accepting their respective CTCL's private federal election grant to conduct federal elections. As a federal preemption claim, the Supremacy Clause provides the cause of action and federal jurisdiction.



- b. HAVA, 52 U.S.C. § 21112, confers a private cause of action and legal standing to bring preemption lawsuits against local governments with regard to federal elections.**

**The absence of any appropriate remedy such as a pre-election injunction in an administrative action reflects the need for federal jurisdiction.**

HAVA, 52 U.S.C. § 21112, confers upon the Wisconsin Voters Alliance a private cause of action and legal standing. It fits the statutory category of “any person who believes that there is a violation of any provision of subchapter III (including a violation which has occurred, is occurring, or is about to occur).” As to the Wisconsin Voters Alliance’s prospective remedies sought in this Court, HAVA, 52 U.S.C. § 21112, titled “Establishment of State-based administrative complaint procedures to remedy grievances,” guarantees an “appropriate remedy” to “any person who believes that there is a violation of any provision of subchapter III (including a violation which has occurred, is occurring, or is about to occur)” of HAVA. Under section (a) of 52 U.S.C. § 21112, Wisconsin, having received federal HAVA payments, is “required to establish and maintain State-based administrative complaint procedures which meet the requirements of paragraph (2).” Paragraph (2), among other things, requires that Wisconsin provide that:

(F) If, under the procedures, the State determines that there is a violation of any provision of subchapter III, the State shall provide the *appropriate remedy*.

(Emphasis added.)

However, here, Wisconsin election laws, under which election complaints are filed with the Wisconsin Elections Commission, fail to provide the federally-required “appropriate remedy” to “any person who believes that there is... [a HAVA] violation which

has occurred, is occurring, or is about to occur” because there is no effective pre-election injunctive relief. Wisconsin Statutes § 5.061. Wisconsin Statutes § 5.07, instead, authorizes the Wisconsin Attorney General to pursue injunctive relief for HAVA violations. Section 5.061 is legally insufficient to satisfy the federal “appropriate remedy” requirement for “any person” filing a HAVA complaint to obtain pre-election injunctive relief. 52 U.S.C. § 21112. Hence, because § 5.061 is legally insufficient to satisfy the federal “appropriate remedy” requirement under 52 U.S.C. § 21112 for “any person” filing a HAVA complaint in Wisconsin to obtain pre-election injunctive relief the Wisconsin Voters Alliance has a private cause of action and legal standing under 52 U.S.C. § 21112 to pursue the relief sought.

**c. The government favoring progressive demographic groups causes injury to plaintiffs who are in non-progressive demographic groups.**

A government’s election policy favoring demographic groups is an equivalent injury to disfavoring demographic groups. “Parity of reasoning suggests that a government can violate the Elections Clause if it skews the outcome of an election by encouraging and facilitating voting by favored demographic groups.” *Young v. Red Clay Consol. Sch. Dist.*, 122 A.3d 784, 858 (Del Ch. 2015). Here, the plaintiffs complain that the CTCL’s nationwide federal election grants are skewed towards progressive voters injuring the plaintiffs; close elections will be lost by plaintiffs’ favored candidates because of the Wisconsin Cities favoring progressive demographic groups—which constitutes the type of injury-in-fact which constitutes standing for constitutional purposes and otherwise.

**2. The Cities’ CTCL private federal election grants are within a subject area, federal elections, where public-private partnerships are constitutionally impermissible.**

Wisconsin receives federal moneys, and through the Wisconsin Elections Commission, uses those moneys to conduct federal elections.<sup>22</sup> But, the Cities chose to seek and accept private moneys from CTCL. In receiving the CTCL's grants of \$6.4 million in grants, they created a public-private relationship, privatizing in part, the conduct of federal elections. As the previously presented facts reveal, the CTCL \$64 million in private grants to the Cities was provided to them as urban cities with each having a demographic group that vote progressive.

In the last presidential election, the Cities voted overwhelmingly for the progressive candidate Hillary Clinton. CTCL, a progressive organization, is targeting the Cities because its demographic group votes progressive. The Wisconsin Voters Alliance notes that in May of 2020, CTCL awarded Racine a grant of \$100,000 to divide among itself and the remaining four cities of Green Bay, Kenosha, Madison, and Milwaukee<sup>23</sup> to develop a plan to obtain additional grants that were eventually awarded of \$6.4 million.<sup>24</sup>

The acceptance of CTCL's \$6.4 million in grants is no small monetary matter. Whether the accepted private funding might be for legitimate purposes, the private funding is an effort to encourage voting of a favored demographic group—an urban city within an identified swing state—that voted overwhelming democratic in the last presidential election.

The privatization of the conduct of elections, however “minor,” disrupts the integrity of the election process of a city's core government responsibility. A public-private

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<sup>22</sup> See e.g. Kaardal Decl. Exs. K and L.

<sup>23</sup> Kaardal Decl. Ex. D-1–2.

<sup>24</sup> *Id.* Ex. C-1–21.

relationship in the subject area of federal elections invites private distortions of elections based on favored demographic groups.

Meanwhile, Congress and the state have provided for the funding to support, improve, or implement election systems. It is the role of the government, not CTCL, to ensure the integrity, credibility, and reliability of federal elections. The courts must ensure that the government's elections policy is not supplanted by CTCL's private federal election grants. The courts must prevent CTCL's outside influences to skew the outcome of an election.

*Young v. Red Clay Consol. Sch. Dist.*, 122 A.3d 784, 858 (Del. Ch. 2015) reveals the dangers of a government scheme to target get-out-to-vote efforts on a favored demographic group. The school district wanted its referendum to pass; so, it targeted parents of school children and adult students for a get-out-to-vote campaign. In the *Young* decision, the court identified the school district's scheme to get-out-the-vote of the parents and adult students as also violating election law. The court held that the school district's improper influence upon a demographic group interfered with the "full, fair, and free expression of the popular will..." *Id.* The court stated that the government favoring a demographic group caused equivalent injury to a voter as the government disfavoring a demographic group:

Historically, the law has focused on forms of "improper influence" that have interfered with the voting rights of disfavored demographic groups by dissuading or preventing them from voting through blatant means like fraud, violence, and intimidation. A government certainly violates the Elections Clause if it skews the outcome of an election in this manner. Parity of reasoning suggests that a government can violate the Elections Clause if it skews the outcome of an election by encouraging and facilitating voting by favored demographic groups. In both situations, the government has diminished the voting rights of one portion of the electorate and enhanced the voting rights of another portion of the electorate. In neither case is the

election “free and equal.”

*Id.*

As a case of first impression, no other case is analogous to the current Wisconsin cities’ public-private partnership in the context of federal elections. However, other cases show the need to announce the constitutional impermissibility of public-private relationships.

For example, in *Board of Education of Kiryas Joel Village School District v. Grumet*, 512 U.S. 687 (1994), the U.S. Supreme Court drew such a line finding a public-private partnership constitutionally impermissible. In *Kiryas*, the New York legislature sought to create a homogenous school district for Satmat Hasidic Jews and did so by statute. This “religious” motive was improper for the state and the statute forming the new district was struck down. *Id.* at 691.

Similarly, in *Ferguson v. City of Charleston*, 532 U.S. 67, 81-86 (U.S. 2001), the U.S. Supreme Court held another public-private partnership unconstitutionally impermissible. Here, the local prosecutor, concerned about crack babies, teamed up with the local hospital to develop a program seeking to prevent expecting mothers from using cocaine during the pregnancy. They developed a program where the hospital would test for the presence of cocaine and provide a program to help with abstinence. If the patient refused, the results were shared with the prosecutor’s office that in turn would encourage participation at the threat of prosecution. The U.S. Supreme Court found the entanglement of public and private interests sufficient to conclude the blood test by the hospital was a Fourth Amendment violation by the state. *Id.* at 86.

As previously mentioned, the conduct of elections is a core public responsibility which must be publicly-funded. Governmental entities are expected to remain neutral. Scholars have warned of the hazard presented by partisan government conduct: “[P]ermitting the government to depart from a neutral position would threaten both the reliability of the election result as an expression of the popular will and the appearance of integrity crucial to maintaining public confidence in the electoral process.”<sup>25</sup> And in Wisconsin there is a significant public interest in ensuring the fairness and integrity of state elections. *Madison Teachers, Inc. v. Scott*, 906 N.W.2d 436, 444 (Wis. 2018). *See also Bullock v. Carter*, 405 U.S. 134, 145 (1972) (recognizing states’ interests maintaining integrity in election processes).

The purpose of the federal and state government exclusively funding federal elections is to eliminate undue influence and the appearance of undue influence by private parties. With the entanglement of public and private interests, CITCL’s private funding of federal elections introduces undue influence and the appearance of undue influence into federal elections—which should be declared as constitutionally impermissible.

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<sup>25</sup> Steven J. André, Government Election Advocacy: Implications of Recent Supreme Court Analysis, 64 *Admin. L. Rev.* 835, 851 (2012), *citing* Note, The Constitutionality of Municipal Advocacy in Statewide Referendum Campaigns, 93 *Harv. L. Rev.* 535, 554, 554 n.112 (1980) (observing that “[t]he [United States Supreme] Court has explicitly recognized that the validity of elections as bona fide expressions of the popular will depends as much upon citizens’ faith that the electoral process is free from government tampering as on the actual fairness of that process”).

**3. The Cities' acceptance of the CTCL's \$6.4 million in grants is preempted by federal and state law.**

Whether a local government action is preempted by federal law such as HAVA is to be determined by application of conflict-preemption principles. The federal court held in *Washington Ass'n of Churches v. Reed*, 492 F. Supp. 2d 1264 (W.D. Wash. 2006), that in adjudicating HAVA preemption issues, the court will find preemption where it is impossible for a private party to comply with both state and federal requirements, or where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. Similarly, the Pennsylvania Supreme Court held in *Kuznik v. Westmoreland County Bd. of Com'rs*, 588 Pa. 95, 902 A.2d 476 (2006), in resolving an issue of preemption of a state statute by HAVA, state law may be displaced under conflict preemption principles if the state law in question presents a conflict with federal law in one of two situations: when it is impossible to comply with both the state and the federal law, or when the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.

Consistently, the federal court instructed in *Colorado Common Cause v. Davidson*, 2004 WL 2360485 (Colo. Dist. Ct. 2004) that since Congress recognized that HAVA did not occupy the field of elections, particular preemption questions can only be answered by considering the purpose of the particular federal provision and measuring it against state provisions to determine whether a particular state provision does or does not conflict with the particular federal provision.

Specifically, the following laws preempt the Wisconsin Cities' actions of approving and using CTCL's private federal election grants because it is impossible for the CTCL's \$6.4

million in private federal election grants to comply with state and federal law and the private federal election grants stand as an obstacle to the accomplishment and execution of the full purposes and objectives of federal law.

**a. U.S. Constitution's Elections Clause and Supremacy Clause preempt CTCL's private federal election grants to local governments.**

The U.S. Constitution, Article I's Elections Clause and Article VI's Supremacy Clause preempts CTCL's private federal elections grant to local governments. The Elections Clause states:

Time, place, and manner of holding. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing [sic] Senators.

U.S. Constitution, Art. I, sec. 4, cl. 1. The Clause grants to the States "broad power" to prescribe the procedural mechanisms for holding congressional elections, *e.g.*, *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 217 (1986) but does not authorize them to dictate electoral outcomes, to favor or disfavor a class of candidates, or to evade important constitutional restraints, *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 833-43 (1995)

The Supremacy Clause states:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Constitution, Art. VI, sec. 2.



The Elections Clause and Supremacy Clause apply in this case. The Elections Clause ensures that the federal government and state legislatures determine the time, place and manner of federal elections—not CTCL and local governments. The Supremacy Clause, as applied here, ensures that local governments do not act contrary to federal and state law regarding federal elections.

The Elections Clause and Supremacy Clause preempt CTCL's private federal election grants to local governments. CTCL's private federal election grants are not legally authorized by federal law nor state law. The Cities have acted ultra vires, without legal authority, in accepting and using CTCL's private federal election grants.

**b. Help America Vote Act (HAVA) preempts CTCL's private federal election grants to local governments.**

The Help America Vote Act (HAVA), 52 USC § 209, preempts CTCL's private federal election grants for the following reasons. HAVA established the Election Assistance Commission (EAC) to assist the states regarding HAVA compliance and to distribute HAVA funds to the states.

The EAC is also charged with creating voting system guidelines and operating the federal government's first voting system certification program. EAC is also responsible for maintaining the National Voter Registration form, conducting research, and administering a national clearinghouse on elections that includes shared practices, information for voters and other resources to improve elections.

HAVA requires that the states implement the following new programs and procedures:

- Provisional Voting

- Voting Information
- Updated and Upgraded Voting Equipment
- Statewide Voter Registration Databases
- Voter Identification Procedures
- Administrative Complaint Procedures

In the past, Wisconsin's HAVA plan, required by HAVA, was approved by the EAC. HAVA's purpose was to coordinate federal and state administration of federal elections. HAVA does not legally authorize local governments to accept private federal election grants. HAVA's preemption prohibits local governments from accepting private federal election grants.

Under HAVA, the EAC is to be bi-partisan and work with all the states in a bi-partisan way. The CTCL's private federal election grants circumvent the EAC and the states and thus conflict with HAVA. Under HAVA, the EAC and the states work toward election plans and budgets.

CTCL's private federal election grants to local governments lead to deviations from the federally-approved and state-approved election administration plans and budgets—thus, conflicting with HAVA. The federal and state money distributed to county and city clerks that administer elections are distributed pursuant to a legally authorized method that is approved by the states under the guidance of EAC, so the counties and cities receive a state-approved share for election purposes. But, local governments accepting CTCL's private federal election grants, violate HAVA by injecting private money into federal elections which is not approved by the EAC or the states.

States are not allowed to deviate from plans submitted under HAVA. Local governments accepting CTCL's private federal election grants, violate HAVA. The CTCL's private federal election grants to local governments are not part of HAVA.

Wisconsin, consistent with HAVA and under the EAC's guidance, has already approved a fiscal plan for its elections. The CTCL's private federal election grants to the Wisconsin's cities circumvents and violates that fiscal plan.

The Supremacy Clause, as applied to HAVA, ensures that Wisconsin cities do not act contrary to HAVA regarding federal elections. HAVA preempts CTCL's private federal election grants to the cities. Under the Supremacy Clause and HAVA, CTCL's private federal election grants are not legally authorized by federal law or state law. Here, the Cities have acted ultra vires, without legal authority, in accepting and using CTCL's private federal election grant.

**c. The National Voters Registration Act (NVRA) preempts CTCL's private federal election grants to local governments.**

National Voters Registration Act (NVRA), 52 U.S.C. §§ 20501–20511, preempts CTCL's private federal election grants for the following reasons. Congress enacted the National Voter Registration Act of 1993 (also known as the "Motor Voter Act"), to create "national procedures for voter registration for elections for Federal office." 52 U.S.C. § 20503. The Act gave responsibility to the Federal Election Commission (FEC) to provide States with guidance on the Act, to develop a national mail voter registration form, and to compile reports on the effectiveness of the Act. A 2002 amendment in HAVA transferred the FEC's responsibilities under the Act to the EAC.

Section 5 of the NVRA requires states to provide individuals with the opportunity to register to vote at the same time that they apply for a driver's license or seek to renew a driver's license, and requires the State to forward the completed application to the appropriate state or local election official. 52 U.S.C. § 20504.

Section 6 of the NVRA provides that citizens can register to vote by mail using mail-in-forms developed by each state and the Election Assistance Commission. 52 U.S.C. § 20505.

Section 7 of the NVRA requires states to offer voter registration opportunities at all offices that provide public assistance and all offices that provide state-funded programs primarily engaged in providing services to persons with disabilities. Each applicant for any of these services, renewal of services, or address changes must be provided with a voter registration form or a declination form as well as assistance in completing the form and forwarding the completed application to the appropriate state or local election official. 52 U.S.C. § 20506.

Section 8 of the NVRA also creates requirements for how States maintain voter registration lists for federal elections. 52 U.S.C. § 20507. NVRA's purpose was to coordinate federal and state administration of voter registration for federal elections and to create legally-authorized, nationwide, and uniform standards for voter registration.

NVRA does not legally authorize local governments to accept private federal election grants for voter registration. NVRA's preemption prohibits local governments from accepting private federal election grants for voter registration.

Under NVRA, the EAC is to be bi-partisan and work with all the states in a bi-partisan way on voter registration for federal elections. The CTCL's private federal election grants circumvent the EAC and the states and thus conflicts with NVRA. Under NVRA, the EAC and the states work toward voter registration plans and budgets. CTCL's private federal election grants to local governments lead to deviations from the federally-approved and state-approved election voter registration administration plans and budgets—thus, conflicting with NVRA.

The federal and state money distributed to county and city clerks that conduct voter registration are distributed pursuant to a legally-authorized method, that is approved by the states under the guidance of EAC, so the counties and cities receive a state-approved share for voter registration. But, local governments accepting CTCL's private federal election grants, violate NVRA by injecting money into federal election voter registration which is not approved by the EAC or the states. States are not allowed to deviate from the NVRA. Local governments accepting CTCL's private federal election grants, violate NVRA.

The CTCL's private federal election grants to local governments are not part of NVRA. As previously noted Wisconsin, consistent with NVRA and under the EAC's guidance, has already approved a fiscal plan for voter registration for federal elections. The CTCL's private federal election grants to the Wisconsin's cities circumvent and violate that fiscal plan.

The Supremacy Clause, as applied to NVRA, ensures that Wisconsin cities do not act contrary to NVRA regarding federal elections. NVRA preempts CTCL's private federal election grants to the cities. Under the Supremacy Clause and NVRA, CTCL's private federal

election grants are not legally authorized by federal law or state law. Once again, the Cities have acted ultra vires, without legal authority, in accepting and using CTCL's private federal election grants.

Moreover, under 52 U.S.C. § 21085, "the specific choices on the methods of complying with the requirements of this subchapter shall be left to the discretion of the State." "Subchapter," refers to the minimum requirements<sup>26</sup> regarding voting systems standards,<sup>27</sup> voting information requirements and computerized statewide voter registration list requirements and requirements for voters who register by mail.<sup>28</sup> "State" does not mean "city" or "municipality."<sup>29</sup> Therefore, as it pertains to federal elections, the Cities cannot act contrary to laws of either the federal or state governments. Each law preempt the actions of the respective Cities in accepting the CTCL's private federal election grant.

**4. Wisconsin Statutes § 12.11 prohibits election bribery preempting local governments from accepting private federal election grants.**

Wisconsin Statutes § 12.11 is violated by CTCL's private federal election grants to the Cities. When Wisconsin election officials accept and use CTCL's private federal election grants, the officials violate § 12.11.

Specifically, § 12.11 prohibits public officials from accepting "anything of value... in order to induce any elector to...go to or refrain from going to the polls [or] to vote or refrain from voting":

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<sup>26</sup> 52 U.S.C. § 21084.

<sup>27</sup> 52 U.S.C. § 21082.

<sup>28</sup> 52 U.S.C. § 21083.

<sup>29</sup> 52 U.S.C. § 21141: "In this chapter, the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands.

(1m) Any person who does any of the following violates this chapter:

(a) Offers, gives, lends or promises to give or lend, or endeavors to procure, anything of value, or any office or employment or any privilege or immunity to, or for, any elector, or to or for any other person, in order to induce any elector to:

1. Go to or refrain from going to the polls.
2. Vote or refrain from voting.
3. Vote or refrain from voting for or against a particular person.
4. Vote or refrain from voting for or against a particular referendum; or on account of any elector having done any of the above.

Wisconsin Statutes § 12.11 (1m).

Under the same section, “anything of value” is defined to include “any amount of money, or any object which has utility independent of any political message it contains and the value of which exceeds \$1.” Wis. Stat. § 12.11. Hence, § 12.11 preempts CTCL’s private federal election grants to the Cities because, as private federal election grants, they are not legally authorized under Wisconsin Statutes § 12.11.

## **II. The moving party will suffer irreparable injury absent the injunction.**

The Wisconsin Voters Alliance, absent the injunction, will suffer irreparable injury. There is no administrative remedy that can be granted under HAVA or another federal or state statutory election law that will provide for immediate injunctive relief. In short, the Wisconsin Voters Alliance has no other option to challenge the Cities’ acceptance of a \$6.4 million in private federal elections grants. The Cities’ acceptance of those CTCL grants reveal a public-private relationship that privatizes federal elections to skew the outcome of an election in an urban city of a favored demographic group. It skews the neutrality of an

election which is the core public responsibility of government. *Red Clay Consol. Sch. Dist.*, 122 A.3d at 857–58

Where, as here, plaintiff has demonstrated a likelihood of success on the merits as to a constitutional claim, such an injury has been held to constitute irreparable harm. *See Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976) (where plaintiff had proven a probability of success on the merits, the threatened loss of First Amendment freedoms “unquestionably constitutes irreparable injury”); *Preston v. Thompson*, 589 F.2d 300, 303 n.4 (7th Cir. 1978) (“The existence of a continuing constitutional violation constitutes proof of an irreparable harm.”). Moreover, courts have specifically held that infringement on the fundamental right to vote constitutes irreparable injury. *See Obama for Am. v. Husted*, 697 F.3d 423, 435 (6th Cir. 2012) (“A restriction on the fundamental right to vote ... constitutes irreparable injury.”); *Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986) (holding that plaintiffs “would certainly suffer irreparable harm if their right to vote were impinged upon”).<sup>13</sup>

Once the November election occurs, the damage to plaintiffs’ favored non-progressive candidates will be complete. Without injunctive relief, the CTCI moneys will cause a non-conformity of uniform elections in the Cities sought by Congress under HAVA and all other election laws, including those of the state of Wisconsin. This illegal public-private partnership causes the Wisconsin Voters Alliance irreparable injury.

### **III. There is no adequate remedy at law.**

Additionally, traditional legal remedies would be inadequate, since infringement on a citizens’ constitutional right to vote cannot be redressed by money damages. *See Christian*



*Legal Soc’y v. Walker*, 453 F.3d 853, 859 (7th Cir. 2006) (“The loss of First Amendment freedoms is presumed to constitute an irreparable injury for which money damages are not adequate.”); *League of Women Voters of N. Carolina v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) (“[O]nce the election occurs, there can be no do-over and no redress.”). Accordingly, plaintiffs have made an initial showing that a temporary restraining order is warranted as to the government skewing election results by favoring progressive demographic groups.

#### **IV. The harm to other interested parties is little or none if the relief is granted.**

The Wisconsin Voters Alliance, absent the injunction, will suffer harm. *Roland Mach. Co.*, 749 F.2d at 385–88. While it is known that there will be anticipated increases in voting, namely absentee ballot voting, it does not excuse the circumvention of federal and state laws.<sup>30</sup> Hence, the need of the \$6.4 million of private federal election grants split between five of Wisconsin’s major cities is questionable at best. The Cities have access to HAVA moneys and additional Cares Act moneys, specifically for election related needs—as does every other city or county in Wisconsin responsible for conducting the 2020 federal elections.

On the other hand, the introduction of a public-private relationship in the federal election context is a first-time foreign element not contemplated by either HAVA or with the Wisconsin Elections Commission or the Wisconsin Legislature since the laws exclusively control the conduct and moneys related to federal elections. There is no question of the historical success and consistency of the Cities in their election processes considering the

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<sup>30</sup> *E.g.* Kaardal Decl. Ex. K and L.

percentages of voters casting ballots. What also is notably are the voter outcomes—predominately progressive. Hence, the \$6.4 million in grants from the CTCL raises sufficient questions as to the propriety of the public-private created relationship and the facilitation of a favored demographic group. In short, injunctive relief to stay expenditures of the grant will cause little or no harm to the conduct of elections.

Moreover, a state grant process is in place through the Wisconsin Elections Commission should the Cities need more money. By doing so, the Cities will stay true to its core public responsibilities in conducting elections consistent with federal and state laws. For these reasons, the balance of harms favors granting the motion.

**V. The public interest is aided by the preliminary injunction.**

The public interest, absent the injunction, will be impeded. *Roland Mach. Co.*, 749 F.2d at 385–88. The Cities’ acceptance of the CTCL’s grants reveal a public-private relationship that privatizes federal elections to skew the outcome of an election in an urban city of a favored demographic group. It skews the neutrality of an election which is the core public responsibility of the Cities. *Red Clay Consol. Sch. Dist.*, 122 A.3d at 857–58. Threats of private unconstitutional interference with the November 3 elections pose the same type of public interest analysis as in First Amendment deprivations. The public interest factor in First Amendment cases generally favors granting the injunction. *Phelps–Roper v. Nixon*, 545 F.3d 685, 690 (8th Cir.2008) (concluding that if the movant “can establish a sufficient likelihood of success on the merits of her First Amendment claim, she will also have established irreparable harm as the result of the deprivation”). As in First Amendment cases, the determination of where the public interest lies should depend on the likelihood of

success on the merits of the Supremacy Clause challenge because it is always in the public interest to protect constitutional rights.

As discussed above, the Wisconsin Voters Alliance has no alternative administrative remedy to obtain immediate injunctive relief against the Cities. There is no other avenue to challenge the illegality of the public-private partnership in a federal election in which a grant is specific to a particular demographic group to facilitate an election influencing a core public responsibility of government. On the other hand, the harm that the Cities will experience if they do not use CTCL's private federal election grants is little or none. The Cities can obtain additional funds from the state legislature or the Wisconsin Elections Commission if they need it. For these reasons, the public interest favors granting the motion.

#### **Conclusion**

For the foregoing reasons and to preserve Wisconsin's democratic elections, the Court should grant the temporary restraining order.

Dated: September 24, 2020.

/s/Erick G. Kaardal  
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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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Wisconsin Voters Alliance, David Tarczon,  
Elizabeth Clemens-Tarczon, Jonathan  
Hunt, Paula Perez, Maria Eck, Douglas  
Doeran, Navin Jarugumilli,

Case No. 20-CV-1487

Plaintiffs,

**Amended Complaint for Declaratory  
and Injunctive Relief**

vs.

City of Racine, City of Milwaukee, City of  
Kenosha, City of Green Bay, City of  
Madison,

**Jury Trial Demanded**

Defendants.

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The Plaintiffs make the following allegations for their complaint.

**Introduction**

Wisconsin Voters Alliance and its member-plaintiffs bring this lawsuit against the Cities of Milwaukee, Madison, Kenosha, Racine, and Green Bay because the cities accept private moneys through conditional grants from a non-profit corporation to conduct federal elections. Milwaukee, Madison, Kenosha, Racine, and Green Bay have accepted conditional grants totaling \$6,324,527 from the Center for Tech and Civic Life (CTCL). Plaintiffs claim that the use of conditional grants of private moneys is violative of the U.S. Constitution, namely the Elections Clause under Article 1, § 4, cl. 1, the First, Ninth, and Fourteenth Amendments. The local governments unconstitutionally pursue and use private conditional moneys to conduct federal elections undermining the integrity of the election process as a social contract to maintain our democratic form of government.

## **Jurisdiction and Venue**

1. Plaintiffs invoke this Court's jurisdiction under 28 U.S.C. 1331 and 1343 for constitutional claims under the Elections Clause, U.S. Const. art. I, § 4, cl. 1, the First, Ninth, and Fourth Amendments.

2. Plaintiffs have private causes of action under 42 U.S.C. 1983 and under federal common law.

3. Venue is proper in this Court under 28 U.S.C. 1391 because the Defendants are Wisconsin municipalities, with offices within Wisconsin, and because the events or omissions giving rise to the claims presented occurred within Wisconsin.

## **Parties**

4. Wisconsin Voters Alliance is a Wisconsin non-profit corporation. The Wisconsin Voters Alliance is an organization with members who seek to ensure, as part of their association objectives, public confidence in the integrity of Wisconsin's elections, in election results and election systems, processes, procedures, and enforcement, and that public officials act in accordance with the law in exercising their obligations to the people of the State of Wisconsin. The Wisconsin Voters Alliance also works to protect the rights of its members whenever laws, statutes, rules, regulations, or government actions that threaten or impede implied or expressed rights or privileges afforded to them under our constitutions or laws or both. Its membership includes candidates seeking elective offices. The Wisconsin Voters Alliance has many members including the individual plaintiffs.

5. Plaintiff David Tarczon is an eligible Wisconsin voter residing in the City of Racine. He resides in the 1st Congressional District.

6. Plaintiff Elizabeth Clemens-Tarczon is an eligible Wisconsin voter residing in the City of Racine. She resides in the 1st Congressional District.

7. Plaintiff Jonathan Hunt is an eligible Wisconsin voter residing in the City of Milwaukee. He resides in the 4th Congressional District.

8. Plaintiff Paula Perez is an eligible Wisconsin voter residing in the City of Kenosha. She resides in the 1st Congressional District.

9. Plaintiff Maria Eck is an eligible Wisconsin voter residing in the City of Green Bay. She resides in the 8th Congressional District.

10. Plaintiff Douglas Doeran an eligible Wisconsin voter residing in the City of Green Bay. He resides in the 8th Congressional District.

11. Plaintiff Navin Jarugumilli is an eligible Wisconsin voter residing in the City of Madison. He resides the 2nd Congressional District.

12. Defendant City of Racine is a Wisconsin local government located in the 1st Congressional District.

13. Defendant City of Milwaukee is a Wisconsin local government located in the 4th Congressional District.

14. Defendant City of Kenosha is a Wisconsin local government in the 1st Congressional District.

15. Defendant City of Green Bay is a Wisconsin local government in the 8th Congressional District.

16. Defendant City of Madison is a Wisconsin local government in the 2nd Congressional District.

## Statement of Facts

17. The cities of Racine, Kenosha, Green Bay, and Madison are all first class cities and incorporated under Wisconsin Statutes Chapter 62.

18. The cities of Racine, Kenosha, Green Bay, and Madison are responsible for the conduct of the November 3, 2020 elections, inclusive of federal elections.

19. The City of Milwaukee is incorporated under a special charter granted by the State of Wisconsin.

20. The CTCL is a private non-profit organization providing federal election grants to local governments, headquartered in Chicago, Illinois.

21. CTCL has been funded by private donations of approximately \$350 million that are in turn used as conditional private grants to local governments.

22. CTCL has funded Wisconsin local governments with conditional private grants that were and are used to conduct federal elections.

23. In Wisconsin, the CTCL has distributed \$6.3 million of private federal election grants to the Cities of Milwaukee, Madison, Green Bay, Kenosha, and Racine which have not been approved by Congress nor by the Wisconsin state legislature.

24. Initially, CTCL recruited all of the Defendant Wisconsin cities to apply for its CTCL's private federal election grants.

25. Beginning as far back as April 2, 2020, Mayor Mason of Racine had corresponded with CTCL to receive and redistribute to other cities \$942,000 in private funding for election administration purposes.

26. On May 28, 2020, the CTCL awarded the City of Racine a \$100,000 private federal election grant to apply and attempt to recruit “other cities in Wisconsin” to apply for CTCL’s private federal election grants:

Dear [Racine] Mayor Mason:

I am pleased to inform you that the Center for Tech and Civic Life (“CTCL”) has decided to award a grant to support the work of the City of Racine.

AMOUNT OF GRANT: One hundred thousand US dollars (USD \$100,000)

PURPOSE: The grant funds must be used exclusively for the public purpose of planning safe and secure election administration in the City of Racine in 2020, and coordinating such planning with other cities in Wisconsin.

27. Racine using CTCL’s initial \$100,000 private federal election grant recruited the Wisconsin cities of Green Bay, Kenosha, Madison, and Milwaukee to apply for the CTCL’s private federal election grants.

28. On July 17, 2020 the City of Madison is on record as accepting from Racine \$10,000 in CTCL funding for specific electoral administration purposes.

29. The CTCL granted \$1.09 million to the City of Green Bay.

30. The CTCL granted \$862,779 to the City of Kenosha.

31. The CTCL granted \$2.154 million to the City of Milwaukee.

32. The CTCL granted \$942,100 to the City of Racine.

33. Each city receiving CTCL grants, according to its policy and custom, agreed to the conditions of the grant in exchange of receiving CTCL moneys.

34. The grants are contracts between each respective City and CTCL.

35. The conditional grants to each city require reporting back to the private non-profit corporation, CTCL, regarding the moneys used to conduct federal elections.



36. The conditional grants to each city, under claw-back provisions, require the city to return moneys to the private non-profit corporation, CTCL, if the private non-profit corporation disagrees how those moneys were spent in the conduct of their respective federal elections.

## COUNT I

### **Violations of the First and Ninth Amendments, the Elections Clause and related federal common law**

37. Plaintiffs re-allege each previous paragraph as if fully restated in support of the instant claim.

38. References under this count to “government” includes city, county, state, or federal, depending upon the structure of the allegation or otherwise specifically stated.

39. The First Amendment of the U.S. Constitution protects the fundamental right to vote.

40. The Ninth Amendment to the U.S. Constitution delegates reserved powers to the people not otherwise delegated to the United States by the Constitution.

41. The reserved powers to the people under the Ninth Amendment are those that can be articulated as those of the people as representative of the sovereign.

42. The right to vote is a fundamental right under the U.S. Constitution.

43. The right to vote is individual and personal in nature.

44. The election process is an integral part of the democratic system of the United States.

45. The right to vote is intertwined with the right to participate in an election process, including casting a ballot for a Congressional or presidential candidate.

46. The right to vote includes the right to participate in an electoral process that is structured to maintain the integrity of a democratic system of government.

47. The right to vote as intertwining with the right to participate in an election process, if the voter is eligible and the ballot cast is valid, is a right under the Ninth Amendment as reserved to the people.

48. A core governmental responsibility is the conduct of elections.

49. A core governmental public responsibility is to conduct elections in a manner which ensures maintenance of the integrity of a democratic system of government.

50. Electoral integrity allows peaceful resolution of conflict through the election of candidates representing differing political or philosophical beliefs, the outcome of which results in a candidate receiving the majority of votes to hold the elected office sought.

51. Electoral integrity includes the professionalism, impartiality, and transparency of government institutions and election officials who conduct elections throughout the election cycle.

52. Without electoral integrity, the consequences undermine the public confidence of the outcome that represents the desired change or continuation of the political policies or institutional statuses by the electorate.

53. Integrity of an election process includes trust in the outcome of an election contest.

54. Trust of an election outcome allows voters to be convinced that electoral changes are real and deserving of their confidence.

55. Integrity of an election process includes a fair election.

56. Integrity of an election process includes an unbiased election.

57. The integrity of an election process is a compelling governmental interest.

58. The government has a compelling interest in honest elections.

59. The government has a compelling interest in fair elections.

60. The government has a compelling interest in unbiased elections.

61. A voter who casts a ballot entrusts the government that the ballot will be counted, unless the ballot is invalid or voter is ineligible.

62. The government in turn, as part of its core election responsibility, will count the ballots and attribute the count to the candidate for which the voter had cast her ballot in support of.

63. The government, as part of its core election responsibility, will announce the total votes of each candidate and the one candidate with the greatest number of ballots cast, as the winner of that election contest.

64. The voters in turn, will accept the outcome of the election contest as the government has announced.

65. The voter and government agreement regarding an election and its process is a “contract” to maintain the democratic system of government as embodied in the U.S. Constitution.

66. The voter and government agreement regarding an election and its process is a “social contract” to maintain the democratic system of government as embodied in the U.S. Constitution.

67. Voters have a right to the governmental maintenance of a democratic system of government under the Ninth Amendment’s reservation of rights to the people.

68. Voters have a right to the maintenance of a democratic system of government through the election process.

69. Voters have a right to the maintenance of a democratic system of government through the election process under the Ninth Amendment’s rights reserved to the people.

70. The Elections Clause of the U.S. Constitution is found under Article 1, sec. 4.

71. The Elections Clause establishes federal control over state-run federal Congressional and presidential elections.

72. Conducting elections is a core governmental public function.

73. The Elections Clause reflects the need to ensure that state or local governments do not interfere with Congressional elections.

74. In the Federalist Papers, No. 59, Alexander Hamilton wrote that if the states were allowed to regulate the elections of Congress, then the legislators of a few important states could enter into a conspiracy to prevent an election and then this could result in the Union’s destruction.

75. The Elections Clause reflects the rights and obligations of the United States in the conduct of federal elections.

76. One of the obligations of the United States, through the Elections Clause, is to protect a person's fundamental right to vote as protected under the First Amendment, to cast a ballot in federal elections.

77. One of the obligations of the United States through a person's fundamental right to vote, through the Elections Clause, is to ensure the integrity of federal elections as fair and unbiased.

78. Having fair, honest, and unbiased federal elections is a compelling interest of the United States.

79. Having fair, honest, and unbiased federal elections is a compelling interest of the people of the United States.

80. A voter entrusts the United States to ensure state and local governments conduct fair, honest, and unbiased federal elections through the authority granted to it under the Elections Clause.

81. A voter entrusts the United States will ensure state and local governments will total all ballots in a federal election contest and ensure the candidate with the greatest amount of total ballots will be announced as the winner of that federal election contest as is the obligation of the United States through the Elections Clause.

82. It is the right and obligation of the United States Congress that it will seat in the U.S. House of Representatives or the U.S. Senate, only those candidates who have won the federal election contest in the district of the state in which the election contest was held as required under Article I, section 5 of the U.S. Constitution.

83. The voters in turn, agree to accept the government's announcement of the winner of a federal election contest to maintain the integrity of the democratic system of the United States.

84. The agreement between the United States and the rights and obligations embodied within reservation of rights under the Ninth Amendment and the Elections Clause as related to the conduct of federal elections over state and local governments and the voters in their acceptance of the outcome of federal election contests is a "social contract."

85. The agreement between the United States and the rights and obligations embodied within the Ninth Amendment regarding rights reserved to the people as related to the conduct of federal elections over state and local governments and the voters in their acceptance of the outcome of federal election contests is a "social contract."

86. The "social contract" also arises from the protection of the fundamental right to vote and integrity of an election contest as fair, honest, and unbiased to maintain the structure of the democratic process.

87. CTCL is a private corporate non-profit entity.

88. CTCL provided private moneys through grants to local governmental entities to conduct federal elections.

89. The CTCL grants provided conditions governing the use of those private moneys.

90. The local governmental entities accepted the conditions and agreed to adhere to the conditions of the private non-profit entity CTCL.

91. The City of Milwaukee accepted \$2,154,500 in private grant moneys from CTCL.
92. The City of Racine accepted \$942,100 in private grant moneys from CTCL.
93. The City of Madison accepted \$1,271,788 in private grant moneys from CTCL.
94. The City of Kenosha accepted \$862,799 in private grant moneys from CTCL.
95. The City of Green Bay accepted \$1.09 million in private grant moneys from CTCL.
96. The local governmental entities, according to their policies and customs, agreed to expend the private moneys exclusively for the purpose as described in the conditions in the conduct of federal elections.
97. The conditions, as adopted by each local governmental entity, are additional regulations in the conduct of federal elections.
98. The local governmental entities further agreed not only to adhere to the conditions but to report back to the private entity CTCL.
99. The CTCL grant, with conditions, is a contract.
100. The local governmental entities used the private moneys to conduct federal elections.
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101. If the private moneys were not used to the satisfaction of the private entity CTCL, the government is to return those moneys.
102. Hence, the governmental entity had to conduct the federal elections, at least in part, in a manner that satisfied the private entity, and not the United States.

103. The private entity is overseeing the conduct of federal elections in contradiction of the Elections Clause and the rights reserved to the people under the Ninth Amendment.

104. The private contract between CTCL and the local government interfered with the social contract of the Elections Clause governing the compelling interest of the United States with the voter regarding the integrity of federal elections and the voter intertwined with the voter's fundamental right to vote.

105. The private contract between CTCL and the local government interfered with the social contract of the rights preserved to the people under the Ninth Amendment governing the compelling interest of the United States with the voter regarding the integrity of federal elections and the voter intertwined with the voter's fundamental right to vote.

106. Plaintiff David Tarczon is an eligible Wisconsin voter residing in the City of Racine. He resides and will vote in the 1st Congressional District.

107. Plaintiff Elizabeth Clemens-Tarczon is an eligible Wisconsin voter residing in the City of Racine. She resides in and will vote in the 1st Congressional.

108. Plaintiff Jonathan Hunt is an eligible Wisconsin voter residing in the City of Milwaukee. He resides and will vote in the 4th Congressional District.

109. Plaintiff Paula Perez is an eligible Wisconsin voter residing in the City of Kenosha. She resides in and will vote in the 1st Congressional District.

110. Plaintiff Maria Eck is an eligible Wisconsin voter residing in the City of Green Bay. She resides in and will vote in the 8th Congressional District.



111. Plaintiff Douglas Doeran an eligible Wisconsin voter residing in the City of Green Bay. He resides in and will vote in the 8th Congressional District.

112. Plaintiff Navin Jarugumilli is an eligible Wisconsin voter residing in the City of Madison. He resides in and will vote in the 2nd Congressional District.

113. Defendant City of Racine is a Wisconsin local government located in the 1st Congressional District.

114. Defendant City of Milwaukee is a Wisconsin local government located in the 4th Congressional District.

115. Defendant City of Kenosha is a Wisconsin local government in the 1st Congressional District.

116. Defendant City of Green Bay is a Wisconsin local government in the 8th Congressional District.

117. Defendant City of Madison is a Wisconsin local government in the 2nd Congressional District.

118. Each of the respective cities of Milwaukee, Madison, Kenosha, Racine, and Green Bay accepted a CTCL grant to conduct the federal election in their respective congressional district.

119. When local governments and their officials accept private moneys to conduct federal elections, the government interferes with the integrity of a core governmental public function embodied within the federal election process, the Elections Clause, the Ninth Amendment, and related federal common law.

120. When the local government accepts conditional grants for moneys to conduct federal elections, it undermines the rights and obligations the voter is entitled to rely upon from the United States which implicates the integrity of the election.

121. Plaintiffs David Tarczon, Elizabeth Clemens-Tarczon, Jonathan Hunt, Paula Perez, Maria Eck, Douglas Doeran, Navin Jarugumilli know of the CTCL private monetary grants and conditions imposed upon their respective local government. Each believe the acceptance of private moneys to conduct federal elections interferes with the social contract of the Elections Clause to ensure fair, honest, and unbiased elections and their acceptance of the election outcome.

122. Plaintiffs David Tarczon, Elizabeth Clemens-Tarczon, Jonathan Hunt, Paula Perez, Maria Eck, Douglas Doeran, Navin Jarugumilli also believe that the acceptance of private moneys to conduct federal elections interferes with the social contract derived from the Ninth Amendment to ensure fair, honest, and unbiased elections and her acceptance of the election outcome.

123. Plaintiff Wisconsin Voters Alliance members know of the CTCL private monetary grant and its conditions imposed upon their respective local government. Each member believes the acceptance of private moneys to conduct federal elections interferes with the social contract of the Elections Clause to ensure fair, honest, and unbiased elections and their acceptance of the election outcome.

124. Plaintiff Wisconsin Voters Alliance members also believe that the acceptance of private moneys to conduct federal elections interferes with the social contract derived

from the Ninth Amendment to ensure fair, honest, and unbiased elections and her acceptance of the election outcome.

125. Hence, the Plaintiff voters also have a constitutional right not to be deliberately placed in a governmentally controlled election process in which the acceptance of private grant moneys to conduct federal elections is a design that interferes with the social contract to maintain a democratic system of government as envisioned under the Plaintiffs rights under the First and Ninth Amendments.

126. When an election outcome is at issue due to the conduct of the federal election, ultimately, is it each respective house of Congress that decides who shall be seated as an elected representative for that Congressional district under Article I, section 5 of the U.S. Constitution.

127. If a congressional house rejects the elected representative and refuses to seat the representative, then each of the individual Plaintiff's vote did not count, regardless of who she voted for because the rejection invalidated the federal election process.

128. Likewise, if a congressional house rejects the elected representative and refuses to seat the representative, then each vote of each member of the Wisconsin Voters Alliance residing in the affected Congressional districts vote did not count, regardless of who she voted for because the rejection invalidated the federal election process

129. The congressional invalidation of an elected representative and refusal to seat that representative invalidates all previously cast ballots within that congressional district.

130. As a result of the alleged facts, the voter is then disadvantaged as the voter has suffered an injury or will suffer an injury from the local governmental entities who accepted

private grant moneys to conduct federal elections, over those local governmental entities who did not.

131. Hence, the voters also have a constitutional right not to be deliberately placed in a governmentally controlled election process in which the acceptance of private grant moneys to conduct federal elections is a design that wastes the ballot of the voter when the elected representative is denied by Congressional action to deny that representative his or her seat in Congress.

132. The voters are disenfranchised by not have a Congressional representative until a special election if either house of Congress calls a special election—as occurred in North Carolina’s Ninth Congressional District after the November 2018 election.

133. The Cities’ actions accepting private moneys to pay for federal elections tortiously interferes with the social contract per the federal common law.

134. Each Plaintiff, requests this Court to declare under 28 U.S. C. sec. 2201, that the local governments acceptance of private funds through conditional grants is unconstitutional under the Elections Clause, the First and Ninth Amendments of the U.S. Constitution and related federal common law.

135. This Court should grant any other relief it deems proper, necessary, or just under the circumstances of this case.

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## **Count II**

### **Violation of the Equal Protection Clause**

136. Plaintiffs re-allege each previous paragraph as if fully restated in support of the instant claim.

137. References under this count to “government” are inclusive of city, county, state, or federal, dependent upon the structure of the allegation or otherwise specifically stated.

138. The Fourteenth Amendment to the U.S. Constitution protects the rights of individuals to equal protection.

139. The Ninth Amendment to the U.S. Constitution delegates reserved powers to the people not otherwise delegated to the United States by the Constitution.

140. The right to vote is a fundamental right under the U.S. Constitution.

141. The right to vote is individual and personal in nature.

142. The election process is an integral part of the democratic system of the United States.

143. The right to vote is intertwined with the right to participate in an election process, including casting a ballot for a Congressional or presidential candidate.

144. The right to vote includes the right to participate in an electoral process that is structured to maintain the integrity of a democratic system of government.

145. The right to vote as intertwining with the right to participate in an election process, if the voter is eligible and the ballot cast is valid, is a right under the Ninth Amendment as reserved to the people.

146. A core governmental responsibility is the conduct of elections.

147. A core governmental public responsibility is to conduct elections in a manner which ensures maintenance of the integrity of a democratic system of government.

148. Electoral integrity allows peaceful resolution of conflict through the election of candidates representing differing political or philosophical beliefs, the outcome of which results in a candidate receiving the majority of votes to hold the elected office sought.

149. Electoral integrity includes the professionalism, impartiality, and transparency of government institutions and election officials who conduct elections throughout the election cycle.

150. Without electoral integrity, the consequences undermine the public confidence of the outcome that represents the desired change or continuation of the political policies or institutional statuses by the electorate.

151. Integrity of an election process includes trust in the outcome of an election contest.

152. Trust of an election outcome allows voters to be convinced that electoral changes are real and deserving of their confidence.

153. Integrity of an election process includes a fair election.

154. Integrity of an election process includes an unbiased election.

155. The integrity of an election process is a compelling governmental interest.

156. The government has a compelling interest in honest elections.

157. The government has a compelling interest in fair elections.

158. The government has a compelling interest in unbiased elections.

159. A voter who casts a ballot entrusts the government that the ballot will be counted, unless the ballot is invalid or voter is ineligible.

160. The government in turn, as part of its core election responsibility, will count the ballots and attribute the count to the candidate for which the voter had cast her ballot in support of.

161. The government, as part of its core election responsibility, will announce the total votes of each candidate and the one candidate with the greatest number of ballots cast, as the winner of that election contest.

162. The voters in turn, will accept the outcome of the election contest as the government has announced.

163. The voter and government agreement regarding an election and its process is a “social contract” to maintain the democratic system of government as embodied in the U.S. Constitution.

164. Voters have a right to the governmental maintenance of a democratic system of government under the Ninth Amendment.

165. Voters have a right to the maintenance of a democratic system of government through the election process.

166. The Elections Clause of the U.S. Constitution is found under Article 1, sec. 4.

167. The Elections Clause establishes federal control over state-run federal Congressional and presidential elections.

168. Conducting elections is a core governmental public function.

169. The Elections Clause reflects the need to ensure that state or local governments do not interfere with Congressional and presidential elections.

170. In the Federalist Papers, No. 59, Alexander Hamilton wrote that if the states were allowed to regulate the elections of Congress, then the legislators of a few important states could enter into a conspiracy to prevent an election and then this could result in the Union's destruction.

171. The Elections Clause reflects the rights and obligations of the United States in the conduct of federal elections.

172. One of the obligations of the United States, through the Elections Clause, is to protect a voter's fundamental right to cast a ballot in federal elections.

173. One of the obligations of the United States, through the Elections Clause, is to ensure the integrity of federal elections as fair and unbiased.

174. Having fair, honest, and unbiased federal elections is a compelling interest of the United States.

175. A voter entrusts the United States to ensure state and local governments conduct fair and unbiased federal elections through the authority granted to it under the Elections Clause.

176. A voter entrusts the United States will ensure state and local governments will total all ballots in a federal election contest and ensure the candidate with the greatest amount of total ballots will be announced as the winner of that federal election contest as is the obligation of the United States through the Elections Clause.

177. It is the right and obligation of the United States Congress that it will seat in the U.S. House of Representatives or the U.S. Senate, only those candidates who have won



the federal election contest in the district of the state in which the election contest was held as found under Article I, section 5 of the U.S. Constitution.

178. The voters in turn, agree to accept the government's announcement of the winner of a federal election contest to maintain the integrity of the democratic system of the United States.

179. The agreement between the United States and the rights and obligations embodied within the Elections Clause as related to the conduct of federal elections over state and local governments and the voters in their acceptance of the outcome of federal election contests is a "social contract."

180. The agreement between the United States and the rights and obligations embodied within the Ninth Amendment regarding rights preserved to the people as related to the conduct of federal elections over state and local governments and the voters in their acceptance of the outcome of federal election contests is a "social contract."

181. The "social contract" also arises from the protection of the fundamental right to vote and integrity of an election contest as fair, honest, and unbiased to maintain the structure of the democratic process.

182. CTCL is a private corporate non-profit entity.

183. CTCL provided private moneys through grants to local governmental entities to conduct federal elections.

184. The CTCL grants provided conditions governing the use of those private moneys.

185. The local governmental entities accepted the conditions as a policy and agree to adhere to the conditions.

186. The City of Milwaukee accepted \$2,154,500 in private grant moneys from CTCL.

187. The City of Racine accepted \$942,100 in private grant moneys from CTCL.

188. The City of Madison accepted \$1,271,788 in private grant moneys from CTCL.

189. The City of Kenosha accepted \$862,799 in private grant moneys from CTCL.

190. The City of Green Bay accepted \$1.09 million in private grant moneys from CTCL.

191. The local governmental entities, according to their policies and customs, agreed to expend the private moneys exclusively for the purpose as described in the conditions in the conduct of federal elections.

192. The conditions, as adopted by each local governmental entity, is an additional regulation in the conduct of federal elections.

193. The local governmental entities further agreed not only to adhere to the conditions but to report back to the private entity CTCL.

194. The CTCL grant, with conditions, is a contract.

195. The local governmental entities used the private moneys to conduct federal elections.

196. If the private moneys were not used to the satisfaction of the private entity CTCL, the government is to return those moneys.

197. Hence, the governmental entity had to conduct the federal elections, at least in part, in a manner that satisfied the private entity, and not the United States.

198. Thus, the private entity is overseeing the conduct of federal elections in contradiction of the Elections Clause and the rights preserved to the people under the Ninth Amendment.

199. The private contract between CTCL and the local government interfered with the social contract of the Elections Clause governing the compelling interest of the United States with the voter regarding the integrity of federal elections and the voter intertwined with the voter's fundamental right to vote.

200. The private contract between CTCL and the local government interfered with the social contract of the rights preserved to the people under the Ninth Amendment governing the compelling interest of the United States with the voter regarding the integrity of federal elections and the voter intertwined with the voter's fundamental right to vote.

201. Other local governmental entities in Wisconsin did not use private moneys to conduct federal elections.

202. Plaintiff David Tarczon is an eligible Wisconsin voter residing in the City of Racine. He resides and will vote in the 1st Congressional District.

203. Plaintiff Elizabeth Clemens-Tarczon is an eligible Wisconsin voter residing in the City of Racine. She resides in and will vote in the 1st Congressional.

204. Plaintiff Jonathan Hunt is an eligible Wisconsin voter residing in the City of Milwaukee. He resides and will vote in the 4th Congressional District.

205. Plaintiff Paula Perez is an eligible Wisconsin voter residing in the City of Kenosha. She resides in and will vote in the 1st Congressional District.

206. Plaintiff Maria Eck is an eligible Wisconsin voter residing in the City of Green Bay. She resides in and will vote in the 8th Congressional District.

207. Plaintiff Douglas Doeran an eligible Wisconsin voter residing in the City of Green Bay. He resides in and will vote in the 8th Congressional District.

208. Plaintiff Navin Jarugumilli is an eligible Wisconsin voter residing in the City of Madison. He resides in and will vote in the 2nd Congressional District.

209. Defendant City of Racine is a Wisconsin local government located in the 1st Congressional District.

210. Defendant City of Milwaukee is a Wisconsin local government located in the 4th Congressional District.

211. Defendant City of Kenosha is a Wisconsin local government in the 1st Congressional District.

212. Defendant City of Green Bay is a Wisconsin local government in the 8th Congressional District.

213. Defendant City of Madison is a Wisconsin local government in the 2nd Congressional District.

214. Each of the respective cities of Milwaukee, Madison, Kenosha, Racine, and Green Bay accepted a CTCL grant to conduct the federal election in their respective congressional district.

215. When local governments and their officials accept private moneys to conduct federal elections, the government interferes with the integrity of a core governmental public function embodied within the federal election process, the Elections Clause, the Ninth Amendment and related federal common law.

216. When the local government accepts conditional grants for moneys to conduct federal elections, it undermines the rights and obligations the voter is entitled to rely upon from the United States which implicates the integrity of the election.

217. Plaintiffs David Tarczon, Elizabeth Clemens-Tarczon, Jonathan Hunt, Paula Perez, Maria Eck, Douglas Doeran, Navin Jarugumilli know of the CTCL private monetary grants and conditions imposed upon their respective local government. Each believe the acceptance of private moneys to conduct federal elections interferes with the social contract of the Elections Clause to ensure fair, honest, and unbiased elections and their acceptance of the election outcome.

218. Plaintiffs David Tarczon, Elizabeth Clemens-Tarczon, Jonathan Hunt, Paula Perez, Maria Eck, Douglas Doeran, Navin Jarugumilli also believe that the acceptance of private moneys to conduct federal elections interferes with the social contract derived from the Ninth Amendment to ensure fair, honest, and unbiased elections and her acceptance of the election outcome.

219. The Cities know of the CTCL private monetary grant and its conditions imposed upon their respective local governments.

220. The Cities' acceptance of private moneys to conduct federal elections interferes with the social contract of the Elections Clause to ensure fair, honest, and unbiased elections and their acceptance of the election outcome.

221. The Cities' acceptance of private moneys to conduct federal elections interferes with the social contract derived from the Ninth Amendment to ensure fair, honest, and unbiased elections and her acceptance of the election outcome.

222. When an election outcome is at issue due to the conduct of the federal election, ultimately, is it each respective house of Congress that decides who shall be seated as an elected representative for that Congressional district under Article I, section 5 of the U.S. Constitution.

223. If a congressional house rejects the elected representative and refuses to seat the representative, then each Plaintiff's vote did not count, regardless of who she voted for because the rejection invalidated the federal election process.

224. The congressional invalidation of an elected representative and refusal to seat that representative invalids all previously cast ballots within that congressional district.

225. As a result of the alleged facts, the voter is then disadvantaged as the voter has suffered an injury or will suffer an injury from the local governmental entities who accepted private grant moneys to conduct federal elections, over those local governmental entities who did not.

226. Hence, the voters also have a constitutional right not to be deliberately placed in a governmentally controlled election process in which the acceptance of private grant moneys to conduct federal elections is a design that wastes the ballot of the voter when the

elected representative is denied by Congressional action to deny that representative his or her seat in Congress.

227. The voters are disenfranchised by not have a Congressional representative until a special election if either house of Congress calls a special election—as occurred in North Carolina’s Ninth Congressional District after the November 2018 election.

228. In any Congressional district that did not accept private CTCL funding to conduct federal elections, the federal election process is upheld with the acceptance of the elected representative as having a seat in Congress.

229. Therefore, each Plaintiff is treated differently when either house rejects the elected representative and hence, invalidates the federal election process, and accepts the representative from the congressional district in which the governmental entity did not accept private monetary conditional grants.

230. The Plaintiffs requests this Court to declare under 28 U.S.C. 2201, that the local government’s acceptance of private funds through conditional grants is unconstitutional as violative of the Equal Protection Clause of the U.S. Constitution.

231. This Court should grant any other relief it deems proper, necessary, or just under the circumstance of this case.

### **Demand for Jury Trial**

232. Plaintiffs demand a jury trial.

### Prayer for Relief

Therefore, the Plaintiffs respectfully ask that this Court to:

1. Grant declaratory relief and declare that the cities of Green Bay, Kenosha, Madison, Milwaukee and Racine acceptance of private funds through federal election conditional grants is unconstitutional under the Elections Clause, the First and Ninth Amendments of the U.S. Constitution and related federal common law.
2. Grant declaratory relief and declare that the cities of Green Bay, Kenosha, Madison, Milwaukee and Racine that the local government's acceptance of private funds through federal election conditional grants is unconstitutional as a violation of the Equal Protection Clause of the U.S. Constitution.
3. Issue an injunction enjoining the Cities of Green Bay, Kenosha, Madison, Milwaukee and Racine from accepting or using the CTCL's private federal election grants.
4. Award the Plaintiffs all costs, expenses, and expert witness fees allowed by law;
5. Award the Plaintiffs attorneys' fees and costs allowed by law; and
6. Award the Plaintiffs such other and further relief as this Court deems just.

Dated: October 30, 2020

Electronically Signed by Erick G. Kaardal

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of the Thomas More Society  
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**Zimbra****bcharbogian@kenosha.org****Fw: Election Complaints****From :** Deborah C. Meiners <dcm@dewittllp.com>

Sat, May 15, 2021 09:19 AM

**Subject :** Fw: Election Complaints

📎 4 attachments

**To :** Bryan Charbogian <bcharbogian@kenosha.org>, Ed Antaramian <eantaramian@kenosha.org>, Vanessa Chavez <Vanessa.Chavez@greenbaywi.gov>, Lindsay Mather <Lindsay.Mather@greenbaywi.gov>, Lindsey Belongea <Lindsey.Belongea@greenbaywi.gov>, Letteney, Scott <Scott.Letteney@cityofracine.org>, jmcarr@milwaukee.gov, kblock@milwaukee.gov, Kilpatrick, Steven C - DOJ <kilpatricksc@doj.state.wi.us>, Bellavia, Thomas C - DOJ <bellaviatc@DOJ.STATE.WI.US>, kaardal@mklaw.com**Cc :** Jon P. Axelrod <jpa@dewittllp.com>, Witecha, James - ELECTIONS <james.witecha@wisconsin.gov>

Dear Counsel:

We, as Special Counsel for the Wisconsin Elections Commission (WEC), are in receipt of the below email relating to the Complaints filed by Attorney Erick Kaardal, on behalf of his various clients, against Meagan Wolfe, Administrator of the WEC, and respondents from the City of Green Bay, the City of Racine, the City of Kenosha, and the City of Milwaukee (in Case Nos. EL 21-24, EL 21-29, EL 21-30, and EL 21-31, respectively).

We are including on this response Attorneys Steven Kilpatrick and Thomas Bellavia, who are representing Administrator Wolfe with respect to these Complaints.

We hereby set a deadline of June 15, 2021 for all respondents to respond to the Complaints in the above-referenced matters. Any respondent who wishes to contest probable cause as referenced in the below email may do so in his or her response.

Complainants' deadline to reply will be June 29, 2021, 10 business days following the response deadline. Of course, if Complainants also need an extension, they should not hesitate to ask.

Sincerely yours,

Jon P. Axelrod  
Deborah C. Meiners**Deborah C. Meiners**

Partner

Ph: 608.252.9266

F: 608.252.9243

[dcm@dewittllp.com](mailto:dcm@dewittllp.com)2 East Mifflin Street, Suite 600  
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Begin forwarded message:

**From:** Bryan Charbogian <[bcharbogian@kenosha.org](mailto:bcharbogian@kenosha.org)>  
**Date:** May 13, 2021 at 8:16:08 AM CDT  
**To:** "Jon P. Axelrod" <[jpa@dewittllp.com](mailto:jpa@dewittllp.com)>  
**Cc:** Vanessa Chavez <[Vanessa.Chavez@greenbaywi.gov](mailto:Vanessa.Chavez@greenbaywi.gov)>, Ed Antaramian <[edantaramian@kenosha.org](mailto:edantaramian@kenosha.org)>, Scott Letteney <[Scott.Letteney@cityofracine.org](mailto:Scott.Letteney@cityofracine.org)>, Lindsay Mather <[Lindsay.Mather@greenbaywi.gov](mailto:Lindsay.Mather@greenbaywi.gov)>, Lindsey Belongea <[Lindsey.Belongea@greenbaywi.gov](mailto:Lindsey.Belongea@greenbaywi.gov)>, James Carroll <[jmcarr@milwaukee.gov](mailto:jmcarr@milwaukee.gov)>, Kathryn Block <[kblock@milwaukee.gov](mailto:kblock@milwaukee.gov)>, Erick Kaardal <[kaardal@mklaw.com](mailto:kaardal@mklaw.com)>  
**Subject:** Election Complaints

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Attorney Axelrod,

I represent the City of Kenosha respondents in Brian Thomas et al. v. Meagan Wolfe et al., EL 21-30.

I, and the attorneys for the Cities of Milwaukee, Racine, and Green Bay, against whom the complainants in EL 21-30 have also filed complaints, and who are cc'd in this email, wanted to inquire as to a couple of topics.

First, pursuant to EL 20.04(1), has there been a determination as to whether any or all of the complaints filed against each of us are timely, sufficient as to form, and state probable cause? Given that the substance of the complaint has already been rejected by the federal courts, we do not believe the complaints are timely, sufficient, or state probable cause, and therefore wanted to inquire. The City of Kenosha received a letter from the Wisconsin Elections Commission requesting a sworn written response to the complaint, but did not reference the items in EL 20.04(1). The other Cities received similar letters.

Second, if the complaints are determined to be sufficient, we would jointly request an extension of the time to file written responses or answers to our complaints so as to coordinate with each other and to collaborate on our legal arguments, though we are not requesting consolidation at this time. We would respectfully request that you allow each of us an extension, and to have the same response deadline, which we ask to be moved to sometime in mid-June.

Best,  
Bryan Charbogian

**Bryan A. Charbogian**  
Assistant City Attorney  
Office of the City Attorney

625 52nd Street  
Kenosha, Wisconsin 53140-3480  
262-653-4170



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