

BEFORE THE
STATE OF WISCONSIN
ELECTIONS COMMISSION

BRIAN THOMAS et al.,

Complainants,

v.

Case No. EL 21-30

MEAGAN WOLFE et al.,

Respondents.

**ADMINISTRATOR MEAGAN WOLFE'S RESPONSE TO COMPLAINT
AND MOTION TO DISMISS ALL CLAIMS AGAINST HER**

Respondent Meagan Wolfe, in her official capacity as Administrator of the Wisconsin Elections Commission, answers the Complaint filed by Complainants Brian Thomas, Tamara Weber, Matthew Augustine, Kevin Mathewson, Mary Magdalen Moser and Pamela Mundling, and hereby ADMITS, DENIES, and ALLEGES as follows:

INTRODUCTION

Administrator Wolfe responds as follows to the allegations in the Introduction section of the Complaint:

In response to the last sentence of the first paragraph of the Introduction section, Administrator Wolfe ADMITS that she gave legislative hearing

testimony before the General Assembly's Campaigns and Elections Committee on March 31, 2021. DENIES all other factual allegations in the sentence. Further ALLEGES that any documents or recorded statements referred to in that sentence and its footnote speak for themselves, and DENIES any characterization of them contrary to their express terms. Additionally ALLEGES that, in her March 31, 2021, hearing testimony to the Assembly Committee on Campaigns and Elections, the Administrator stated that she could not offer her opinion or speculate on actions of individual municipalities and that it would be outside her statutory or delegated authority to determine if a municipality has acted lawfully. DENIES that the Administrator has supported or endorsed any activities contrary to federal law, state law, or directives of the Commission.

In response to the first full paragraph on page 4, ADMITS that “[t]he Commission . . . never opined on the legality of private corporate conditions affecting existing election laws,” and that the Commission did not “authorize the five largest cities to obtain private funds” or to engage in the other activities enumerated in that paragraph. ALLEGES that a complaint was filed with the Commission in 2020 questioning whether some jurisdictions could accept and use private grant funds. The Commission dismissed that complaint in part because the grant funding issues it raised were not covered by any of

the election statutes in Wis. Stat. chs. 5–10 and 12 that are administered by the Commission.

DENIES the allegation on page 4 that “the Administrator’s . . . actions violate state law and the U.S. Constitution’s Elections and the Electors Clauses because they diverted constitutional authority of the State Legislature and the Commission to private corporations and the approving municipalities.” ALLEGES that the Administrator did not make any determinations as to (1) the legality of actions or communications by municipal officials related to municipal acceptance or use of private grant funds; or (2) any relations between municipal officials and outside consultants.

DENIES the allegation on page 4 that Administrator Wolfe has taken the “legal position that the Commission has no role when a municipality’s actions could or do directly modify the conditions of the municipality’s state and federal elections.”

In response to the allegation on page 5 that “the Administrator may not render a decision without the approval of the Commission related to the legality of any agreement between private corporate entities and municipalities related to imposing private corporate conditions on the administration of election laws,” OBJECT that the phrase “render a decision” is too vague and ambiguous to permit a responsive pleading. ALLEGES that the Administrator has taken the position that it would be outside her statutory

or delegated authority to determine if a municipality has acted lawfully, and that she stated that position in her March 31, 2021, hearing testimony to the Assembly Committee on Campaigns and Elections. To the extent further response is required, DENIES the allegation.

LACKS knowledge or information sufficient to form a belief as to the truth of any other factual allegations in the introductory section, and thus DENIES.

ALLEGES that all statutes, constitutional provisions, court opinions, and any other sources of law referenced in the introductory section speak for themselves, and DENIES any characterization of them contrary to their express terms.

Otherwise, ALLEGES that the introductory section contains only legal conclusions to which no responsive pleading is required.

Complainants

1. Brian Thomas is a Wisconsin elector residing at 5122 23rd Place, Kenosha, Wisconsin 53144.

LACKS knowledge or information sufficient to form a belief as to the truth of the factual allegations in this paragraph, and thus DENIES.

2. Tamara Weber is a Wisconsin elector residing at 5122 23rd Place, Kenosha, Wisconsin 53144.

LACKS knowledge or information sufficient to form a belief as to the truth of the factual allegations in this paragraph, and thus DENIES.

3. Matthew Augustine is a Wisconsin elector residing at 4306 31st Avenue, Kenosha, Wisconsin 53144.

LACKS knowledge or information sufficient to form a belief as to the truth of the factual allegations in this paragraph, and thus DENIES.

4. Kevin Mathewson is a Wisconsin elector residing at 6503 103rd Avenue, Kenosha, Wisconsin 53144.

LACKS knowledge or information sufficient to form a belief as to the truth of the factual allegations in this paragraph, and thus DENIES.

5. Mary Magdalen Moser is a Wisconsin elector residing at 2106 73rd Street, Kenosha, Wisconsin 53144.

LACKS knowledge or information sufficient to form a belief as to the truth of the factual allegations in this paragraph, and thus DENIES.

6. Pamela Mundling is a Wisconsin elector residing at 7327 11th Avenue, Kenosha, Wisconsin 53143.

LACKS knowledge or information sufficient to form a belief as to the truth of the factual allegations in this paragraph, and thus DENIES.

7. Meagan Wolfe is the Administrator of the Commission.

ADMITS.

8. Respondent John M. Antaramian is the Mayor of the City of Kenosha.

ADMITS.

9. Respondent Matt Krauter is the Kenosha City Clerk.

ADMITS.

Statement of Facts

10. The Wisconsin Legislature expressly assigned to the Commission “the responsibility for the administration of ... laws relating to elections,” Wisconsin Statutes § 5.05(1). *Trump v. Wisconsin Elections Commission*, 983 F.3d 919, 927 (7th Cir. 2020).

ALLEGES that the statute and court opinion referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, ALLEGES that this paragraph contains only legal conclusions to which no responsive pleading is required.

11. Under Wisconsin Statutes § 7.15(1), the municipal clerk has “charge and supervision” of federal elections within a municipality:

(1) SUPERVISE REGISTRATION AND ELECTIONS.

Each municipal clerk has charge and supervision of elections and registration in the municipality ...

ALLEGES that the statute referred to in this paragraph speaks for itself, and DENIES any characterization of it contrary to its express terms. Otherwise, ALLEGES that this paragraph contains only legal conclusions to which no responsive pleading is required.

12. The Commission and its municipal clerks, in administering elections in Wisconsin’s municipalities, are constitutionally obligated to follow the legal conditions set by the state legislature. Wis. Stat. §§ 5.05(1), 7.15(1).

ALLEGES that the statutes and constitutional provisions referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, ALLEGES that this

paragraph contains only legal conclusions to which no responsive pleading is required.

13. The Elections Clause of the U.S. Constitution states that the state legislatures and Congress set the conditions for Congressional elections:

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 Senators.

U.S. Const., Art. I, § 4, cl. 1.

ALLEGES that the constitutional provision referred to in this paragraph speaks for itself, and DENIES any characterization of it contrary to its express terms. Otherwise, ALLEGES that this paragraph contains only legal conclusions to which no responsive pleading is required.

14. The Electors Clause of the U.S. Constitution states that the state legislatures exclusively set the conditions for choosing Presidential Electors:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress.

U.S. Const., Art. II, § 1, cl. 2.

ALLEGES that the constitutional provision referred to in this paragraph speaks for itself, and DENIES any characterization of it contrary to its express

terms. Otherwise, ALLEGES that this paragraph contains only legal conclusions to which no responsive pleading is required.

15. The Elections Clause and the Electors Clause provide no power to municipal governments to adopt private corporate conditions on federal elections or to introduce private corporations and their employees into federal election administration. U.S. Const., Art. I, § 4, cl. 1 and Art. II, § 1, cl. 2.

ALLEGES that the constitutional provisions referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, ALLEGES that this paragraph contains only legal conclusions to which no responsive pleading is required.

16. The City of Kenosha is incorporated under Wisconsin Statutes chapter 62.

ADMITS.

17. Wisconsin cities are created by state statute and cannot exercise any power unless specifically provided for by statute:

The legislative power in this state is lodged in the legislature. When it exerts that power, it exerts it on behalf of and in the name of the people of the State of Wisconsin.” *Van Gilder v. City of Madison*, 222 Wis. 58, 67,267 N.W. 25 (1936). Conversely, “cities are creatures of the state legislature [that] have no inherent right of self-government beyond the powers expressly granted to them.”

Black v. City of Milwaukee, 882 N.W.2d 333, 342-43 (Wis. 2016).

ALLEGES that the court opinion referred to in this paragraph speaks for itself, and DENIES any characterization of it contrary to its

express terms. Otherwise, ALLEGES that this paragraph contains only legal conclusions to which no responsive pleading is required.

18. The Center for Tech and Civic Life (CTCL) is a private non-profit organization providing federal election grants to local governments, headquartered in Chicago, Illinois. (001–002)

ADMITS that the Center for Tech and Civic Life (CTCL) is a private non-profit organization headquartered in Chicago, Illinois. ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

19. For the 2020 federal election, CTCL was funded by private donations of more than \$300 million that were in turn used as conditional private grants to local governments.

ALLEGES that the articles referred to in the footnote to this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph or its footnote, and thus DENIES.

20. This method of wealthy and well-connected corporate forces partnering with the government to exercise political influence is common to countries such as Russia where the powerful oligarchs work hand and glove with the rulers.

ALLEGES that the article referred to in the footnote to this paragraph speaks for itself, and DENIES any characterization of it contrary to its express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph or its footnote, and thus DENIES.

21. Nationally, CTCL funded local governments, cities and counties, with conditional private grants that were used for the 2020 general election. (001–002)

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

22. Certain urban local governments receiving CTCL grants agreed to the conditions of the grant in exchange for receiving CTCL moneys. (017-018 (Green Bay); 393- 394 (Racine); 419-420 (Racine); 551-552 (Kenosha))

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form

a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

23. These grants are contracts between each local government and CTCL. (017–018; 393–394; 419–420; 551–553)

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES. As to any legal conclusions, ALLEGES that no responsive pleading is required.

24. These conditional grants to the local government required reporting back to the private non-profit corporation, CTCL, regarding the moneys used for the 2020 general election. (018; 393; 419; 552)

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

25. These conditional grants to the local government included claw-back provisions, requiring the local government to return the moneys to the private non-profit corporation, CTCL, if the private non-profit corporation disagreed as to how those moneys were spent in the conduct of the 2020 election. (018; 393; 419; 552) Having contracted with CTCL, and agreed to “conditions” which allow CTCL to “claw back” funds, the City of Kenosha submitted

itself to potential breach of contract actions from CTCL, where Milwaukee would have to defend its election administration to its superiors at CTCL, thereby ceding control of elections from local, city and state in favor of outside groups.

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES. As to any legal conclusions, ALLEGES that no responsive pleading is required.

26. Upon information and belief, Kenosha Mayor Antaramian communicated with CTCL about Kenosha and the other Wisconsin Five cities accepting private corporate conditions on state and federal elections. (393–394; 464–482)

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

27. Upon information and belief, Kenosha Mayor Antaramian coordinated on accepting private corporate conditions on state and federal elections with the other Mayors of the Wisconsin Five cities, to wit, Green Bay Mayor Eric Genrich, Racine Mayor Cory Mason, Madison Mayor Satya Rhodes-Conway, and Milwaukee Mayor Tom Barrett by having virtual meetings on the following days: May 16, 2020; June 13, 2020; and August 14, 2020. (464-482)

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

28. Upon information and belief, no public notice of the May 16, 2020 meeting was provided.

LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

29. Upon information and belief, no public notice of the June 13, 2020 meeting was provided.

LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

30. Upon information and belief, no public notice of the August 14, 2020 meeting was provided.

LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

31. Upon information and belief, the Wisconsin Elections Commission was not notified of these meetings. As a result of this lack of notice, the Wisconsin Five cities began operating as a parallel government outside of public scrutiny, side-stepping Wisconsin election law and administration, and ceding local, city and state control of elections to groups outside of Wisconsin.

ADMITS that the Wisconsin Elections Commission was not notified of the referenced meetings. LACKS knowledge or information

sufficient to form a belief as to the truth of any other factual allegations in the paragraph, and thus DENIES. As to all legal conclusions, ALLEGES that no responsive pleading is required.

32. Upon information and belief, after the Wisconsin Five mayors began meeting in May 2020, pursuant to the agreement of the Wisconsin Five Mayors, CTCL issued a \$100,000 grant to the City of Racine to coordinate the other Wisconsin Five cities to join the “Wisconsin Safe Voting Plan.” (393–394)

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

33. Upon information and belief, Kenosha Mayor Antaramian communicated with Mayors of other Wisconsin cities about the \$100,000 grant and accepting private corporate conditions on state and federal elections. (393–394; 464–482)

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

34. CTCL authorized the City of Racine to distribute from the \$100,000 grant, \$10,000 to each of the four recruited cities, including Kenosha, as an incentive for the Wisconsin Five Cities to join in the CTCL conditional grants. (393-394).

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

35. CTCL, through the City of Racine, its Mayor and the \$100,000 grants successfully recruited Green Bay, Madison, Milwaukee, and Kenosha to apply for the conditional grants. (393–394; 395–415)

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

36. The so-called “Wisconsin Safe Voting Plan” was a grant application designed for the recruited Wisconsin Five cities, Green Bay, Kenosha, Madison, Milwaukee, and Kenosha to request millions of dollars of CTCL grant funding to support election administration activities during the COVID-19 pandemic. (487–507)

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form

a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

37. The “Safe Voting Plan” was developed ostensibly “in the midst of the COVID-19 Pandemic” to ensure voting could be “done in accordance with prevailing public health requirements” to “reduce the risk of exposure to coronavirus.” Further, it was intended to assist with “a scramble to procure enough PPE to keep polling locations clean and disinfected.” (487–507).

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

38. The Cities of Madison, Green Bay, Racine, Kenosha and Milwaukee entered into the conditional grant agreements with CTCL. (395–415).

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

39. CTCL referred to the Cities of Madison, Green Bay, Racine, Kenosha and Milwaukee as the "Wisconsin Five" or "WI-5" cities. (139–141).

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

40. However, it is only the Commission that can provide “aid” to cities and counties for the administration of elections, not wealthy, well-connected business owners who may benefit from the election outcome, such as by ending recent hearings into their business practices. Wis. Stat. §5.05(11).

ALLEGES that the statute and any other documents referred to in this paragraph and its footnote speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES. As to all legal conclusions, ALLEGES that no responsive pleading is required.

41. Specifically, under Wisconsin Statutes §5.05(10), the Commission may render assistance to municipalities and counties via the state election administration plan that meets the requirements of the Help America Vote Act (Public Law 107-252) to enable participation by Wisconsin in federal assistance programs relating to elections.

ALLEGES that the statutes referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, ALLEGES that this paragraph contains only legal conclusions to which no responsive pleading is required.

42. As previously stated, with respect to elections, the Wisconsin State Legislature under Wisconsin Statutes § 5.05(1) delegated general authority to the Commission for the responsibility of administration of Wisconsin elections.

ALLEGES that the statute referred to in this paragraph speaks for itself, and DENIES any characterization of it contrary to its express terms. Otherwise, ALLEGES that the paragraph contains only legal conclusions, for which no responsive pleading is required.

43. CTCL and its “partners” also sought direct contact lines of communication with WEC. For example, Michael Spitzer-Rubenstein of National Vote at Home Alliance wrote to Claire Woodall-Vogg, the Executive Director of the City of Milwaukee Election Commission: “can you connect me to Reid Magney and anyone else who might make sense at the WEC? Would you also be able to make the connection with the Milwaukee County Clerk?” (600)

ALLEGES that the documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

44. Whether moneys are received from other sources directly or indirectly related to the administration of elections, specifically wherein those moneys are conditional affecting existing election laws, the general authority and the jurisdiction of the Commission is engaged.

ALLEGES that any election laws referenced in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Further ALLEGES that the grant funding issues raised in this complaint are not covered by any of the election statutes in Wis. Stat. chs. 5–10 and 12 that are administered by the Commission. Otherwise, this paragraph contains only legal conclusions to which no responsive pleading is required.

45. For instance, under Section 3 of the HAVA state administration plan, the Commission is “required to conduct regular training and administer examinations to ensure that individuals who are certified are knowledgeable concerning their authority and responsibilities.”

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES. As to any legal conclusions, ALLEGES that no responsive pleading is required.

46. Upon information and belief, in July, 2020, the Cities of Racine, Madison, Green Bay, Milwaukee and Kenosha entered into a conditional grant agreement with CTCL for \$6,324,527. (017–018; 393–394; 419–420; 487–507; 551–553)

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

47. Under the terms of the CTCL conditional grant agreement, the five cities adopting the conditions would be required to remit back to CTCL the entire \$6,324,527 if CTCL, at its sole discretion, determined these cities had not complied with CTCL’s terms. (017–018; 393–394; 419–420; 551–553)

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

48. The CTCL Agreement dated May 28, 2020, provides that the purpose of the funds CTCL provided to the cities was to “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.” (393). The CTCL Agreement required these cities to develop a joint plan for their elections pursuant to the agreement by June 15, 2020:

The City of Racine, and any cities granted funds under paragraph 4, shall produce, by June 15th, 2020, a plan for a

safe and secure election administration in each such city in 2020, including election administration needs, budget estimates for such assessment, and an assessment of the impact of the plan on voters.

(394)

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

49. Wisconsin and federal election laws establish the manner in which elections are to be conducted. The administration of those laws is within the jurisdiction of the Commission; however, the administration must also be consistent with legislative or Congressional enactments.

ALLEGES that the laws referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, ALLEGES that this paragraph contains only legal conclusions to which no responsive pleading is required.

50. On June 15, 2020, the Wisconsin Five cities presented their plan to CTCL. Among other things, these cities entered into agreements with CTCL to use the moneys to:

- Hire additional personnel for elections;
- Increase existing salaries for staff;
- Encourage and Increase Absentee Voting (by mail and early, in-person)

- Provide assistance to help voters comply with absentee ballot requests & certification requirements;
- Utilize secure drop-boxes to facilitate return of absentee ballots
- Deploy additional staff and/ or technology improvements to expedite & improve accuracy of absentee ballot processing;
- Expand In-Person Early Voting (Including Curbside Voting); and
- Commit “to conducting the necessary voter outreach and education to promote absentee voting and encourage higher percentages of our electors to vote absentee.”

(487–507).

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

51. These provisions contained in the “Wisconsin Safe Voting Report,” which the Cities were required to adhere to, cannot be at or under direction of CTCL, in which case would be contrary to, or in-place of, or in addition to Wisconsin or federal election laws.

ALLEGES that the documents and laws referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to

their express terms. Otherwise, ALLEGES that this paragraph contains only legal conclusions to which no responsive pleading is required.

52. The “Wisconsin Safe Voting Report” (492–500) specifically provided that these Cities would promote and “encourage higher percentages of our electors to vote absentee” (493) which violates Wisconsin Statutes 6.84 (1) in which the State Legislature states:

The legislature finds that the privilege of voting by absentee ballot must be carefully regulated to prevent the potential for fraud or abuse; to prevent *overzealous solicitation of absent electors who may prefer not to participate in an election.*

(320-328) (emphasis added).

ALLEGES that the documents and statutes referred to in this paragraph and its footnote speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph or the footnote, and thus DENIES. As to any legal conclusions in the paragraph or the footnote, ALLEGES that no responsive pleading is required.

53. First, not all Wisconsin cities adopted and received conditional grant moneys to administer their respective 2020 general election, rather the grant money was provided to select large cities, and even to special, “targeted communities” within those cities. (34,42)

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their

express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

54. Second, those cities that did adopt and receive conditional grant moneys from CTCL, that is the Wisconsin Five, imposed conditions on the administration of elections from a private corporate entity when other cities had no such conditions. Hence, with the added private conditions on Kenosha's election process, the Kenosha Complainants were within a jurisdictional boundary that affected them as a demographic group.

LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in this paragraph and thus DENIES. As to any legal conclusions, ALLEGES that no responsive pleading is required.

55. Similarly, by the Wisconsin Five cities contracting with CTCL and allied private corporations, the Wisconsin Five cities chose to favor the Wisconsin Five's demographic groups of urban voters over all other voters in the State of Wisconsin. By these actions, the "Wisconsin Five" cities favored its urban demographic group over other non-urban Wisconsin voters in federal elections, putting the integrity of the election process in jeopardy—and violating Complainants' rights to lawful and equal elections.

LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in this paragraph and thus DENIES. As to any legal conclusions, ALLEGES that no responsive pleading is required.

56. Whitney May, Director of Government Services at CTCL, wrote to Kenosha employee Michelle Nelson and representatives of the other Wisconsin Five cities on August 18, 2020, stating, "You are the famous WI-5 ... excited to see November be an even bigger success for you and your teams." (566–567).

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

57. Upon information and belief, on about May 28, 2020, the Racine Common Council approved the CTCL conditional grant in the amount of \$100,000 to recruit the Wisconsin Five cities, including Kenosha, to join the Wisconsin Safe Voting Plan 2020 submitted to Center for Tech and Civic Life on June 15, 2020. (393–394)

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

58. Upon information and belief, on about June 15, 2020, the Kenosha Common Council, as well as the other Wisconsin Five's Common Councils, approved the Wisconsin Safe Voting Plan. (395-415)

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

59. Upon information and belief, on about July 24, 2020, the Kenosha Common Council adopted the CTCL conditional grant in the amount of \$862,779, as had or did the other Wisconsin Five cities, thus securing for themselves benefits not made available to the rest of the state, as well as obligating themselves to CTCL's conditions. (551–552)

ALLEGES that any documents referred to in this paragraph and its footnote speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph or the footnote, and thus DENIES.

60. Upon information and belief, the CTCL conditions in the August 31, 2020 CTCL grant agreed to by Kenosha included:

- “The grant funds must be used exclusively for the public purpose of planning and operationalizing safe and secure election administration in the City of Racine in accordance with the Wisconsin Safe Voting Plan 2020.” (551)
- Each city or county receiving the funds was required to report back to CTCL by January 31, 2021 regarding the moneys used to conduct federal elections; (552)
- “The City of Kenosha shall not reduce or otherwise modify planned municipal spending on 2020 elections, including the budget of the City Clerk of Kenosha (the Clerk) or fail to appropriate or provide previously budgeted funds to the Clerk for the term of this grant. Any amount reduced or not provided in contravention of this paragraph shall be repaid to CTCL up to the total amount of this grant.” (552).

- The City of Kenosha “shall not use any part of this grant to give a grant to another organization unless CTCL agrees to the specific sub-recipient in advance, in writing.” (552)
- “CTCL may discontinue, modify, withhold part of, or ask for the return of all or part of the grant funds if it determines, in its sole judgement, that (a) any of the above conditions have not been met or (b) it must do so to comply with applicable laws or regulations.” (552).

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

61. Upon information and belief, despite the stated purpose of helping to assist with a COVID-19 safe election, CTCL’s early communications with the Kenosha and the Wisconsin Five cities focused on other, apparently parallel purposes referencing other “resources” to help with: “technical assistance,” “implementation support,” “print materials,” “communications,” “adding drop boxes, and “website.” (523, 527, 554–555, 556–561)

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

62. Upon information and belief, even though the stated purpose of the CTCL grant was only for the “Safe Voting Plan” and “for no other purpose,” CTCL, when working with the Wisconsin Five, had other conditions that had nothing to do with COVID prevention, such as:

- Employing “voter navigators” to help voters “complete their ballots”; (030-031)
- The “voter navigators” would later be “trained and utilized as election inspectors”; (031)
- “Utilize paid social media” and “print and radio advertising” to direct voters “to request and complete absentee ballots”; (030)
- “enter new voter registrations and assist with all election certification tasks”; (030)
- “reach voters and potential voters through a multi-prong strategy utilizing ‘every door direct mail,’ targeted mail, geo-fencing, billboards radio, television, and streaming-service PSAs, digital advertising, and automated calls and texts,” and direct mail to “eligible but not registered voters”; (032)
- Assist new voters to “obtain required documents” to get valid state ID needed for voting, targeting African immigrants, LatinX residents, and African Americans; (032) and
- “facilitate Election day Registrations and verification of photo ID.” (032)

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form

a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

63. Upon information and belief, based on CTCL's agenda, most of the action items had nothing to do with bringing about safe, COVID-19 free voting.

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

64. Upon information and belief, rather than working toward a COVID-19 safe election, the “projects” that CTCL proposed to the Wisconsin Five were to get the urban vote out. For example, in Green Bay:

- a. Adding satellite locations to “streamline onboarding process for new EIPAV [early in person absentee voting] staff [to be conducted by CTCL's partner [The (Elections Group)”];
- b. Adding drop boxes;
- c. Printing materials for mail ballots;
- d. Targeting communities with election information through National Vote at Home Institute's “communication toolkit” to “support outreach around absentee voting” and to “share research insights about how to engage people who might not trust the vote by mail process. . .”; and
- e. Explaining this “targeting” of communications, Celestine Jeffreys wrote to Whitney May of CTCL on August 27,

2020 that “There are probably 5 organizations that are focused on working with disadvantaged populations and/or with voters directly.” (034, 042)

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

65. Upon information and belief, Kenosha, as one of the Wisconsin Five cities, was offered by the CTCL the same projects to engage in and did. In fact, Vicky Selkove of the City of Racine informed the representatives of the other Wisconsin 5 that “Our national funding partner, the Center for Tech & Civic Life, has one additional question area they'd like answered: **What steps can you take to update registered voters' addresses before November? What steps can you take to register new voters? How much would each cost?**” (591, email from Vicky Selkove to Wisconsin 5 representatives, June 10, 2020).

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

66. Once CTCL secured agreements with the Wisconsin 5, and bound those cities to CTCL's conditions, CTCL began introducing the Wisconsin 5 to CTCL's “partners,” most of whom like CTCL were from other states, and not necessarily knowledgeable about Wisconsin election law, or concerned about following it. Instead, as political or election mercenaries, the CTCL “partners” believed

themselves to be specialists in certain election activities, and that they should convince Kenosha and the other Wisconsin Five Cities to go along with CTCL's recommendations about how to conduct their election.

ALLEGES that any documents referred to in this paragraph or its footnote speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph or the footnote, and thus DENIES.

67. Upon information and belief, CTCL's "partners" introduced to the Wisconsin Five included other private entities. For example, in Green Bay, the following CTCL partners were introduced:

- The National Vote At Home Institute ("VoteAtHome" or "NVAHI") who was represented as a "technical assistance partner" who could consult about among other things, "support outreach around absentee voting," voting machines and "curing absentee ballots," and to even take that duty (curing absentee ballots) off of the City of Racine's hands. (036-049; 051-067) The NVAHI also offered advice and guidance on accepting ballots and streaming central count during election night and on the day of the count. (068-075)
- The Elections Group and Ryan Chew were represented to be able to provide "technical assistance partners to support your office" and "will be connecting with you in the coming days regarding drop boxes" and technical assistance to "support your office," and worked on "voter outreach." (076-078, 205, 079-081) Elections Group Guide to Ballot Boxes. (082-0121)
- Ideas42 was represented by CTCL as using "behavioral science insights" to help with communications. (392)

- Power the Polls was represented by CTCL to help recruit poll workers (122) and discuss ballot curing. (123-124)
- The Mikva Challenge was recommended to recruit high school age poll workers (125-126, 404) and then to have the poll workers to “serve as ballot couriers,” and for “ballot drop-off/voter registrations.” (125-127)
- US Digital Response was suggested to help with and then take over “absentee ballot curing,” and to “help streamline the hiring, onboarding, and management” of Green Bay’s poll workers. (128–136)
- Center for Civic Design to design absentee ballots and the absentee voting instructions, including working directly with the Commission to develop a “new envelope design” and to create “an advertising/targeting campaign.” (137–0155; 190-0201)
- Eric Ming, the Communications Director for CSME, to serve as a “communications consultant to review your [City of Green Bay] advertising plan for November.” (156–157)
- The Brennan Center which focuses on “election integrity” including “post-election audits and cybersecurity.” (158–160)
- HVS Productions to add “voter navigator” FAQs and Election Countdown Copy for the city of Green Bay. (161–166)
- Modern Selections to address Spanish language. (167-169)

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms.

In response to the seventh bullet point, ALLEGES that WEC staff proposed a new envelope design to the Commission. In that design process, WEC hired CCD to provide training to assist WEC in conducting its own usability studies with voters as WEC staff redesigned the envelope. The Commission ultimately decided not to adopt the proposed new envelope design and to pause the redesign project until after the 2020 election. The envelope redesign project was unrelated to any interactions between CCD or CTCL and any of the municipal respondents in this matter.

Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

68. Similar to those efforts to bring people into Green Bay to help with the election, CTCL offered Milwaukee to provide “an experienced elections staffer [from the Elections Group] that could potentially embed with your staff in Milwaukee in a matter of days and fill that kind of a role.” (626).

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

69. CTCL and its "partners" took advantage of the conditions Kenosha and the other Wisconsin 5 agreed to as set forth in the following communications:

- a. If you could send the procedures manual and any instructions for ballot reconstruction, I'd appreciate that. On my end: • By Monday, I'll have our edits on the absentee voter instructions. • We're pushing Quickbase to get their system up and running and I'll keep you updated. • I'll revise the planning tool to accurately reflect the process. (600, Michael Spitzer-Rubenstein emailing to Claire Woodall-Vogg of Milwaukee)
- b. • I'll create a flowchart for the VBM processing that we will be able to share with both inspectors and also observers. • I'll take a look at the reconstruction process and try to figure out ways to make sure it's followed. (600, Michael Spitzer-Rubenstein emailing to Claire Woodall-Vogg of Milwaukee)
- c. "That sounds like a real pain. It would be helpful to just understand the system and maybe the USDR folks can figure out a way to simplify something for you if it's okay with you, they'd also like to record the screen-share to refer back to, if needed." We're hoping there's an easier way to get the data out of Wis Vote than you having to manually export it every day or week. To that end, we have two questions: 1. Would you or someone else on your team be able to do a screen-share so we can see the process for an export? 2. Do you know if Wis Vote has an API or anything similar so that it can connect with other software apps? That would be the holy grail (but I'm not expecting it to be that easy). (659-659A, Michael Spitzer-Rubenstein to Claire Woodall-Vogg)
- d. I know you won't have the final data on absentee ballots until Monday night but I imagine you'll want to set things up beforehand. Just let me know your timeline for doing so and if you get me the absentee data a day ahead of time and I can set things up. And as a reminder, here's what I'll need: 1) Number of ballot preparation teams

2) Number of returned ballots per ward 3) Number of outstanding ballots per ward. (673, Michael Spitzer-Rubenstein to Claire Woodall-Vogg).

- e. In order to get the data by ward, are you able to run a summary in WisVote or do you have to download all the active voters, absentee applications, etc. and then do an Excel pivot table or something similar? We added Census data and zip codes to the map and so now we're moving to figure out how we'll update this. Also, if you can send these reports (whether in summary form or just the raw data), we can put them in: Active voters, Absentee applications, Ballots received, Ballots rejected/ returned to be cured. (677, Michael SpitzerRubenstein to Claire Woodall-Vogg).
- f. "I'll try and do a better job clarifying the current need. We are not actually using anything visual right now (though will in the future). In the state of affairs now, we are just looking for raw data. The end result of this data will be some formulas, algorithms and reports that cross reference information about ballots and the census data. For example, we want to deliver to Milwaukee + Voteathome answers to questions like "How many of age residents are also registered to vote?" or "what percentage of ballots are unreturned in areas with predominantly minorities?". To do that, we need a clear link between address + Census Tract. We need this for all ~300k voters and the ~200k+ absentee ballots, and it needs to be able automatic as we perform more inserts. To accomplish this, we were making calls to the Census API. They allow you to pass in an address and get the Census Tract. That solution "works", but is far too slow. Their batch solution isn't working either." (653-658)

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information

sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

70. Though some of these attempts of CTCL and its partners to take over the Wisconsin 5's election administration may have been rebuffed, others were agreed on. The Wisconsin 5 apparently agreed that some of CTCL's attempts would have left a record making the election officials look bad or were too egregious. For example, Claire Woodall-Vogg responded: "While I completely understand and appreciate the assistance that is trying to be provided, *I am definitely not comfortable having a non-staff member involved in the functions of our voter database, much less recording it.* While it is a pain to have to remember to generate a report each night and less than ideal, it takes me less than 5 minutes. Without consulting with the state, which I know they don't have the capacity or interest in right now, I don't think I'm comfortable having USDR get involved when it comes to our voter database. I hope you can see where I am coming from - this is our secure database that is certainly already receiving hacking attempts from outside forces." (659, Claire Woodall-Vogg to Michael Spitzer-Rubenstein).

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

71. Upon information and belief, Kenosha was offered by the CTCL the same private corporations to engage in election administration:

- "Center for Tech and Civic Design, who is working with WEC on envelope design." (554)

- “NVAHI [National Vote at Home Institute] is launching a communications toolkit for election officials on August 6 to support outreach around absentee voting. (National Vote at Home Institute)” (554)
- “Communications-review the design, language, and translation of election materials produced by communications firm (Center for Civic Design)” (554, 575, 578)
- “Adding drop boxes-provide tailored guidelines and implementation support (Elections Group)” (554)
- Website help (556-451)
- “Ryan Chew, the Elections Group state lead for Wisconsin. Election Group is one of the technical assistance partners available to support your office.” (562)
- “I’m connecting you with two people from the Elections Group, Gail and Ryan (cc’d). They both have decades of election experience working with the Cook County Clerk in Illinois. They are available to discuss drop box plans (and more!). (563)
- “Here are the absentee instructions designed by CCD.” (564)
- “Here are the absentee envelopes designed by CCD.” (564)
- “Check out the attached Voter Pocket Guide that the Center for Civic Design helped design, based on our Voting in the City of Madison brochure.” (569)
- Translation services (570, 572, 574)
- “These two buckets (voter reg and absentee voting) seem like the two topic areas to focus on for voter education.” (571)

- “We have another idea for advertising.” (571)
- “I’m going to share this with the National Vote at Home contacts I have.” (571)

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms.

In response to the first bullet point in the paragraph, ALLEGES that WEC staff worked with Center for Civic Design (CCD) on form design, and that WEC has hired CCD in the past to provide training to assist WEC in conducting its own usability studies with voters as WEC staff redesign forms, technology, etc. Further ALLEGES that any such communications between WEC staff and CCD were unrelated to any interactions between CCD and any of the municipal respondents in this matter.

Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

72. Upon information and belief, CTCL’s private corporate “partners” assumed aspects of administration of Wisconsin Five’s election processes. For example, in Green Bay, the private corporations and their employees engaged in the following aspects of election administration.

- a. Vote at Home volunteered to take curing of ballots off a municipality’s plate; (179-181);

- b. Offered to “lend a hand” to Central Count stations; (182) Elections Group offer; (183)
- c. Offered to connect a municipality to “partners like Power the Polls” to recruit poll workers; to partner with CTCL to send out e-mails to recruit poll workers; (184)
- d. Advised the City as to using DS200 voting machines; (185-188)
- e. Provided a “voter navigator” job description; (189)
- f. Advised a municipality regarding moving the “Central Count” from City Hall to a different location, which was wired to provide election results directly to private corporate employees; (270)
- g. The Center for Civic Design offered a municipality to design the absentee voting instructions and the absentee envelopes; (190–203)
- h. The Elections Group issued a Guide to Ballot Drop Boxes, a report on Planning Drop Boxes, Voter Outreach, and Communication; (204–238)
- i. Provided advice about procedures for challenging an elector's ballot; (239–243) and
- j. Conservation Voices and curing. (244-247)

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

73. Upon information and belief, Kenosha was offered by the CTCL the same private corporations engaging in the same election administration areas and accepted the offer and conditions. (554–555; 556–561; 562; 563, 564; 569, 570, 571, 572, 574, 578).

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

74. Upon information and belief, on or about August 18, 2020, CTCL apparently stopped implementing its plans for the Wisconsin Five cities to use the CCD-designed absentee voter instruction and absentee voter envelopes because of the Commission's intervention. Whitney May for Center for Tech and Civic Life wrote:

Hello everyone

Thank you for taking time to review the CCD materials and ask questions today. CTCL is putting the brakes on operation envelope with the WI-5 because:

- WEC wants everyone in the state using the same formats.
- WEC wants complete new envelop design work next year.
- WEC shared uniform instructions today.

(566).

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms.

In response to the first two quoted bullet points, ALLEGES that WEC staff proposed a new envelope design to the Commission. In that design process, WEC staff obtained training from CCD on conducting usability studies. The Commission ultimately decided not to adopt the proposed new envelope design and to pause the redesign project until after the 2020 election. The redesign project and the pause in that project were unrelated to any interactions between CCD or CTCL and any of the municipal respondents in this matter.

In response to the third quoted bullet point, ALLEGES that the Commission generally issues uniform voter instructions, but municipalities are permitted to modify or supplement those instructions. In 2020, WEC staff developed uniform instructions which were reviewed, edited, and approved by the Commission.

Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

75. Upon information and belief, WEC was working with CTCL as a representative of the Wisconsin Five cities in an extra-governmental capacity, which is not legally authorized.

DENIES.

76. Upon information and belief, Whitney May of Center for Tech and Civic Life advised Kenosha's Information Coordinator Michelle Nelson on how to request from Kenosha administration additional funding for election administration and encouraging her to consult with other Wisconsin Five clerks:

Below is some language I drafted along with 2 links that may help you frame the need for more staff. And have you asked Kris in Green Bay or Tara in Racine about their staffing levels? If they have similar numbers of registered voters as Kenosha, but more staff than Kenosha, then I think that's also a way to make your case to Admin.

(576)

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

77. Upon information and belief, Kenosha on August 31, 2020, sought and obtained CTCL approval of purchasing 3 DS450 high speed ballot tabulators for use at Absentee Central Count locations at an amended cost of \$180,000 instead of \$172,000. (584–586)

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

78. Upon information and belief, Kenosha officials began reporting to CTCL of the City's efforts regarding:

- a. Voter outreach/ education;
- b. Drop boxes;

- c. Poll books;
- d. Community groups; and
- e. Badger books

(261–264 (Green Bay))

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES.

79. WEC Administrator Meagan Wolfe, regarding the Wisconsin Five's conduct alleged here, has supported the Wisconsin Five cities' claimed prerogative to adopt private corporate conditions on federal elections without approval by Congress, the state legislature and the Commission. She most recently stated this legal position on March 31, 2021 before the General Assembly's Campaigns and Elections Committee.

Administrator Wolfe ADMITS that she gave legislative hearing testimony before the General Assembly's Campaigns and Elections Committee on March 31, 2021. DENIES all other factual allegations in the paragraph. Further ALLEGES that any documents or recorded statements referred to in this paragraph and its footnotes speak for themselves, and DENIES any characterization of them contrary to their express terms. Additionally ALLEGES that, in her March 31, 2021, hearing testimony to the Assembly

Committee on Campaigns and Elections, the Administrator stated that she could not offer her opinion or speculate on actions of individual municipalities and that it would be outside her statutory or delegated authority to determine if a municipality has acted lawfully. DENIES that she has supported or endorsed any activities contrary to federal law, state law, or directives of the Commission. As to any other legal conclusions in the paragraph, ALLEGES that no responsive pleading is required.

80. The Complainants believe the legal position of WEC Administrator Meagan Wolfe and the rest of the Kenosha Respondents is incorrect. Only Congress and the state legislature have legal authority to place conditions on federal elections in Wisconsin and to approve private corporations and their employees to engage in federal election administration.

In response to the first sentence of the paragraph, DENIES that the Complainants have fully or accurately characterized any legal position the Administrator has taken. ALLEGES that the Administrator did not make any determinations as to (1) the legality of actions or communications by municipal officials related to municipal acceptance or use of private grant funds; or (2) any relations between municipal officials and outside consultants. Further ALLEGES that, in her March 31, 2021, hearing testimony to the Assembly Committee on Campaigns and Elections, the Administrator stated that she could not offer her opinion or speculate on actions of individual municipalities and that it would be outside her statutory or delegated authority to determine

if a municipality has acted lawfully. DENIES that the Administrator has supported or endorsed any activities contrary to federal law, state law, or directives of the Commission.

ALLEGES that the second sentence in the paragraph contains only legal conclusions for which no responsive pleading is required.

Claim

81. The Wisconsin State Legislature under Wisconsin Statutes § 5.05(1) delegated general authority to the Commission for the responsibility of administration of Wisconsin elections.

ALLEGES that the statute referred to in this paragraph speaks for itself, and DENIES any characterization of it contrary to its express terms. Otherwise, ALLEGES that this paragraph contains only legal conclusions to which no responsive pleading is required.

82. The Wisconsin State Legislature delegates federal election authority to municipal clerks to implement Wisconsin election laws within the respective clerk's municipality. Wis. Stat. § 7.15(1).

ALLEGES that the statute referred to in this paragraph speaks for itself, and DENIES any characterization of it contrary to its express terms. Otherwise, ALLEGES that this paragraph contains only legal conclusions to which no responsive pleading is required.

83. In general elections held in Kenosha, the election authority of Congress, the Wisconsin state legislature, the Commission and Kenosha City Clerk was and will continue to be illegally and unconstitutionally diverted by the Respondents to entities and persons including Kenosha's Common Council, Mayor and private corporations and their employees.

Administrator Wolfe DENIES that she has engaged in, supported, or endorsed any activities contrary to federal law, state law, or directives of the Commission. As to all other legal conclusions in the paragraph, ALLEGES that no responsive pleading is required.

84. Without Commission intervention, Kenosha's illegal and unconstitutional diversion of election authority will continue. In fact, CTCL has continued to be in contact with Kenosha and the Wisconsin 5 as recently as February and March 2021 for the purpose of brainstorming about what went well in the 2020 election, and to repeat and expand on those efforts in the 2022 and subsequent elections, even though the only stated reason for CTCL's 2020 grants was to ensure a safe election during the COVID pandemic. (8049-8057)

ALLEGES that any documents referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, LACKS knowledge or information sufficient to form a belief as to the truth of any factual allegations in the paragraph, and thus DENIES. As to all legal conclusions, ALLEGES that no responsive pleading is required.

85. Notably, on December 24, 2020, the U.S. Court of Appeals for the Seventh Circuit, in rejecting the Trump campaign's Electors Clause arguments in a Wisconsin case, suggested that the Electors Clause may apply when Wisconsin public officials usurp federal election administrative powers contrary to state law:

The Wisconsin Legislature expressly assigned to the Commission "the responsibility for the administration of ... laws relating to elections," WIS. STAT. § 5.05(1), just as Florida's Legislature had delegated a similar responsibility to its Secretary of State. See *Bush*, 531 U.S. at 116, 121 S.Ct. 525 (Rehnquist, C.J., concurring). Florida's legislative scheme included this "statutorily provided apportionment of responsibility," *id.* at 114, 121 S.Ct. 525, and three Justices found a departure from that scheme when the Florida Supreme Court rejected the Secretary's interpretation of state law. See *id.* at 119, 123, 121 S.Ct. 525. And it was the Minnesota Secretary of State's lack of a similar responsibility that prompted two judges of the Eighth Circuit to conclude that he likely violated the Electors Clause by adding a week to the deadline for receipt of absentee ballots. See *Carson*, 978 F.3d at 1060.

Trump v. Wisconsin Elections Commission, 983 F.3d 919, 927 (7th Cir. 2020). To be sure, in that case, the Trump campaign's 2020 Electors Clause claims regarding "indefinitely confined" voters, endorsing the use of absentee ballot drop boxes, and best practices for correcting a witness's address on an absentee ballot certificate were dismissed by the federal courts.

ALLEGES that all court opinions, statutes, and constitutional provisions referred to in this paragraph speak for themselves, and DENY any characterization of them contrary to their express terms. Otherwise, ALLEGES that this paragraph contains only legal conclusions to which no responsive pleading is required.

86. The claims in this matter relating to the City of Kenosha are distinguishable from those facts in the *Trump* case because these legal claims relate to the Administrator's and Kenosha's diversion of the election law authority of Congress, the Wisconsin State Legislature, the Commission, and the Kenosha City Clerk. In this way, the complainants' Elections Clause and Electors Clause claims are similar to the claim considered by the three Supreme Court justices finding a "departure from that scheme" in the Florida case and the claim considered by the two Eighth Circuit judges to be a "likely" violation of the Electors Clause in the Minnesota case. *Wisconsin Elections Commission*, 983 F.3d at 927.

Administrator Wolfe DENIES that she has engaged in, supported, or endorsed any activities contrary to federal law, state law, or directives of the Commission. ALLEGES that all court opinions and constitutional provisions referred to in this paragraph speak for themselves, and DENIES any characterization of them contrary to their express terms. Otherwise, ALLEGES that this paragraph contains only legal conclusions to which no responsive pleading is required.

87. The Respondents' past and continuing diversion of election authority violated and continues to violate state and federal law.

Administrator Wolfe DENIES that she has engaged in, supported, or endorsed any activities contrary to federal law, state law, or directives of the Commission. Otherwise, ALLEGES that this paragraph contains only legal conclusions to which no responsive pleading is required.

MOTION TO DISMISS

Administrator Wolfe hereby MOVES for an order dismissing all claims against her in this matter on the grounds that the Complaint fails to state a claim against her on which relief can be granted. The basis for this motion is set out in Administrator Meagan Wolfe's Brief in Support of Motion to Dismiss All Claims Against Her in the Five Complaints, which is being simultaneously filed.

WHEREFORE, Administrator Wolfe respectfully asks the Commission to enter an order in her favor and against the Complainants, denying all the relief sought against her and dismissing all claims against her in their entirety.

Dated at Madison, Wisconsin this 15th day of June 2021.

SIGNING AS TO ALL LEGAL ARGUMENT:

JOSHUA L. KAUL
Attorney General of Wisconsin



THOMAS C. BELLAVIA
Assistant Attorney General
State Bar #1030182

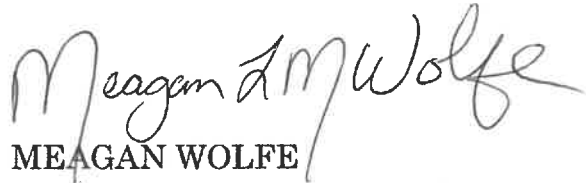
STEVEN C. KILPATRICK
Assistant Attorney General
State Bar #1025452

Attorneys for Respondent,
Meagan Wolfe, Administrator
Wisconsin Elections Commission

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-8690 (TCB)
(608) 266-1792 (SCK)
(608) 267-2223 (fax)
bellaviatc@doj.state.wi.us
kilpatricksc@doj.state.wi.us

SIGNING AND CERTIFYING AS TO ALL FACTUAL STATEMENTS:


"I, Meagan Wolfe, being first duly sworn upon oath, state that I personally read the above answer and that the above factual statements in response to the complaint are true and correct based on my personal knowledge."



MEAGAN WOLFE
Administrator, Wisconsin Elections
Commission

Respondent

Subscribed and sworn to before me
this 15th day of ~~January~~ June 2021.


Notary Public, State of Wisconsin
My Commission expires: 03/02/2024

