



Wisconsin Elections Commission

201 West Washington Avenue | Second Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8005 | elections@wi.gov | elections.wi.gov

October 17, 2024

Bartholomew Williams
2420 Skyline Dr.
West Bend, WI 53090

Sent via email: bartwilliamsforschoolboard@gmail.com

Re: Complaint Filed with Wisconsin Elections Commission
Bartholomew Williams v. Maribeth Witzel-Behl et al. (24-102)

Dear Mr. Williams,

I am in receipt of the complaint filed with the Wisconsin Elections Commission (“the Commission”), received on October 3, 2024, against clerk Witzel-Behl, Representative Fitzgerald, Assembly Speaker Robin Voss, and unnamed additional respondents employed by the City of Madison. The administrative rules governing the Commission’s processing of complaints require that I review the complaint and determine within 10 business days whether the complaint is timely, is sufficient as to form, and states probable cause. Wis. Admin. Code EL § 20.04(1).

Your complaint is insufficient regarding form. Additionally, aspects of your complaint are untimely and fail to make allegations that could lead to a finding of probable cause. Therefore, I am returning the complaint to you without prejudice pursuant to Wis. Stat. § 5.06 and Wis. Admin. Code § EL 20.04(1) and (2).

Issues of Form:

There are two issues regarding the form of the complaint that prevent the Commission from sending notice letters to the respondents. Both issues independently require the Commission to return the complaint to you without prejudice. A third issue regarding form would prevent the Commission from sending a notice letter to all but Clerk Witzel-Behl, who is the only election official named. A fourth issue may prevent the Commission from addressing each claim you have raised due to citing statutes that fall outside of the Commission’s administrative domain or failing to cite any statutes concerning an issue discussed.

First, while it is clear from the complaint form itself that you intend to file a Wis. Stat. § 5.06 complaint and seek an order to correct various alleged violations, the complaint in several places cites statutes in Chapter 12 that are criminal in nature and that the Commission could not resolve within a § 5.06 complaint. The Commission makes probable cause determinations regarding criminal matters within Wis. Stat. § 5.05 complaints. A § 5.05 complaint may be made against any individual, including an election official, and must allege a criminal violation of chapters 5 to 10 or chapter 12. A § 5.05 complaint will almost always allege a violation of Ch 12. If the Commission finds probable cause to believe a crime was committed, a § 5.05 complaint may be referred to a District Attorney for prosecution. For example, on page 10, you allege that Respondent Witzel-Behl and other City of Madison Employees violated Wis. Stat. § 12.13(2), which is an issue the Commission could only address within a § 5.05

Wisconsin Elections Commissioners

Ann S. Jacobs, chair | Marge Bostelmann | Don M. Millis | Carrie Riepl | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

complaint. In your prayer for relief in section 11.f, you also ask the Commission to refer the respondents for prosecution.

The range of outcomes for each complaint type, namely an order against an election official for § 5.06 complaints and a referral to a district attorney for § 5.05 complaints, and the process that the Commission must follow regarding each type differ, and the Commission is not able to follow both processes within one complaint. Please see our complaint page (here: <https://elections.wi.gov/filing-sworn-complaint>) for more information about each type. If you wish to proceed under both statutory processes, you will need to break the complaint into two parts and submit one complaint under § 5.05 and another under § 5.06.

The second issue regarding form is that a § 5.06 complaint may only be filed by an “elector of a jurisdiction or district served by an election official [who] believes that a decision or action of the official” is contrary to law or an abuse of discretion. Wis. Stat. § 5.06(1). An election official means someone with a specific duty within chapters 5 to 10 and 12. In this case, you have named one election official, Clerk Witzel-Behl, however, you are not an elector of her district, and thus you are not able to file a Wis. Stat. § 5.06 complaint against her. Given your address, your municipal clerk is Jilline Dobratz of the City of West Bend. Were you to become a resident of the City of Madison, you would then be served by Clerk Witzel-Behl and could file a § 5.06 complaint against her. Alternately, an individual who is currently a resident of Madison could file a § 5.06 complaint against her.

The third issue is closely related to the second, though it would not on its own prevent the Commission from moving forward with the complaint. Of the respondents named in your complaint, only Clerk-Witzel Behl is an election official. As cited above, a § 5.06 complaint can only be filed against an election official. US Representative Scott Fitzgerald and Wisconsin Assembly Speaker Robin Vos are elected officials, but they are not election officials, and nothing in this complaint attempts to show that they should qualify as election officials. A § 5.05 complaint could potentially be filed against such individuals, but a § 5.06 complaint cannot be because they are not assigned any of the election-related statutory duties alleged to have been violated in this complaint. Finally, your complaint names “any/all lawbreaking Madison employees.” The Commission cannot provide notice to individuals who have not been named. If you wish to file a § 5.06 complaint against City of Madison employees, you will need to specifically name them, and they will need to be election officials. For more information about who qualifies as an “election official” please see a recent Attorney General opinion that was released this summer: <https://www.doj.state.wi.us/sites/default/files/OAG-01-24.pdf>.

The fourth issue regarding form that also would not on its own prevent the Commission from providing a notice letter for your complaint is that while your complaint alleges violations of elections statutes which could be considered by the Commission, it also raises issues that the Commission may not be able to address because they fall outside of its administrative domain or fails to cite any statutes concerning a specific issue. The Commission administers chapters 5 to 10 and 12 of the Wisconsin Statutes, and your complaint cites statutes that fall outside of these chapters and that may not relate to actions involving elections or elections statutes. If you refile your complaint, please ensure that all issues presented for the Commission’s determination involve elections or an election statute and cite the specific statute that you allege governs the specific issue you discuss.

Issues of Probable Cause:

Due to the issues of form discussed above, it is not possible to fully evaluate whether each claim makes allegations that could lead to a finding of probable cause. Some of your claims may be resubmitted in a Wis. Stat. § 5.05 complaint which would not receive a prior review for probable cause under Wis. Admin. Code EL 20, and some may pertain to specific individuals who are not named, further complicating a probable cause review. Additionally, some claims which do not cite specific statutes may be resubmitted with statutory citations that could be evaluated for probable cause.

However, there is at least one issue raised that would fail to meet the probable cause requirement in any case. On July 5, 2024, the Wisconsin Supreme Court released its decision in *Priorities USA v. WEC*, 2024 WI 32. See also the Commission’s guidance released following the decision here: <https://elections.wi.gov/memo/litigation->

[update-priorities-usa-v-wec](#). That decision overturned a prior ruling and held that all municipal clerks may choose to use secure absentee ballot drop boxes in their jurisdiction. To the extent you ask the Commission to issue an order finding that drop boxes may not be used regarding absentee ballots, that issue cannot lead to a determination of probable cause because the Commission is bound by the decision of the Supreme Court of Wisconsin.

Issues of Timeliness:

In its closure letter for complaint EL 21–40, *Stone v. Barrett et al.*, the Commission, in a 5–1 vote, “order[ed] that all future Wis. Stats. §§ 5.05 and 5.06 complaints relating to the acceptance and use of 2020 CTCL election grant funds shall be considered untimely, barred by laches and issue preclusion, or otherwise nonjusticiable under those statutes.” This closure letter is available on our website for your review at this link: [Close%20Ltr_Stone%20v.%20Barrett%20et%20al_Complainant.pdf \(wi.gov\)](#). Your complaint does not center on CTCL (the Center for Tech and Civic Life) grants, but to the extent you raise those concerns, they are untimely and will not be considered if you refile your complaint.

Conclusion:

I am returning the complaint, without prejudice, pursuant to Wis. Admin. Code § EL 20.04(2), after specifying that it is not sufficient as to form and, in part, does not state probable cause and is not timely.

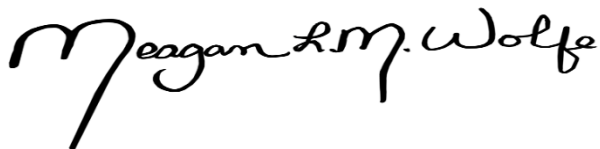
Regarding form, should you choose to refile this complaint, you must submit issues you wish the Commission to address in a § 5.06 complaint and those you wish it to address in a § 5.05 complaint separately, and clearly establish which issues pertain to which process. You must also ensure that all respondents in a § 5.06 complaint are named election officials in your own jurisdiction. You must also ensure that each issue you intend the Commission to address is supported by a citation to a statute, or related rule, within Chapters 5 to 10 and 12 of the Wisconsin Statutes, or clearly relates to a process governed by those chapters. Discussions that do not cite any election provisions may not be addressed by the Commission in any order issued.

Regarding probable cause and timeliness, the Commission cannot issue a decision that contradicts a Supreme Court decision, and issues that have been dismissed as untimely will not receive a new decision from the Commission. Please ensure that all of the issues you raise are timely and allege issues supported by current law.

Accordingly, the Commission now considers this complaint to be disposed of pursuant to Wis. Stat. § 5.06(2).

Please feel free to contact our office if you have any additional questions regarding this complaint.

Sincerely,

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

Meagan Wolfe
Administrator

WISCONSIN ELECTIONS COMMISSION

Cc: Commission Members