

**STATE OF WISCONSIN
BEFORE THE ELECTIONS COMMISSION**

Yiping Liu, Kathleen Johnson, Susan N. Timmerman,
Mary Baldwin, Bonnie Held

Complainants,

Case No. EL 21-33

v.

MEAGAN WOLFE, in her capacity as Administrator
of the Wisconsin Elections Commission, SATYA
RHODES-CONWAY, in her capacity as Mayor of the
City of Madison, and MARIBETH WITZEL-BEHL,
in her capacity as City Clerk of the City of Madison,

Respondents.

SUR-REPLY OF RESPONDENTS RHODES-CONWAY AND WITZEL-BEHL

Respondents Satya Rhodes-Conway in her capacity as Mayor of the City of Madison, and Maribeth Witzel-Behl, in her capacity of City Clerk of the City of Madison (collectively, “Respondents”), by and through attorneys Michael Haas and Steven Brist, hereby submit the following sur-reply to the Complaint filed with the Commission in the above-referenced matter. The Respondents restate and reallege all of the factual statements and legal arguments previously filed in support of their position as though fully set forth herein.

- I. The Complainants Have *Still* Failed to Show that the Respondents’ Actions Violated State or Federal Law.

The claim that Wisconsin municipalities are prohibited from accepting private funds to assist in the administration of elections has been rejected by the Eastern District of Wisconsin federal court in the case of *Wisconsin Voters Alliance, et al. v. City of Racine, et al.* No. 20-C-1487, 2020 WL 6129510 (E.D. Wis. Oct. 14, 2020); *Wisconsin Voters All. v. City of Racine*, No. 20-C-1487, 2021 WL 179166 (E.D. Wis. Jan. 19, 2021). *See*, Exhibit A to the City’s Answer.

The Complainants ask the Commission to disregard the federal Court's ruling *without providing any sound basis in fact or law* which would justify the Commission in doing so. The irony and inconsistency of their position is all the more compelling given the fact that Complainants' counsel litigated the federal case and chose to bring that case in the forum counsel now urges the Commission to disregard. Notably, the federal court did *not* find that the use of the CTCL grant funds, on the facts presented, violated *federal or state law*. The court opined it was a matter for the Legislature to address. *Wisconsin Voters' Alliance at 5-7.*

Though this is a federal lawsuit seeking relief in a federal court, Plaintiffs have offered only a political argument for prohibiting municipalities from accepting money from private entities to assist in the funding of elections for public offices. They do not challenge any specific expenditure of the money; only its source. They make no argument that the municipalities that received the funds used them in an unlawful way to favor partisan manner. Their brief is bereft of any legal argument that would support the kind of relief they seek.

Wisconsin Voters' Alliance at 6-7.

The WEC needs to look no further than this federal court decision which was the result of an action brought by the Complainants' counsel. Especially given his personal involvement, if counsel attempted to bring this argument back to court in an appeal of WEC's dismissal of this Complaint, it clearly would be a frivolous claim, likely subjecting counsel to sanctions.

Indeed, the almost complete lack of credible factual allegations in this Complaint compels a conclusion that, had the Complainants' allegations been subjected to the usual, rigorous process of evaluation under the Commission's procedures for a determination of probable cause, it would likely not have survived such an analysis. *See*, Section I B of Respondents' Answer at p.13. Volumes of unsubstantiated factual allegations and lengthy specious arguments do not make the Complainants' case any more worthy or valid. Nor does their continued pattern of trying to lump all of the larger five cities together in order to avoid articulating specific illegal actions by the City of Madison Respondents. Respondents respectfully submit that rather than requiring an Answer from Respondents, the adjudicators, standing in Administrator Wolfe's position, should have conducted an initial determination

as required by Wis. Admin. Code section EL 20.04(1) and sent the Complaint back to Complainants for being untimely and lacking probable cause.

Likewise, the Commission cannot ignore the federal court's rulings and create a prohibition on municipalities using private grant funds when such a provision appears nowhere in state law. As noted in the City's original Answer, the Wisconsin Legislature is completely capable of enacting laws through its own procedures to make such grant funding illegal in the future should there be any public policy arguments against such funding that prevail. Furthermore, the Commission itself has already opined on the acceptance and use of private grant funds. Commission Administrator Meagan Wolfe testified to the Wisconsin Assembly Committee on Campaigns and Elections about complaints to the Commission that raised those specific issues, explaining, "[t]he Commission dismissed the complaint, noting that there is nothing in Wisconsin elections statutes which prohibits, proscribes, or even discusses grant funding." (*Informational Hr'g on Green Bay Election Before the Assemb. Comm. on Campaigns and Elections*, 2021-22 Sess. (March 31, 2021) (testimony of Meagan Wolfe, Administrator, Wisconsin Elections Commission), available at <https://wiseye.org/2021/03/31/assembly-committee-on-campaigns-and-elections-14/> (4:40-5:15).)

Complainants' argument that the acceptance of the grant monies is prohibited stands the policy underlying Wisconsin municipal law and election law on its head. Respondents want the Commission to adopt a construction of the state law which would hold that unless expressly authorized, the activities are prohibited. In fact, the language of the state election law governing a municipal clerk's authority clearly gives the clerks broad discretion. WIS. STAT. § 7.15. See, City of Madison Answer at Section II.

The Legislature has assigned the municipal clerks significant duties, authorities and discretion under Wisconsin law. Among their many statutory responsibilities, clerks are directed to "[e]quip polling places," "[p]rovide for the purchase and maintenance of election equipment," "[p]repare" and "distribute

ballots and provide other supplies for conducting all elections,” “[p]repare official absentee ballots,” “[p]repare the necessary notices and publications in connection with the conduct of elections or registrations,” “[t]rain election officials” and “advise them of changes in laws, rules and procedures,” and educate voters. WIS. STAT. §§ 7.15(1), (9), (11). See, City of Madison Answer at pp 17-18. This statutory scheme also provides a very broad grant of discretionary authority at Sec. 7.15. The undisputed facts in this record demonstrate that the City Clerk’s office took appropriate and necessary actions within the scope of its authority to fulfill its responsibilities in administration of the November 2020 election.

Similarly, the home rule provisions of municipal law clearly anticipate and authorize municipal governments to manage their finances independently, including the authority to apply for, accept and administer grant funds from a variety of sources. See, Section III B of this Reply Brief, *infra*.

II. The Complainants Have Failed to Show that the Reasons Given for Accepting the Grants Were A Pretext for any Illegal Activity.

In Complainants’ Brief at page 45, they devote two paragraphs to their argument that the City’s assertions that it used the grant monies for legal purposes in response to the pandemic is a “pretext” for updating voter registration addresses. Notably, this assertion is based on an email from the City of Racine clerk and does not allege any actions by the Madison Respondents. Setting aside for the moment the speciousness of an argument that updating registered voter addresses is somehow an illegal activity of the municipal clerk under state or federal law, the legal purposes to which the grant monies were used in Madison is undisputed on the record.¹

¹ This is just one more example of the “guilt by association” tactic the Complainants’ repeatedly engaged in throughout this proceeding. There is no section containing allegations against actions by the City of Madison and its two Respondents. Alleged violations against Madison are referenced primarily as a part of a list of alleged violations by the five cities, with virtually no particularity involving the City of Madison’s Respondents in this complaint. See, Madison’s Letter Objecting dated August 25, 2021.

The June 14, 2020 Affidavit of Clerk Witzel-Behl, which was filed with the Respondents' Answer has already provided details about how grant fund monies were used. Her Affidavit also described the process by which the acceptance of the grant monies were originally approved by the City of Madison Common Council, and how she supervised the election process in November 2020. The Complainants have produced no verifiable evidence of any kind to refute the sworn testimony of Clerk Witzel-Behl.²

Clerk Witzel-Behl testified that the acceptance of the grant monies was approved by the Madison Common Council at a public meeting and that the City specifically authorized the City staff to execute the Safe Voting Plan as part of the grant's conditions. Affidavit of Witzel-Behl at para 5; Witzel-Behl Exhibit C. The contents of the Safe Voting Plan establish on its face that there was nothing "nefarious" about the purposes to which the grant money was put.³ Nor is there any evidence that any activity was designed to, or in reality operated in any way that fundamentally interferes with the functions of the City of Madison government in conducting a safe election.⁴ See, the Safe Voting Plan at Witzel-Behl Affidavit, Exhibit C.

Respondent Witzel-Behl's undisputed testimony further establishes that the vast majority of the activities funded in part by grant monies in November 2020 are activities that the City employed prior to the November 2020 election, a time in which no private grant monies were used. For example, the use of curbside voting, early in-person voting, drop boxes for absentee ballots, and paying rent for polling places in private facilities are all examples of activities funded in part with grant money which had been

² The June 14 2021 Affidavit of Witzel-Behl is referred to herein as "Affidavit of Witzel-Behl". References to the additional Affidavit filed with this Sur-Reply are identified as "Sur-Reply Affidavit of Witzel-Behl".

³ Complainants' Brief at p. 49

⁴ Id.

employed in elections where no grant funding was available. (Sur-Reply Affidavit of Witzel-Behl at paras 3, 6)

The following activities required additional funding which was clearly traceable to the existence of the pandemic: funding for plexiglass shields, hand sanitizer and disinfectant sprays, and extra hazard pay for poll workers. (Sur-Reply Affidavit of Witzel-Behl at para 4) Given this undisputed record as to the use of funds, Complainants' argument that only certain demographics of the voting populations were benefitted by the use of the grant money is simply not credible. (Affidavit of Witzel-Behl at paras 11-12)

It should not go unnoticed or unremarked upon that the entire basis underlying the Complainants' legal arguments is a thinly disguised "dog whistle." Complainants' brief is rife with challenges to the activities of the City Clerk based upon an assumption that the goal of helping to turn out voters *in communities of color* and *historically disenfranchised residents* is a violation of state or federal law. In favor of this argument, they cite the use of such educational efforts as advertising on Spanish language television or radio stations, ignoring the fact that advertising was also conducted on English language media outlets. (Complainants' Brief at 74).

This discloses an underlying and false assumption on Complainants' part that encouraging *all eligible people* to vote is somehow fundamentally at odds with the democratic principles underlying elections in Wisconsin and the job of municipal clerks. It also ignores the fact that the City of Madison has no control over how the other municipal clerks chose to use the grant funds available to them in November 2020 to engage in voter education and to promote voter turnout among their community members. Those communities were able to use grant monies to motivate and turn out eligible electors in their own communities if they chose to do so. Complainants have filed no admissible evidence to support any inferences or conclusions to the contrary. Conducting a successful election involves encouraging eligible electors to vote, which requires resources for communications and public information. There is

simply no law nor Constitutional provision that prohibits or discourages this activity, and federal, state and local election officials routinely engage in those efforts. Suggesting, as the Complainants do, that local clerks encouraging voter turnout is an illegal activity is simply false, disingenuous and cynical, and that assertion should be rejected by the Commission in the strongest possible terms.

III. None of the References to the City of Madison Support a Finding of Illegality.

The City of Madison Respondents have previously noted that there are very few allegations in Complainants' filings to support their allegations against these Respondents. In all, the City of Madison is mentioned 57 times in the Complainants' Brief, as opposed to literally hundreds of references to the other Cities' alleged activities or to alleged collective activities by the "Wisconsin Five". In fact, even though the Complainants were given a second chance to revise their brief to make it fact specific as to each of the individual Respondents, their brief against the City of Madison Respondents still contains references to actions by employees of other cities.

One example of this tactic occurs at page 34 of the Complainants' brief. They cite an email exchange between Celestine Jeffreys and CTCL as an example of "targeting of communications" to disadvantaged populations. Celestine Jeffreys is not further identified in this reference in Complainant's brief, creating a presumption that she was a Madison employee. However, Ms. Jeffreys is an employee of the City of Green Bay, **not of Madison**. To persist in including allegations irrelevant to the Madison Respondents at this stage demonstrates either laziness or deliberate attempts to mislead the Commission. It also makes it very difficult for these answering Respondents to provide an organized and targeted sur-reply.

Many of the 57 references to Madison in Complainants' brief are merely in passing or as part of citations. In reality, only a handful of allegations are devoted to complaints about how Madison used its grant funds. A critical examination of these allegations discloses that *none* of them support a finding that either Respondent violated state or federal law.

A. Complainants' Specific References to Madison Demonstrate Grant Funds Were Used in a Neutral, non-Discriminatory Fashion.

A compelling number of the activities relied upon by complainants as evidence of the “nefarious” actions in the conduct of Madison’s elections reveals that the activities were neutral and consistent with public policy, to wit:

- Madison used some of the grant funds on “ostensibly nonpartisan voter education efforts” (Complainants’ Brief at 8). *Madison’s Response*: A total of approximately \$88,866.67 of a \$1.271 million grant was used for such education efforts. (Complainants’ Appendix at 880). Fifteen other communities also used grant monies for these purposes. (Wisconsin Law and Liberty Policy Paper, Complainants’ Appendix at 880). There is no evidence presented that the Madison voter education efforts were partisan.
- Madison “used private money to hold curbside ‘get your voter i.d. on file’ events for Madison voters. The city “used private money to purchase large flags, mobile hot spots and tablets...so Madison voters could complete their voter registration and absentee requests all at once rather than wait for staff to follow up with paper forms.” (Complainants’ Brief at pp. 16-17) *Madison’s Response*: None of these activities were targeted only to certain demographic or geographic areas. They had the potential to equally benefit all eligible voters and also served to make the absentee voting request process more timely and efficient for the clerk’s staff. It reduced the turnaround time in processing absentee voter requests and was designed to minimize the risk that mailed absentee ballots would be received too late to be counted as part of the November 2020 election. Sur Reply Affidavit of Witzel-Behl at para 5).
- “In Madison the City intended to use the private money to fund one secure drop box for every 15,000 voters, 12 boxes total”. (Complainants’ Brief at p.18) *Madison’s Response*: There is nothing illegal about using a drop box as a means of collecting ballots in secure

locations. Drop boxes had been used in a more limited fashion in Madison in the April 2020 election. They were expanded in November of 2020 as a means of enabling eligible voters to vote without engaging in potentially dangerous personal contact during the pandemic. Special care was taken to place them in secure places, such as fire stations which had 24 hour staffing. (Sur-Reply Affidavit of Witzel-Behl at para 6.).

- “In Madison the City intended to use private funds for 18 in person absentee voting locations for the early voting time periods before the primary and general 2020 elections. Funds were used to purchase tents to protect the equipment, and the secure voting bags from getting wet and flags to identify the curbside locations for voters.” (Complainants’ Brief at 19) *Madison’s Response*: Respondents fail to see how keeping voting equipment and ballots safe and dry could be deemed an illegal function of the City Clerk’s administration of elections. Nor is purchasing flags or markers to make it easier for voters to identify curbside locations and direct traffic flow. There is no proof provided (nor could there be) that only votes in communities of color were kept dry nor that flags were only used in allegedly “targeted” demographic neighborhoods.

B. The Complainants Cite No Evidence of Undue Influence by CTCL.

Another category of allegations made by Complainants could be described as allegations that the acceptance of CTCL grant monies somehow subjected the Madison Respondents to undue influence in the conduct of the Nov. 2020 election. Complainants refer to this as the City becoming “beholden” to CTCL or somehow being made part of a “plan” to skew election results in a particular fashion. (Complainants’ Brief at 23-26; 46). Their alleged factual evidence simply does not support such a conclusion. In fact, most of the conduct complained of is nothing more than the normal process which municipalities go through whenever participating in a project funded with grant monies. It is neither unusual nor untoward for local governments to apply for and receive grant funding to assist in their

operations, to fund special projects and/or to relieve the burden on their taxpayers. (Sur-Reply Affidavit of Witzel-Behl at paras 7-10). Municipalities routinely accept grant funds and donations from private organizations and parties and use them to support the facilities, programs and operations of many public agencies such as police departments, libraries and senior centers. It would be absurd and completely ignorant of everyday practice to conclude that public-private partnerships violate individual Constitutional rights of residents when they support and advance public goals and initiatives. *See*, Madison Respondents' Answer discussion of home rule and municipal authority to accept private grant monies in funding elections at pp. 18-19. As evidence of such undue influence the Complainants have offered the following:

- A Racine employee who expressed negative views about Trump invited Madison and the other 4 cities to apply for the CTCL grant which was allegedly part of a “plan”. (Complainants' Brief at 23) *Madison's Response*: an invitation to apply for federal grant funds, regardless of the political views of another city's employee is not evidence of any kind of conspiracy or plan. There is no evidence of any impropriety by either Madison Respondent.
- “Maribeth of Madison” (sic) wrote an email that the \$10,000 in initial planning money under the grant came in before the Madison Common Council had accepted the grant funds. (Complainants' Brief at 26; Appendix at 1024.) *Madison's Response*: This assertion deliberately misrepresents the clear contents of the email. The email chain documents that although the check from CTCL arrived before the City had completed its review and authorization process for the grant, the check was left uncashed in the vault and not negotiated until after the Mayor signed the official proceedings (minutes) of the Common Council meeting approving the grant. (Sur-Reply Affidavit of Witzel-Behl at para.9)
- Madison agreed to the following conditions on the grants: 1) not give the money to any other organization, 2) not reduce city's own appropriations for elections activities, 3) exclusively

used for the public purpose of planning and operationalizing safe and secure election administration in the city, in accordance with the Wisconsin Safe Voting Plan... Also Madison had to keep track of expenditures and report back to CTCL (Complainants' Brief at 29) *Madison's Response:* As noted at the beginning of this section, none of these provisions are out of the ordinary in the context of grant administration, nor are they against the law.

- By email to “Maribeth of Madison”(sic), CTCL offered technical support/assistance and proposed projects that were unrelated to COVID 19 safety. (Complainants' Brief at 33-34) *Madison's Response:* CTCL may have offered such assistance, but other than minimal free design services, no CTCL partner technical assistance was provided to the City of Madison. Furthermore, no grant money was paid to CTCL's partners by the City of Madison. Clerk Witzel-Behl was in no need of technical assistance, given her many years' experience in conducting elections in a large metropolitan area. (Sur-Reply Affidavit of Witzel-Behl at paras. 12-13). Note that these allegations also incorrectly refer to offers of technical assistance as ‘conditions’ and references actions by non-Madison employees.
- As evidence of Madison's being “beholden to CTCL” the Complainants refer to an email exchange between an employee of the Madison City Clerk to “Maribeth” asking about documentation for a requisition for an invoice payment. (Appendix 1026). (Complainants' Brief at 46, Appendix at 1026) *Madison's Response:* This is nothing more than documentation of normal purchasing procedures used by the City. This is clear from the context of the email itself. The city's purchasing procedures require documentation for payment of a requisition order. (Sur-Reply Affidavit of Witzel Behl at para 14).
- In an email exchange dated 9/22/2020 from Madison employee Kratowitz, she asked CTCL for “instruction and permission” on how to spend the money (Complainants' Brief at 47,

Appendix at 1030) *Madison's Response*: It is abundantly clear from context that this was also simple due diligence as part of the normal grant financial operating procedures. Kratowitz was seeking confirmation from CTCL's perspective as to whether monies could be transferred within the grant from one category to another. *See*, the actual text of the email at Complainants' Appendix p. 1030, Sur-Reply Affidavit of Witzel-Behl at paras.10-11)

- Madison reported on its compliance with the grant conditions to CTCL. (Complainants' Brief at 47) *Madison's Response*: This is actually a reference to Green Bay practices and not Madison's. However, there is nothing unusual in a grantor expecting reports throughout grant periods on the uses to which grant funds were put and administration of grant funds. This reporting was no different than due diligence conducted during every grant reporting process. *Id.*).

C. The Complainants Have Failed to Show that the Use of the Grant Money Was Outcome Determinative

The final category of allegations made against Respondents is that the alleged uses of the grant monies somehow skewed the election results in such a fashion as to have improperly affected the outcome of the November 2020 election, This last category consists primarily of conclusory allegations and assertions of Complainants' legal theory rather than any specific verified factual allegations. Examples are noted as follows:

- Madison's privately funded classification leaves out electors who don't live in Madison and leaves out electors in Madison who are not Spanish speaking, who do not listen to hip hop radio stations, who don't read African American focused publications and who do not read online publications run by and for Madison's communities of color. (Complainants' Brief at 74) *Madison's Response*: This allegation completely and conveniently ignores the fact that Madison engages in numerous outreach efforts across all communities of electors, not just

those listed in this allegation, including but not limited to television and bus advertising in English. (Sur-Reply Affidavit of Witzel-Behl Sur-Reply at para 15).

- The City lacks self-reflection to acknowledge the illegality of its actions, prevent from future harm in 2022 and beyond (Complainants' Brief at 55) *Madison's Response*: This section refers generically to "the City" and thus it is unclear if it is intended as an allegation against Madison or another guilt by association tactic. Regardless, it is a legal argument and not a factual allegation that is supported by any verified evidence in the record. In fact, the City regularly debriefs and assesses the performance of its election officials and processes following each election, and even completed an equity analysis of its administration of elections in 2020. There is no reason to engage in "self-reflection" about or to "acknowledge" alleged illegal activity when none of the City's actions were illegal.
- The City by accepting conditional grants and thereby engaging private entities to engage in the election administrative process compromised the core governmental function to affect the fundamental right to vote (Complainants' Brief at 61) *Madison's Response*: This section refers generically to "the City" and thus it is unclear if it is intended as an allegation against Madison or another guilt by association tactic. As noted previously, Respondent Witzel-Behl's testimony is that she did not delegate her election administration responsibilities to any outside party, and that sworn testimony is unrefuted. (Sur-Reply Affidavit of Witzel-Behl at para 13) This is an inflammatory legal argument and not a factual allegation that is supported by any verified evidence in the record.
- The City's acceptance of the grants for election administration purposes violates federal and state law because it is a substantial departure from the state's election law scheme. (Complainants' Brief at 62) *Madison's Response*: This section refers generically to "the City" and thus it is unclear if it is intended as an allegation against Madison or another guilt by

association tactic. Regardless it is a legal argument and not a factual allegation that is supported by any verified evidence in the record. The Complainants point to no federal or state law that has been violated and their Constitutional claims have been soundly and consistently rejected by the courts.

- Complainants here have demonstrated that their right to vote is unjustifiably burdened by the City targeting geographic and demographic groups for increased voting. (Complainants' Brief at 69) *Madison's Response*: The Complainants assert this conclusion without having provided any actual detail as to *how* their individual rights to vote in the November 2020 election were "unjustifiably burdened" by trying to make it easier for any other eligible voter to vote.⁵ An effort to help one eligible voter to vote does not in any way interfere with the rights of a different eligible voter to vote.

In sum, the Complainants may *think* the availability and legal use of CTCL grant funds in November 2020 somehow worked to the unfair advantage of one candidate or another. But they have failed to produce any credible evidence that funds were used primarily for any purpose other than to: 1) implement safety measures for voters and poll workers 2) protect ballot integrity and 3) help those who are least able to access information about how to vote to get that information.

CONCLUSION

When you can't argue facts, argue the law. When you can't argue the law, argue the facts. When you can't argue the facts or the law, pound the table. This old adage aptly describes what is going on in this case. The City of Madison Respondents took actions during a pandemic to assist the eligible voters in the City of Madison to vote as safely in the November 2020 election as possible during very challenging circumstances. They accepted private grant monies from a nonprofit entity and entered

⁵ Only TWO of the FIVE original Complainants against the City of Madison Respondents swore to the facts in the Complainants' final revised 8-19-21 Memorandum against these Respondents. Therefore, evidence must be presented as to how either or both of these two voters' rights were specifically unjustifiably interfered with by the Respondents' efforts to assist all voters in November 2020.

into a contract for those monies, the terms of which were outlined in a Safe Voting Plan approved by the City's Common Council after notice to the public at a public meeting where the Council accepted the grant.

None of the activities in the Safe Voting Plan have been shown to constitute violations of state or federal law, nor have the Complainants provided any actual, verified facts from which a contrary conclusion can be made. *No* verified facts have shown that the Madison City Clerk delegated her authority or her supervision of the election to an outside party. *No* verified facts have shown that any of the activities which were funded by the grant monies had any illegal effect on the outcome of the election. As noted in Madison's initial response, the Complainants even included the Mayor of Madison as a Respondent, who is not an election official subject to the procedures or jurisdiction of Wis. Stat. § 5.06.

The Complainants have failed to show the Commission why it should not follow and be bound by the federal court precedent which already determined that there is no prohibition under state or federal law from accepting the grants. Nor have they showed the Commission why the Commission should usurp the Legislature's prerogative to make public policy and enact sound laws governing our election processes in our state.

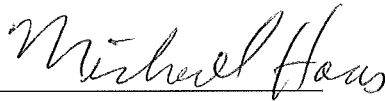
Finally, the Complainants' lack of any allegations specific to the City of Madison Respondents shows exactly how flimsy and frivolous their complaint is against the City of Madison Respondents. The Commission's own processes applicable to the review of complaints for probable cause would have likely resulted in dismissal of the Complaint at its initial stages. Wisconsin Statutes section 5.06(1) requires that a complaint "set forth such facts . . . to show probable cause to believe that a violation of law or abuse of discretion has occurred or will occur." *See also* WIS. ADMIN. CODE § EL 20.03(3). "Information which may establish probable cause includes allegations that set forth which persons are involved; what those persons are alleged to have done; where the activity is believed to have occurred;

when the activity is alleged to have occurred and who are the witnesses to the events.” *Id.* The Complaint does not establish probable cause that a violation of law has occurred, and therefore it should have been returned to Complainants upon initial review.

We respectfully request the Complaint now be dismissed in its entirety. For purposes of creating a clear record for a reviewing court, we also request that the WEC find that the Complaint does not establish probable cause that the Madison Respondents violated the election laws.

Dated this 24th day of September, 2021.

Respectfully submitted,



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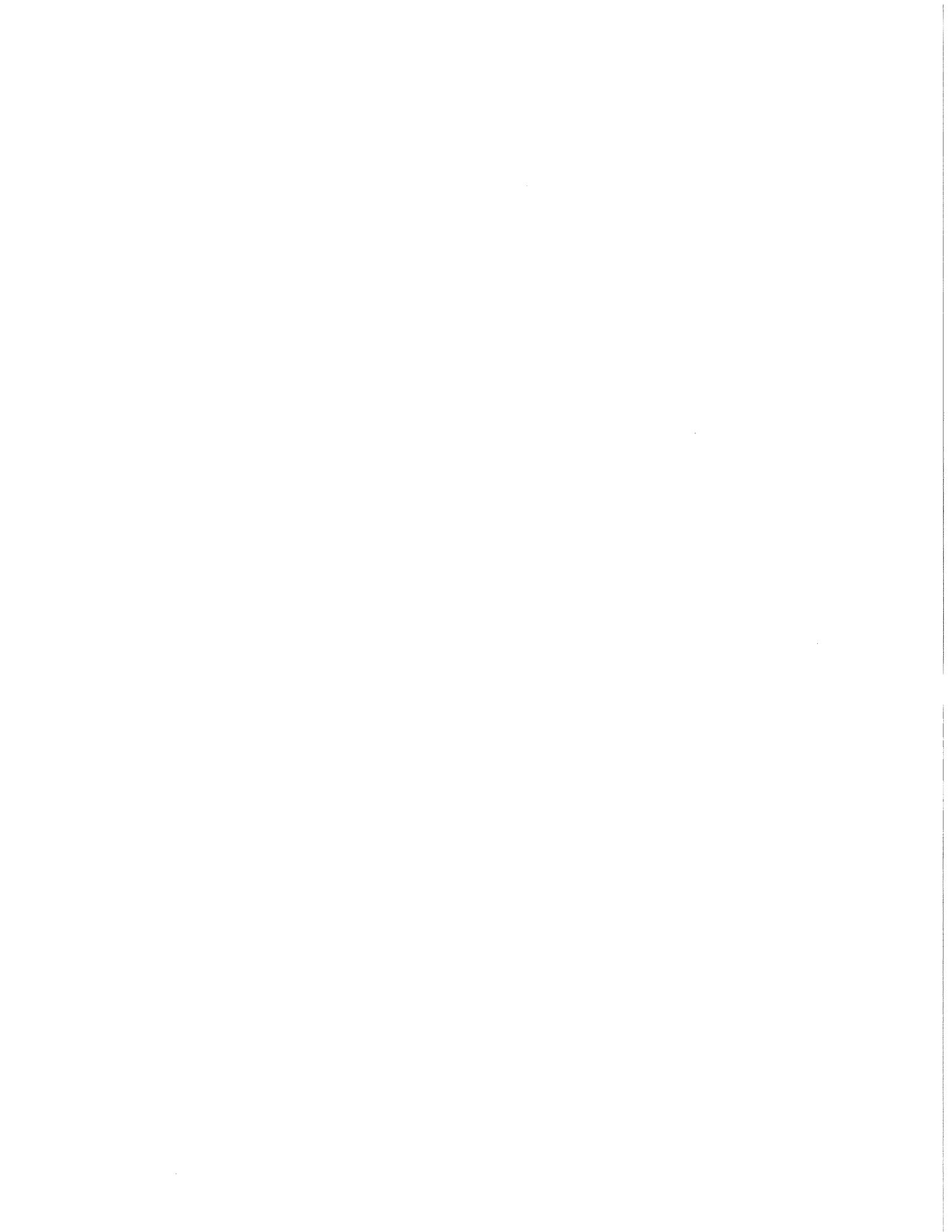
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which no private grant monies were used. For example, the use of curbside voting, early in person voting, and drop boxes for absentee ballots[mlw1] are all examples of activities funded in part with grant money which had been employed by Madison in elections where no grant funding was available.

4. The unique uses to which the grant monies were put in November 2020 are all clearly traceable to the existence of a pandemic: funding for plexiglass shields, hand sanitizer and disinfectant sprays, and extra hazard pay for pollworkers.
5. Complainants have argued that Madison “used private money to purchase large flags, mobile hot spots and tablets...so Madison voters could complete their voter registration and absentee requests all at once rather than wait for staff to follow up with paper forms.” None of these activities were targeted only to certain demographic or geographic areas but were available throughout the City. These measures had the potential to equally benefit all eligible voters and also served to make the absentee voting request process more timely and efficient for the clerk’s staff. It reduced the turn around time in processing absentee voter requests and was designed to minimize the risk that mailed absentee ballots would be received too late to be counted as part of the November 2020 election.
6. Drop boxes were not new in November 2020. They had been used in a more limited fashion in Madison in April 2020. I supervised the expansion in 2020 of drop boxes as a means of enabling eligible voters to vote without engaging in potentially dangerous personal contact during the pandemic. I worked carefully to select secure locations for the drop boxes to ensure good coverage throughout the City, such as near fire stations which were staffed 24 hours per day.
7. In the course of my duties as City Clerk, either I or my designee attend and maintain documentation of the City’s Common Council meetings. I also work closely with the City’s financial administrative staff. As a result I have personal knowledge and familiarity with the City’s participation in grant funding for various projects and activities.
8. Based upon my experience and observations as City Clerk and my contacts with clerks in other municipalities, it is not unusual for local governments to apply for and receive grant funding to assist in their operations, to fund special projects and/or to relieve the burden on their taxpayers
9. I note that the Complainants have pointed to an email authored by me that documented that \$10,000 in initial planning money under the CTCL grant came in before the Madison Common Council had accepted the grant funds. (Complainants’ Appendix at 1024) Although this is true, there was nothing inappropriate about how the funds were handled. As the email clearly documents, although this check from CTCL arrived before the City had completed its review and authorization process for the grant, the check was left uncashed in the vault and not negotiated until after the Mayor signed the

official proceedings (minutes) of the Common Council meeting approving the grant. Had the Common Council not approved the grant, the check would have been promptly returned.

10. None of the provisions of the Grant Agreement, nor any of the reporting requirements imposed on the City by CTCL were in any way out of the ordinary course of business for the proper handling and reporting on the use of grant monies. Based upon my personal observations and experiences, granting agencies routinely ask for progress reports and documentation of how grant funds are used. These responsibilities are not in any measurable way different from a public official's usual obligations to properly account for the use of public funds.
11. Information about the use of the CTCL grant funds, the terms of the Agreement and the Safe Voting Plan were matters of public record. The Grant and the Safe Voting Plan were approved by the Madison Common Council at a properly noticed public meeting.
12. CTCL offered technical assistance to participating local government grantees but using such assistance was **not** a condition of receiving a grant. Other than minimal free design services, no CTCL partner technical assistance was provided to the City of Madison. Furthermore, no grant money was paid to CTCL's partners by the City of Madison.
13. Given my years of experience in administering high volume elections, such as those in Presidential years, I did not feel that I nor any member of our staff was in need of technical assistance from CTCL or any outside source.
14. The Complainants also refer to an email exchange between one of my employees and me in which my employee asks about documentation for a requisition for an invoice payment. (Complainants' Appendix 1026). This email is nothing more than documentation of normal purchasing procedures used by the City. The city's purchasing procedures require documentation for payment of a requisition order.
15. The Complainants have criticized my decisions to engage various media outlets which enabled us to reach voters in the Hispanic and African American communities. Madison engages in numerous voter outreach efforts across *all* communities of electors. Our efforts are not solely limited to communities of color. In November 2020 we advertised not only in media outlets which target a minority audience but also advertised on our English speaking local television and buses running throughout the city. Our goal was to reach as many people as possible to help them make safe voting choices during the dangers presented by the pandemic.

Maibeth Witzel-Behl

Maribeth Witzel-Behl, City Clerk

City of Madison

Subscribed and sworn to before me
this 9th day of ~~June~~, 2021,
September

E.A.C.

Eric A. Christianson
Notary Public, Dane County, WI.
My Commission is/expires 3.27.2022

