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July 2, 2024

**Via email**

Angela Sharpe, Staff Attorney  
Wisconsin Elections Commission (“WEC”)  
201 West Washington Avenue  
Second Floor  
P.O. Box 7984  
Madison, WI 53707-7984  
angela.sharpe@wisconsin.gov  
elections@wi.gov

**Re: Complaint EL 24-68, David Baker v. Bobbi Birk-LaBarge et al.**

Dear Ms. Sharpe:

This firm serves as the Village Attorney for the Village of Kronenwetter (“Village”). This letter addresses legal arguments and is part of the Village’s response to EL 24-68 together with the Clerk’s response and supporting documents. Although different in form, EL 24-68 seems to be on the same issues(s) as the recent WEC Complaint EL 24–26, Ken Charneski v. Bobbi Birk-LaBarge. If not formally consolidated, we recommend that the materials still be read together for greater insight. Both complaints are regarding the same situation at the same municipality.

The overall nature of this complaint is probably commonplace as has been portrayed in the media. Andrew Bahl, “In Wisconsin, poll workers can have a partisan origin story,” *The Cap Times* (July 1, 2024, 1:14 p.m.), [https://captimes.com/news/elections/in-wisconsin-poll-workers-can-have-a-partisan-origin-story/article\\_12bb94b6-0636-11ef-94c9-eb11934195b3.html](https://captimes.com/news/elections/in-wisconsin-poll-workers-can-have-a-partisan-origin-story/article_12bb94b6-0636-11ef-94c9-eb11934195b3.html) (enclosed). The practical realities to running an election are widespread.

**Governing Body Members Are Not Election Officials**

The first legal issue to address in Complaint EL 24-68 is the naming of a selection of Village Board members (four of seven) as election officials and respondents in this matter.

An election official is defined as “an individual who is charged with any duties relating to the conduct of an election.” Wis. Stat. § 5.02(4e). County, municipal and school district clerks are election officials, as are election inspectors, chief inspectors, election registration officials (EROs), tabulators, greeters, and canvass board members. Election officials perform a very important public service by enhancing the high quality and integrity of our elections. It is important that you, as a municipal clerk, ensure there are qualified and well-trained individuals for these positions.

WEC, *Election Administration Manual for Wis. Municipal Clerks*, p. 113 (Feb. 2024). WEC's existing guidance does not name the members of elected governing bodies, which are four of the named respondents to this matter, as an "election official."

An important part of the election official definition is that they have "duties relating to the conduct of an election." Wis. Stat. § 5.02(4e). The word "conduct" is not defined in either Wis. Stat. chs. 5 or 7. Turning to a dictionary for "conduct" provides the following: "to direct or take part in the operation or management of." *Merriam-Webster.com*. 2024. <https://www.merriam-webster.com> (19 June 2024). In other words, the persons conducting an election are the ones running it first-hand.

Members of governing bodies, such as Village Board members, do not conduct elections. The persons named in WEC's manual do that. Governing body members are not included in Wis. Stat. § 5.02(4e). Therefore, the four (out of seven) Village Board members are improperly named as respondents in this matter because they are not election officials under Wis. Stat. § 5.02(4e).

Furthermore, actual election officials are required to be trained for the purpose, whereas there is no provision on training governing body members for elections. Wis. Stat. chs. 5 & 7; Wis. Adm. Code chs. EL 11 & 12. Bona fide election officials are also offered compensation for the training and conducting of elections. Wis. Stat. § 7.03. It is the governing body members that pay them for it; body members are not also paying themselves additional monies for running in an election. *Id.*

Whatever the purpose and intent of naming selected Village Board members as respondents in Complaint EL 24-68, if WEC were to broaden the scope of "election official" to include governing body members, then it would have to consider required training and possible compensation for them. That would be a lot more persons requiring training while, as you are aware, Wisconsin is already known for the sheer numbers of its local election officials.

Unlike many places around the country, Wisconsin has a highly decentralized system for election administration. *Jefferson v. Dane County*, 2020 WI 90, ¶ 24 n.5, 394 Wis. 2d 602, 951 N.W.2d 556. Rather than a top-down arrangement with a central state entity or official controlling local actors, Wisconsin gives some power to its state election agency (the Commission) and places significant responsibility on a small army of local election officials. *Id.*; see also <https://elections.wi.gov/index.php/clerks> (explaining that Wisconsin's 1,850 municipal clerks and 72 county clerks are each "a partner in the process of carrying out open, fair and transparent elections").

*State ex rel. Zignego v. Wis. Elections Cm'n*, 2021 WI 32, ¶ 13, 396 Wis. 2d 391, 957 N.W.2d 208. Wisconsin's small army is already a sufficient number of local election officials. As another matter of public policy, probably no one wants governmental units to pay their own politicians to train for running for re-election. That seems absurd and ethically invalid.

Thus, keeping the definition of "election official" unchanged and excluding governing body members appears to be the best public policy. Changing the definition of election official at the behest of a repetitive complaint singling out a selection of Village Board members is the ad hominem stuff of political blogs. It is not a legal or compelling reason for WEC to make such a change.

Paragraph 8 of the complaint points to a blog post to explain the Complainant's motivations: not re-appointing the Clerk; discipline of the Clerk; and also attempting to blame selected members of the Village Board for a perceived issue(s). Yet, as addressed above, the named and unnamed Village Board members are improper respondents to this WEC complaint under current law and it should stay that way. The Village acknowledges that the respondent Clerk is an election official.

Finally, in the wake of a recent constitutional amendment, the Wisconsin Attorney General recently issued an opinion on “the meaning of election official designated by law” and “task in the conduct of any primary, election, or referendum” to clarify that they have not changed:

“Tasks in the conduct of an election” are thus not everything relating to the election more broadly, but activities in directing or leading the administration of the election.

#### CONCLUSION

In sum, I conclude that the meaning of “election official” is the same under Wis. Const. art. III, § 7(2) and Wis. Stat. § 5.02(4e) and that the work that Wis. Const. art. III, § 7(2) requires to be performed by election officials is work in directing or leading the administration of an election.

OAG-01-24, ¶¶ 15, 16 (enclosed). The Attorney General discounts things tangentially related to running an election and then names the same persons as the WEC manual cited above. *See* OAG-01-24. The fact that governing bodies enact resolutions and ordinances does not involve them in the “conduct” of an election such that they then become election officials.

A WEC complaint such as this one may only be filed against an “election official.” Wis. Stat. § 5.06(1). Complaint EL 24-68 has been filed on the same issue(s) as the earlier Complaint EL 24-26 (before WEC has had a chance to respond to Complaint EL 24-26). Complaint EL 24-68 specifically refers to Complaint EL 24-26 in its text, so it was known to the Complainant. (Complaint EL 24-68, ¶¶ 11, 28.) The “prayer for relief” in Complaint EL 24-68 demands specific Village Board actions by specific dates, yet improperly named as respondents only four of the seven Village Board members. That makes no objective sense as individuals are not a governing body.

Governing body members do not direct or lead the administration of an election. There is no law supporting that the Village Board members are proper respondents here; and there is law, including very recent law, showing that the named Village Board members are not election officials and thus are improper respondents.

#### The Appointment Process in General

There is no argument with the Complainant’s desire for the Village to follow the law. But in reality, the law is much more malleable as applied to the circumstances at the Village than is assumed by the Complainant. The Complainant’s attempt at the strict construction of an isolated statute is further hampered by the fact that Wisconsin uses a system that “places significant responsibility” on its small army of election officials, to include nearly 2,000 different clerks, including the one at this Village.

The law seems clear at first: there shall be 7 inspectors for each polling place. Wis. Stat. § 7.30(1)(a). Unless you have voting machines and want 5 inspectors per polling place instead. *Id.* And unless you have more than one voting machine or a polling place that is combined wards, both of which are the case in this Village (Clerk Resp. ¶¶ 1, 2, 4.), and then in that case you may have an unspecified number of “additional inspectors.” *Id.* And finally, a municipality can set aside Wis. Stat. § 7.30(1)(a) and name a number not less than 3. Wis. Stat. § 7.32.

Furthermore, a greeter may serve “without regard to party affiliation” and can substitute for any other election official in the room. Wis. Stat. § 7.30(1)(b). If a municipality wants to appoint more names than it receives on party lists it may do so without any regard to affiliation. Wis. Stat. § 7.30(4)(c).

Therefore, the Village may have virtually any number of total election officials appointed, in particular if it is a number greater than 7, and these could be a mix of party affiliations and unaffiliated persons. Wis. Stat. ch. 7. The Village last initially appointed a pool of 23 affiliated and 9 unaffiliated, for a total of 32, that was also supplemented with temporary appointments. (Clerk Resp. ¶¶ 5-14.) This is permitted in this Village.

The Clerk alone may appoint persons to permanent and temporary inspector vacancies and as election registration officials to register voters at the polling place on election day. Wis. Stat. §§ 7.30(2)(b) & 6.28(1). The Clerk has appointed several temporary inspector vacancies because no one resigns, even if unavailable. (Clerk Resp. ¶¶ 10-14.)

There may be alternate officials, and even multiple sets of officials, who all may work at different times on election day. Wis. Stat. §§ 7.30(1)(a). The Clerk is also authorized to reassign inspectors as necessary to ensure adequate staffing on election day. Wis. Stat. § 7.15(1)(k). The chief inspectors at the Village make a point of rotating persons to cross-train positions. (Clerk Resp. ¶ 16.) Arranging the election inspectors about the tasks insofar as practicable is permitted. Wis. Stat. § 7.30(2)(a).

The statute requires that the “total number of officials is an **odd number** and the **predominant party** under sub. (2) is represented by one more official **than the other party.**” Wis. Stat. § 7.30(1)(a) (emphasis added). Unaffiliated inspectors (and greeters) do not figure into that math. In any case the recent elections had well more than just one additional inspector for the predominant Republican party. (Clerk Resp. ¶¶ 17-19.)

Another section states that:

the **party** which received the largest number of votes is entitled to one more inspector than the **party** receiving the next largest number of votes **at each polling place**. Whenever 2 or more inspectors are required to perform a function within a polling place and both parties that are entitled to submit nominees have done so, the chief inspector shall assign, **insofar as practicable**, an equal number of inspectors from the nominees of each party.

Wis. Stat. § 7.30(2)(a). This section reinforces that only party nominees are used for the party balancing at the Village’s sole polling place. There was some imbalance in favor of the far greater number of submitted Republicans. (Clerk Resp. ¶¶ 17-19.) Unaffiliated persons do not factor in to the party balancing. Second, where persons are stationed during the day is not accomplished absolutely, but only “insofar as practicable.”

Collectively, it is then difficult to argue about who should have been sitting where exactly in the room at any given point in time or to even keep track of that. There is a deal of turnover and substitutions from election to election and even over the course of election day based on availability. Taking a count at a moment in time is probably not representative of a count at other times.

The overall appointment process is a little complex by the time that it gets past all of the following: the various statutes providing different guidance based on different local circumstances; locally delegated implementation of those various statutes; the human factors of outside parties submitting lists, or not, and the quality of those lists; and actual worker availability; all to be conducted under the auspices of our Wisconsin clerks. This is not something that instead can be micromanaged from the outside by nonparticipants.

At the recent elections, the dominant Republican party had more election inspectors present than the Democratic party and there was an overall odd number greater than 7 as permitted given the number of voting machines and single combined ward polling place. (Clerk Resp. ¶¶ 1, 2, 4, 18, 19.) All names submitted on the party lists except for those requesting not to serve were in fact appointed. (Clerk Resp. ¶ 7.) However, only a fraction of the Village's pool of election inspectors is ever actually available. (Clerk Resp. ¶¶ 10-12, 18, 19.) Additional non-affiliated persons are also temporarily appointed as the Clerk deems necessary. (Clerk Resp. ¶ 14.) The Village needs its own small army given the number of voters to process through its single polling place and especially when multiple rooms are staffed there. (Clerk Resp. ¶¶ 1-3.) The statutes permit all of this at the Village.

The Village provided elections inspectors according to law. Far from there being a one-size fits all, the statutes provide for a wide array of tools to manage local elections in local circumstances. These can look far different from one municipality to the next.

It is unclear that the Complainant's remaining argument as to his preferred format for Resolution No. 2021-026 is itself actionable. The resolution is distinct from election inspector lists showing party and unaffiliated status that can be requested as public records. (Clerk Resp. ¶ 9.)

### Local Village Authority

The Complaint states that the Village has no resolutions or ordinances on the appointment of election officials. (Complaint ¶ 28.) This is inaccurate. Village ordinances related to elections are the following:

§ 41-1. - Election officials.

Election officials shall be appointed as prescribed by Wis. Stats. § 7.30.

§ 41-2. - Hours for voting.

The polls on each election day shall remain open for voting from 7:00 a.m. until 8:00 p.m.

§ 41-3. - Alternates.

The village clerk may appoint alternate election inspectors, as needed, to work at elections held in the village. This includes wards one through eight.

Village Code, available at:

[https://library.municode.com/wi/kronenwetter\\_marathon\\_co/codes/code\\_of\\_ordinances](https://library.municode.com/wi/kronenwetter_marathon_co/codes/code_of_ordinances) (last viewed May 6, 2024; Clerk Resp. ¶ 4). Under § 41-3, the Clerk may appoint alternate inspectors "as needed."

Separately, the Village has Resolution No. 2021-026 establishing election wards. (Clerk Resp. ¶ 4.) The Village has eleven wards at this time (the above ordinances are from 2004 and appear dated). The Wisconsin Department of Administration's 2023 estimate for the Village's population is 8,539.

As addressed in Resolution No. 2021-026, the Village has one combined polling location for all wards. (Clerk Resp. ¶ 4.) That is the Village Hall, although for some elections voting occurs in multiple rooms therein. (Clerk Resp. ¶ 1.) The Village also utilizes multiple voting machines per election. (Clerk Resp. ¶ 2.) Under the statute, these facts are applicable to the appointment of election officials.

(1) Number.

(a) Except as authorized under par. (b), there shall be 7 inspectors for each polling place at each election. Except as authorized in par. (b), in municipalities where voting machines are used, the municipal governing body may reduce the number of inspectors to 5. **A municipal**

governing body may provide for the appointment of additional inspectors whenever more than one voting machine is used or wards are combined under s. 5.15(6)(b). A municipal governing body may provide by ordinance for the selection of alternate officials or the selection of 2 or more sets of officials to work at different times on election day, and may permit the municipal clerk or board of election commissioners to establish different working hours for different officials assigned to the same polling place. Alternate officials shall also be appointed in a number sufficient to maintain adequate staffing of polling places. Except for inspectors who are appointed under par. (b) and officials who are appointed without regard to party affiliation under sub. (4) (c), additional officials shall be appointed in such a manner that the total number of officials is an odd number and the predominant party under sub. (2) is represented by one more official than the other party.

Wis. Stat. § 7.30 (emphasis added). Due to the single polling place, and multiple voting machines, the Village can and does appoint additional inspectors as is apparent from Resolution No. 2023-016.

The Village named thirty-two (32) election inspectors in Resolution No. 2023-016, including two Chief Election Inspectors and one alternate Chief. Resolution No. 2023-016 also states the following:

BE IT FURTHER RESOLVED, that the Village Clerk is directed to schedule working hours for Election Inspector and Chief Election Inspectors accordingly, and

Therefore, Resolution No. 2023-016 authorizes the Clerk to schedule the election officials.

Under Wis. Stat. § 7.30(1)(a), the Village may provide by ordinance for the flexible use of adequate officials. The Village addresses this in Code §§ 41-1 and 41-3. (Clerk Resp. ¶ 4.) In addition, the Village currently has both Resolution No. 2021-026 and Resolution No. 2023-016. (Clerk Resp. ¶ 4.)

There is no known mandate on the exact structure of a municipality's ordinances and resolutions for election administration as authorized, in part, by Wis. Stat. § 7.30(1)(a). The authorities offered to municipalities under Wis. Stat. § 7.30(1)(a) would further appear to be directory, as opposed to mandatory. *See Teigen v. Wisconsin Elections Commission*, 2022 WI 64, ¶¶ 81, 108, 176, 403 Wis.2d 607, 976 N.W.2d 519 (2022). It could hardly be argued that the Village's elections are void due to its local structure of ordinances and resolutions. *Id.*

Villages are generally granted power that is to be "in addition to all other grants and shall be limited only by express language." Wis. Stat. § 61.34(1). In addition:

Construction of powers. For the purpose of giving to villages the largest measure of self-government in accordance with the spirit of article XI, section 3, of the constitution it is hereby declared that this chapter shall be liberally construed in favor of the rights, powers and privileges of villages to promote the general welfare, peace, good order and prosperity of such villages and the inhabitants thereof.

Wis. Stat. § 61.34(5). It is the Village's own home rule authority that underpins its ordinances and resolutions, some of which are authorized by the election laws. *See also, Heritage Farms, Inc. v. Markel Ins. Co.*, 2012 WI 26, ¶¶ 32 & 36, 339 Wis. 2d 125, 810 N.W.2d 465 (discussing "may" versus "shall"). The statutes authorize that the Village may take certain steps for election inspectors in response to relevant facts such as the number of polling places and election machines. Wis. Stat. § 7.30(1)(a). Adequate numbers of alternate officials shall be appointed. *Id.* The Village has done exactly that.

Finally, this Village's election logistics (significant population, large geographic size, and single polling location) tend to create a situation that would be difficult to adequately address by the standard language in Wis. Stat. § 7.30(1)(a) of simply 7 election inspectors per polling place. To compound that situation are the elements that are simply out of any clerk's hands: the level of effort put in by the political parties to create and evaluate their lists; and the actual availability of individual inspectors on election days.

State and local law permits the Village to exercise the law as it did. There remains simply an objection as to the Complainant's preferred format for Resolution No. 2021-026. There is no basis for that complaint to be actionable.

### Conclusion

The Complainant does not understand the statutes as applied to the circumstances at the Village. The Village Board members are not election officials and therefore are improperly named as respondents. Practical realities such as party list coordination and worker availability are things that a Clerk, and likely WEC, cannot directly control. The Village has provided election officials as permitted under the statutes and its own local authorizations. Perhaps that is why there is no actual complaint of a disorderly voting process at Village Hall on election day.

The Complainant's prayer for relief is simply aspirational. It is unclear that WEC can order the Village to draft an ordinance or resolution to a specific form requested by a Complainant; by a requested specific deadline; or to send mail to third persons; or that WEC needs to do any of that in any case.

We hope that the Village Response assists the Wisconsin Elections Commission in its consideration of Complaint EL 24-68 as well as Complaint EL 24-26. The Village is of course willing to follow and implement whatever guidance WEC may be able to provide. Please let us know if the Village can do anything more.

Respectfully,  
**DEMPSEY LAW FIRM, LLP**



Lee D. Turonie  
Village Attorney

Enclosures

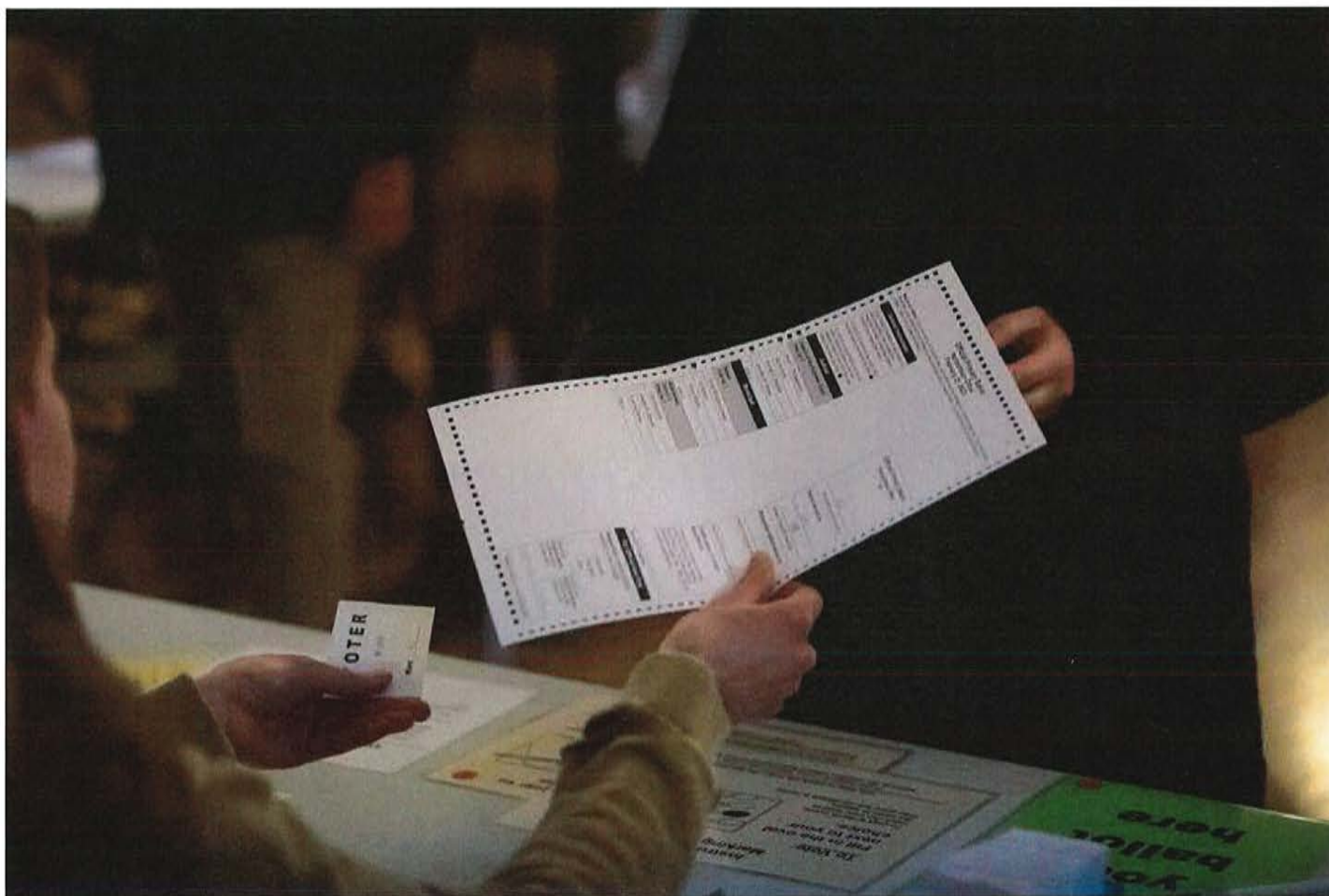
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## In Wisconsin, poll workers can have a partisan origin story

By Andrew Bahl

May 6, 2024



*Poll workers are needed for a range of tasks, such as distributing ballots, checking voter IDs and other election administration duties.*

Amena Saleh | Wisconsin Watch



Political parties are ramping up their efforts to enlist poll workers for Wisconsin's 2024 elections, a move toward embracing a duty that falls to local Democrat and Republican officials.

Experts say there's a good reason Wisconsin election officials ask that both major political parties provide a list of possible poll workers to local officials.

Poll workers have myriad tasks they are expected to conduct, ranging from checking voters in and verifying their photo identification to handling ballots. Municipal clerks are quick to point out that poll workers are nonpartisan in performing those tasks, but party representation can help if disputes arise or a situation needs clarification — for example, if a voter's name in a poll book doesn't fully match what is on their driver's license.

In those situations, having members of both parties present reduces the risk that observers might think poll workers are trying to benefit one side or another, said Barry Burden, director of the Elections Research Center at the University of Wisconsin-Madison.

“It should build trust in the system, because it means that each polling place, if it were staffed by at least one Republican and one Democratic poll worker, has a monitor from each party essentially keeping eyes on what's happening,” Burden said.

But the system hasn't quite worked out that evenly, and that's made headlines recently.

Earlier this month, GOP chapters in Dane and Milwaukee counties, backed by the Republican National Committee, filed a complaint with state election officials, alleging that clerks in Madison and Milwaukee were not including their party's poll workers in sufficient numbers.

The complaint filed against Madison Clerk Maribeth Witzel-Behl argues that out of well over 100 Republican poll workers suggested to the city and approved for use, only 51 were scheduled to work.

“This is the kind of misconduct that drives down faith in elections,” Michael Watley, chair of the Republican National Committee, said in a prepared statement.

The person named in the Republican Party of Dane County's complaint, John Barnes of Cambridge, says he was not contacted, though the clerk's office disputes this. Madison City Attorney Mike Haas said the city would provide documentation, if needed, that “many individuals nominated by the Republican Party did not complete required paperwork to be hired or respond to communications from the Clerk's Office regarding their availability.”

“All proper procedures were followed in appointing election inspectors,” Haas said.

However, it's true that clerks rely on “nonpartisan” poll workers more often than not.

In Madison, only 3% of the 1,918 poll workers for the April election were from the lists provided by either the Republican or Democratic Party, according to data provided by the City Clerk's office.

That's actually an improvement over past election cycles. In February 2021, for instance, only three poll workers were from the Republican Party, which comes out to 0.2% of all workers. The Dane County Democratic Party didn't even submit names for consideration.

## Democrats and Republicans lining up workers

There have been signs that parties are pushing to change this. Statewide, the Republican Party of Wisconsin has said it wants to better emphasize poll workers as part of an effort to ensure the integrity of the state's election process.

In Dane County, Democrats have begun to match those efforts. During the 2022 and 2023 election cycles, Republicans routinely nominated six times the number of poll workers as Democrats. In both elections so far in 2024, Democrats have nominated 119 people to serve, while Republicans have presented 148.

Witzel-Behl, the Madison clerk, noted in an email that many political appointees "do not remember ever agreeing to work at the polls." In recent years in Madison, the number of poll workers tapped by their party to serve who ultimately wound up working on Election Day ranged from six to 51.

Burden noted that Wisconsin makes it easy for election observers to keep an eye on the voting process, helping to curb any perception of malfeasance.

But he said the lack of partisan poll workers was still a “missed opportunity.”



*Madison poll workers process absentee ballots in November 2020, preparing them to be sent to polling sites throughout the city.*

KATELYN FERRAL

“Serving as a worker is a way to keep them involved, and also have them keep an eye on the process to make sure their party is represented,” Burden said. “But apparently, this is not a way that parties really emphasize making use of their supporters.”

A spokesperson for the Republican Party of Wisconsin did not return a request for comment, though the party has previously said it wants to make poll worker recruitment a priority.

Joe Oslund, a spokesperson for the Democratic Party of Wisconsin, said the party nominated more poll workers “than ever before” by the statutory deadline in November.

“Heading into this fall, Wisconsin Democrats are committed to ensuring that polling places are staffed appropriately to ensure all eligible voters can cast their ballot,” Oslund said in a statement.

## Constant need for poll workers

Clerks have other ways of recruiting poll workers, promoting opportunities on social media. Voters can also indicate they are interested in serving in the state’s online voter registration portal, My Vote Wisconsin.

Some areas even target high schoolers, who can serve as poll workers even before they are eligible to vote, provided they have at least a 3.0 grade point average and the permission of their principal and parents.

Witzel-Behl noted that many people start out serving as a partisan poll worker before recruiting their friends or family to join the ranks. The city is always looking for poll workers, she said.

“We lose poll workers every year because people move, so we always have a mix of experienced poll workers and brand new poll workers,” she said.

Hostility toward election officials has been running high since the 2020 election in Wisconsin prompted a raft of unfounded conspiracy theories about voting in the state. While state lawmakers were unable to finalize legislation making battery against a poll worker a felony, many local governments across the state have increased protections.

Many clerks point out that serving as a poll worker is a way of dispelling myths about the voting process.

“Some of the dramatic or sensational things people hear about online, that may be going on at a polling place or behind the scenes, turn out not to materialize when someone signs up,” Burden said.

*Andrew Bahl joined the Cap Times in September 2023, covering Wisconsin politics and government. He is a University of Wisconsin-Madison alum and has covered state government in Pennsylvania and Kansas.*

*You can follow Andrew on X @AndrewBahl. You also can support Andrew’s work by becoming a Cap Times member.*



STATE OF WISCONSIN  
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June 25, 2024

OAG-01-24

Mr. Carlos A. Pabellón  
Dane County Corporation Counsel  
210 Martin Luther King, Jr. Boulevard  
Madison, WI 53703-3345

Dear Corporation Counsel Pabellón:

¶ 1. You seek an opinion about the meaning of Wis. Const. art. III, § 7(2), which was created through referendum at the April 2024 election following passage of joint resolutions by the Wisconsin Legislature. Article III, section 7(2) provides that “[n]o individual other than an election official designated by law may perform any task in the conduct of any primary, election, or referendum.” I construe your request as asking two questions about the provision: (1) the meaning of “election official designated by law”; and (2) the meaning of “task in the conduct of any primary, election, or referendum.”

¶ 2. I conclude that “election official” has the same meaning in the new constitutional provision as it has in the statutes, *see* Wis. Stat. § 5.02(4e), and that a “task in the conduct of any primary, election, or referendum” refers to work in directing or leading the administration of an election. The legislative record shows that the provision was proposed in response to the perception that a local election official had lost control of the oversight of an election. Article III, section 7(2) does not apply to more ordinary circumstances in which an election official works with or is assisted by non-election officials in ensuring the proper administration of an election, such as work with vendors on the layout and printing of ballots, information technology personnel on software and hardware security, law enforcement personnel on ballot transport, or employees or volunteers assisting with mailings or other clerical work.

¶ 3. Your first question relates to the position that does the work described in Wis. Const. art. III, § 7(2): “an election official designated by law.” You ask whether “election official designated by law” is synonymous with “[e]lection official” as defined in Wis. Stat. § 5.02(4e). It is.

¶ 4. “The constitution means what its framers and the people approving of it have intended it to mean, and that intent is to be determined in light of the circumstances in which they were placed at the time.” *Dairyland Greyhound Park, Inc. v. Doyle*, 2006 WI 107, ¶ 19, 295 Wis. 2d 1, 719 N.W.2d 408 (quoting *State ex rel. Bare v. Schinz*, 194 Wis. 397, 404, 216 N.W. 509 (1927)). In construing a provision of the constitution, courts examine three primary sources: “the plain meaning, the constitutional debates and practices of the time, and the earliest interpretations of the provision by the legislature, as manifested through the first legislative action following adoption.” *Id.*

¶ 5. The plain language of Wis. Const. art. III, § 7(2) answers your first question. That constitutional provision requires “election official[s] designated by law” to carry out the work described. Wis. Const. art. III, § 7(2). The provision does not create its own definition of “election official,” but simply defines the role by reference to other “law” that designates a position as an election official.

¶ 6. That law exists in Wisconsin statutes. The definitional section of the election statutes broadly defines “[e]lection official” as “an individual who is charged with any duties relating to the conduct of an election.” Wis. Stat. § 5.02(4e). “Election” is defined to include public primaries, elections, and referenda. Wis. Stat. § 5.02(4), (16s).

¶ 7. Numerous officials are charged with “duties relating to the conduct of an election” within the meaning of Wis. Stat. § 5.02(4e). Among others, they include village clerks, who “perform any duties prescribed by law relative to elections,” Wis. Stat. § 61.25(1); municipal clerks, including city clerks, who have “charge and supervision of elections and registration in the municipality,” Wis. Stat. § 7.15(1); county clerks, who are designated as “the chief election officer[s] of the county,” Wis. Stat. § 59.23(2)(i); municipal and county boards of canvassers, Wis. Stat. §§ 7.53, 7.60, 9.01; and school district clerks, Wis. Stat. §§ 120.05(1)(b), 120.06(8).

¶ 8. Because the statutes impose “duties relating to the conduct of an election” on all these officials, they are “[e]lection official[s]” within the meaning of Wis. Stat. § 5.02(4e). And because they are thus each an “election official designated by law,” they are election officials within the meaning of Wis. Const. art. III, § 7(2).



¶ 9. You mention Wis. Stat. § 7.30, which states that “[o]nly election officials appointed under this section or s. 6.875 may conduct an election.”<sup>1</sup> Wis. Stat. § 7.30(2)(a). But Wis. Stat. § 7.30 regulates eligibility for and the appointment and tenure in office of specific election officials. *See, e.g.*, Wis. Stat. §§ 7.30(1) (specifying number of inspectors for each polling place), 7.30(2)(a) (specifying qualification of a chief inspector), 7.30(2)(am) (allowing 16- and 17-year-olds to serve as inspectors), 7.30(3) (providing for municipal clerk or director of the board of election commissioners to select tabulators). It does not negate the statutes empowering clerks and other election officials to run elections or create a competing definition of “election official” that is narrower than the definition in Wis. Stat. § 5.02(4e), and it does not change the meaning of “election official” in Wis. Const. art. III, § 7(2).

¶ 10. Your second question relates to the activities that Wis. Const. art. III, § 7(2) requires to be performed by election officials: “any task in the conduct of any primary, election, or referendum.” As you point out, the word “task” does not appear in Wisconsin’s elections statutes, and there are many non-election officials and entities that perform activities relating to an election, such as commercial printers who help lay out and create ballots; information technology staff responsible for the software and hardware security of the voter registration system and voting tabulation; vendors who provide technical guidance and troubleshooting regarding the equipment’s operation and maintenance; law enforcement personnel who transport sealed ballots to the office of the clerk; and designated employees or volunteers who are assigned to assist with absentee ballot mailings or other clerical work.

¶ 11. I conclude that Wis. Const. art. III, § 7(2) does not require such work to be performed by election officials. It also does not apply to activities that are distinct from *the administration* of an election, such as the kinds of efforts by non-election officials to encourage voting that commonly take place in connection with elections. Instead, Wis. Const. art. III, § 7(2) applies to activities in directing or leading the administration of the election.

¶ 12. To begin with, the legislative record associated with the adoption of this new provision of the Wisconsin Constitution supports a narrow interpretation of its scope. *See generally Dairyland Greyhound Park*, 295 Wis. 2d 1, ¶ 19 (constitutional debates are relevant to construing a constitutional provision). In written testimony, the lead author in the state senate of the joint resolutions that included then-proposed Wis. Const. art. III, § 7(2), State Senator Eric Wimberger, described

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<sup>1</sup> Wisconsin Stat. § 6.875 discusses special voting deputies.

concerns regarding the conduct of the 2020 general election in the City of Green Bay, asserting in part:

[T]he City Clerk . . . found herself excluded from elections meetings by the “grant team.” Due to the stipulations of the grant [an outside consultant] orchestrated the fall election and acted as a city clerk would act, though paid by [the grantor], including managing staff and having access to ballots.<sup>2</sup>

¶ 13. While there is a dispute as to the circumstances of that situation, this context illustrates that the prohibition on having non-election officials “perform any task in the conduct of any primary, election, or referendum” was aimed at preventing election officials from losing control of the oversight of the administration of elections. There is no indication that Wis. Const. art. III, § 7(2) was intended to sweep much more broadly and change the way in which election officials work with or are assisted by non-election officials in the vast majority of jurisdictions.

¶ 14. The plain language of the amendment further supports the conclusion that its application is limited to activities in directing or leading the administration of an election. The word “task” must be read not in isolation, but rather in the context of the words around it. The Wisconsin Supreme Court has recognized that “terms in . . . constitutional provisions, should be construed to give effect ‘to each and every word, clause and sentence’ and ‘a construction that would result in any portion

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<sup>2</sup> Wis. Legis. Council, Hearing Materials for 2023 Wis. S.J. Res. 78, Testimony of State Sen. Eric Wimberger, J. Comm. on Shared Revenue, Elections & Consumer Prot. and Assemb. Comm. on Campaigns & Elections, *Testimony on Senate Joint Resolution 78 Senate* (Oct. 24, 2023), [https://docs.legis.wisconsin.gov/misc/lc/hearing\\_testimony\\_and\\_materials/2023/sjr78/sjr0078\\_2023\\_10\\_24.pdf](https://docs.legis.wisconsin.gov/misc/lc/hearing_testimony_and_materials/2023/sjr78/sjr0078_2023_10_24.pdf); accord Wis. Legis. Council, Hearing Materials for 2021 Wis. S.J. Res. 101, Testimony of State Sen. Eric Wimberger, S. Comm. on Elections, Election Process Reform & Ethics, *Testimony on Senate Joint Resolution 101* (Feb. 7, 2022), [https://docs.legis.wisconsin.gov/misc/lc/hearing\\_testimony\\_and\\_materials/2021/sjr101/sjr0101\\_2022\\_02\\_07.pdf](https://docs.legis.wisconsin.gov/misc/lc/hearing_testimony_and_materials/2021/sjr101/sjr0101_2022_02_07.pdf); see also Cosponsorship Memorandum from State Reps. August and Bodden and State Sen. Wimberger to All Wisconsin Legislators (Sept. 19, 2023), [https://www.wheelerbilltracking.com/upload/files/lrb/doc\\_5409532596509ff713b6884.44232304.pdf](https://www.wheelerbilltracking.com/upload/files/lrb/doc_5409532596509ff713b6884.44232304.pdf) (“In at least one case, private employees played a concerning role in the administration of the presidential election.”); Cosponsorship Memorandum Email from State Reps. August and Vorpapel and State Sen. Wimberger to All Wisconsin Legislators (Feb. 2, 2022 09:04 CST) (on file with the Wisconsin Department of Justice) (“In at least one instance, private individuals from [the grantor] played a concerning role in the administration of the election.”).

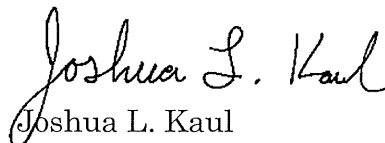
of a statute being superfluous should be avoided wherever possible.” *Wagner v. Milwaukee Cnty. Election Comm’n*, 2003 WI 103, ¶ 33, 263 Wis. 2d 709, 666 N.W.2d 816 (citation omitted).

¶ 15. In Wis. Const. art. III, § 7(2), the word “task” is limited by the prepositional phrase that follows it: “in the conduct of any primary, election, or referendum.” “[T]ask[s] in the conduct of . . . election[s]” refers to the work of conducting an election. Wis. Const. art. III, § 7(2). And the noun “conduct,” in this context, means “the act, manner, or process of carrying on: MANAGEMENT.”<sup>3</sup> “Tasks in the conduct of an election” are thus not everything relating to the election more broadly, but activities in directing or leading the administration of the election.

### CONCLUSION

¶ 16. In sum, I conclude that the meaning of “election official” is the same under Wis. Const. art. III, § 7(2) and Wis. Stat. § 5.02(4e) and that the work that Wis. Const. art. III, § 7(2) requires to be performed by election officials is work in directing or leading the administration of an election.

Sincerely,

  
Joshua L. Kaul  
Attorney General

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<sup>3</sup> *Conduct*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/conduct> (last visited June 20, 2024); *see also id.* (meanings of “conduct” when used as a transitive verb include “to direct or take part in the operation or management of,” “to direct the performance of,” and “to lead from a position of command”).