



Wisconsin Elections Commission

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December 15, 2022

David Bolter
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Claire Woodall-Vogg
Milwaukee Elections Commission
City Hall, 200 E. Wells St., Room 501
Milwaukee, WI 53202
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Sent via email

Re: In the Matter of David Bolter v. Claire Woodall-Vogg (Case No.: EL 22-23)

Dear Mr. Bolter and Ms. Woodall-Vogg:

This letter is in response to the verified complaint submitted by David Bolter (“Complainant”) to the Wisconsin Elections Commission (“Commission”), which was filed to challenge actions taken by Claire Woodall-Vogg (“Respondent”) concerning the use of a private consultant alleged to meet the statutory definition of an election official, an obligation to discharge that consultant, an alleged improper referral of that consultant, election fraud and threats, and several allegations related to the acceptance of 2020 CTCL grants. The Complainant alleges that the use of a private consultant, and the duties assumed in this instance, would violate Wis. Stats. §§ 5.02(4e), 6.869, 7.15(1)(f), 12.09(2), and 12.11[sic; 12.13].

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.”

The Commission has reviewed the complaint and Ms. Woodall-Vogg’s response. The Commission provides the following analysis and decision. In short, the Commission finds that the Complainant did not show probable cause to believe that a violation of law or abuse of discretion occurred with relation to Respondent’s use of a private consultant. As to any claims related to the acceptance of 2020 CTCL grants, the Commission has previously determined that after the *Stone v. Barrett, et al.*, Case No. EL 21-40 decision, they will no longer entertain such claims.

Complaint Allegations and Response

On March 21, 2022, Mr. Bolter filed a sworn complaint with the Commission pursuant to Wis. Stat. § 5.06. On April 3, 2022, Mr. Bolter filed an amended complaint. The intention to file an amended complaint was previously disclosed to WEC staff, so the Respondent withheld a response until the amended complaint was received. The complaint submissions allege that Executive Director Woodall-Vogg violated various sections of Wisconsin Statutes within Chapters 5, 6, 7, and 12.

Wisconsin Elections Commissioners

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Meagan Wolfe

The Complainant primarily supports the allegations through a summarization of an analysis he performed on various email and other records, some of which do not appear to have been submitted for the record, though the complaint is sworn. These records are purported to prove that the Respondent unlawfully hired and delegated election official responsibilities to a private consultant, Michael Spitzer-Rubenstein (“Consultant”) of the National Vote at Home Institute (“NVHI”).

This alleged unlawful delegation included access and responsibilities claimed to be in contravention of Wisconsin statutes (*e.g.* requests for referrals to other government entities, review and input related to election materials such as manuals and instructions, election administration duties generally assigned to election officials, etc.).

The Complainant also submits that Wis. Stat. § 5.02(4e) defines an “election official,” and the responsibilities and access provided to the Consultant dictate that he met the statutory requirements, and thus unlawfully assumed such responsibilities (*e.g.* he was included in operations meetings, he provided suggested edits for absentee voter instructions, he was an untrained nonresident despite assuming these duties, the Respondent is purported to have expressed discomfort over the Consultant’s desired access to Milwaukee’s voter database, the Consultant allegedly suggested he would create a vote by mail flowchart and would ensure the manual on ballot reconstruction processes was going to be followed, etc.).

The Complaint further alleges that it is a violation of Wis. Stat. § 6.869 for the Respondent to have allowed the Consultant to have offered suggestions relating to the absentee voting instruction used in Milwaukee, and that those efforts contradicted the Commission’s preference that its instructions be utilized by all. For all of the aforementioned reasons, the Complainant contends that the Respondent had a legal obligation under Wis. Stat. § 7.15(1)(f) to discharge the Consultant.

Finally, the Complaint sets forth several reasons why the Complainant believes these actions constituted two Wisconsin Statute Chapter 12 violations, including election fraud and threats.

Respondent first asserts that the doctrine of laches should apply and the Complaint should be time-barred per Wis. Stat. § 5.06(3) which requires filing “promptly so as not to prejudice the rights of any other party.” The conduct alleged in the Complaint occurred between 16 and 18 months prior to the filing of the Complaint.

Respondent further asserts that Mr. Spitzer-Rubenstein was not an “election official” as defined in Wis. Stat. § 5.02(4e) nor did he fit into one of the enumerated categories of “election officials” under Wis. Stat. § 7.03(a) entitled to “reasonable daily compensation” as inspectors, voting machine custodians, automatic tabulating equipment technicians, members of a board of canvassers, messengers, and tabulators “who [are] employed and performing duties under chs. 5 to 12.”

Respondent asserts the following interactions took place to obtain resources for the municipal entity conducting an election:

- Spitzer-Rubenstein provided feedback regarding a City of Milwaukee map that combined election data (by ward) with census data to visualize voting trends and thus allocate election staff appropriately (polling places vs. early voting sites vs. Central Count). No voter names or other identifying information were included in the mapping project or

shared with Spitzer-Rubenstein/NVHI. All decisions regarding use of map data in allocating staff were made by Woodall-Vogg and/or MEC staff, not by Spitzer-Rubenstein or other NVHI personnel. Spitzer-Rubenstein did not, as Bolter alleges, permit Spitzer-Rubenstein to “manage or assign inspectors to Milwaukee’s Central count and polling places.”

- Spitzer-Rubenstein provided feedback regarding SafeVote mailers, which were communications sent to potential voters regarding options for voting safely during the pandemic. All decisions regarding final content of SafeVote mailers and other voter communications were made by Woodall-Vogg and/or MEC staff, not by Spitzer-Rubenstein or other NVHI personnel.
- Spitzer-Rubenstein and NVHI provided an Excel spreadsheet template that Woodall-Vogg and MEC staff used to project time and expenses associated with ballot mailing, drop box set-up and staffing, and Central Count operations. All decisions regarding these issues, as applied to the administration of the November 2020 election, were made by Woodall-Vogg and/or MEC staff, not by Spitzer-Rubenstein or other NVHI personnel.
- Spitzer-Rubenstein and NVHI provided a “communications toolkit” template that was shared with other election administrators around the country and that offered ideas about how to effectively communicate with voters about voting by mail. All decisions regarding communications with voters, whether about voting by mail or otherwise, were made by Woodall-Vogg and/or MEC staff, not by Spitzer-Rubenstein or other NVHI personnel.
- Spitzer-Rubenstein and NVHI provided Woodall-Vogg with feedback regarding how to best communicate with elections workers about the ballot reconstruction process. Spitzer-Rubenstein was not advising regarding Woodall-Vogg or her staff regarding what ballots should/should not be reconstructed, nor did he or NVHI make any such decisions before or during the tallying of ballots. All such decisions were made by the appropriate election officials, including Woodall-Vogg and her staff. Woodall-Vogg did not, as Bolter alleges, allow Spitzer-Rubenstein to “manage the curing of Wisconsin ballots.”
- Spitzer-Rubenstein and Woodall-Vogg met in person in Woodall-Vogg’s office for approximately 30 minutes on October 15, 2020. This was a friendly visit that did not involve any election administration tasks.
- Spitzer-Rubenstein provided Woodall-Vogg with referrals to possible resources providing free N95 masks and snacks for poll workers.

Respondent asserts no violations of Wis. Stat. §§ 6.869, 7.15(1)(f), 12.09, 12.11 or 12.13 occurred or were supported and the Complainant should be sanctioned for filing frivolous complaints under Wis. Stat. § 5.05(2m)(c)2.am.

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

Under Wis. Stat. §§ 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 by Mr. Bolter’s 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.

Commission Findings

Timeliness of the Complaint Filing

The timeliness provision of statute is designed to expedite processes related to ballot access challenges. It does not place a “statute of limitation” on other complaint types appropriately raised under Wis. Stat. § 5.06. The Commission does not otherwise take a position on timeliness in the instant matter and will proceed with the necessary analysis of the complaint. This leaves only a consideration of the sufficiency of the complaint, and an examination of whether the probable cause standard was met.

Alleged Violations of Wis. Stat. §§ 5.02(4e), 6.869, and 7.15(1)(f)

Wis. Stat. § 7.15(1) states that municipal clerks have “charge and supervision of elections and registration in [each] municipality.” The municipal clerk “shall perform” certain duties specified in subsections (a) through (k) of the statute, as well as “any others which may be necessary to properly conduct elections or registration.” Wis. Stat. § 7.15(1). There is no language in section 7.15(1) that prohibits municipal clerks from using private grant money or working with outside consultants in the performance of their duties. (See *Liu, et al. v. Wolfe*, EL 21-33, and the similar complaints filed against four other Wisconsin municipalities.)

The Complainant has not presented sufficient evidence which supports that Mr. Spitzer-Rubenstein was anything other than an outside consultant used by Ms. Woodall-Vogg in the performance of her duties.

While Wis. Stat. § 5.02(4e) broadly defines an “election official” as “an individual who is charged with any duties relating to the conduct of an election,” this definition is narrowed by other elections related statutes. For example, Wis. Stat. § 7.03 details compensation of election officials and trainees and specifically lists “inspector, voting machine custodian, automatic tabulating equipment technician, member of a board of canvassers, messenger, and tabulator” as election officials “employed and performing duties under chs. 5 to 12.” No evidence has been presented that Mr. Spitzer-Rubenstein fell into one of these categories.

Duties of election officials may be found throughout Wis. Stat. chs. 5 to 10 and 12, but most specifically in ch. 7. Sections 7.10, 7.15, 7.25, 7.36, and 7.37 enumerate the duties charged to county clerks, municipal clerks, voting machine officials, chief inspectors, and inspectors, respectively. No evidence has been presented that Mr. Spitzer-Rubenstein was charged with or performed any of these enumerated duties.

Regarding the alleged violation to Wis. Stat. § 6.869, this is a provision of law that applies to the Commission, not directly to clerks, to “prescribe uniform instructions for municipalities to provide to absentee electors.” Since this provision does not apply directly to the Respondent, no further analysis is necessary.

Regarding the alleged violation of Wis. Stat. § 7.15(1)(f) for Respondent’s failure to “[d]ischarge election officials for improper conduct or willful neglect of duties,” as Mr. Spitzer-Rubenstein was

not an election official, this provision also does not apply to Respondent and no further analysis is necessary.

Alleged Violations of Wis. Stat. §§ 12.09, 12.13(2)(a) and 12.13(2)(b)7.

Any criminal allegations under Wis. Stat. ch. 12 would need to be brought as a complaint under Wis. Stat. § 5.05. The Commission cannot address criminal allegations within a Wis. Stat. § 5.06 complaint.

Commission Decision

Based upon the above review and analysis, the Commission does not find probable cause to believe that violation of law or abuse of discretion occurred under Wis. Stats. §§ 5.02(4e), 6.869, 7.15(1)(f) based on Respondent's use of a private consultant.

Right to Appeal – Circuit Court

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 me.

Sincerely,

WISCONSIN ELECTIONS COMMISSION

A handwritten signature in black ink that reads "Meagan R.M. Wolfe". The signature is written in a cursive style with a large, looped initial "M".

Meagan Wolfe
Administrator

cc: Commission Members

James M. Carroll (jmcarr@milwaukee.gov)

Kathryn Z. Block (kblock@milwaukee.gov)