

STATE OF WISCONSIN
Wisconsin Elections Commission

In the Matter of:

Adrian Amelse v. Vernon County Clerk and Canvas Board.

Case No. EL 22-41

RESPONDENTS' JOINT RESPONSE TO COMPLAINT

Adrian Amelse filed a complaint with the Wisconsin Elections Commission (“WEC”) naming Vernon County Clerk and the Canvass Board as respondents. Respondents received WEC’s notice of this complaint on May 12, 2022 wherein WEC instructed Respondents to respond within ten business days (or by May 26, 2022). Herein below, Respondents provide their joint response through counsel Abt Swayne Law, LLC by Attorney Nikki C. Swayne.

I. Summary of Complaint.

Mr. Amelse claims that Respondents relied upon illegal votes from a different county in making its determination regarding county board supervisor race involving [incumbent] supervisors Amelse and Yttri. He argues that this reliance was in violation of Wis. Stats. §§ 5.01(3), 5.01(4) and 6.97(4).

II. Facts in Dispute.

Mr. Amelse’s complaint is premised on a misunderstanding of what transpired. The substance of Mr. Amelse’s Complaint, with the omission of the statutes he included, is provided herein below; it is presented in numbered segments with those various segments subsequently addressed by Respondents herein.

1. *“Four Richland County ballots were counted in the April 5th 2022 election between Vernon County Board District 14 Supervisors Ole Yttri and Adrian Amelse. When the four-illegal/incorrect Richland County ballots in the Village of Viola were identified and removed during the canvas (3 for Yttri & 1 for Amelse), the result was a tie vote of 139 Yttri and 139 Amelse.*

Respondents deny the above. The Board of Canvassers did receive information from the Village of Viola that there was error to remedy involving the need to remove four ballots from the Village’s ballot bag. It had 35 when there should have been 31. However, Respondents deny that the four votes were “removed during the canvas...,” resulting in a tie. This did not occur.

2. *“The Vernon County canvas board decided to break the 139 to 139 tie by adding back in the four illegal/incorrect ballots from Richland County in a Vernon County election so Amelse thereby... trailed by two votes again, 140 to 142. Furthermore, the four illegal votes were used again for drawing lots in the tiebreaker.*

Respondents deny the above. There was no tie to be broken.

3. *“Drawing lots should offer a presumption of fairness and a random outcome that is equitable to both candidates. The decision of the canvas board put Amelse at a significant statistical disadvantage since he was no longer tied in a tiebreaker and needed 3 out of four votes to tie again and needed four out of four votes to win.*

To the extent facts are alleged in the above excerpt from Mr. Amelse’s complaint, Respondents deny the above. There was no decision regarding how to break a tie. Further, the Board did not weigh, as a factor in its decision-making process, the possible outcomes when it was determining how best to reconcile the 35 ballots in the ballot bag with the 31 voters reflected in the pollbook.

4. *“The Wisconsin Election Commission also suggested as an option to flip a coin or draw from a card deck where both candidates would have had a 50/50 chance to win. The approach taken by the Vernon County canvass board was not a fair tiebreaker, relied on incorrect votes from a different county (Richland) not once, but twice to ostensibly stack the cards against Vernon County Supervisor Adrian Amelse.*

Respondents do not deny that a coin flip or card deck draw may be appropriate ways in which to break a tie. Respondents deny all other assertions reflected above.

5. *“These same four voters who decided the race in Vernon County also voted in Richland County on April 5'th.*

Respondents deny as it would not be a fair characterization to state that any specific four voters “decide” any race. Notwithstanding, upon information and belief, Respondents do agree that it appears four ineligible ballots that were included in the Village of Viola’s ballot bag (leading to 35 instead of the appropriate 31 ballots) also were permitted to vote with their appropriate ballots and in their appropriate jurisdictions.

6. *“Lastly, my wife and I never agreed to use illegal ballots in the drawdown or to break the tie with the Vernon County canvas board with notarized complaints to the WEC.”*

Respondents do not contend and are willing to stipulate that Mr. Amelse never indicated, nor did his wife, that Mr. Amelse wished Respondents to use “illegal ballots.” However, Respondents do dispute the implication that neither Mr. Amelse nor his wife indicated consent to a drawdown. In fact, Mr. Amelse’s wife expressed her consent, on Mr. Amelse’s behalf as he was out of the country and unavailable, to a draw down. Respondents believe that after careful explanation to Ms. Amelse, Ms. Amelse affirmed that Mr. Amelse would prefer to remove 4 ballots *randomly* to arrive at the necessary 31 ballots to comport with the pollbook’s 31 entries. Whether or not there was a meeting of the minds would call for speculation. Respondents do affirm that all three members of the Board of Canvassers were confident Ms. Amelse both understood the issue at hand and clearly and unequivocally expressed a wish for the Board to exercise the random drawdown method to remedy the error.

7. *“The canvassing did not to use the amended tally sheet to break the tie with a 139 to 139 vote and instead and reverted back to 142-140 to draw lots with four incorrect ballots from Richland County in a Vernon County Board election as noted above. Kelly Mendygral the Deputy Clerk from the Village of Viola can share the tally sheet and ballots in question.”*

Respondents deny that there was a “reverting back to 142-140 to draw lots.” Mr. Amelse incorrectly premises this concern on his (mis)understanding that the Board removed four specific ballots, resulting in a tie, and then put them back as a way to resolve that tie. This did not occur. Instead, there were 35 votes when there should have been 31 in the ballot bag. This was reconciled with a drawdown to remove by random four of the 35 ballots.

III. Respondents’ Factual Statement.

On April 11, 2022, the Vernon County Board of Canvass (the “Board”) convened. The Board received from District 14 (the Village of Viola) a ballot bag that contained a total of 35 ballots. There were only 31 voters reflected on the pollbook. The Village of Viola’s Municipal Board of Canvass (“Municipal Board”) reported to the Board that the ballots were retrieved from the electronic machine and as a result of the Municipal Board’s practice of recording voter numbers on the ballots, the Municipal Board believed it could identify the four ballots that were not reflected in the pollbook. The Municipal Board did not remedy the error but did alert the Board to the matter.

The Board understood it was tasked with remedying the discrepancy of a ballot bag with 35 ballots when there were to be 31 ballots. It understood that the four ballots could be arguably identified, based on the Municipal Board’s information. However, after conversations with WEC and research, ultimately it was determined that there was concern with the Municipal Board pulling the ballots from the machine, and having recorded all voters’ numbers on their respective ballots such that each ballot could be—and perhaps was in this case—linked to each respective pollbook entry. This practice of course completely nullifies any anonymity for the Village’s

voters. In Wisconsin, the right to secret ballots is preserved in our State Constitution. It followed that to rely on the knowledge obtained through the Village's practice—which would have been necessarily done if the Board had opted to remove the four ballots the Village indicated were the four ineligible ballots of the 35 in the bag—was to potentially infringe further upon the constitutionally protected right to secret ballots.

After consulting again with the WEC, the Board believed that a drawdown would be the best way to remedy the discrepancy. The Board also believed that exercising either option may be permissible. Before making its decision as to which of the two options to exercise, the Board attempted to consult with the two impacted candidates and factored into their decision the input it obtained. Mr. Yttri was present in person and indicated that he preferred a drawdown. Mr. Amelse was not reachable. The Board, understanding Mr. Amelse was out of the country and unavailable, attempted to reach his spouse, Ms. Amelse. The Board spoke with Lori Polhamus, a clerk for the City of Viroqua, who provided the Board with Ms. Amelse's phone number. The Board left a voicemail message with Ms. Amelse. When the Board was unable to reach Ms. Amelse, Ms. Polhamus affirmed that she would be willing to speak on Mr. Amelse's behalf. Ms. Polhamus indicated that she would opt for pulling the four specific ballots. The Board then heard back from Ms. Amelse.

The Board informed Ms. Amelse of the problem and that the Board was deciding whether to pull the four specific ballots or to conduct a drawdown instead. Ms. Amelse opted for a drawdown. Ultimately, the Board conducted a drawdown as opposed to pulling the four specific ballots. The Board believed both contestants supported this option. Four ballots were withdrawn; two by Ms. Polhamus (for Mr. Amelse) and two by Mr. Yttri. After this process, there were 31 ballots. Mr. Amelse had 22, Mr. Yttri had 7 and there were 2 undervotes. Overall, the race yielded 140 for Mr. Yttri and 138 for Mr. Amelse. At no time was there a tie. (*Note, the assertions contained in the above two paragraphs are supported by the Minutes attached hereto; specifically pages 13 and 14 of 16.*)

Mr. Amelse's complaint is based on many misunderstandings and includes material misstatements of fact. Respondents have clarified those misstatements here. Upon consideration of the facts as recited herein, it is evident that Respondents did not violate any relevant law, including Wis. Stats. §§ 5.01(3), 5.01(4) or 6.97(4).

IV. Law and Argument.

Mr. Amelse claims Respondents have acted in violation of Wis. Stats. §§ 5.01(3) & (4), as well as 6.97(4).

Wis Stat. § 5.01(3) states that the plurality shall elect. It requires that "...each elector has one vote for each office... The person receiving the greatest number of legal votes for the office shall be declared elected, and the canvassers shall so determine and certify."

The Board acted in accordance with Wis. Stat. § 5.01(3) when it ensured that there were 31 ballots as recorded in the pollbook and did so through a random drawdown, one of two lawful ways in which to resolve such a discrepancy; and, arguably the one most appropriate to have exercised here given the way in which the Village ascertained which four of the 35 ballots in its ballot bag the Village believed did not belong.

Wis. Stat. § 5.01(4) is irrelevant. That statute addresses how a board may resolve a tie. The Board here conducted a drawdown to remedy the problem of 35 ballots instead of the necessary 31. After the drawdown, there was no tie; Mr. Amelse had 22 votes, Mr. Yttri had 7 votes and there were two undervotes. Overall, the results were 140 to 138.

Mr. Amelse lastly claims the Board violated Wis. Stat. § 6.97. That statute does not apply to this matter and instead addresses when a voter votes without the necessary proof of identification or residency. The specific section alleged to have been violated, § 6.97(4), requires that a board of canvassers must ultimately count a ballot where timely notified that an individual voter was indeed qualified to vote where that individual's ballot was cast. The problem here had nothing to do with voters who presented at the polls without valid identification or proof of residency. Here, instead, the problem was that there were 4 ballots that needed to be excluded.


V. Conclusion.

In applying the statutes cited by Mr. Amelse to the correct factual scenario, it becomes evident that Respondents complied with those cited statutes (Wis. Stats. §§ 5.01(3) & (4), as well as 6.97(4)). Respondents further contend that the actions of the Board of Canvassers, as related to the (correct) factual scenario involving Mr. Amelse's race, were in accordance with all relevant laws.

Respondents offer, along with this response, the attached three affidavits completed by the three individuals who comprised the Board of Canvassers (pages 6-8 of 16); the Vernon County Clerk's minutes and notes recorded during the canvass at issue (pages 9-15 of 16); and, the e-mail from the Clerk to the WEC reporting the District 14 final results (page 16 of 16).

Dated: May 24, 2022.

ABT SWAYNE LAW, LLC
Attorneys for the Plaintiff



State Bar No. 1067002

210 North Main Street
PO Box 128
Westby, WI 54667
(608) 634-2157

**STATE OF WISCONSIN
Wisconsin Elections Commission**

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AFFIDAVIT OF RON HOFF


STATE OF WISCONSIN)
)ss.
VERNON COUNTY)

Ronald C. Hoff, being first duly sworn on oath, deposes and states as follows:

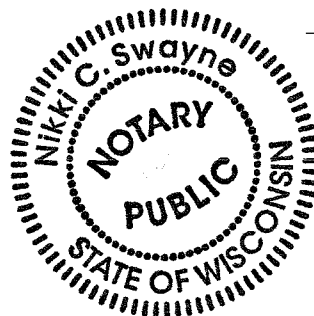
1. I, Ronald C. Hoff, am a Wisconsin adult resident residing at S1570 County Road B, Coon Valley, in Vernon County, Wisconsin.
2. I served as the County Clerk for Vernon County for approximately 18 years with my last term completed January of 2021.
3. I have served on Boards of Canvassers for the past 19 years, including on the Canvass Board named as Respondent in the above-captioned matter pending before the Wisconsin Elections Commission.
4. I have reviewed the Response drafted by the County's corporation counsel, Attorney Nikki C. Swayne and believe, based on personal knowledge and observation, that all factual statements made therein are true and accurate to the best of my knowledge.

This Affidavit is made on personal knowledge and in support of Respondents' Response to the above-captioned WEC complaint.

Subscribed and sworn to before me
this 25th day of May, 2022.



Nikki C. Swayne
State Bar No. 1067002
My commission is permanent.





Ronald C. Hoff

**STATE OF WISCONSIN
Wisconsin Elections Commission**

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AFFIDAVIT OF RACHEL STRANGSTALIEN

STATE OF WISCONSIN)
)ss.
VERNON COUNTY)

Rachel Strangstalien, being first duly sworn on oath, deposes and states as follows:


1. I, Rachel Strangstalien, am a Wisconsin resident residing at S1855 Strangstalien Valley Road in Westby, Vernon County, Wisconsin.
2. I have served on many Boards of Canvassers—for the past approximately 10 to 15 years—including on the Canvass Board named as Respondent in the above-captioned matter pending before the Wisconsin Elections Commission (WEC).
3. I have reviewed the Response drafted by our County's corporation counsel, Attorney Nikki C. Swayne, and dated May 24, 2022 and believe, based on personal knowledge and observation, that all factual statements made therein are true and accurate to the best of my knowledge.

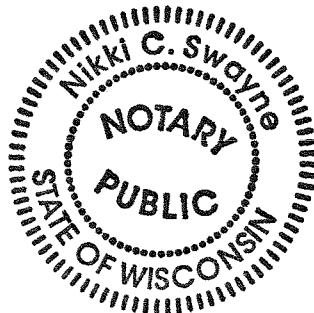
This affidavit is made on personal knowledge and in support of Respondents' Response to the above-captioned WEC complaint.



Rachel Strangstalien

Subscribed and sworn to before me
this 24th day of May, 2022.


Nikki C. Swayne
State Bar No. 1067002
My commission is permanent.



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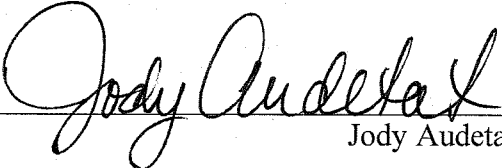
AFFIDAVIT OF JODY AUDETAT

STATE OF WISCONSIN)
)ss.
VERNON COUNTY)

Jody Audetat, being first duly sworn on oath, deposes and states as follows:

1. I, Jody Audetat, am a Wisconsin adult resident residing at 301 Ulland Ave. in the City of Westby, Vernon County, Wisconsin.
2. I have served on Boards of Canvassers for the past approximately 1.5 years, including on the Canvass Board named as Respondent in the above-captioned matter pending before the Wisconsin Elections Commission.
3. I have included attached hereto my handwritten minutes from the Canvass at issue.
4. I have reviewed the Response drafted by the County's corporation counsel, Attorney Nikki C. Swayne and believe, based on personal knowledge and observation, that all factual statements made therein are true and accurate to the best of my knowledge.

This Affidavit is made on personal knowledge and in support of Respondents' Response to the above-captioned WEC complaint.

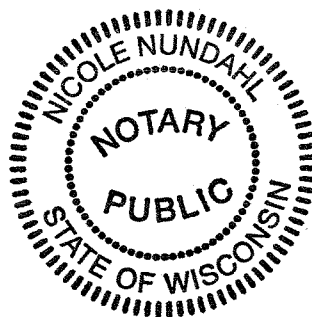


Jody Audetat

Subscribed and sworn to before me
this 25 day of May, 2022.



My commission expires: 11-26-2024



Will of Viola
627-1831

Canvass 4/11/22

608-266-8005 Elec Comm.

~~Brian~~ Brandon - Legal Team
~~Richard~~ Riley -

Will of Viola - Problem. 4 Richland voters received + voted on V.C. Ballot

Pollbook 31 voters, machine shows 33 voters + 2 under votes.

Muni Board on Canvass - Go through drawdown process @ muni level. They would drawdown 2 ballots to take from 33 to 31. (Only 2 because of under votes)
Muni can decide not to do anything.

My canvass has to decide

My canvass can take votes as is

or my canvass can send back to muni to have them decide yes or no drawdown

Adjourn Canvass + reconvene. Post 24 hour notice

Richard
Riley

Will of Viola -

Called WEC that day & were told to remake the ballots.

Richard - said ok to open ballot bag to take out spoiled ballots.

27-3=24 24 Hrs to contact candidate & then it must start by 9am the next day after that.
24-1=23 that.

9-3=6

Not correct
again for
undervotes
Doesn't make
sense.

Amuse	$24 - 1 = 23$	$140 - 1 = 139$
Uttri	$9 - 3 = 6$	$142 - 3 = 139$
Under	$2 - 0 = 2$	
	35	<u>31</u>

4/10/22 Allison - said to break the tie

Richard - if confident, remove those votes. (That makes a tie). For tie - flip coin, pull a card, ^{high card wins} pull name out of hat. If possible, have candidates available.

Election Manual - County Contest.
Tie broken by Board of Canvass. If
Candidates are present, they can
draw.

Richard wants to know who advised
Bill of Viola.

Make amendments to all races.
Need to remove votes x 4 of those who
voted in V.C. + s/b Richland County.
Do whole ballot.

9:05 Recount was done to make sure count
was right. 23, 6, 2 votes.

Adrian - 606-9183 (Donna).

To
Correct:

Blanchard	-	<-3>	+ 1 undervote
Amelse	-	<-1>	
Uthri	-	<-3>	
Village Trustee:			
Geary	-	<-3>	
Matthes	-	<-2>	
Kanable	-	<-2>	
Faraj	-	<-2>	

School Kickapoo:

Matthes: $\langle -2 \rangle$

Jaynes: $\langle -2 \rangle \langle -3 \rangle$

School Board Member:

Wallace $\langle -4 \rangle$

Finals for
City Brd Dist 14

Amelse - 24 - 1 = 23

Yttri - 9 - 3 = 6

Under - $\frac{2}{35}$ - 0 = $\frac{2}{31}$

S/b 31 V.C. Voters

9:35 Gwen bought brand new deck of Cards. Yttri is here + Lori Polkamus will draw for Amelse. Ron + Rachel are shuffling deck.

V.C. is Ward 1
Richland is Ward 2

608-639-0104 Adrian cell

~~✗~~ Voter # was in corner of ballot.

9:50 Called Richard again to clarify process.

Richard - Voter # was put on ballot & was not correct process. but doesn't invalidate the ballot.

Statute assumes ballots are anonymous & there would be lots of ballots in pool so wouldn't be able to find problem ballots so draw down would be best procedure.

Board on Canvass has discretion on what to do - drawdown or having exact problem ballots. B. of Canv- can decide what to do.

Ole would like drawdown. Lori would like 4^{bad} ballots.

Ron asked if he should pull 4 ballots or just 2 because of 2 undervotes.

Richard - we can only walk through options. Can't say how to proceed.

Richard guided us to pull 4 ballots if drawdown.

608-261-2015

Richard - WEC

Ole would like to do drawdown.
Lori would like to pull the actual ballots.

10:19 Donna Amelse called. After talking decide to do drawdown.

Lori draws 1, Ole draws 1,
Lori draws 1, Ole draws 1

Amelse $24 - 2 = 22$

$140 - 2 = 138$

Lttri $9 - 2 = 7$

$142 - 2 = \underline{140} *$

Candidates left

Viola left @ 10:40

Correct: Blanchard $\langle -3 \rangle$ + 1 undervote

Amelse $\langle -2 \rangle$

Lttri $\langle -2 \rangle$

Trustee: Faraj $\langle -2 \rangle$

Geary $\langle -4 \rangle$

Matthes $\langle -2 \rangle$

Kanable $\langle -2 \rangle$

School: Matthes $\langle -2 \rangle$

Jaynes $\langle -4 \rangle$

Fredrickson \emptyset change

Wallace $\langle -3 \rangle$ 14 of 16

Respondents' Response to EL 22-41

Drawdown done on 4/12/22

Lori Polhamus drew for Amelse
Ole Yttri drew for Yttri

4 Ballots drawn
2 pulled for Amelse
2 pulled for Yttri

Final numbers ended with

Amelse 24 - 2 pulled votes = 22
Yttri 9 - 2 pulled votes = 7
29 votes

Final numbers

+ 2 undervotes
31 total voters

Amelse 140 - 2 pulled = 138
Yttri 142 - 2 pulled = 140 * Yttri

Witnessed:

Ronda Fetter
Jody Hester
Tom Hester
Lori Polhamus

Rachel Strangstulm
Ole Yttri
J. Tomi Murawski
Renée Wofford
Reya Call

Audetat, Jody

From: Audetat, Jody
Sent: Tuesday, April 12, 2022 12:21 PM
To: 'Rydecki, Richard H - ELECTIONS'
Cc: 'Willman, Riley P - ELECTIONS'; Tryggestad, Renee; Nelson, Nicole
Subject: RE: District 14 Election Results

Hi again. Our final result for Board of Canvass was to do a draw down. We had one candidate present and were able to reach the other candidate's wife via phone since he is out of country. Our city clerk is a close friend of the absent candidate so she was also present to be his representative until we reached his wife. Both parties decided that the most fair and random way to handle it would be to do a draw down.

With Canvassers, Village of Viola Election staff, and Yttri present and Amelse's rep present, we did the ballot draw down. Amelse's rep and Yttri each pulled 2 ballots. Votes pulled were 2 for Yttri and 2 for Amelse. That brought us to the total votes for Village of Viola to Amelse 22 total and Yttri 7 total, there were 2 undervotes. This brought our total votes to the 31 that was listed on the poll book. Grand total came to Amelse 138 votes and Yttri 140 votes for final election results. Yttri is the winner of the contest.

Please call if you have any questions. I hope I've explained this well enough over email. Sometimes that is difficult so please let us know if you would like any more information.

Thank you SO much for all of your help through this. It was an unusual situation.

Jody

Jody Audetat
Vernon County Clerk

Vernon County Clerk's Office
Courthouse Annex, Room 108
400 Courthouse Square
Viroqua, WI 54665

(608) 637-5380 Office
(608) 637-5381 Direct Line
Fax (608) 637-5556
jody.audetat@vernoncounty.org



From: Rydecki, Richard H - ELECTIONS <Richard.Rydecki@wisconsin.gov>
Sent: Thursday, April 7, 2022 11:46 AM
To: Audetat, Jody <jody.audetat@vernoncounty.org>
Subject: RE: District 14 Election Results

WARNING! This email was sent to you by an external sender, **DO NOT CLICK** links or attachments unless you recognize the sender and know the content is safe.

Jody,