



# Wisconsin Elections Commission

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September 18, 2024

Terry Johnson  
N5656 County Road A  
Westfield, WI 53964

Town Board  
Town of Westfield, Marquette County  
P.O. Box 157  
Westfield WI 53964

Sent via email to: [elanson@ammr.net](mailto:elanson@ammr.net), [kmjohnson@maqs.net](mailto:kmjohnson@maqs.net)

## **Re: In the Matter of Terry Johnson v. Town Board of Westfield (Case No. EL 24–86)**

Dear Ms. Johnson and the Town of Westfield Town Board:

This letter is in response to the verified complaint submitted by Terry Johnson (Complainant) to the Wisconsin Elections Commission (Commission), which was filed to challenge actions taken by the Town Board of Westfield (Respondent). The complaint pertains to alleged violation under Wis. Stat. § 9.10(4)(d) of the Respondent to call a recall election following a finding of sufficiency by the town clerk.

The Commission has reviewed the complaint and response. The Commission provides the following analysis and decision. In short, the Commission finds that the Complainant did show probable cause to believe that a violation of law or abuse of discretion occurred with regard to the failure to promptly call a recall election.

### Commission Authority and Role in Resolving Complaints Filed Under Wis. Stat. § 5.06

Under Wis. Stats. §§ 5.05(1)(e) and 5.06(6), the Commission is provided with the inherent, general, and specific authority to consider the submissions of the parties to a complaint and to issue findings. In instances where no material facts appear to be in dispute, the Commission may summarily issue a decision and provide that decision to the affected parties. This letter serves as the Commission’s final decision regarding the issues raised in this complaint.

The Commission’s role in resolving verified complaints filed under Wis. Stat. § 5.06, which challenge the decisions or actions of local election officials, is to determine whether a local official acted contrary to applicable election laws or abused their discretion in administering applicable election laws.

Complaints “. . . shall set forth such facts as are within the knowledge of the complainant to show probable cause to believe that a violation of law or abuse of discretion has occurred or will occur.” Wis. Stat. § 5.06(1). Probable cause is defined in Wis. Admin. Code § EL 20.02(4) to mean “the facts and reasonable inferences that together are sufficient to justify a reasonable, prudent person, acting with caution, to believe that the matter asserted is probably true.”

*Wisconsin Elections Commissioners*

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

*Administrator*  
Meagan Wolfe

### Complaint Allegations

The complaint alleges that the Respondent Town Board “violated Wis. Stat. § 9.10(4)(d) when they failed to set the required recall election date.” The complaint alleges that the Town Clerk issued a certificate of sufficiency regarding a recall petition on August 13 and that a recall election must be held on September 24. The complaint alleges that “[o]ne supervisor stated that the election should be tabled because he heard someone filed a complaint with the WI Election Commission” but that the complaint was not provided to the board, that another supervisor stated that the September 24 date should be followed, and that the Town Board Chair “stated that we shouldn't have a recall election because she didn't do anything wrong, and she shouldn't be recalled.” The complaint alleges that no action was taken by the board concerning the recall petition or election. The complaint further alleges that “the chairperson has been using her position of authority to derail the recall efforts of many town citizens.” The complaint asks the Commission to order the Respondent to “set the recall election date as required by law.”

### Response

The Respondent admits that the Town Clerk issued a Certificate of Sufficiency for a recall petition on August 13, and that the clerk notified the Respondent of that fact. The Response alleges that “the Town Clerk did not request a recall election date of September 24, the Town Clerk merely reported that the recall election date was September 24. This date arises by operation of State law” and cites Wis. Stat. § 9.10(4)(d). The response also admits that no action was taken by the board. The response denies that the chair has been using her position to “derail the recall efforts.” The response admits that the election must be held on September 24 and that ballots have been printed and mailed to electors. The response:

denies that the Town Board sets the date of the recall election, however. The Town Board cannot be ordered to do something it has no legal ability to do. As correctly announced by the Town Clerk at the meeting held on August 19, 2024, the recall election will be held on September 24th as required by Wisconsin Statute Section 9.10(4)(d).

The response also states that: “if members of the public, or the petitioner, did not understand the election dates and deadlines established in the state law, that also does not change the dictates of the statute.”

### Reply

The Complainant provided her reply on September 17, 2024. She asserts that the Respondent’s actions “usurped the possibility of anyone wishing to file candidacy documents.” She asserts that Form CF-IL requires candidates to input a date of election, and since the Respondent did not set an election date, the Respondent did not allow the candidates the required time to file the necessary documents.

Neither the Complainant’s original complaint or the Respondent’s response address the impact of the allegations on candidate filing or Form CF-IL. Accordingly, the Commission cannot consider new allegations or arguments raised for the first time in a Complainant’s reply. Furthermore, the Complainant’s reply is required to be “sworn to before a person authorized to administer oaths.” Wis. Admin. Code EL § 20.03(1). The Complainant’s reply did not contain any indication that it was sworn.

### Discussion

Both the Complainant and the Respondent appear to agree that the recall election should properly be held on Tuesday, September 24, 2024. Both parties also appear to agree that the recall election has indeed been called and will proceed on September 24. Neither party has asserted that the recall election should be on a different date, or should not be held altogether.

The only dispute appears to be one of the statutory interpretation of Wis. Stat. § 9.10(4)(d) regarding who must be the one to call the recall election—the municipal clerk or the town board—and the answer to that question has no bearing on whether the recall election should proceed. Unambiguously, § 9.10(4)(d) states, in relevant part, that “[p]romptly upon receipt of a [recall petition certification], **the governing body**...shall call a recall election.” (Emphasis added). A “governing body” means “the common council of a city, board of supervisors of a town or board of trustees of a village.” Wis. Stat. § 5.02(6). It does not mean, refer to, or include the municipal clerk.

Accordingly, the Commission finds that the failure of the Respondent to call a recall election promptly upon receipt of the recall petition certification was contrary to law. Although it appears from the response that the Respondent was following the municipal clerk’s lead in setting the recall election on September 24, the Respondent is the proper statutory actor under § 9.10(4)(d). The Respondent asserts, incorrectly, in its response that it has “no legal ability” to set the date of a recall election. This is plainly contrary to law—§ 9.10(4)(d) means what it says.

However, even though the parties appear to agree that there will be, and should be, a recall election on September 24, 2024, that election cannot proceed on the municipal clerk’s decision alone. Accordingly, the Commission orders the Respondent to take all action necessary by Friday, September 20, 2024 to properly call the election for Tuesday, September 24, 2024. The Commission further orders the Respondent to take all action necessary to communicate to their constituents that a recall election will take place on Tuesday, September 24, 2024, and that the recall election has been called by the Respondent upon receipt of a recall petition certificate.

#### Commission Decision

Based upon the above review and analysis, the Commission finds that the Respondent took actions that were contrary to law when it declined to call a recall election after the municipal clerk issued a certificate of sufficiency to a recall petition. The Respondent is the governing body of the Town of Westfield, and it alone has the responsibility under § 9.10(4)(d) to promptly call a recall election upon receipt of a certificate of sufficiency of a recall petition from the municipal clerk.

Prior to 11:59 p.m. on Friday, September 20, 2024, the Respondent is ordered to complete the following:

1. Take all action necessary to properly call the recall election for Tuesday, September 24, 2024 pursuant to § 9.10(4)(d).
2. Take all action necessary to communicate to the electors of Westfield that a recall election will take place on Tuesday, September 24, and that the recall election has been called by the Respondent upon receipt of a recall petition certificate.

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This letter constitutes the Commission's resolution of this complaint. Wis. Stat. § 5.06(2). Pursuant to Wis. Stat. § 5.06(8), any aggrieved party may appeal this decision to circuit court no later than 30 days after the issuance of this decision.

If any of the parties should have questions about this letter or the Commission's decision, please feel free to contact the Commission at 608-266-8005 or [elections@wi.gov](mailto:elections@wi.gov).

Sincerely,

**WISCONSIN ELECTIONS COMMISSION**