

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.

SECOND VERIFIED RESPONSE

Pursuant to Wis. Stat. § 5.05(2m)(c)2.a and correspondence with the Wisconsin Elections Commission, Respondents submit this response to Complainant David VanderLeest’s “5.06 Combined Reply and Affidavit” (“Reply”). Respondents incorporate all facts and arguments presented in their initial Response submitted to the Wisconsin Elections Commission on October 8, 2024.

PROCEDURAL BACKGROUND

Complainant David VanderLeest filed two baseless complaints with the Wisconsin Elections Commission, one under Wis. Stat. § 5.06 (this docket number) and a complaint under Wis. Stat. § 5.05 (No. EL 24-94), as well as a related request for an advisory opinion. On October 8, 2024, Respondents submitted their Response to VanderLeest’s § 5.06 Complaint.

On October 17, 2024, VanderLeest filed reply briefs in support of his complaints. On October 21, 2024, Wisconsin Elections Commission Attorney Brandon Hunzicker stated by email that the reply brief would be considered with respect to EL 24-95 but that reply briefs are not statutorily authorized in support of a § 5.05 complaint, such that the reply brief in that matter would be provided to Commissioners who may choose whether to consider it.

On November 25, 2024, Counsel for Respondents wrote a letter to the Wisconsin Elections Commission noting that VanderLeest's reply briefs consist almost entirely of new arguments and allegations absent from his earlier filings. Respondents requested that the Commission either disregard those new allegations or allow Respondents an opportunity to respond. On December 18, 2024, the Commission informed the parties that the Commission would allow another response period for new allegations and arguments contained in VanderLeest's Reply.

Respondents' Second Response, accordingly, is limited to the new allegations and arguments raised by VanderLeest. Respondents incorporate by reference their responses to the allegations and arguments originally raised by VanderLeest. Respondents filed a separate second Response to the § 5.05 Complaint (No. EL 24-94) on January 2, 2025, per the Commission's established deadline in that case.

ARGUMENT

VanderLeest's initial Complaint was a misguided attempt to relitigate the April 2 election for Green Bay City Council, District 6 and the resulting April 12 recount. (Compl. ¶¶5–8, No. EL 24-95). His requests for relief are equally if not more

outrageous: he asks the Commission to (1) “Nullify the Election for Green Bay City Council, District Six which took place on April 2nd, 2024 and nullify the Recount Results from April 12th 2024,” (2) “Order a Special election to be held,” (3) “Issue a refund of the recount fees ... and void the remaining [] balance,” and (4) “look at all the election ballot bags and EL-104 forms for the entire city of Green Bay.” (*Id.*, ¶¶18–22). Having failed to raise any issue of merit, VanderLeest now argues that there was fraud in the underlying election. Once again, VanderLeest’s claims lack merit. They are based on repeated and egregious misunderstandings or misrepresentations of the law and facts. Because Respondents acted in conformity with Wisconsin law in conducting the April 2 election for Green Bay City Council, District 6 and the April 12 recount, VanderLeest’s complaint must be dismissed.

A. VanderLeest’s assertions about “Qualifying Sticks” are irrelevant to the claims in his Complaint.

VanderLeest asserts that Respondent Jeffreys “lost two ‘Qualifying Sticks’ from the Spring Election Cycle 2024.” (Reply ¶4, No. EL 24-95). In support of this allegation, VanderLeest cites an email exchange with Brown County Clerk Patrick Moynihan. (*Id.*; *see also* Reply Exh. 11, No. EL 24-95). But as that email exchange makes explicit, the allegedly misplaced USB devices were “utilized for the *February Spring Primary*,” (Reply Exh. 11, No. EL 24-95 (emphasis added)), *not* the *April 2 election* for which VanderLeest is seeking relief. (Compl. ¶5, No. EL 24-95). For that reason alone, VanderLeest’s allegation about the allegedly misplaced USB devices has no bearing at all on his claims.

Compounding the irrelevance of the USB devices identified by VanderLeest, the email exchange on which he relies makes clear that the devices were “obsolete” and were “‘Qualifying Sticks’ *not* ‘Results Sticks.’” (Reply Exh. 11, No. EL 24-94 (emphasis added)). Based on the email exchange, it is Respondents’ understanding that “qualifying sticks” only are used to *program* the election equipment during Pre-Election Electronic Voting Equipment Testing, one week before election day.¹ Qualifying sticks are divorced from *results* on election day, however, which are reported using “results sticks.” As a result, the allegedly misplaced *qualifying sticks for the February primary election* have no bearing on whether the *results for the April 2 election* and recount were properly tabulated.

B. VanderLeest’s allegation about ballot stuffing is false.

VanderLeest claims that “the ballot was stuffed at ward 21.” (Reply ¶5, No. EL 24-95). VanderLeest’s only evidence of alleged ballot stuffing is his repeated assertion that the “electronic ballot images” show that the first 45 ballots were cast for “one candidate,” Joey Prestley. (*Id.*). VanderLeest at best misunderstands and at worst misrepresents this evidence. In any event, his assertions do not warrant the relief sought.

First, VanderLeest’s claim of ballot stuffing turns entirely on an assumption that the electronic ballot images reflect the exact order in which votes were cast in that ward on Election Day. In Wisconsin, however, it is Respondents’ understanding

¹ See, e.g., Samantha Petters, *Green Bay city officials conduct public test of voting equipment ahead of November election*, WeAreGreenBay.com (Oct. 28, 2024), <https://www.wearegreenbay.com/news/local-news/green-bay-city-officials-conduct-public-test-of-voting-equipment-ahead-of-november-election/>.

that counties randomize the results when publishing electronic ballot images.² Counties do this ensure voter secrecy and privacy and to stop people like VanderLeest from using publicly available information to undermine each voter’s constitutional right to a secret ballot. Wis. Const. art. III, § 3.³ Based on conversations with Brown County officials, it is Respondents’ understanding that the ballot images that VanderLeest presents as obtained from Brown County are presented in a randomly generated sequence of votes. The images thus do not support VanderLeest’s assertion that the ballots in Ward 21 were “stuffed.”

Second, even if the vote records VanderLeest presents as obtained from Brown County are complete, accurate, and presented in the order in which they were cast, it is incorrect the first 45 were cast in favor of Joey Prestley for Alderperson District 6. In VanderLeest’s Exhibit, the 30th ballot was cast in favor of Steven Campbell for Alderperson District 6 (Exh. W21 at p. 59, No. EL 24-95); and the 32nd ballot left blank the race for Alderperson District 6 (*id.* at p. 63).

Third, further undermining VanderLeest’s claim that the first 45 ballots were “stuffed,” the ballots he references differ in many other ways, suggesting they were cast by different voters with different preferences across many races. By way of example, within those 45 referenced ballots:

² See, e.g., Election Audit Central, Dane County, <https://elections.countyofdane.com/Auditing> (“The ballots images for the 2024 General Election are contained in zip files The images are PDFs. They have no identifying voter information. They are randomly sorted[.]”); Election Audits, St. Croix County, <https://www.sccwi.gov/1036/Election-Audits> (stating same).

³ See Laura Hinkle, Sarah Walker & Rachel Orey, *Implications of Making Ballot Images and Cast Vote Records Public*, Bipartisan Policy Center (Aug. 17, 2023), <https://bipartisanpolicy.org/explainer/implications-of-making-ballot-images-and-cast-vote-records-public/>.

- The first ballot includes a write-in vote for President of the United States, for “Dwayne Johnson,” commonly known as The Rock. (*Id.* at p. 1). No other ballot in the submission appears to have been cast in favor of Dwayne Johnson for President of the United States.
- The second ballot did not include any selection in the races for Circuit Court Judge Branch 2, Circuit Court Judge Branch 6, and County Supervisor District 6. (*Id.* at p. 3). No other ballot appears to have replicated that pattern.
- Only two ballots appear to have been cast in favor of Dean Phillips for President of the United States. (*Id.* at pp. 11, 55).
- Only two ballots appear to have been cast in favor of “Uninstructed Delegation” for President of the United States. (*Id.* at pp. 47, 57).

All of these differences, none of which VanderLeest acknowledges much less explains, undermine his baseless claim of ballot stuffing.

In sum, VanderLeest fails to provides any evidence that supports his incendiary claim of ballot stuffing.

C. Wisconsin law requires the Clerk or the Deputy Clerk to initial absentee ballots.

VanderLeest claims that “almost all” of the absentee ballot envelopes he viewed during the April 12 recount were improperly stamped with Respondent Jeffrey’s initials and that they should have instead been initialed by two election workers. (Reply ¶¶6–8, No. EL 24-95). VanderLeest confuses separate requirements under Wisconsin law for absentee ballots and ballots voted in person on election day.

In Wisconsin, for absentee ballots not cast through Special Voting Deputies, either the clerk or deputy clerk is required to initial the absentee ballot envelope certificate as well as the ballot itself. On the absentee ballot certificate envelope, the clerk or deputy clerk provides their initials to verify that the voter showed valid

identification if they voted in-person absentee, or provided requisite personal identification with their request for a mail ballot, or was exempt from the identification requirement under the governing statutory provisions. *See* Wis. Stat. § 6.86(1)(ar); Wisconsin Elections Commission, Official Absentee Ballot Application/Certification Form EL-122 (Form EL-122)⁴; Wisconsin Elections Commission, Election Administration Manual for Wisconsin Municipal Clerks (“Election Administration Manual”) at 87 (Aug. 1, 2024).⁵ On the absentee ballot itself, the clerk or deputy clerk initials the ballot before providing it to the voter either by mail or in person as part of the ballot endorsement process required by law. *See* Wis. Stat. §§ 5.54, 6.87(1); Wisconsin Elections Commission, Election Administration Manual at 39; Wisconsin Elections Commission, FAQ⁶ (“Why [do] so many absentee ballots ... have the same initial? ... The clerk or deputy clerk is required to initial the absentee ballot before issuing it to the voter, so it is natural that many of them all have the same set of initials.”).⁷ Some jurisdictions in Wisconsin use stamps with the clerk’s initials given the volume of absentee ballots in certain jurisdictions.

For ballots voted in person on Election Day, however, *two* election inspectors initial the ballot before giving the ballot to a voter. Wis. Stat. §§ 5.54, 6.80(2)(d); 7.37(4); Election Administration Manual at 39. No such process is required for

⁴ Form EL-122 is available at https://elections.wi.gov/sites/default/files/documents/EL-122%20Standard%20Absentee%20Ballot%20Certificate%20%28rev.%202023-08%29_2.pdf.

⁵ The Election Administration Manual is available at <https://elections.wi.gov/resources/manuals/election-administration-manual>.

⁶ The FAQs are available at <https://elections.wi.gov/faq>.

⁷ Special Voting Deputies may initial the ballots when conducting absentee voting in care facilities or retirement homes. Wis. Stat. §§ 6.875(4), 7.08(1)(a); Election Administration Manual at 39.

absentee ballots, as is clear on the face of the ballots and the ballot envelopes. *See, e.g.,* Form EL-122; VanderLeest Exh. W21, No. EL 24-95.

Moreover, the Wisconsin Court of Appeals has unambiguously held that Wis. Stat. § 7.37(4) “should be interpreted as directory when the number of votes is equal to the number of electors” and that failure to comply with the statute thus is not grounds to exclude a ballot so long as there has been “substantial compliance” in the form of at least one inspector’s signature. *Roth v. La Farge Sch. Dist. Bd. of Canvassers*, 2001 WI App 221, ¶34, 247 Wis. 2d 708, 634 N.W.2d 882. In *Roth*, the court considered “whether a ballot initialed by only one inspector was legally excluded by the board.” *Id.*, ¶1. The court concluded that “there is nothing in Wis. Stat. § 7.37(4) suggesting that initials of two inspectors are ‘essential to the validity of the election,’” *id.*, ¶28, and recognized that “the supreme court has already decided that a ballot should be counted when it was initialed by only one clerk but a statute required that it be initialed by two.” *Id.* (citing *Ollmann v. Kowalewski*, 238 Wis. 574, 300 N.W. 183 (1941)). As a result, it held that one inspector’s signature was “substantial compliance” where the number of ballots matched the number of voters and “there [wa]s no reason to invalidate the will of one elector because of a technical defect.” *Id.*, ¶¶33–34.

VanderLeest cites to Wis. Stat. § 7.50(2) in attempt to support his claim that two initials of election workers are required on all ballots. (Reply ¶7, No. EL 24-95). VanderLeest’s argument is contrary to binding precedent in both *Roth* and *Ollmann*. Indeed, the Court in *Roth* unequivocally stated: “We disagree that Wis. Stat. § 7.50(2)

mandates the board to exclude votes that contain the initial of only one inspector.” 2001 WI App 221, ¶31. That is because Wis. Stat. § 7.50(2) merely lays out the process for determining voter intent during the counting and canvassing of ballots voted on election day:

All ballots cast at an election which bear the initials of 2 inspectors shall be counted for the person or referendum question for whom or for which they were intended, so far as the electors’ intent can be ascertained from the ballots notwithstanding informality or failure to fully comply with other provisions of chs. 5 to 12.

Wis. Stat. § 7.50(2). Thus, as the court in *Roth* made clear, Wis. Stat. § 7.50(2) “simply guarantees voters who do use properly initialed ballots that their votes will be counted,” 2001 WI App 221, ¶33. As a result, contrary to VanderLeest’s new claim, Wis. Stat. § 7.50(2) has no bearing on the validity of the ballots at issue here.

Respondents complied with the law and the procedures laid out by the Wisconsin Elections Commission for both absentee ballots and ballots voted in person on election day.

D. VanderLeest’s claims regarding party affiliation are incorrect.

VanderLeest claims that Florence Aerts, an election inspector in Green Bay, “is a democrat and fraudulently lists herself as unaffiliated”⁸ and that other “poll observers” are also listed as unaffiliated although they are “known democrats.” (Reply

⁸ VanderLeest also alleges that Ms. Aerts is on the indefinitely confined list. VanderLeest neither raises any statute violated by Respondents with respect to this claim, *see* Wis. Stat. § 7.30(2)(a) (describing requirements for election inspectors), nor offers any evidence that Ms. Aerts engaged in any misconduct while serving as an election inspector. VanderLeest’s argument about the indefinitely confined list is thus a red herring.

¶9, No. EL 24-95). Again, VanderLeest misunderstands the laws and procedures governing Wisconsin election officials.

In Wisconsin, election inspectors or “poll workers” staff polling places on election day. *See* Wisconsin Elections Commission, Election Day Manual for Wisconsin Election Officials (“Election Day Manual”) at 9 (Aug. 2024).⁹ Each of the two major political parties has the *opportunity*, but is not required, to provide each municipal clerk with a list of nominees to serve as election inspectors in the local jurisdiction. *See id.*; Wis. Stat. § 7.30(4)(b). The election inspectors that are nominated by the major political parties are then considered “affiliated” with that political party. However, if positions are still open after the clerks have considered the candidates submitted or if no lists are submitted by the parties, “unaffiliated” inspectors may be appointed to the remaining positions.” Election Administration Manual at 128; *see also* Election Day Manual at 163 (Form EL-101) (“An inspector is ‘unaffiliated’ unless his or her name was submitted as an inspector nominee by one of the two dominant parties in the county (generally, the Democratic and Republican Parties).”).

The term “affiliated” in this context has a procedural, rather than a substantive, meaning. An election inspector’s personal party preference, including whether they are registered as a member of any political party, has no bearing on whether they are “affiliated” with that party through the nomination process.

⁹ The Election Day Manual is available at <https://elections.wi.gov/resources/manuals/election-day-manual>.

Respondents followed the law and procedures set out by the Commission with respect to party affiliation of election inspectors.

Even if there had been an issue with respect to party affiliation—and there was not—VanderLeest offers no explanation and provides no evidence tethering the issue to his baseless assertions of fraud. VanderLeest’s accusation that “not having a Republican poll worker at ward 21 allows for the ballot stuffing to occur,” (Reply ¶10, No. EL 24-95), for instance, is a vague, speculative, and wholly unsubstantiated claim that should not be entertained by the Commission. As noted above, the only evidence VanderLeest presents not only fails to provide any valid support for his claim of ballot stuffing at Ward 21 but, upon close examination, undermines his allegation. Furthermore, there is no requirement in Wisconsin law that a poll worker of a particular party affiliation be working at any ward if there are no such workers available. Indeed, if no lists of nominees for election inspectors are submitted by the political parties, “all appointments are made without regard to party affiliation.” Election Administration Manual at 127; Wis. Stat. § 7.30 4(c). In sum, here as throughout his Reply, because VanderLeest makes no specific, supported allegations that Respondents violated a statute enforced by the Commission, his Complaint must be dismissed.¹⁰

¹⁰ Respondents take issue with VanderLeest’s attempt to tarnish their reputation and motives by inaccurately describing their counsel. (Reply ¶14, No. EL 24-95). Law Forward is a nonpartisan, nonprofit organization committed to protecting and advancing free and fair elections in Wisconsin. It goes without saying that Respondents are nonpartisan election officials and that at all times relevant here, and always, Respondents work to ensure that elections in Green Bay are free, fair, and secure.

CONCLUSION

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

Dated this 28th day of January, 2025.

By: /s/ Electronically signed by Jeffrey A. Mandell
Jeffrey A. Mandell, SBN 1100406
LAW FORWARD
222 West Washington Avenue, Suite 250
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Attorney for Respondents

Pursuant to Wis. Stat. § 887.015, I declare under penalty of false swearing under the law of Wisconsin that the foregoing is true and correct.

Signed on the 28th day of January, 2025, at Green Bay, Wisconsin.

/s/ Electronically signed by Celestine Jeffreys
Celestine Jeffreys