



*Law Firm of*  
**CONWAY, OLEJNICZAK & JERRY, S.C.**

Since 1976

October 6, 2022

*Attorney Kurt A. Goehre*  
*KAG@lcojlaw.com*

**VIA U.S. MAIL & E-MAIL**

Attorney Brandon Hunzicker  
Wisconsin Elections Commission  
201 West Washington Avenue, Second Floor  
P.O. Box 7984  
Madison, WI 53707-7984

**Re: Trojan v. Woodall-Vogg and Milwaukee Election Commission  
Case No. EL 22-66**

Dear Attorney Hunzicker:

Enclosed please find the Authenticated Reply of Complainant Susan Trojan in Support of Complaint and in Opposition to Respondents' Request to Dismiss.

Very truly yours,

**LAW FIRM OF CONWAY, OLEJNICZAK & JERRY, S.C.**

By: *Ross W. Townsend jr*  
Ross W. Townsend  
Kurt A. Goehre

KAG/jmr  
4374097

Enclosure

cc: Attorney Kathryn Z. Block (*via email only*)

STATE OF WISCONSIN  
BEFORE THE WISCONSIN ELECTIONS COMMISSION

---

SUSAN TROJAN

Complainant,

Case No. EL 22-66

v.

CLAIRE WOODALL-VOGG and  
MILWAUKEE ELECTION COMMISSION,

Respondents.

---

**ATHENTICATED REPLY OF COMPLAINANT SUSAN TROJAN IN SUPPORT OF  
COMPLAINT AND IN OPPOSITION TO RESPONDENTS' REQUEST TO DISMISS**

---

In support of her Complaint and in Reply to the Request to Dismiss the Complaint filed by Respondents Claire Woodall-Vogg and Milwaukee Election Commission (collectively, “Respondents”), Complainant Susan Trojan states as follows:

**I. Respondents unlawfully exercised powers that they do not have.**

**A. Respondents unlawfully decided to implement “voting by appointment.”**

Respondents assert that they relied on a July 24, 2020 Guidance (“the Guidance”) from the Wisconsin Elections Commission (“WEC”) to implement “voting by appointment” at 23 alternate in person voting locations. (*See* R.Br., pp. 3, 6.)<sup>1</sup> No statute authorizes absentee voting “by appointment,” and to the extent that the Guidance suggests otherwise, the Guidance is contrary to law and unlawfully usurps the powers of the Wisconsin Legislature. Indeed, among other problems, voting “by appointment” would thwart the statutory requirement that observers

---

<sup>1</sup> Citations to Respondents’ Response Brief are made as “R.Br., p. \_\_.”

be given access to the voting process when absentee ballots are cast. Wis. Stat. § 7.41(1).

Furthermore, it would violate the requirement of Wis. Stat. § 6.86(1)(b) for in-person voting that the municipality “shall specify the hours” of such voting in a public notice that complies with Wis. Stat. § 10.01(2)(e), which also requires that “hours” of voting be set:

The type E notice shall state the qualifications for absentee voting, the procedures for obtaining an absentee ballot in the case of registered and unregistered voters, the places and the deadlines for application and return of application, including any alternate site under s. 6.855, and the office hours during which an elector may cast an absentee ballot in the municipal clerk's office or at an alternate site under s. 6.855.

Wis. Stat. § 10.01(2)(e). Such notice must be posted by the 4<sup>th</sup> Tuesday preceding the election.

The obligations of Wis. Stat. § 6.86(1)(b) are mandatory and must be strictly followed. Wis. Stat. § 6.84(2).

Clearly, in-person absentee voting by appointment does not, and cannot, comply with the requirement to provide the specific hours of voting at alternate in-person absentee voting sites. MEC provided no notice of days or hours for the 23 alternate in-person “by appointment” absentee voting sites. In an attempt to sidestep their clear failure to comply with Wis. Stat. §§ 6.86, 6.855, and 10.01(2)(e), Respondents announce in their brief that they plan to “post a 24-hour notice in the event anyone” seeks to vote by appointment “so observers may be present to observe any such voting.” (See R.Br., p. 6.) But their half-hearted attempt to allow some notice to observers simply highlights the clearly unlawful process that they implemented.<sup>2</sup>

Even if, for the sake of argument, voting by appointment were permitted by Wisconsin law, Respondents have far exceeded their authority to implement such voting. When announcing

---

<sup>2</sup> Respondents off-the-cuff creation of a 24-hour notice for voting by appointment sparks several questions, including, among others: By what authority do Respondents purport to create such a 24-hour notice rule? How is 24-hour notice compliant with Wis. Stat. § 6.855 or § 10.01(2)(e)—both which require notice of precise days and hours of voting four weeks prior to election day? What authority do Respondents have to supersede Wisconsin Statutes? Of course, these questions only illuminate the obvious—Respondents “by appointment” absentee voting does not and cannot comply with the requirements of Wisconsin law.

that voting by appointment would be available, Respondents unilaterally decided to add an additional requirement, and stated that, to vote by appointment, electors would be asked to “provide explanation for why the other sites with regular hours are not able to accommodate the voter.” (VC, ¶13, Exh. 3.)<sup>3</sup> By what authority did Respondents impose a requirement that electors justify their choice to vote by appointment? Who would determine if the reason given by an elector was adequate to justify the elector’s decision to vote by appointment? By what standard would that decision be made? If the elector’s choice to vote by appointment were refused, then would the elector have a right to appeal that decision? To whom? All these questions and many more arise directly out of Respondents’ decision to unilaterally and unlawfully exercise powers that were never given to them.

Respondents continue to conduct themselves as though they have unfettered power to just make it up as they go along. They do not. The Wisconsin Legislature has said that absentee voting is a privilege that must be closely regulated “to prevent the potential for fraud or abuse.” Wis. Stat. § 6.84(1). For that reason, Respondents’ powers to facilitate absentee voting are narrow and are “carefully regulated” by statutes, which Respondents have clearly failed to follow.

**B. Respondents unlawfully decided that 23 alternate in-person absentee voting sites designated by the Common Council would not be used or would be used “by appointment.”**

Respondents argue that, pursuant to the Guidance, they had authority to decide that 23 of the 27 alternate absentee voting sites designated by the Milwaukee Common Council would not be used. (R.Br., pp. 3-4.) Although the Guidance states that Clerks have the power to establish the hours during which the alternate absentee voting sites would be used, nothing within the

---

<sup>3</sup> Citations to the Verified Complaint are made as “VC, ¶ \_\_, Exh. \_\_.”

Guidance (or under § 6.855) gave Respondents the authority to either decide that a site designated by the Common Council would not be used at all, or that the manner in which the site would be used would be changed. Furthermore, Respondents may only use alternate in-person absentee voting sites for the general election that were also designated and used for the primary election. Wis. Stat. § 6.855(1). Consequently, because the 23 sites were not actually used during the primary in August, Respondents are prohibited from using those 23 sites for in-person absentee voting for the November general election.

**II. Respondents failed to timely display notice of the designations of alternate absentee voting sites made by the Milwaukee Common Council.**

Complainant asserts that Respondents failed to timely display notice of the designations of alternate absentee voting sites made by the Milwaukee Common Council. (VC, ¶¶21-22.)

The controlling statute - Wis. Stat. §6.855(2) - plainly states that:

... the board of election commissioners shall prominently display a notice of the designation of the alternate site selected under sub. (1) in the office of the municipal clerk or board of election commissioners beginning on the date that the site is designated under sub. (1) ... [emphasis added].

The relevant and undisputed facts are that, on June 1, 2022, the Milwaukee Common Council passed a Resolution designating 27 alternate absentee voting sites. Also undisputed is the fact that Respondents failed to display a notice of those designations until mid-July and, when they finally did display a notice, Respondents failed to identify days or hours of voting for 23 of those sites. (VC, ¶¶16, 23.) Plainly, Respondents failed to fulfill the statutory obligation to post notice of the alternate absentee voting sites “beginning on the date that the site [was] designated.”

In response, Respondents first argue that “[n]otice was actually given via posting of the Resolution on Legistar on the City’s website as of the date it was passed.” (R.Br., p. 4.) In

support, Respondents cite paragraph 2 of Ms. Woodall-Vogg's affidavit. Paragraph 2 of Ms. Woodall-Vogg's affidavit says nothing about when the action of the Common Council was first posted on "Legistar," but instead refers to a two-page document attached to her Affidavit that is identified as Exhibit 1. That document is simply a copy of the Resolution found on the Common Council website—but it is not something posted by Respondents. Furthermore, even if we assume it was posted by Respondents, Exhibit 1 does not indicate when Exhibit 1 was posted in accordance with Wis. Stat. § 6.855(2)—if it ever was.

In any case, even if Exhibit 1 to the Woodall-Vogg affidavit were posted on Legistar, Respondents' argument still fails because Wis. Stat. §6.855(2) plainly requires that the notice be posted "in the office of the municipal clerk or board of election commissioners" beginning on the date that the site is designated by the Common Council. That statute also requires Respondents to post the notice on their website as of the date that the alternate site is designated by the Common Council. Respondents concede that they did not comply with these requirements until, at the earliest, mid-July 2022 in violation of their obligations set forth in § 6.855(2).

Respondents also argue that they fulfilled their statutory obligations because the alternate absentee voting sites were "widely reported in the media", and "actual notice was ample and given via multiple channels." (R.Br., p. 4.) Whether or not the information was reported in the media is irrelevant to the question of whether Respondents met their statutory obligations to "display a notice of the designation of the alternate site selected under sub. (1) in the office of the municipal clerk or board of election commissioners" and "on the[ir]website during the same period that notice is displayed in the office." Wis. Stat. § 6.855(2).

Equally unavailing is the Respondents' unsupported claim that "actual notice" is sufficient to fulfill their obligations to post the notice. Again, Respondents have no legislative

authority to support their position, and their opinion that “actual notice” is an adequate substitute for statutory compliance is simply wrong. Only the Wisconsin Legislature is in a position to decide what is, or is not required, and what is, or is not, adequate. Respondents failed to meet their statutory obligations.

**III. Respondents unlawfully permitted functions related to voting and the return of absentee ballots to be conducted in the office of the MEC while such functions were occurring at alternate absentee voting sites.**

The notice published by Respondents plainly indicates that the dates “to vote an absentee ballot with the clerk’s office” (emphasis added) ran from July 26 to August 6. During that same time period, absentee voting was also ongoing at one or more of the alternate in-person absentee voting sites. Absentee voting in the clerk’s office while - at the same time - absentee voting was occurring at one or more of the alternate in-person absentee voting sites is prohibited by Wis. Stat. §6.855(1).

Additionally, during that same time period, electors were permitted to drop off their absentee ballots at one or more of the alternate in-person absentee voting sites and at the MEC office in City Hall. Since a “function related to voting and return of absentee ballots” occurred at the municipal clerk’s office and/or the MEC during the same time period that those same functions were also available at alternate in-person absentee voting sites, Wis. Stat. §6.855(1) was violated.

**IV. Respondents unlawfully designated alternate absentee voting sites that were not as near as practicable to the office of the municipal clerk or board of election commissioners.**

Complainant has demonstrated (and Respondents do not dispute) that the majority of the designated 27 alternate absentee voting sites are not “as near as practicable to the office of the municipal clerk or board of election commissioners.” Wis. Stat. § 6.855(1). Respondents argue,

however, that sub. (1) of the statute must be construed in light of sub. (5) of the statute which permits designation of more than one alternate site, and that sub. (5) “would be rendered surplusage if subsection (1) were to be” construed literally. (R.Br., p. 4.) Respondents claim that the statute’s use of the phrase “as practicable” gives Respondents the power to adopt a “plan” for in-person absentee voting - a plan which, in this case, creates 27 different alternate absentee voting sites scattered widely across the City. (R.Br., p. 5.) Respondents conclude that Complainant “does not, and cannot establish that this plan is not the most practical plan for IPAV within the City.” (*Id.*)

First, Respondents’ construction of sub. (1) must be rejected. The construction offered by Respondents does not “construe” sub. (1). Rather, Respondents argue that the proximity requirement of sub. (1) must be completely ignored. In fact, in Respondents’ view, they may establish alternate absentee voting sites anywhere in the City, regardless of the proximity of those sites to “the office of the municipal clerk or board of election commissioners.” That is contrary to the well-known rules of statutory construction requiring that “[s]tatutory language is read where possible to give reasonable effect to every word, in order to avoid surplusage” and that “interpretations that render provisions meaningless should be avoided. *State ex rel. Kalal v. Cir. Ct. for Dane Cnty.*, 2004 WI 58, ¶ 46, 271 Wis. 2d 633, 663, 681 N.W.2d 110, 124; *Belding v. Demoulin*, 2014 WI 8, ¶ 17, 352 Wis. 2d 359, 367, 843 N.W.2d 373, 377. This is yet another example of Respondents ignoring clear statutory requirements and usurping statutory authority that has not been given to them.

Second, the statutory burden lies with Respondents to establish and implement a proper alternate in-person absentee voting plan. Wis. Stat. §6.855(1). Respondents claim that, by creating 27 alternate absentee voting sites scattered across the City—including 23 superfluous



sites—they have established the “most practical” plan available. (R.Br., p. 4-5.) If Respondents’ plan is the “most practical” plan available, then Respondents should be able to explain why 27 is the proper number—but they utterly fail to do so. Clearly, the fact that it was unnecessary to use those 23 sites demonstrates that it was unnecessary to designate those sites. In fact, wouldn’t designating, properly staffing, and setting proper hours for two or six or nine sites be more “practical” than designating 23 sites that are not staffed and are never used? Regardless, by the very fact that so many sites were designated and scattered across the City, it is clear that the vast majority of those sites are not “located as near as practicable to the office of the municipal clerk or board of election commissioners.”

In the end, Respondents offer no evidence or viable argument that the alternate in-person absentee voting sites are “located as near as practicable to the office of the municipal clerk or board of election commissioners.”

**V. Respondents unlawfully designated alternate absentee voting sites that afforded an advantage to a political party.**

Respondents do not dispute that the Good Hope Library site is staffed and used for office hours by Democrat State Senator Lena C. Taylor. Furthermore, Exhibit 5 to Complainant’s Complaint demonstrates that Senator Taylor also regularly uses two other sites - Coffee Makes You Black and the Atkinson Library - that are included among the 27 alternate absentee voting sites designated by the Milwaukee Common Council. Obviously, establishing alternate absentee voting sites at locations that are regularly used by Senator Taylor gives a distinct advantage to the Democrat Party.

In response, Respondents argue:

[Complainant] does not allege that the Library was selected because it is a location that Taylor has selected for her community meetings or that Library would not be available to candidates of other political parties. [R.Br., p. 6.]

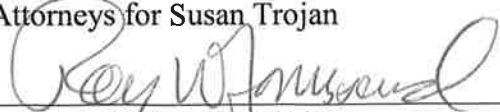
While it is true that Complainant makes no claims regarding why the Good Hope Library or any other site was selected as an alternate absentee voting site, the motive for selecting the Library or other sites is entirely irrelevant. The statute simply states that “no site may be designated that affords an advantage to any political party.” Wis. Stat. §6.855(1). Selecting a site that is frequently used by one political party—on the very day that in-person voting takes place at that location no less—obviously affords an advantage to that party. Similarly, even if other political parties might theoretically have the right to use such sites (though Respondents provide no evidence to support that claim), that fact would also be irrelevant. The fact is that the Good Hope Library, the Atkinson Library, and Coffee Makes You Black are sites that are frequently used for office hours by a Democrat Senator. Because using those sites as alternate absentee voting sites “affords an advantage to” the Democrat Party, their use is prohibited.

#### **VI. Conclusion.**

Complainant calls upon WEC to reign in Respondents and order Respondents to carefully exercise those powers (and only those powers) that have been given to them by statute. Respondents should also be ordered to immediately cease any activities that exceed the narrow scope of the powers given to them by Wisconsin law.

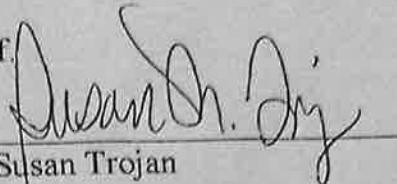
Respectfully submitted this 5<sup>th</sup> day of October, 2022.

LAW FIRM OF CONWAY, OLEJNICZAK & JERRY, S.C.  
Attorneys for Susan Trojan




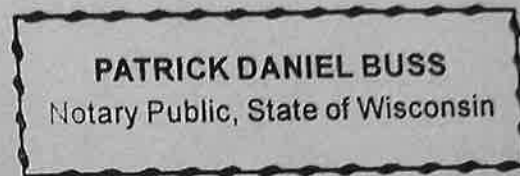
Kurt A. Goehre (#1068003)  
Ross W. Townsend (#1011622)  
231 South Adams Street  
Green Bay, WI 54305-3200  
Telephone: (920) 437-0476  
E-mail: [kag@lcojlaw.com](mailto:kag@lcojlaw.com)  
[rwt@lcojlaw.com](mailto:rwt@lcojlaw.com)

The Complainant, Susan Trojan, being first duly sworn, states that she has personally read the above document, and that the above facts and allegations stated therein are true and correct to the best of her knowledge and belief.

  
Susan Trojan

Subscribed and sworn to before me  
this 6<sup>th</sup> day of October, 2022.

  
Notary Public, State of Wisconsin  
My commission June 9, 2026



832215.065:#4370301