

WISCONSIN ELECTIONS COMMISSION

DAVID A. VANDERLEEST

Complainant,

v.

CELESTINE JEFFREYS,
City Clerk for the City of
Green Bay,

Case No. EL 24-95

JAMIE FUGE, PAM VANDERBLOEMEN,
and STEVEN GRENIER,
Members of the Municipal Board of Canvass
for the City of Green Bay,

Respondents.

RESPONSE

Pursuant to Wis. Stat. § 5.06 and the Wisconsin Elections Commission letter dated September 19, 2024, Respondents respond to the complaint as follows:

INTRODUCTION

Steven Campbell lost an election for a seat on the Green Bay City Council by 15 votes.¹ Because the margin was small, Campbell was eligible to petition for a recount, which he did. The Municipal Board of Canvass (“the Board”) convened on April 12, 2024, and conducted the recount in accordance with Wisconsin law. During the recount, Campbell made objections and arguments. He also unsuccessfully sought

¹ It was initially reported that he lost by 15 votes but, as described below, he actually lost by 16 votes.

a court order requiring a hand recount. Factoring in the results of the recount, the Board certified that Campbell lost the election by one vote *more* than the Board had previously indicated—16 votes in total. Campbell thereafter attempted to have the circuit court “decertify” the results; this effort failed.

Complainant David VanderLeest appeared as one of Campbell’s representatives during the recount. VanderLeest also made objections and arguments and, at several points, tried to stop or derail the proceedings. He also attempted to disenfranchise most of the voters in the relevant wards by objecting wholesale to at-polls ballots cast in Wards 20, 20A, and 21, as well as all ballots cast by indefinitely confined voters. Having failed to accomplish any of this, VanderLeest has filed two baseless complaints with the Wisconsin Elections Commission and a related request for an advisory opinion.² All three are based on VanderLeest’s mistaken belief that a small error in the Inspectors’ Statements is evidence of tampering that would require the Board (and, now, this Commission) to disenfranchise hundreds of voters in a city council election.

VanderLeest’s complaint under Wis. Stat. § 5.06 fails for at least four reasons, each of which is independently sufficient to require dismissal:

- (1) the April 12, 2024 recount complied with Wisconsin law, under which the Board was required to count the ballots from all wards;

² Should the Commission consider VanderLeest’s request for an advisory opinion, Respondents respectfully request that the Commission consider the arguments raised in response to VanderLeest’s Wis. Stat. § 5.05 complaint as well as the robust constitutional protections for Wisconsin’s right to vote and Wis. Stat. § 5.01(1)’s mandate that, “Except as otherwise provided, chs. 5 to 12 shall be construed to give effect to the will of the electors, if that can be ascertained from the proceedings, notwithstanding informality or failure to fully comply with some of their provisions.”

- (2) none of the statutes on which VanderLeest relies includes the requirement he would have the Commission impose;
- (3) VanderLeest's complaint amounts to an untimely appeal of a recount, which he is not entitled to bring; and
- (4) VanderLeest is not entitled to the relief he seeks.

The complaint should be dismissed with no further action.

FACTS

A. The April 2, 2024 election in District 6.

On April 2, 2024, the City of Green Bay conducted the 2024 spring and presidential preference election, including an election for Green Bay City Council, District 6. *See* Wis. Stat. §§ 5.02(21), 8.12(1)(a). Steven Campbell and Joey Prestley both ran in District 6, and initial reporting indicated Prestley had won by a margin of 15 votes, 355–340.³ The Board met on April 8, 2024 to canvass the results. (Exh. 1, Board Notice.)⁴

B. The recount.

On April 11, 2024, Campbell filed a recount petition. (Exh. 2.) The City rejected that initial petition because it failed to state that Campbell was an aggrieved party, as required under Wis. Stat. § 9.01(1)(a)(2)c, and therefore was insufficient. Campbell filed a new petition the same day. (Exh. 3.) Campbell alleged fraud and mistake in

³ *Green Bay area Election Results*, Green Bay Press Gazette (Apr. 3, 2024), <https://www.greenbaypressgazette.com/elections/results/2024-04-02/wisconsin/00000/green-bay-area>.

⁴ Municipal Board of Canvassers, Notice of the Green Bay Area Public School Board Canvass of the 2024 Spring General Election, available at <https://greenbaywi.gov/DocumentCenter/View/12199/2024-04-08-Canvass-Notice?bidId=>

the counting and return of votes in Wards 20, 20A, 21, and 22—all four of the wards in District 6.⁵ (*Id.*) Because the difference between the votes cast for Campbell and Prestley exceeded 10, Campbell was required to pay the costs of the recount. Wis. Stat. § 9.01(1)(a)1, (ag)2. As required by law, Respondent City Clerk Celestine Jeffreys provided a cost estimate, which was \$4,306.76. *Id.* Campbell initially paid that amount.

Because Campbell filed his petition on the last possible day, the Board was required to convene no later than 9 a.m. the next day to conduct the recount, which it did. Wis. Stat. § 9.01(1)(b); (Exh. 4, Recount Minutes at 1.) The Board for the recount consisted of Respondents Deputy Clerk Jaime Fuge, Pam Vanderbloemen, and Steve Grenier. Clerk Jeffreys was also present, called the meeting to order, and facilitated it. Various other city officials were present, as were Prestley, his attorney, Campbell, and Campbell’s representatives, VanderLeest and Jefferson Davis. (Exh. 4, Recount Minutes at 1.)

Within six minutes of the meeting commencing, VanderLeest accused Clerk Jeffreys of not being prepared, asked to stop the recount, and demanded a hand count. (*Id.*) The Board voted to proceed using tabulators, and Clerk Jeffreys informed VanderLeest he would need to seek a court order for a hand count. (*Id.*) Shortly before 10 a.m., the Board recessed to permit Campbell to seek a court order for a hand count. (*Id.*) It reconvened at 11:15 a.m. (*Id.* at 2.)

⁵ Although VanderLeest objected to ballots in all four wards of District 6, the ballot-bag numbers were missing from the Inspectors’ Statement in only three of those wards.

The full recount proceedings, which lasted until after midnight, are reflected in the minutes attached to VanderLeest's complaint and as Exhibit 4 to this response. The relevant portions begin at 3:41 p.m., when Clerk Jeffreys began reviewing the Inspectors' Statements (on form EL-104) and ballot bags from each ward. Clerk Jeffreys noted that, although each bag had both an integrated seal and ballot bag number, the ballot bag numbers for the in-person/at-polls ballot bags for wards 20, 20A, and 21 were not included on the relevant Inspectors' Statements. (*Id.* at 5.) The Statements included the numbers from the tamper-evident seals on the tabulators for each ward and for the ballots from central count. (*Id.* at 5–6.) VanderLeest objected to all at-polls ballots from Wards 20, 20A, and 21. (*Id.* at 5.)

Following the review of the absentee-ballot certificates and testing of the machines, the Board returned to VanderLeest's objection regarding the ballot bag seals. (*Id.* at 8.) For each ward, the Board examined the relevant ballot bag and other materials. The Board determined the seals were intact, the dates of the signatures on the bags and other materials were all from election day, and that the signatures on the bags and the corresponding poll books appear to match. (*Id.* at 8.) For each ward, the Board determined that the integrity of the ballot bag appeared to be maintained even though the ballot bag numbers were not recorded on the EL-104s. (*Id.* at 8–9.)⁶ Mr. VanderLeest objected and argued throughout these proceedings.

⁶ The minutes include a typo on page 8. The Board did not review the ballot bag and make the corresponding interpretation for Ward 20A twice. The minutes beginning at 7:57 p.m. should instead reflect that the Board reviewed the materials for Ward 21. The undersigned avers that the Board reviewed all relevant materials.

(*Id.*) Mr. VanderLeest also objected to the votes from all voters who identified as indefinitely confined. (*Id.*)

The Board reviewed and tabulated both the absentee and at-poll ballots for all four wards. (*Id.* at 9–12.) The Board tabulated 140 at-polls ballots from Ward 20, 49 from Ward 20A, 192 from Ward 21, and 130 from Ward 22. (*Id.*) The final result of the recount was that Prestley received 355 votes and Campbell received 339 votes. Clerk Jeffreys informed the parties that they could appeal to the circuit court. (*Id.* at 13.)

C. Litigation during and after the recount.

During the recount, Campbell filed an “Emergency Motion for Relief” in Brown County Circuit Court, requesting that Clerk Jeffreys be required to perform a manual recount. (Exh. 5.) Clerk Jeffreys, by an assistant city attorney, filed a letter taking no position on the motion but directing the court’s attention to the recount requirements in Wis. Stat. § 5.90(2). (Exh. 6.) The court held a motion hearing on April 15, at which the City noted it had not been served and the court granted Campbell’s request for a substitution. Ultimately, Clerk Jeffreys filed an opposition, and, on April 19, the court denied the request for a hand count. (Exhs. 7–8, Opposition and circuit court minutes.)

During that hearing, Campbell handed the court a document titled “Motion to Decertify Election and Recount Results; Motion for Scheduling Conference; Demand for Discovery; Motion for /Costs [sic].” (Exh. 9, Motion.) Among other unfounded allegations of “ballot harvesting” and illegal get-out-the-vote activities, Campbell

alleged that there was “undeniable evidence that the ballot for Green Bay councilperson, District 6 was tampered with or never secured” because of the missing serial numbers. (*Id.* at 3–4.) The circuit court, the Honorable Donald R. Zuidmulder, presiding, indicated that this motion was not properly received or part of the April 19 hearing. (Exh. 8, court minutes.)⁷ The court dismissed the case with prejudice on April 24, 2024. (Exh. 10, dismissal.) Campbell did not appeal.

ARGUMENT

I. Respondents conducted the recount in accordance with Wisconsin law.

The substance of VanderLeest’s complaint is that Respondents violated Wisconsin election law in the way they conducted the April 12 recount. Because Respondents acted in conformity with Wisconsin law, the complaint must be dismissed.

A. The Board complied with Wis. Stat. § 9.01(1)(b)3., which required the Board to ensure the ballot bags had not been tampered with.

VanderLeest incorrectly claims that the Board violated Wisconsin law while conducting the recount. The relevant statutory provision provides, in full, that after a municipal board of canvass has examined the absentee ballot certificate envelopes, “The board of canvassers shall then examine the container or bag containing the ballots to be certain it has not been tampered with, opened, or opened and resealed. Any irregularities or possible tampering with the container or bag shall be noted.”

⁷ The docket entry on the Wisconsin Circuit Court Access Program indicates that the court rejected this motion “as it raises an independent course of Action.” <https://wcca.wicourts.gov/case/Detail.html?caseNo=2024CV000554&countyNo=5&index=0#records>.

Wis. Stat. § 9.01(1)(b)3. The statute makes no reference to serial numbers on ballot bags or tamper evident seals.

The Wisconsin Elections Commission's Recount Manual *does* recommend that a board of canvass check the serial numbers against the Inspectors' Statement. That portion of the manual reads:

Examine Ballot Bag or Container – Wis. Stat. § 9.01(1)(b)3. The BOC examines the ballot bag or ballot container to determine that it has not been tampered with, opened, or opened and resealed. The BOC should verify that the tamper-evident seal matches the serial number on the ballot Container Certificate (EL-101) and the Inspectors' Statement (EL-104). The WEC recommends the BOC investigate any irregularities or possible tampering with the ballots and note its findings in the minutes.⁸

Critically, the Manual does *not* state that, should the serial numbers be missing (as they were in the three wards at issue here), the Board must operate as though those ballots were necessarily tampered with and should be discarded. Instead, the Commission advises only that a board of canvass investigate any irregularities and note its findings in the minutes. Moreover, while the Manual is a helpful guide for clerks and others in conducting recounts, it is not law and cannot form the basis of a complaint. *See* Wis. Stat. §§ 5.05(2m), 5.06(1).

In any event, here the Board followed the steps laid out in the Manual precisely in performing its duties under Wis. Stat. § 9.01(1)(b)3. When it became clear that the serial numbers were missing from the Inspectors' Statements, the Board examined each ballot bag and the corresponding materials from the polls. It checked the seals, confirmed that the dates corresponded, and affirmed that the signatures appeared to

⁸ Wisconsin Elections Commission, *Recount Manual*, *12 (Apr. 2024), https://elections.wi.gov/sites/default/files/documents/Recount%20Manual%20%2804_2024%29.pdf.

match before concluding that the integrity of each bag was intact. This is precisely what the statute requires and Manual recommends—a thorough investigation based on the available evidence. The bags were sealed, and the relevant data points matched.

Having followed those procedures and made these factual determinations, the Board was satisfied that there had been no tampering. The Board also complied with the Manual’s suggestion by noting the irregularities in the minutes. In so doing, the Board complied with Wis. Stat. § 9.01(1)(b)3. Nothing in that statute, nor in the Manual, suggests or requires that the Board throw away ballots and disenfranchise voters who did nothing wrong.

B. Wisconsin law required the Board to count the ballots.

Not only is VanderLeest wrong about Wisconsin law compelling the Board to throw out the challenged votes and disenfranchising the voters who submitted them, but instead Wisconsin law affirmatively required the Board to count those votes. “Except as otherwise provided, chs. 5 to 12 shall be construed to give effect to the will of the electors, if that can be ascertained from the proceedings, notwithstanding informality or failure to fully comply with some of their provisions.” Wis. Stat. § 5.01(1). This statutory provision accords with Wisconsin’s long tradition of elevating the right to vote, and to have votes counted, above minor formalities. For example, in *Petition of Anderson*, the Supreme Court considered whether to reject three absentee ballots for failing to comply with the then-applicable absentee-ballot statute, Wis.

Stat. § 11.57 (1959-60).⁹ 12 Wis. 2d 530, 534, 107 N.W.2d 496 (1961). Before determining that the votes would be counted, the Court explained that rejecting these absentee ballots would deprive the relevant voters “of their right to vote.” *Id.*; *see also Lanser v. Koconis*, 62 Wis. 2d 86, 93, 214 N.W.2d 425 (1974) (“[W]e are not inclined to disenfranchise these voters”).

More recently, in *Trump v. Biden*, the Court considered whether to invalidate hundreds of thousands of absentee ballots for alleged inconsistencies with absentee-voting statutes. There, this Court correctly identified that throwing out these absentee ballots would deprive Wisconsinites of their *right* to vote: “Striking these ballots would disenfranchise^[10] voters.” 2020 WI 91, ¶27, 394 Wis. 2d 629, 951 N.W.2d 568; *see also State v. Barnett*, 182 Wis. 114, 195 N.W. 707, 711 (1923); *In re Burke*, 229 Wis. 545, 282 N.W. 598, 602 (1938); *Roth v. Lafarge School Dist. Bd. of Canvassers*, 2004 WI 6, ¶21, 268 Wis. 2d 335, 677 N.W.2d 599.

The inspectors’ omission of the ballot-bag numbers from the polling place EL-104s for Wards 20, 20A, and 21 is squarely the type of “informality” or “failure to fully comply” described in Wis. Stat. § 5.01(1). Wisconsin runs its elections at the municipal level, meaning inspectors are neighbors and members of the community. *State ex rel. Zignego v. Wis. Elections Comm’n*, 2021 WI 32, ¶13, 396 Wis. 2d 391, 957 N.W.2d 208. Chief inspectors, and the officials they supervise, are charged with a

⁹ The opinion is ambiguous as to the year of the particular provision, but based upon the date of the publication, it appears that Wis. Stat. § 11.57 (1959-60) was at issue.

¹⁰ “In the election context, ‘disenfranchise’ means to deny a voter the right to vote.” *Trump v. Biden*, 2020 WI 91, ¶145 (R.G. Bradley, J., dissenting).

massive number of tasks on election day. *See generally* Wis. Stat. §§ 7.36–7.37, 7.51; *see also* Wisconsin Elections Commission, *Election Day Manual* (rev. Aug. 2024).¹¹

Mistakes occur, as they did here. And the Board responded as the law required—it made an independent determination that, despite this informality, the available evidence showed that the ballot bags were secured and, therefore, the ballots they contained represent the will of the electorate in those wards. To have done otherwise would have violated the command of Wis. Stat. § 5.01(1) and disenfranchised 381 voters, representing more than half of the relevant electorate for this election.

The Clerk also responded by making long-term improvements to the system. In April, the ballot bags with integrated certificates were new for poll workers. Since then, Clerk Jeffreys has re-trained poll workers on providing the ballot-bag number, re-worked the EL104 to highlight the necessity of this information, and provided feedback to every chief inspector on the key elements of their EL104. Furthermore, she has scanned bar codes of the assigned ballot bags into a spreadsheet that the election technicians will check off when receiving the ballot bags on Election night.

C. Missing serial numbers do not indicate tampering.

VanderLeest’s complaint rests on a misapprehension that the missing ballot-bag numbers indicate tampering rather than human error. (Compl., Case No. EL 24-95 at 4 (“The absence of tamper-evident seal serial numbers matching ballot bag

¹¹ Wisconsin Elections Commission, *Election Day Manual for Wisconsin Election Officials*, August 2024, available at https://elections.wi.gov/sites/default/files/documents/ED%20Manual-August%202024_0.pdf.

number [sic] is undeniable proof that the ballot was never secure, tampered with and, [sic] should have been set aside, nullifying the election”).) This is simply not true. While a matching serial number on the EL-104 may be one piece of evidence that tampering did *not* occur, it does not follow that the absence of such numbers is evidence that tampering *did* occur. As described, the Board made independent findings based upon available evidence that the ballots were secure. VanderLeest does not, and cannot, explain how these findings were erroneous.

Another portion of the recount statute supports this common-sense conclusion.

Wis. Stat. § 9.01(1)(b)6 reads:

In recounting the votes cast on a voting machine in which the record of the votes cast is contained in the machine, the board of canvassers shall make a record of the number of the seal, if any, the number of the protective counter or other device, if one is provided, and shall open the recording compartment of the machine ...

This appears to be the only reference to seal numbers in Chapter 9 and, in the context of voting machines, makes clear that the use of seals bearing numbers is optional. While seals with recorded serial numbers are a helpful tool, the mere fact that the numbers are not recorded on the Inspectors' Statement is not evidence of tampering or fraud. Because Respondents conducted the recount according to law, the complaint should be dismissed.

II. VanderLeest cites no statute establishing a violation of the law.

Since the relevant portion of the recount statute includes no requirement that the Board discard ballots contained in bags with tamper-evident seals for which there is no corresponding notation on the Inspectors' Statements, it is no surprise that

VanderLeest cannot identify a single statute that would substantiate his claim that there has been a violation of the law, let alone that there was a criminal violation under Chapter 12. Paragraph 10 of the complaint alleges that the Board violated Wis. Stat. § 7.51(2)(d), (3)(a), and (3)(c). Paragraph 12 alleges violations of Wis. Stat. § 12.13(2)(a), (2)(b)2., (2)(b)4., (2)(b)7., (3)(f), (3)(l), (3)(m), (3)(x), and (3)(z).

As an initial matter, none of the cited provisions of Wis. Stat. § 7.51 relate to serial numbers. Those subsections require election inspectors to do the following: keep a written statement of ballots set aside, the number of defective ballots and challenged ballots (Wis. Stat. § 7.51(2)(d)); secure all counted ballots together so they cannot be tampered with and place provisional ballots in a separate sealed carrier envelope (*Id.* (3)(a)); and seal, lock, and close voting machines and canvass paper ballots before securing those as well (*Id.* (3)(c)). These are procedures applicable to the election inspectors on election night, not a municipal board of canvass conducting a recount. And none of these statutes mandate recording serial numbers, let alone require a board to discard ballots. Finally, there appears to be no dispute that the ballot bags at issue *were sealed*.

And while VanderLeest does not explain his theories of how any portion of Chapter 12 was violated here, his implication seems to be that opening (and presumably counting) the ballot bags in the absence of corresponding serial numbers on Inspectors' Statements constitutes, or contributed to, the type of false statements, canvass, falsified ballots, or tampering proscribed by these statutes. VanderLeest presents no evidence that any Respondent did any of those things. Nor can he

establish that any official neglected their duties. Wis. Stat. § 12.13(a). To the contrary, the Board and Clerk Jeffreys conducted the recount according to law. Because VanderLeest’s complaint includes no specific allegations that Respondents violated a statute enforced by the Commission, the complaint should be dismissed.

III. VanderLeest’s complaint is an improper attempt to appeal the recount results.

Although VanderLeest purported to file this complaint under Wis. Stat. § 5.06, in its substance and requested relief the complaint is clearly an attempt to relitigate the recount. The gravamen of the complaint is that the Board and Clerk Jeffreys did not follow proper procedures while conducting the recount Campbell requested. And the relief requested includes various relief that would be available only under Wis. Stat. § 9.01, if at all, including different (and bizarre) forms of discovery and VanderLeest’s request that the Commission “[n]ullify the Election for Green Bay City Council.” (Compl. at 6.) Because VanderLeest is not entitled to appeal the recount (only Campbell could have done so), and because any such appeal would be untimely at this point, the Commission should dismiss the complaint.

A. VanderLeest’s complaint amounts to improper appeal of the recount.

VanderLeest alleges irregularities during the canvass and recount and requests that, as a result, the Commission overturn the election result. This type of claim is governed exclusively by the recount provisions of Wis. Stat. § 9.01: “This section constitutes the exclusive judicial remedy for testing the right to hold an elective office as the result of an alleged irregularity, defect or mistake committed

during the voting or canvassing process.” Wis. Stat. § 9.01(11). To obtain judicial review of a recount, an appellant must: (1) be either a candidate for the office or a voter who voted in a referendum, (2) file and serve a proceeding in the circuit court, and (3) file the proceeding within 5 days after completion of the recount. Wis. Stat. § 9.01(6)(a). VanderLeest fails on all three counts.

First, VanderLeest was not the candidate—Campbell was. VanderLeest appeared as Campbell’s representative during the recount, but VanderLeest filed this complaint on his own behalf. It appears that Campbell considered seeking some form of judicial review but failed to do so properly. Although Clerk Jeffreys provided Campbell with the information he needed, he did not pursue an appeal of the recount result. Nothing in the law permits VanderLeest to belatedly step into Campbell’s shoes. *See Werner v. Dankmeyer*, 22CV555, Order at *6 (Cir. Ct. LaCrosse County, Sept. 18, 2023) (dismissing Plaintiff’s claim under Wis. Stat. § 9.01 because, in part, “[t]he Plaintiff was not an aggrieved candidate who asked for a recount and then sought an appeal to this circuit court regarding that Recount”).

Second, any appeal is far too late. The recount began on April 12, 2024 and concluded on April 13, 2024. Any appeal was therefore due no later than April 19, 2024. Wis. Stats. §§ 9.01(6)(a), 801.15. Clerk Jeffreys reminded all parties of the applicable deadline at the conclusion of the recount. (Exh. 4, Recount Minutes at 13.) VanderLeest, however, filed this complaint nearly five months later, on September 13, 2024.

Third, VanderLeest did not file in circuit court, but rather with this Commission, which is not empowered to review recounts under Wis. Stat. § 9.01(6)–(9).

Because this complaint is a transparent attempt to relitigate the recount, and obtain relief available under that statute only, despite failing to conform to any of the requirements of Wis. Stat. § 9.01(6)–(9), it should be dismissed.

IV. VanderLeest requests relief that the Commission cannot provide.

Finally, even if the Commission were inclined to agree with VanderLeest on the merits of the complaint, the relief requested is not authorized under Wis. Stat. § 5.06. That statute permits the Commission to “by order, require any election official to conform his or her conduct to the law, restrain an official from taking any action inconsistent with the law or require an official to correct any action or decision inconsistent with the law.” Wis. Stat. § 5.06(6). VanderLeest requests no such relief. Instead, he requests that the Commission “nullify” the election and recount results for District 6, order a special election, refund Campbell’s pre-paid recount costs (and permit him to avoid paying the balance), permit “discovery,” and review every ballot bag and Inspector Statement from the City of Green Bay, “because there is undeniable proof the ballot [sic] was tampered with and never secure.” (Compl. at 6.) This is not the type of corrective action considered by Wis. Stat. § 5.06(6).

Apart from the massive problems that would stem from disenfranchising 381 voters in a contest in which a total of 694 voters were cast, VanderLeest’s request that the Commission overturn an election is not available. Indeed, no such relief could

ever be sought under Wisconsin law: Wis. Stat. § 9.01 states that the “*exclusive* judicial remedy” for addressing any “irregularity, defect or mistake committed during the voting or canvassing process” is a *recount and appeal*—not a Wis. Stat. § 5.06 complaint seeking election nullification. Wis. Stat. § 9.01(11) (emphasis added); *see also Carlson v. Oconto Cnty. Bd. of Canvassers*, 2001 WI App 20, ¶7, 240 Wis. 2d 438, 623 N.W.2d 195; *see also Trump v. Evers*, 2022 WI 82, 985 N.W.2d 450 (Table) (Hagedorn, J., concurring in order denying petition for an original action). In other words, if aggrieved candidates—not third parties like VanderLeest—want to remedy allegations of tampering during a recount, they must do so by appealing the recount’s results. VanderLeest’s request that the Commission use Wis. Stat. § 5.06 to throw out election results six months after the election and recount is as unlawful as it is unreasonable.

Nor is there authority for the Commission to order Respondents to refund Campbell’s partial recount fee or void the remaining balance. This, too, falls under the exclusive ambit of Wis. Stat. § 9.01. *Carlson*, 2001 WI App 20, ¶7 (“The statute is the exclusive remedy for any claimed election fraud or irregularity.”). The only circumstances in which a recount petitioner may be refunded any portion of the fee is when they withdraw their petition before the recount begins or if they overpaid. Wis. Stat. § 9.01(1)(ag)3m., (1)(am).

Finally, while Wis. Stat. §§ 5.05(1)(b) and 5.06 authorize the Commission to request, receive, and even subpoena documents and other evidence, no statute permits the type of “discovery” VanderLeest seeks. Although VanderLeest’s

complaint involves one election for a council seat, he requests that the Commission review every single Inspector Statement and ballot bag from the City of Green Bay for an unspecified time period, almost all of which are not relevant to his meritless claim.

Notwithstanding these deficiencies, Respondents will provide any additional information the Commission may require in its consideration of the complaint.

CONCLUSION


For the reasons stated herein, Respondents respectfully request that the Wisconsin Elections Commission dismiss the complaint, determine by a preponderance of the evidence that complaint was frivolous, and order Complainant David VanderLeest to forfeit \$500. To the extent that any of the allegations in the complaint are not addressed herein, Respondents deny those allegations.

Dated this 8th day of October, 2024.

By: electronically signed by Chris Donahoe
Chris Donahoe, SBN 1092282
LAW FORWARD
222 West Washington Avenue, Suite 250
Madison, WI 53703-0326


Attorney for Respondents

I, Celestine Jeffreys, being first duly sworn, state that I personally read the above reply, and that the information contained within is true based on my personal knowledge and, as to those stated on information and belief, I believe then to be true.



Celestine Jeffreys
City Clerk, City of Green Bay

Subscribed and sworn to before me
this 8th day of October, 2024



Deanna K. Debruler
Notary Public, State of Wisconsin
My commission expires: 01/02/2027

