



Wisconsin Elections Commission

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April 1, 2024

Susan Trojan
2644 N. 61st St.
Milwaukee, WI 53213

Claire Woodall
200 E. Wells St., Room 501
Milwaukee, WI 53202

Sent via email to: susanmtrojan@gmail.com; KAG@lcojlaw.com; cwooda@milwaukee.gov;
kblock@milwaukee.gov

Re: In the Matter of Susan Trojan v. Claire Woodall-Vogg (EL 22–63)

Dear Ms. Trojan and Executive Director Woodall:

This letter is in response to the verified complaint submitted by Susan Trojan (Complainant) to the Wisconsin Elections Commission (Commission), which was filed in reply to actions taken by Claire Woodall-Vogg (Respondent, now Claire Woodall) who is the Executive Director of the Milwaukee Elections Commission (MEC). The Complaint has also identified the MEC as a Respondent, which is permissible under the administrative rules governing § 5.06 complaints. Wis. Admin. Code EL § 20.02(5). However, the Complaint does not appear to make any allegations that the MEC Commissioners as a body took any actions that are contrary to law. Accordingly, the analysis will address the alleged actions of Executive Director Woodall as the primary Respondent.

The Commission has reviewed the complaint, the Respondent’s response, and the Complainant’s replies. The Commission provides the following analysis and decision.

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 the complaint of Susan Trojan.

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

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Administrator
Meagan Wolfe

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.”

Complaint Allegations – Susan Trojan v. Claire Woodall

The Complainant alleges that she is a registered voter and qualifies as a registered elector in the City of Milwaukee.

The Complainant argues that the deadline for a governing body of a municipality to designate an alternate absentee ballot site was June 9, 2022, pursuant to § 6.855(1). She alleges that on June 1, 2022, the Milwaukee Common Council adopted Resolution 220149, which was signed by the Mayor of Milwaukee on June 6, 2022. She alleges that Resolution 220149 lists 27 locations for alternate absentee voting sites throughout the City of Milwaukee. She further alleges that in July of 2022, the Respondent posted a Type E Notice (Notice) on the MEC’s website. The Complainant included what she alleges are copies of these documents as exhibits to her complaint.

The Complainant alleges that four locations listed in Resolution 220149 were identified by Notice E as in-person absentee voting (IPAV) sites: the Frank P. Zeidler Municipal Building; Midtown Center; Zablocki Library; and the Good Hope Library (collectively Four Locations). She alleges that IPAV was scheduled from July 26 through Saturday August 6 during certain hours. She alleges that the Notice also indicates that IPAV will be available at the additional 23 sites from August 1 to August 5, 2022, by appointment only.

The Complainant raises several claims with respect to actions taken by the Respondent and the MEC during the lead up to the August 2022 Primary Election. First, she argues that the Respondent lacks the authority to determine which alternate absentee ballot sites will be used, and that the Respondent failed to immediately display the Notice properly. Second, she argues that the alternate IPAV sites are not as near as practicable to the office of the MEC in violation of § 6.855(1). Third, she argues that functions relating to voting were impermissibly occurring at the MEC office during the time period that alternate site designations were in effect in violation of § 6.855(1). Fourth, she argues that IPAV by appointment is not authorized by law because that form of voting was not specifically authorized by Resolution 220149. She also argues that IPAV by appointment violates § 7.41 by not permitting opportunity for observers to reasonably access and observe such voting. Finally, she argues that certain IPAV voting sites afford an advantage to a political party in violation of § 6.855(1).

The Respondent’s Response

The Respondent alleges that the Milwaukee Common Council made a timely designation of alternate locations for IPAV on June 1, 2022, for the Fall 2022 elections. She alleges that she published a Type E Notice pursuant to § 10.01(2). For the partisan primary, she alleges that IPAV took place at alternate sites from July 16 through August 6, 2022, and further alleges that during this time, no IPAV took place at City Hall. She alleged that she allowed for the return of voted absentee ballots at the City Hall office before and after IPAV at alternate sites. She alleged that she did not accept the return of voted absentee ballots at City Hall between July 26 and August 6, but that she resumed accepting voted absentee ballots at City Hall after the conclusion of IPAV on August 6, 2022.

The remainder of the response refutes the legal arguments and claims brought by the Complainant. She admits that only the City Common Council had the authority to designate IPAV sites, but that

§ 6.855(1) does not specify the details of how voting is to be conducted at those sites. Instead, she argues that Commission guidance informed her policies regarding the specifics of voting that were included in the Notice. She also argues that the Notice was given via posting on Legistar on June 1, as of the day it was passed.

The Respondent also argues that the IPAV sites were properly located because a literal proximity interpretation is inconsistent with the goal of the statute, which is to provide options for absentee voting outside of the clerk's office.

The Respondent argues that she did allow for the return of voted absentee ballots in the City Hall Office prior to the start of IPAV, but that this option closed at the end of the day on July 25, 2022. She alleges that, after this point, signs were placed instead that directed voters to return their voted absentee ballots to the nearest alternate site at the Zeidler Municipal Building.

The Respondent argues that the Commission specifically authorized IPAV by appointment, but that no voters utilized this option for the August 2022 primary. She alleged that she intends to post a 24-hour notice if any voter seeks to vote via IPAV by appointment.

Finally, the Respondent argues that none of the sites selected for IPAV provided an advantage to any political party. She alleged that almost all of the IPAV sites were publicly owned buildings, and that they were selected because of their geographic location, low or no-cost availability, or other features such as size.

The Complainant's Reply to the Response

The Complainant's reply focused on additional legal arguments in support of her argument that the Respondent's actions were contrary to law. The Complainant argues that to the extent that the Commission offered guidance that IPAV by appointment is permitted, then that guidance is also contrary to law. She also argued that the Respondent's decision not to use 23 additional alternate sites in August 2022 meant they also could not be used for IPAV for the November 2022 General Election. She also disputes the Respondent's account for how the Notice was properly posted, and argues that a posting on Legistar does not conform with the requirement of § 6.855(2) that it be posted "in the office of the municipal clerk or board of elections commissioners."

The Complainant also argues that the Notice states that the dates to vote via IPAV with the clerk's office ran from July 26 to August 6, and that electors were permitted to drop off their absentee ballots and both the IPAV alternate sites and City Hall at the same time.

The Complainant argues that the Respondent has conceded that the majority of the 27 alternate absentee voting sites are not as near as practicable to the office of the municipal clerk or board of election commissioners.

Finally, the Complainant argues that the Respondent also does not dispute that the Good Hope Library site is staffed and used for office hours by Democrat State Senator Lena C. Taylor. The Complainant also alleges that Senator Taylor also holds office hours at two additional designated alternate sites, Coffee Makes You Black and the Atkinson Library. The Complainant argues that the motive for the alternate site selection is irrelevant, and that selecting a site that is often used by one political party necessarily affords an advantage to that political party.

Discussion

Selection and Use of Designated Alternate Absentee Voting Sites

The Complainant argues that the Respondent is not authorized to designate alternate in-person absentee ballot voting sites. Specifically, she argues that the Respondent “unilaterally determined which alternate absentee ballot sites would be used during the primary election on August 9, 2022.” As a preliminary matter, it appears as if the Respondent *did* plan to use all alternate absentee sites, even if not all of them were fully staffed for the entire time. In addition to the IPAV at four specific locations, the Respondent explained that under her policy, voters could also utilize any of the other designated sites so long as they provided notice to the Respondent in advance so that the Respondent could properly staff and service the site.

Generally, voters may request and vote absentee ballots, as well as return completed absentee ballots, to the office of the municipal clerk or board of election commissioners during an election. However, the governing body of a municipality “may elect to designate a site other than the office” of these officials. Wis. Stat. § 6.855(1). The governing body is allowed to designate more than one alternate site. Wis. Stat. § 6.855(5). Section 6.855 is silent with respect to whether the municipal clerk must utilize every designated alternate site, or whether they may choose to use a smaller subset of approved sites.

However, the plain language of Resolution 220149 supports a conclusion that the governing body of the City of Milwaukee intended to provide the Respondent with the option of using one or more of the approved alternate absentee voting sites. The resolution “directs the [MEC] to provide alternative in-person absentee voting at any of the following locations in the city for the Fall 2022 Elections.” (Emphasis added). The plain meaning of “any” encompasses “one, some, or all indiscriminately of whatever quantity.”¹ Accordingly, the Complainant’s argument that such authority was not granted by the Milwaukee Common Council is not supported by the plain language of the Council’s resolution.

Even if Resolution 220149 had not indicated that the Respondent could choose from any of the designated alternate sites, nothing in § 6.855 supports a reading that a municipality is required to staff and use every alternate absentee site designated by the governing body for any specific period of time. Instead, the best reading of § 6.855(3) is that any designated site that the clerk intends to use as an alternate site must be staffed by her or her employees, as opposed to other individuals. In the absence of such a prohibition, the Respondent is otherwise authorized by § 7.15 to perform the duties “which may be necessary to properly conduct elections or registration.” This includes the ability to determine the hours and staffing levels for alternate absentee sites in order to best serve the electorate.

Finally, the Complainant argues in her reply that since the Respondent elected not to use 23 of the designated alternate sites for IPAV in the August 2022 primary, she was precluded from using them for IPAV in the November 2022 General Election. This argument is without merit and contrary to statute. The Complainant cites § 6.855(1) to support an argument that “Respondents may only use alternate in-person absentee voting sites for the general election that were also designated and used for the primary election.” But this is not what § 6.855(1) says. To the contrary, under § 6.855(1), the governing body may elect to designate an alternate site “for any election.”

¹ Available at: <https://www.merriam-webster.com/dictionary/any>.

Resolution 220149 directs the MEC to provide IPAV at the designated alternate sites for the “Fall 2022 Elections,” which obviously is intended to include the November 2022 General Election.

Accordingly, the Commission finds that the Respondent’s actions were not contrary to law with respect to choosing how to best staff and use designated alternate absentee voting sites.

Posting of the Required Notice

The Complainant argues that the Respondent was required to immediately display notice of the alternate site designations, both in her office and on the MEC website, beginning June 1, 2022, through the period that absentee ballots were available for the election. The Respondent argues that she posted the required notice immediately on Legistar, and that it was reported by the media, but does not deny the Complainant’s assertion that she did not post the either a Type E Notice, or other notice of alternate site designation, on the MEC website or in her office until July 2022.

Section 6.855(2) directs the MEC to “prominently display a notice of the designation of the alternate site...” in the MEC office “beginning on the date that the site is designated . . . and continuing through the period that absentee ballots are available.” The section also requires the notice to be posted on the MEC website “during the same time period” that the notice is displayed in the office. Wis. Stat. § 6.855(2). Section 6.855(2) does not require that this notice specifically be a Type E Notice, just a notice of designation that the governing body has authorized alternate absentee sites.

The parties appear to agree that the Respondent did not post either a Type E Notice, or any notice of designation at all, in her office or on the MEC website starting on the day that the alternate sites were designated. The statute unambiguously informs the Respondent where and when to post the required designation notice, and does not authorize any substitute posting locations. Accordingly, it is not sufficient for the Respondent to post the designation notice required by § 6.855(2) in Legistar, or rely on media coverage.

The Commission therefore finds that the Respondent’s actions were contrary to law with respect to her failure to post the designation notice required by § 6.855(2) in the MEC office and on the MEC website on the day the designation was made.

Location of Alternate Absentee Voting Sites

The Complainant argues that the designated alternate sites were not located “as near as practicable” to the MEC office in violation of § 6.855(1). The Respondent argues that an overly-restrictive reading of “as near as practicable” conflicts with the intent of § 6.855(5), which allows the governing body to designate more than one alternate site.

The clear end desired by § 6.855 is an ability to provide the voter with alternate voting locations in case the office of the municipal clerk or the MEC is not suitable for some reason. Section 6.855(5) expressly permits the designation of multiple alternate sites. The words “practicable” and “possible” are not synonymous. Read plainly, “practicable” in § 6.855(1) is synonymous with “feasible,” both of which apply “to what is likely to work or be useful in attaining the end desired.”² It would be illogical to argue that the distribution of multiple alternate absentee voting sites

² Available at: <https://www.merriam-webster.com/dictionary/practicable>.

throughout the geographic confines of a city need be “near as practicable to the office of the municipal clerk,” provided all sites are within the municipal boundaries and are relatively politically equitable, geographically equal, and otherwise lawful in their distribution. *See Brown v. WEC*, Amended Decision and Order, Jan. 10, 2024 (2022CV001324) (“Accordingly, this Court rejects that the elections statute and election statutory scheme in Wisconsin required that the alternate absentee balloting sites be as physically near to the City Clerk as possible.”).³

However, the Commission concludes that Executive Director Woodall and the MEC are not the proper Respondents for this specific claim because neither Respondent possesses the statutory authority to designate alternate sites. That authority rests solely with “the governing body of a municipality.” Wis. Stat. § 6.855(1). Accordingly, the Commission cannot conclude that the Respondents’ alleged actions with respect to this claim are contrary to law because the law does not provide the Respondents with any action to take regarding the location of alternate absentee sites. The governing body of a municipality may meet the definition of an “election official” under § 5.02(4e) in some circumstances, but the Commission need not decide that question in this case because the Complainant has not identified the Milwaukee Common Council as a Respondent. Accordingly, the Commission dismisses this claim of the complaint for failure to identify an actionable Respondent.

Voting Functions During Alternate Site Designation

[Withdrawn]

IPAV by Appointment

The Complainant argues that offering IPAV or the return of voted absentee ballots “by appointment” at a designated alternate site is contrary to law. Specifically, she argues that nothing in § 6.86 authorizes absentee voting by appointment, and that such an arrangement violates the public’s right to observe elections under § 7.41. The Respondent argues that she was following Commission guidance in authorizing absentee voting by appointment, but that no voters selected that option for the August primary. Nevertheless, the Respondent also indicates her intent to “post a 24-hour notice” if anyone does request absentee voting by appointment in the future so that observers may be present.

Resolution 220149 and § 6.855(3) impose a difficult burden upon the Respondent. Resolution 220149 designates 27 different alternate absentee voting sites, spread throughout the City of Milwaukee, and § 6.855(3) requires that, if she chooses to use them all, that they all be staffed by the Respondent or by MEC employees. It may be impossible for the Respondent, or her office, to fully staff all 27 alternate sites, full-time, for the entire designation period to accommodate both IPAV and the in-person return of voted absentee ballots. As already discussed, the Respondent has no control over which alternate sites, and how many, are designated by the Common Council, but does have control over the use and hours of operation of each site.

Section 10.01(2)(e), which requires the posting of the Type E Notice, states that it must include “the office hours during which an elector may cast a ballot in the municipal clerk’s office or at an alternate site...” Office hours are necessarily predicated upon anticipated demand, and it is illogical to require the Respondent to staff 27 different alternate absentee sites full time when she

³ Litigation Note: As of February 2024, at least two parties to this litigation have filed notices of appeal.

is familiar with the actual needs of her jurisdiction. As discussed in a prior section, the Respondent is vested with statutory authority to properly conduct elections in her jurisdiction. Wis. Stat. § 7.15. She alleges that she took anticipated voter turnout into account when setting the hours at the alternate sites, which she is uniquely qualified to do as the Executive Director of the MEC.

Accordingly, the Commission finds that the Respondent's policy of offering functions relating to voting or the in-person return of voted absentee ballots to designated alternate sites by appointment only is not contrary to law, as long as the Respondent provides at least 24 hours of notice in advance of any appointment so that anyone wishing to lawfully observe the election process may do so. Giving at least 24 hours of notice ensures that the public's right of access under § 7.41(1) is preserved. The 24 hour notice must be posted in a forum likely to be the most visible to voters, such as the MEC website. Finally, the Type E Notice must specify the office hours of each designated alternate site, even if that number is zero, for locations that the Respondent plans to service by appointment only. Including a sentence that is substantially similar to the following is sufficient for this purpose: "There are zero scheduled office hours for this designated alternate site. Voters seeking accommodation to use this site may do so by appointment only. At least 24 hours' notice will be provided after a voter requests an appointment at this designated alternate site."

Alternate Site Political Party Advantage

The Complainant alleges that certain designated alternate sites, including the Good Hope Library, the Atkinson Library, and the private business Coffee Makes You Black, afford an advantage to the Democratic Party. The Complainant alleges that these locations are regularly used by State Senator Lena C. Taylor (D-Milwaukee) for office hours with her constituents, and thus afford an impermissible advantage to the Democratic Party. The Respondent argues that almost all of the designated sites are publicly owned buildings and were not chosen because of Senator Taylor's activities. The Complainant argues that the intent behind the designation decision is immaterial, and the mere fact that Senator Taylor utilizes these sites renders an advantage to the Democratic Party.

Section 6.855(1) states plainly that "no site may be designated that affords an advantage to any political party." No further indication is given regarding the phrase "affords an advantage," though common sense and the plain meaning of those words offer basic parameters. "Afford" used as a transitive verb means "to make available, give forth, or provide naturally or inevitably."⁴ An advantage is a "benefit resulting from some course of action."⁵ An alternate site surely could not be the headquarters of a major political party, for example.

The Commission concludes that Executive Director Woodall and the MEC are not the proper Respondents for this specific claim because neither Respondent possesses the statutory authority to designate alternate sites. As stated in a previous section, that authority rests solely with "the governing body of a municipality." Wis. Stat. § 6.855(1). Accordingly, the Commission cannot conclude that the Respondents' alleged actions with respect to this claim are contrary to law because the law does not provide the Respondents with any action to take regarding the location of alternate absentee sites. The governing body of a municipality may meet the definition of an "election official" under § 5.02(4e) in some circumstances, but the Commission need not decide that question in this case because the Complainant has not identified the Milwaukee Common

⁴ Available at: <https://www.merriam-webster.com/dictionary/afford>.

⁵ Available at: <https://www.merriam-webster.com/dictionary/advantage>.

Council as a Respondent. Accordingly, the Commission dismisses this claim of the complaint for failure to identify an actionable Respondent.

Even if the municipal clerk does have an obligation or duty to observe the political party advantage prohibition of § 6.855(1), the Complainant has not alleged *how* any of the designated alternate sites afford an advantage to a particular political party.⁶ The Complainant alleges that three designated alternate sites—the Good Hope Library, the Atkinson Library, and Coffee Makes You Black—are frequently used for office hours by former Democratic State Senator Lena Taylor. The Complainant provided a flyer purportedly created by former Senator Taylor as evidence of this allegation. However, the Complainant has not alleged how the existence of undescribed “office hours” at these locations afford an advantage to the Democratic Party. The Commission will not speculate about facts not alleged.

Commission’s Findings

Complainants seek various forms of relief from the Commission, including the issuance of an order directing the Respondent to conform her conduct to the law, to be restrained from taking any action inconsistent with Wisconsin law, and to be required to correct any policies inconsistent with the law.

Pursuant to the analysis above, the Commission hereby issues this order restraining the Respondent from taking any action inconsistent with the analysis of the law in this decision. Wis. Stat. § 5.06(6). This method of relief is intended to provide clear instruction to the Respondent. Accordingly:

1. For future alternate site designations, the Respondent shall ensure that either a Type E Notice, or other notice of designation required by § 6.855(2), is properly posted in her office and on the MEC website on the day that the Common Council issues the designation.
2. **[Withdrawn]**
3. If the Respondent plans on offering IPAV or the in-person return of voted absentee ballots by appointment, she shall provide at least 24 hours’ notice of the date, time, and location of the appointment on the MEC website so that any interested election observers may attend to lawfully observe the process.

Right to Appeal – Circuit Court

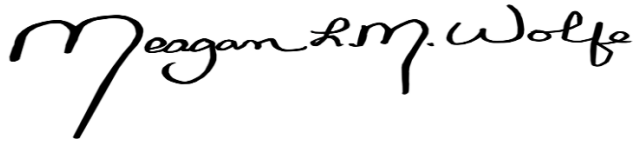
This letter constitutes the Commission’s resolution of these complaints. Wis. Stat. § 5.06(2). Pursuant to Wis. Stat. § 5.06(8), any aggrieved party may appeal this decision to circuit court no later than 30 days after the issuance of this decision.

If any of the parties should have questions about this letter or the Commission’s decision, please feel free to contact me.

⁶ In the *Brown* decision, the Racine County Circuit Court stated: “It is the requirement of either the common council in choosing alternate sites or the municipal clerk to see that sites chosen comply with this mandatory language.” *Brown v. WEC*, Amended Decision and Order, Jan. 10, 2024 (2022CV001324). Judge Gasiorkiewicz did not reconcile this interpretation with the plain language of Wis. Stat. § 6.855(1) which states that a “governing body of a municipality,” not a municipal clerk, may designate alternate absentee sites. As of February 2024, at least two parties have appealed the Amended Decision and Order in this case.

Sincerely,

WISCONSIN ELECTIONS COMMISSION

A handwritten signature in black ink that reads "Megan L.M. Wolfe". The signature is written in a cursive style with a large, prominent initial "M".

Meagan Wolfe
Administrator

cc: Commission Members