



# Wisconsin Elections Commission

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September 30, 2022

Sandy Weidner  
2310 Thor Avenue  
Racine, WI 53405

Sandra Morris  
908 Belmont Avenue  
Racine, WI 53405

Tara McMenammin (formerly Coolidge)  
City Clerk  
730 Washington Avenue  
Racine, WI 53403

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Re: In the Matter of: Sandy Weidner et al. v. Tara Coolidge (Case No.: EL 22-24)

Dear Ms. Weidner, Ms. Morris, and Ms. McMenammin:

This letter is in response to the verified complaint submitted by Sandy Weidner and Sandra Morris (“Complainants”) to the Wisconsin Elections Commission (“Commission”), which was filed in reply to actions taken by Clerk McMenammin of the City of Racine (“Respondent”) concerning the use of a “mobile elections unit” which serves as a movable voting and registration precinct (“Precinct”). The Complainants allege that the Precinct is not compliant with the Americans with Disabilities Act, as required by the Help America Vote Act and Commission policies.

Complaints “...shall set forth such facts as are within the knowledge of the Complainants 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 the City of Racine Clerk’s response. The Commission provides the following analysis and decision. In short, the Commission finds that the Complainants did show probable cause to believe that a violation of law or abuse of discretion occurred with relation to Respondent’s use of the Precinct.

## Complaint Allegations and Response

On March 9, 2022, Ms. Weidner and Ms. Morris filed a sworn complaint with the Commission pursuant to Wis. Stat. § 5.06 alleging that Clerk McMenammin violated applicable sections of the Americans with Disabilities Act (42 U.S.C. §§ 12101-12213)(“ADA”), as required to be applied to Wisconsin polling places in the Help America Vote Act (52 U.S.C. §§ 20901-21145)(“HAVA”) and Commission policy applicable to implementing those provisions of federal law ([Accessible Voting | Wisconsin Elections Commission](#)).

*Commissioners*

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

*Administrator*  
Meagan Wolfe

The Complainants note that the City of Racine utilized \$250,000 of grant money to purchase the Precinct in 2020, and it has been in use as a mobile option to register new voters and as a polling place since 2021. Complainants state that the Precinct fails to meet federal requirements because it fails to comply with the following:

- The Americans with Disabilities Act (ADA) requires each polling location to have at least one van-accessible parking space available of at least 8 feet wide with an 8-foot-wide marked accessible aisle or loading area.
- Each polling location is required to have at least one ADA accessible entrance.
- Each polling location is required to have an accessible route that connects the accessible entrance with the voting area.
- Each polling location is required to have an internal corridor with a minimum width of 36”.
- Each polling location is required to have within the voter area a minimum of 5’ by 5’ turning space.
- Each polling place is required to have an accessible voting machine and booth or table present where a voter with a disability can cast a ballot.

These alleged compliance failures are based on the following considerations:

- Racine’s mobile voting precinct has stairs instead of a wheelchair lift at its entrance.
- Racine voters with ambulatory problems who do not require a wheelchair cannot climb Racine’s mobile voting precinct’s stairs to enter the polling place.
- Racine’s mobile voting precinct entrance is not ADA complaint. The width and handles of Racine’s mobile voting precinct entrance door are not ADA compliant.
- The width of Racine’s mobile voting precinct internal corridor is too small and not ADA compliant.
- The turning space within Racine’s mobile voting precinct voting area is too small and not ADA compliant.
- Racine’s mobile voting precinct’s voting booth and table are too small and not ADA complaint.
- Racine requires its mobile voting precinct voters to exit the rear of the vehicle. Racine’s mobile voting precinct exit door and stairs are not ADA compliant.

Finally, the Complainants assert that the Precinct denies disabled voters the same degree of privacy and requires additional assistance that non-disabled voters would not need, in violation of the requirements of Wis. Stat. § 5.25(4)(a).

The Respondent contends in her sworn response that the City of Racine Common Council lawfully approved the purchase of the Precinct on August 5, 2020. The response also notes:

Municipal governments are permitted to designate alternate absentee voting sites pursuant to Wisconsin Statutes section 6.855. There is nothing in Wisconsin Statutes section 6.855 prohibiting the use of a vehicle at an alternate absentee voting site. The mobile election vehicle has been used at sites designated as alternate absentee ballot sites by the Racine Common Council.

Further, the Respondent counters the complaint by noting that voters with disabilities are offered an “equally effective opportunity” to cast their votes without having to enter the Precinct:

- Accessible parking spaces are always available at sites to which the Precinct has been deployed.
- Curbside voting processes are employed for voters that are unable to enter the Precinct, much as they would be at a physical polling place. An awning protects from the elements, and signage is present to alert voters that curbside voting is available, the location in which curbside voting can be conducted, and how the voter may notify officials that they are waiting curbside.
- The vehicle also includes a doorbell/buzzer system to otherwise alert officials of a voter’s presence.
- A portable voting system allows the voter to cast their ballot privately and independently in accordance with accessibility laws.

The Complainants submitted a final sworn reply arguing that the curbside voting options offered by the Respondent do not comply with the Wis. Stat. § 5.25(4)(a) requirements for equality in voting processes, and more generally that the Precinct is not ADA compliant. Additionally, the Complainants note that the Respondent did not follow Commission policy in failing to submit a Polling Place Accessibility Survey for the Precinct before putting it into service.

The Commission Chair requested that Respondent complete a WEC Polling Place Accessibility Survey prior to the issuance of a decision, as the record was devoid of a direct response to the specific details the Complainants’ allegations of ADA noncompliance. These surveys are typically completed for new polling places, and not alternate absentee and registration sites. However, the Commission reserves the right to request additional materials to supplement a complaint record.

The survey, dated August 19, 2022, was returned to the Commission, but the document lacked completion of certain fields, and noted noncompliance in others. Additionally, the WEC’s Elections Administration Specialist for Accessibility noted the following concerns:

- The standard accessible parking spaces are closest to the entrance, but the van accessible parking space is not, as required.
- The van has no accessible entrance, and only stairs without ramps or lifts. There is inaccessible door hardware.
- There is no accessible voting booth in the voting area, located outside.
- There are options to potentially bring this facility into compliance.

#### 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 in the complaint Ms. Weidner and Ms. Morris.

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

To address the claim of whether the Precinct complied with accessibility requirements, the Commission must first address whether the mobile facility qualifies as a polling place which is subject to state and federal accessibility requirements. It is clear from the record that the Precinct qualifies as a lawful alternate absentee ballot (*See* Wis. Stat. § 6.855) and voter registration site. There is a tacit acknowledgement that the vehicle is a polling place in the Complainants' arguments that it is subject to accessibility laws pertaining to polling places, and the Racine Common Council and City Clerk appear to have gone through all the appropriate approval processes to notice and utilize the Precinct. The Complainants' primary arguments rest not on the creation and use of the site, but rather that it does not comply with accessibility laws.

Wisconsin Statute § 6.82(1)(a) provides:

When any inspectors are informed that an eligible elector is at the entrance to the polling place who as a result of disability is unable to enter the polling place, they shall permit the elector to be assisted in marking a ballot by any individual selected by the elector, except the elector's employer or an agent of that employer or an officer or agent of a labor organization which represents the elector...The inspectors shall then issue a ballot to the individual selected by the elector and shall accompany the individual to the polling place entrance where the assistance is to be given. If the ballot is a paper ballot, the assisting individual shall fold the ballot after the ballot is marked by the assisting individual. The assisting individual shall then immediately take the ballot into the polling place and give the ballot to an inspector. The inspector shall distinctly announce that he or she has "a ballot offered by .... (stating person's name), an elector who, as a result of disability, is unable to enter the polling place without assistance". The inspector shall then ask, "Does anyone object to the reception of this ballot?" If no objection is made, the inspectors shall record the elector's name under s. 6.79 and deposit the ballot in the ballot box, and shall make a notation on the poll list: "Ballot received at poll entrance".

Curbside voting of the type offered by the Respondent is a long-established process, and nothing submitted to the record in the instant matter meets the probable cause standard in proving that the Precinct did not comply with Wis. Stat. § 6.82(1)(a), and subsequently the ADA and HAVA, provided the Precinct complies with Wis. Stat. § 5.25(4)(a) and the physical requirements the ADA imposes on polling places. The difficulty here is that the Precinct does not appear to comply with the ADA and HAVA.

An argument could be made that a physical polling place and a mobile polling place cannot be distinguished under the law. Under that rationale, the interior of a mobile polling place would need to be compliant with the ADA and HAVA, and thus be accessible to disabled voters, while curbside voting is reserved for eligible electors "who as a result of disability is[are] unable to enter the polling place." The Commission hereby finds that a mobile polling place is indeed not distinguishable under the requirements of the ADA from an immobile/permanent structure.

It then becomes necessary to examine both state and federal requirements to determine whether the Precinct is a legally compliant polling place. Wisconsin Statute § 5.25(4)(a) states that the “...voting system used at each polling place will permit all individuals with disabilities to vote *without the need for assistance and with the same degree of privacy* that is accorded to nondisabled electors voting *at the same polling place*” (emphasis added).

Parties enjoying the benefits of a mobile polling place and registration station take advantage of increased access and decreased transit time, while giving up some level of comfort or privacy that a physical polling place would have. That is true for any voter. Racine contemplated a potential lack of space or accessibility inside the precinct for certain disabled voters and incorporated an exterior doorbell process, inclement weather awning, and a private/portable voting system for disabled voters, which existed in direct proximity to the Precinct.

Indeed, the accessibility tradeoffs of a mobile polling place are counteracted by the creation of lawful processes and facilities that offer the same voting systems and a lack of need for assistance, while also providing significant benefits to all voters. The Precinct may even increase the participation of disabled voters by providing a mobile service that can be stationed at care facilities and in neighborhoods in which such voters reside, giving them access to registration and voting services that do not require accessible vans or other forms to transit (*e.g.* the voter may be able to transit from their home in a wheelchair, register/vote, and return home without any additional needs for transit/assistance).

Despite all of the benefits of the mobile Precinct, and an analysis of the equivalent and private voting experiences of all voters, the Commission concedes that the ADA and HAVA still necessitate absolute compliance with polling place facility requirements, even for mobile units that may benefit voters with disabilities. The Respondent has addressed certain allegations, such as the presence of accessible parking spaces and voting procedures.

However, curbside processes meant for those who are “unable to enter the polling place,” while lawful, are not a true and equal substitute for in-person voting experiences and ADA facility requirements. A doorbell, awning, and portable voting system may or may not be an “equally effective opportunity” to vote as the Respondent contends. The Commission need not weigh that more fully, though, despite the fact that those alternatives do not appear to meet the standards of Wis. Stat. § 5.25(4)(a). The Commission need not consider it because the Complainants’ allegations of ADA noncompliance would supersede any other claim.

The Respondent did not provide substantive argument that a mobile office, such as the Precinct, is exempt from ADA accessibility requirements. In fact, the law directs that newly designed and constructed or altered state and local government facilities, public accommodations, and commercial facilities need be readily accessible to, and usable by, individuals with disabilities. *Information and Technical Assistance on the Americans with Disabilities Act*, UNITED STATES DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION (August 7, 2022), [https://www.ada.gov/ada\\_title\\_III.htm](https://www.ada.gov/ada_title_III.htm). The Commission finds that mobile office spaces that meet these criteria are not exempt from the requirements of the ADA.

The Respondent was given a second opportunity to address the Complainants’ direct allegations in the form of an accessibility survey response, yet the Respondent’s provided information did nothing to rebut the burden of proof that the Precinct is noncompliant with the entrance, route,

corridor, and turning space requirements of the ADA (*e.g.* measurements, photographic evidence, affidavits providing the necessary information, etc.). Therefore, the Commission finds probable cause to believe a violation of law or abuse of discretion has occurred with regard to a failure of the physical space within the Precinct to comply with the ADA's accessibility requirements for a polling place. More specifically, Wis. Stat. § 5.25(4)(a) operationalizes the provisions of the ADA in Wisconsin, and the Precinct is noncompliant with both the ADA and Wisconsin Statute.

Wisconsin Statute § 5.06(6) authorizes the Commission to "...require any election official to conform his or her conduct to the law, restrain an official from taking any action inconsistent with the law or require an official to correct any action or decision inconsistent with the law. The Commission hereby orders the Respondent to cease use of the Precinct as an alternate voter registration and absentee ballot site until such time as the Precinct is made compliant with the accessibility requirements placed upon such a facility.

#### Commission Decision

Based upon the above review and analysis, the Commission finds probable cause to believe that a violation of law or abuse of discretion occurred under the Americans with Disabilities Act, the Help America Vote Act, or the related provisions of Wisconsin statute and policy, as they pertain to the Respondent's use of the Precinct.

#### 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,

**COMMISSION**

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

Meagan Wolfe  
Administrator

cc: Commission Members