

BEFORE THE  
STATE OF WISCONSIN  
ELECTIONS COMMISSION

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RICHARD CARLSTEDT, et  
al.,

Complainants,

v.

Case No. EL 21-24

MEAGAN WOLFE, et al.,

Respondents.

MARTIN PRUJANSKY, et  
al.,

Complainants,

v.

Case No. EL 21-29

MEAGAN WOLFE, et al.,

Respondents.

BRIAN THOMAS, et al.,

Complainants,

v.

Case No. EL 21-30

MEAGAN WOLFE, et al.,

Respondents.

CYNTHIA WERNER, et al.,

Complainants,

v.

Case No. EL 21-31

MEAGAN WOLFE, et al.,

Respondents.

YIPING LIU, et al.,

Complainants,

v.

Case No. EL 21-33

MEAGAN WOLFE, et al.,

Respondents.

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**ADMINISTRATOR MEAGAN WOLFE'S BRIEF IN SUPPORT OF  
MOTIONS TO DISMISS ALL CLAIMS AGAINST HER IN THE FIVE  
COMPLAINTS**

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**INTRODUCTION**

The complainants—electors from Green Bay, Racine, Kenosha, Milwaukee, and Madison—have filed five largely overlapping complaints under Wis. Stat. § 5.06, claiming that respondent officials from those cities violated state election statutes and the Elections and Electors Clauses of the U.S. Constitution in two related ways. First, by accepting and using over \$6 million dollars of conditional grant funds from a private non-profit

organization<sup>1</sup> to address election needs related to the COVID-19 pandemic, the cities allegedly imposed restrictions on their administration of the 2020 presidential election that were outside the regulatory framework of Wisconsin's election statutes. Second, by coordinating various election administration activities with outside private consultants, the cities allegedly gave those consultants roles in election administration that Wisconsin's election statutes confer on designated public officials. The complainants contend that these activities by the municipal respondents violated state and federal law by diverting the authority to control the administration of a federal election out of the channels statutorily designated by the Wisconsin Legislature.

The complaints also advance a claim under Wis. Stat. § 5.06 against Meagan Wolfe, in her official capacity as the Administrator of the Wisconsin Elections Commission. The complainants claim that the Administrator endorsed the legality of the activities of the respondent municipal officials, and thereby participated in the alleged unlawful diversion of authority over the conduct of a federal election.

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<sup>1</sup> The private non-profit organization that ran the grants is the Center for Tech and Civic Life (CTCL), headquartered in Chicago, Illinois. (E.g., Carlstedt Compl. ¶ 18.)

All of the claims against the Administrator in the five complaints should be dismissed as a matter of law. The complainants have failed to state a claim against her under Wis. Stat. § 5.06 for two reasons.

First, to the extent the claims against the Administrator are based on allegations that she gave legally incorrect legislative hearing testimony, those claims fail as a threshold matter of law because such testimony cannot be deemed a violation of law or an abuse of discretion that could support a section 5.06 complaint.

Second, to the extent the complainants are trying to base their claims on unspecified communications by the Administrator to any of the municipal respondents, their claims fail because they have supplied only conclusory legal allegations that are categorically insufficient to state a plausible claim for relief against the Administrator. Even if those conclusory allegations are construed as attempts to factually allege that the Administrator gave legally incorrect guidance, those allegations still plainly fail to meet the probable cause standard under Wis. Stat. § 5.06(1), both because they supply no specificity about the substantive content of any guidance, and because the Administrator merely taking a legal position or giving guidance to local officials is not a violation of the law or an abuse of discretion subject to a section 5.06 complaint.

## BACKGROUND

The five complaints include voluminous allegations about the activities of the various municipal respondents. Most of those allegations do not involve the Administrator, so they will not be detailed here. The material allegations<sup>2</sup> about the Administrator's actions are as follows:

Meagan Wolfe is the Administrator of the Wisconsin Elections Commission. (Carlstedt Compl. ¶ 6; Prujansky Compl. ¶ 6; Thomas Compl. ¶ 7; Werner Compl. ¶ 6; Liu Compl. ¶ 6.)

On March 31, 2021, the Administrator gave hearing testimony before the General Assembly's Campaigns and Elections Committee, a committee of the Wisconsin Legislature. In that testimony and in other unspecified ways, the Administrator allegedly has taken an incorrect legal position supporting the legality of (1) Wisconsin cities entering into grant agreements that imposed conditions on the way those cities conducted a federal election without approval by Congress, the Wisconsin Legislature, or the Commission; and (2) municipal use of private consultants in conducting a federal election.

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<sup>2</sup> The allegations are drawn from the five complaints. Only *factual* allegations, however, are accepted as true for purposes of a motion to dismiss. See *Peterson v. Volkswagen of Am., Inc.*, 2005 WI 61, ¶ 15, 281 Wis. 2d 39, 697 N.W.2d 61. References to conclusory legal allegations are included in this section only to provide background for understanding the five complaints. Such references are not admissions that the legal assertions include any factual allegations. Relatedly, the Administrator has responded to all the allegations in her verified responses to the complaints filed contemporaneously with this motion to dismiss.

(Carlstedt Compl. ¶¶ 100–101; Prujansky Compl. ¶¶ 65–66; Thomas Compl. ¶¶ 79–80; Werner Compl. ¶¶ 84–85; Liu Compl. ¶¶ 95–96.)

The Administrator’s actions, in combination with those of the municipal respondents, allegedly diverted the authority to control the conduct of a federal election from state and local officials to unauthorized municipal officials and non-governmental actors. (Carlstedt Compl. at 3; Prujansky Compl. at 4; Thomas Compl. at 4; Werner Compl. at 4, Liu Compl. at 4.) That diversion of authority allegedly is in violation of state and federal law. (Carlstedt Compl. ¶ 108; Prujansky Compl. ¶ 73; Thomas Compl. ¶ 87; Werner Compl. ¶ 92, Liu Compl. ¶ 103.)

## ARGUMENT

**All of the claims against the Administrator in the five complaints should be dismissed for failure to state a claim under Wis. Stat. § 5.06.**

### **I. The legal standard for a Wis. Stat. § 5.06 complaint.**

Under Wis. Stat. § 5.06, a Wisconsin “elector of a jurisdiction or district served by an election official” may file a verified complaint with the Commission when the elector “believes that a decision or action of the official or the failure of the official to act with respect to any matter concerning nominations, qualifications of candidates, voting qualifications, including residence, ward division and numbering, recall, ballot preparation, election administration or conduct of elections is contrary to law, or the official has

abused the discretion vested in him or her by law with respect to any such matter.” Wis. Stat. § 5.06(1).

“The complaint shall set forth such facts as are within the knowledge of the complainant to show *probable cause* to believe that a violation of law or abuse of discretion has occurred or will occur.” Wis. Stat. § 5.06(1). The Commission’s administrative rules define “probable cause” as follows:

“Probable cause” means the facts and reasonable inferences that together are sufficient to justify a reasonable, prudent person, acting with caution, to believe that the matter asserted is probably true.

Wis. Admin. Code EL § 20.02(4).

Under Wisconsin’s rules of civil procedure, “Wisconsin Stat. § 802.02(1) sets the requirements for a complaint if it is to withstand a motion to dismiss for failure to state a claim.” *Data Key Partners v. Permira Advisers, LLC*, 2014 WI 86, ¶ 20, 356 Wis. 2d 665, 849 N.W.2d 693. That statute requires that a pleading “shall contain,” among other things, “[a] short and plain statement of the claim, identifying the transaction or occurrence or series of transactions or occurrences out of which the claim arises and showing that the pleader is entitled to relief.” Wis. Stat. § 802.02(1)(a).

Although the rules of civil procedure are not automatically applicable in administrative proceedings, the standard for stating a claim for relief should be applied here. The applicable legal standard under Wis. Stat. § 5.06 requires

the Commission to determine whether acts or omissions alleged in a complaint are violations of the law or an abuse of discretion, and any such determination by the Commission is subject to judicial review under Wis. Stat. § 5.06(8). It follows that, in making its determinations, the Commission must apply the same standards of legality that would apply in a court proceeding, which include the standards for stating a claim for relief under Wis. Stat. § 802.02(1).

“[T]o satisfy Wis. Stat. § 802.02(1)(a), a complaint must plead facts, which if true, would entitle the plaintiff to relief.” *Data Key Partners*, 356 Wis. 2d 665, ¶ 21. “[T]he sufficiency of a complaint depends on substantive law that underlies the claim made because it is the substantive law that drives what facts must be pled.” *Id.* ¶ 31. To withstand a motion to dismiss, “[p]laintiffs must allege facts that plausibly suggest they are entitled to relief.” *Id.* In determining the sufficiency of a complaint, a court will “assume the facts set forth in the complaint are true and consider only the facts set forth therein.” *Peterson*, 281 Wis. 2d 39, ¶ 15. “Bare legal conclusions set out in a complaint provide no assistance in warding off a motion to dismiss.” *Data Key Partners*, 356 Wis. 2d 665, ¶ 21.



**II. The Administrator's legislative hearing testimony cannot be deemed a violation of law or an abuse of discretion that could support a Wis. Stat. § 5.06 complaint.**

As an initial matter, the Administrator's act of testifying before the Legislature and the content of her testimony cannot provide the basis of a Wis. Stat. § 5.06 complaint against her.

Under Wisconsin law, the mere act of testifying before a legislative committee cannot be unlawful. That is because the Legislature has the constitutional power to compel witness testimony. *See* Wis. Const. art. 1, sec. 1 (Legislative power); *In re Falvey*, 7 Wis. 630 (1859); Wis. Stat. § 13.35(1). In support of that constitutional power, the Legislature has further provided by statute that “no testimony so given nor any paper, document or record produced by any such person before either house of the legislature or any such committee shall be competent testimony . . . in any court.” Wis. Stat. § 13.35(1). As previously noted, the Commission's actions under Wis. Stat. § 5.06 must apply the same standards of legality that would apply in a court proceeding, and they are subject to judicial review in the courts. Therefore, since a court could not consider the substance of the Administrator's legislative testimony as the basis of finding a legal violation, neither can the Commission.

Accordingly, neither the fact that the Administrator gave legislative testimony nor the content of that testimony can be used against the Administrator here. Even if one assumes, for purposes of the present motion,

that her legislative testimony supported the legality of the challenged actions by the municipal respondents, and that such support was legally incorrect, as the complainants contend, that testimony still would not be a violation of state law or an abuse of discretion for purposes of Wis. Stat. § 5.06.<sup>3</sup>

**III. The complainants' allegations about unspecified communications by the Administrator to any of the municipal respondents fail to state a claim under Wis. Stat. § 5.06.**

With the Administrator's legislative testimony off the table, the complainants are left with vague allegations that the Administrator endorsed allegedly unlawful actions by the municipal respondents. Those allegations fail to state a claim against the Administrator for two related reasons. First, the complainants have presented only conclusory legal allegations that are categorically insufficient to state a plausible claim for relief. Second, even if those conclusory allegations are construed as attempts to factually allege that

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<sup>3</sup> Although the factual accuracy of the complainants' allegations is not at issue in the present motion to dismiss, the Administrator reiterates that she is not conceding that her legislative testimony actually did support the legality of the actions of the municipal respondents. *See Testimony of Meagan Wolfe to the Assembly Committee on Campaigns and Elections*, March 31, 2021, <https://elections.wi.gov/sites/elections.wi.gov/files/2021-04/Testimony%20of%20Meagan%20Wolfe%20for%20March%2031%202021%20Assy%20Elections%20Committee%20Hearing.pdf>, accessed June 12, 2021 ("I cannot offer my opinion or speculation on actions of individual municipalities. . . . It would be outside of my statutory or delegated authority to determine if a municipality has acted lawfully."). Moreover, the Administrator's legislative testimony on March 31, 2021, cannot possibly have contributed to any illegality in the conduct of the 2020 Presidential election, which had already taken place more than three months earlier.

the Administrator gave legally incorrect guidance, the allegations still plainly fail to meet the probable cause standard under Wis. Stat. § 5.06(1), both because they supply no specificity about the content of any guidance purportedly provided, and because the Administrator merely taking a legal position or giving guidance to local officials is not a violation of the law or an abuse of discretion subject to a section 5.06 complaint.

Accordingly, all claims against the Administrator in the five complaints should be dismissed as a matter of law, without the Commission needing to address the merits of those claims.

**A. The complainants have supplied only conclusory legal allegations that are categorically insufficient to state a plausible claim for relief against the Administrator.**

Some *factual* allegations are required in a Wis. Stat. § 5.06 complaint. Indeed, the statute expressly provides that a complaint must “set forth such *facts* as are within the knowledge of the complainant to show probable cause to believe that a violation of law or abuse of discretion has occurred or will occur.” Wis. Stat. § 5.06(1). *See also* Wis. Admin. Code EL § 20.02(4) (defining “probable cause” to include “facts”).

Here, the complainants make only conclusory legal allegations, not factual ones. They allege that the Administrator has taken an incorrect legal position supporting the legality of (1) Wisconsin cities entering into grant

agreements that imposed conditions on the way those cities conducted a federal election without approval by Congress, the Wisconsin Legislature, or the Commission; and (2) municipal use of private consultants in conducting a federal election. (Carlstedt Compl. ¶¶ 100–101; Prujansky Compl. ¶¶ 65–66; Thomas Compl. ¶¶ 79–80; Werner Compl. ¶¶ 84–85; Liu Compl. ¶¶ 95–96.) They also allege that, by taking such a position, the Administrator contributed to an unlawful diversion of the authority to control the conduct of a federal election from state and local officials to unauthorized municipal officials and non-governmental actors. (Carlstedt Compl. at 3; Prujansky Compl. at 4; Thomas Compl. at 4; Werner Compl. at 4.) That diversion of authority is alleged to be in violation of state and federal law. (Carlstedt Compl. ¶ 108; Prujansky Compl. ¶ 73; Thomas Compl. ¶ 87.)

These paragraphs in the complaints are nothing more than bare conclusory legal allegations of unspecified state election law violations, which the Commission does not accept as true and must ignore in deciding a motion to dismiss. *Data Key Partners*, 356 Wis. 2d 665, ¶ 21. As the supreme court has made clear, “Bare legal conclusions set out in a complaint provide no assistance in warding off a motion to dismiss.” *Id.*

In short, because the complaints only contain conclusory legal allegations, they do not plausibly show that the Administrator (1) acted or failed to act with respect to a matter concerning election administration or the

conduct of elections, or (2) abused her discretion with respect to any such matter. *See* Wis. Stat. § 5.06(1). For this reason, the complaints against her must be dismissed.

**B. Even if the complainants’ conclusory allegations are construed as factual, they still fail to meet the probable cause standard under Wis. Stat. § 5.06(1).**

Even if the complainants’ conclusory legal assertions are generously interpreted as attempts to factually allege that the Administrator gave legally incorrect guidance to the municipal respondents, those allegations still fail to set forth facts sufficient to show probable cause that a violation of state election law<sup>4</sup> or an abuse of discretion has occurred. *See* Wis. Stat. § 5.06(1).

First, the allegations are not sufficiently specific to state a claim. Some factual specificity is required in a Wis. Stat. § 5.06 complaint. Such a complaint must “set forth such facts as are within the knowledge of the complainant *to show probable cause* to believe that a violation of law or abuse of discretion has occurred or will occur.” Wis. Stat. § 5.06(1). Probable cause is shown if the facts alleged and reasonable inferences from them are sufficient to justify a reasonable, prudent person, acting with caution, to find a violation of law or

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<sup>4</sup> Because the complainants’ claims that the Administrator violated the Elections and Electors Clauses of the United States Constitution are based on her alleged violation of state election law, those federal claims fail because the state claims fail.

abuse of discretion. *See* Wis. Admin. Code EL § 20.02(4) (defining “probable cause”).

Here, the complainants have not identified any specific statements or actions by the Administrator that supported or endorsed the legality of any actions by municipal officials related to municipal acceptance or use of private grant funds. The complainants likewise have not identified any specific statements or actions by the Administrator that supported or endorsed the legality of any use that municipal officials made of outside consultants in conducting the 2020 presidential election. No reasonable, prudent person, acting with caution, could find, on the basis of such vague allegations, that the Administrator violated state election laws or abused her discretion.

Second, the Administrator merely taking a legal position or giving guidance to local officials is not a violation of the law or an abuse of discretion subject to a Wis. Stat. § 5.06 complaint. Wisconsin statutes permit the Commission—and, in turn, the Administrator, *see* Wis. Stat. § 5.06(3d)—to provide guidance about election administration to local election officials and to the public. *See, e.g.*, Wis. Stat. § 5.05 (5t), (6a). Thus, the Administrator merely providing guidance by taking a legal position and communicating it to municipal officials—which the complainants here have not even specifically alleged—is not action contrary to the law or an abuse of discretion in a matter relating to election administration or the conduct of elections. Wis. Stat. § 5.06.

Even if the Administrator were to give legally incorrect guidance, as the complainants here have alleged, the Administrator would still be performing a statutorily authorized function and there would be no violation of the law. If a local official subsequently *implemented* such incorrect guidance, then that official's action might be "contrary to law" within the meaning of Wis. Stat. § 5.06(1), and a complaint could be filed against that official. But merely interpreting election laws and giving guidance to election officials does not provide a basis for a Wis. Stat. § 5.06 complaint against the Administrator.

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The five verified complaints are complete failures in notice pleading as to the Administrator. Their factual allegations, even assuming them to be true, do not plead a plausible claim that the Administrator took action (or failed to take action) contrary to the law in a matter related to election administration or conduct of elections, or that she abused her discretion with respect to any such matter. *See Data Key Partners*, 356 Wis. 2d 665, ¶¶ 22, 37. The complainants thus are not entitled to relief against the Administrator under Wis. Stat. § 5.06(1) and all claims against her should be dismissed.

## CONCLUSION

Respondent Wolfe respectfully asks that the Commission dismiss the five complaints against her for failure to state a claim upon which relief can be granted.

Dated this 15th day of June, 2021.

SIGNING AS TO ALL LEGAL ARGUMENT:

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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 15<sup>th</sup> day of June 2021.



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

