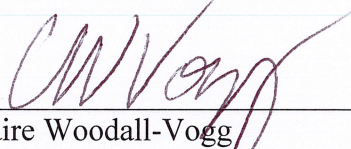


VERIFICATION

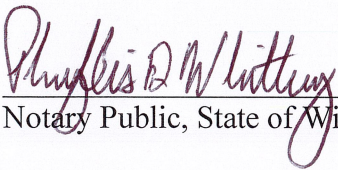
I, CLAIRE WOODALL-VOGG, being first duly sworn upon oath, state that I personally read the above Verified Response and Request to Dismiss and Impose Sanctions and that it is true and correct based upon my personal knowledge.

Dated this 27th day of April, 2022.



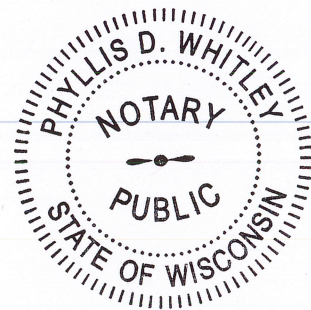
Claire Woodall-Vogg
Executive Director, Milwaukee Election Commission

Subscribed and sworn to before me this
27th day of April, 2022.



Notary Public, State of Wisconsin

My commission expires May 31, 2025



**STATE OF WISCONSIN
BEFORE THE ELECTIONS COMMISSION**

DAVID BOLTER,

Complainant,

v.

Case No. EL 22-23

**CLAIRE WOODALL-VOGG,
Executive Director, Milwaukee Election Commission,**

Respondent.

**VERIFIED RESPONSE AND REQUEST TO DISMISS AND IMPOSE SANCTIONS OF
RESPONDENT CLAIRE WOODALL-VOGG**

INTRODUCTION & BACKGROUND

Respondent Claire Woodall-Vogg (erroneously and repeatedly referred to as “Claire Woodall-Voog”), Milwaukee Election Commission Executive Director (“Woodall-Vogg”), acting by and through Assistant City Attorney James M. Carroll, hereby submits the following response and asks the Wisconsin Elections Commission (“WEC”) to dismiss in their entirety the March 21, 2022, and April 2, 2022, verified complaints of Complainant David Bolter (“Bolter”) and impose sanctions against Bolter.

Though his complaints are sometimes difficult to decipher, Bolter’s purported claims can be summarized as follows:

- That between August and October of 2020 Woodall-Vogg abused her authority/discretion by “hiring” and delegating election duties to Spitzer-Rubenstein,

thus permitting him to act as an “election official” as that term is defined in Wis. Stat. § 5.02(4e);

- That in September 2020 Woodall-Vogg was obligated to “discharge” Spitzer-Rubenstein pursuant to Wis, Stat. § 7.15(1)(f).
- That in August 2020 Woodall-Vogg improperly referred Spitzer-Rubenstein to the WEC.

Bolter maintains that the above alleged conduct by Woodall-Vogg in autumn of 2020 violated multiple Wisconsin elections statutes; specifically, Wis. Stat. Sections 6.869, “Uniform instructions;” 7.15, “Municipal clerks;” 12.11, “Election bribery;” and 12.09, “Election threats.”

The claims in Bolter’s complaints should be familiar to the WEC and to all who have witnessed the flood of cynical Wisconsin litigation spawned by the 2020 presidential election. As have others before him, Bolter seeks to undermine the legitimacy of the November 2020 election in Wisconsin by revisiting stale issues. In this instance, Bolter’s claims mainly focus on interactions between Woodall-Vogg and Michael Spitzer-Rubenstein (“Spitzer-Rubenstein”) of the National Vote at Home Institute (“NVHI”), a non-profit organization with a stated mission of “increas[ing] voters’ access to, use of, and confidence in voting at home.” Bolter also cannot resist referencing the Center for Tech and Civic Life (“CTCL”), an entity that provided election-related grant funds to hundreds of Wisconsin communities in 2020 (not merely the “Zuckerberg 5” municipalities to which Bolter so flippantly refers), and whose role in the 2020 election has been upheld by every Wisconsin court or administrative body that has considered it, including the WEC.

Bolter’s claims are time-barred by the equitable doctrine of laches. They are also substantively meritless and frivolous. Bolter merely repackages previous administrative complaints and lawsuits all of which suggest, without factual or legal support, that sinister outside

forces (whether CTCL, NVHI, or others) conspired with local election officials to manipulate the November 2020 election. The WEC should dismiss Bolter's complaints and sanction him, pursuant to Wis. Stat. § 5.05(2m)(c)2.am., for advancing tired allegations unsupported by the facts or the law.

ARGUMENT

I. Bolter's Claims are Time-Barred.

Per Wis. Stat. § 5.06(3), complaints such as Bolter's must be filed "promptly so as not to prejudice the rights of any other party." And while Section 5.06(3) does not apply a hard and fast limitations period in all instances, its requirement of "prompt" action is consistent with the well-established equitable doctrine of laches in Wisconsin. "Laches is founded on the notion that equity aids the vigilant, and not those who sleep on their rights to the detriment of the opposing party." *Trump v. Biden*, 2020 WI 91, ¶ 10, 394 Wis. 2d 629, 951 N.W.2d 568 (quoting *State ex rel. Wren v. Richardson*, 2019 WI 110, ¶ 14, 389 Wis. 2d 516, 936 N.W.2d 587). "Extreme diligence and promptness are required in election-related matters, particularly where actionable election practices are discovered prior to the election. Therefore, laches is available in election challenges." *Trump v. Biden*, 2020 WI 91 at ¶ 11 (quoting 29 C.J.S. Elections § 459 (2020)).

"Application of laches is within the court's discretion upon a showing by the party raising the claim of unreasonable delay, lack of knowledge the claim would be raised, and prejudice." *Trump v. Biden*, 2020 WI 91 at ¶ 10 (citing *Richardson*, 2019 WI at ¶ 15). In this instance, all three elements of laches are decidedly present. First, Bolter's delay is both significant and unreasonable, as he complains of conduct by Woodall-Vogg that occurred between approximately 16 and 18 months prior to the filing of his initial complaint, and before the November 2020 election upon which his complaint focuses. Second, there is nothing in the record suggesting that Woodall-

Vogg could have anticipated Bolter’s complaints; to the contrary, it was Woodall-Vogg’s hope and expectation that the barrage of unfounded WEC complaints challenging the City of Milwaukee’s administration of the November 2020 election would have ceased by a year and a half thereafter. Third, Bolter’s tardy complaints impose severe prejudice on Woodall-Vogg by forcing her to waste time responding to tired and unfounded allegations of 2020 election malfeasance rather than preparing for the fall 2022 election cycle. In fact, Bolter’s complaints, and those of his kindred spirits, prejudice voters in the City of Milwaukee and throughout the State of Wisconsin by frivolously attacking election integrity to undermine the will of the electorate.

The WEC recently applied the doctrine of laches to dilatory conduct by complainants substantially similar to Bolter in *Stone v. Barrett, et al.*, Case No. EL 21-40. In an April 21, 2022, communication to counsel for the respondents in that case—which included the mayors of Milwaukee, Green Bay, Racine, Kenosha, and Madison—the WEC stated “that all future Wis. Stats. §§ 5.05 and 5.06 complaints related to the acceptance of and use of 2020 CTCL election grant funds shall be considered untimely, barred by laches and issue preclusion, or otherwise nonjusticiable under those statutes.” While Woodall-Vogg recognizes that the CTCL grants are not the express focal point of Bolter’s complaints, the underlying premise of the WEC’s dismissal of the *Stone v. Barrett* complaints applies equally here: that individuals asking the WEC in 2022 to revisit events leading up to the November 2020 election are time-barred from doing so. The WEC should dismiss Bolter’s complaints per the same rationale.

II. Bolter’s Claims Are Meritless.

A. Spitzer-Rubenstein Was Not an “Election Official.”

Bolter’s complaints allege that Woodall-Vogg violated various Wisconsin elections laws by permitting Spitzer-Rubenstein to perform the duties of an “election official,” as that term is

defined in Wis. Stat. § 5.02(4e). Yet while the definition of “election official” in Wis. Stat. § 5.02(4e) may initially appear relatively broad, other portions of Wisconsin’s elections statutes limit the term’s scope. In particular, Wis. Stat. § 7.03(a), “Compensation of election officials and trainees,” enumerates the following categories of “election officials” who are entitled to “reasonable daily compensation”: 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.” There is absolutely no evidence that Spitzer-Rubenstein fit into any of the categories set forth in Wis. Stat. § 7.03(a) or that he was “employed and performing duties under chs. 5 to 12.” Spitzer-Rubenstein was not employed by Woodall-Vogg or the City of Milwaukee at all, nor did Woodall-Vogg “charge” him with making decisions or carrying out duties “relating to the conduct of an election.”

Bolter’s complaints disingenuously ignore the important distinction between a third party actually conducting an election—which did not occur here—and a third party providing resources to a municipal entity that is conducting an election. In this instance, because Woodall-Vogg was attempting to ensure maximum voter access during the COVID-19 pandemic, she and MEC staff worked with individuals from NVHI, including Spitzer-Rubenstein (as well as various other non-profit entities and vendors). Interactions between Spitzer-Rubenstein and Woodall-Vogg/MEC were as follows:

- 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.” (April 2, 2022 Complaint, p. 4.)

- 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. Spitzer-Rubenstein did not, as Bolter alleges, allow Spitzer-Rubenstein to “manage the curing of Wisconsin ballots.” (April 2, 2022 Complaint, p. 4.)
- 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.

The above interactions do not suggest, as Bolter would have it, that Woodall-Vogg improperly inserted Spitzer-Rubenstein into the elections process and permitted him to act as an “election official.” The real narrative is actually quite pedestrian: Woodall-Vogg simply sought out every available resource to help her perform her duties competently in an extremely challenging environment. Indeed, the fact that Woodall-Vogg passed along Spitzer-Rubenstein’s information to the WEC was not an “abuse of her election official discretion,” as Bolter argues, but rather a clear sign of Woodall-Vogg’s desire to maximize access for all voters in a cost-effective manner under genuinely unique and demanding circumstances.

B. Woodall-Vogg’s Interactions with Spitzer-Rubenstein Did Not Violate any Wisconsin Laws.

Not only does Bolter fail to demonstrate that Spitzer-Rubenstein improperly acted as an “election official” as defined in Wis. Stat. § 5.02(4e), but he also cannot establish that Woodall-Vogg violated any of the other statutes to which he cites.

- **Wis. Stat. § 6.869, “Uniform instructions”** – This statute directs the WEC to “prescribe uniform instructions for municipalities to provide to absentee electors.” Though his allegations regarding this statute are difficult to decipher, he appears to suggest that Woodall-Vogg violated the statute by including both English and Spanish versions of absentee ballot instructions for City of Milwaukee voters. Bolter’s allegations are absurd for at least three reasons. First, the statute itself is a directive to the WEC, not grounds for a cause of action against individual election officials. Second, Bolter points to no authority for the proposition that there was anything illegal about providing Spanish language instructions to voters in a city with a large Spanish-speaking population. In fact, Spanish language instructions are required in Milwaukee pursuant to Section 203 of the Voting Rights Act.¹ Third, while the City of Milwaukee’s instructions did not exactly mirror the WEC’s uniform instructions, they were substantively identical and were tailored to provide information specifically relevant to Milwaukee voters. (See Exhibits 1 & 2).
- **Wis. Stat. § 7.15(1)(f)** – This statute directs municipal clerks to “[d]ischarge election officials for improper conduct or willful neglect of duties.” As discussed

¹ As stated by the Census Bureau in a notice published December 8, 2021: “Section 203 mandates that a state or political subdivision must provide language assistance to voters if more than five (5) percent of voting-age citizens are members of a single-language minority group and do not ‘speak or understand English adequately enough to participate in the electoral process,’ and if the rate of those citizens who have not completed the fifth grade is higher than the national rate of voting-age citizens who have not completed the fifth grade.” 86 FR 69611, pp. 69611-69618.

in Section I(A), above, Spitzer-Rubenstein was not an “election official” and thus is not subject to this statute, nor could Woodall-Vogg have “discharged” him. To be sure, the fact that Section 7.15(1)(f) refers to the “discharge” of election officials by municipal clerks indicates that the term “election officials” applies only to those individuals who are hired and supervised by a municipal entity, which Spitzer-Rubenstein certainly was not, as he was neither paid by nor under the authority of Woodall-Vogg, the MEC, or the City of Milwaukee. In other words, the language of this statute further refutes the core premise of Bolter’s complaints.

- **Wis. Stat. §§ 12.09 & 12.11** - As an initial matter, Bolter appears to incorrectly cite to Wis. Stat. § 12.11 regarding “election fraud;” it seems that he meant to cite to Wis. Stat. § 12.13. That error aside, the notion that Woodall-Vogg committed “election bribery” or “election fraud” by seeking out free resources to assist individuals in voting safely during a pandemic is patently absurd. There is no evidence whatsoever that Woodall-Vogg willfully neglected or refused to perform her duties, nor is there any rational legal theory under which she “automatically impeded the ‘free exercise of the franchise at an election,’” as Bolter ridiculously asserts on page 9 of his complaint. While Bolter may believe that the conclusions he wishes the WEC to reach are “automatic,” a legal filing before this or any other adjudicative body must meet a significantly higher bar. Bolter has not presented any facts to support his legal theories of “fraud” and “bribery,” and his failures warrant sanction, as discussed in the following section.

III. Bolter Should Be Sanctioned for Filing Frivolous Complaints.

The WEC recognized the frivolousness of allegations similar to Bolter's in its April 21, 2022, written decision in *Stone v. Obama, et al.* (WEC Case No. EL 21-37). In that matter the WEC imposed a \$500 forfeiture on the complainant, who alleged (among other things) that former Milwaukee Mayor Barret engaged in election "threats" and "bribery" by participating in "get out the vote" activities in 2020. Bolter should not be permitted to level comparably unsubstantiated allegations of misconduct against Woodall-Vogg, or any other public official, without consequence. In their tardiness, their lack of substance, and their insistence on revisiting conspiracy theories long-since debunked, Bolter's complaints are the very definition of bad faith and thus warrant sanctions pursuant to Wis. Stat. § 5.05(2m)(c)2.am.

CONCLUSION

For the foregoing reasons the WEC should dismiss Bolter's complaints in their entirety and sanction him pursuant to Wis. Stat. § 5.05(2m)(c)2.am.

Dated this 27th day of April, 2022.

Respectfully submitted,

Electronically signed by James M. Carroll
James M. Carroll (State Bar No. 1068910)
Kathryn Z. Block (State Bar No. 1029749)
Attorneys for Respondent Claire Woodall-Vogg
CITY OF MILWAUKEE
200 E. Wells St., Room 800
Milwaukee, WI 53202-3515
Telephone: (414) 286-2601
Facsimile: (414) 286-8550
jmcarr@milwaukee.gov
kblock@milwaukee.gov



Review checklist

- Did you **sign** the back of the envelope?
- Did your **witness sign and write their address** on the back of the envelope?
- Are you returning your ballot by the deadline?** After October 26, we recommend you use a drop box instead of mailing your ballot.



Making a correction

- If you make a mistake, **contact us immediately** to ensure your vote counts. We can send you a new ballot.
- The deadline to request a new ballot is 5:00 p.m. on the Thursday before Election Day. However, this deadline is not realistic for you to have time to vote by mail.



24-Hour Absentee Ballot Drop Box Locations

- **Atkinson Library**, 1960 W Atkinson Ave
- **Bay View Library**, 2566 S Kinnickinnic Ave
- **Capitol Library**, 3969 N 74th St
- **Center Street Library**, 2727 W Fond du Lac Ave
- **Central Library**, 814 W Wisconsin Ave
- **City Hall Complex**, 200 E Wells Street (on east side of Market St)
- **East Library**, 2320 N Cramer St
- **Election Commission Warehouse**, 1901 S Kinnickinnic Ave
- **Good Hope Library**, 7715 W Good Hope Rd
- **Martin Luther King Library**, 310 W Locust St
- **Mitchell Street Library**, 906 W Historic Mitchell St
- **Tippecanoe Library**, 3912 S Howell Ave
- **Villard Square Library**, 5190 N 35th St
- **Washington Park Library**, 2121 N Sherman Blvd
- **Zablocki Library**, 3501 W Oklahoma Ave



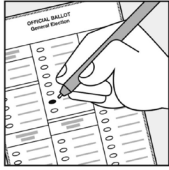
Election Day Information

- **Ballots cannot be returned to polling places on Election Day.**
- On Election Day, please return your ballot to a drop box listed above or to our absentee ballot processing center located at 501 W Michigan Street.
- If you have returned your absentee ballot, do not vote at your polling place on Election Day. **Voting twice is against the law.**
- If you have **NOT** returned your absentee ballot, you may vote at your polling place on Election Day.

Uniform Instructions for Wisconsin Absentee Voters

Confirm the envelope from your clerk contains your ballot and the envelope you'll use to return your ballot.

- 1 Read and follow the instructions on your ballot. Mistakes may prevent your votes from being counted.
- 2 You must vote your ballot in the presence of an adult witness:



- Start by showing the witness your unmarked ballot.
- Mark your ballot in the presence of your witness.
- Your witness must confirm that you are the one completing your ballot but, because voting is a private activity, your witness cannot tell you who or what to vote for and cannot see the choices you make on your ballot.

Who can be a witness?

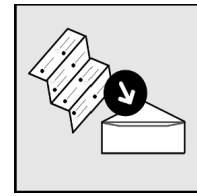
- A witness must be a U.S. Citizen who is at least 18 years old.
- For military or overseas voters, your witness must be at least 18 years old but is not required to be a U.S. Citizen.
- A witness can be a friend, spouse, family member, neighbor, etc.

Who cannot be a witness?

- A candidate on the ballot for this election.

If you're having trouble finding a witness or have questions about the witness requirement, please contact your municipal clerk or the Wisconsin Elections Commission for assistance. Contact information can be found on the back of this page.

- 3 Refold your voted ballot and place it inside of the return envelope.
- 4 Seal the envelope in the presence of your witness.
- 5 Fill out the required sections of the form on the absentee return envelope.



To make sure your ballot is counted, double check the following before you return it:



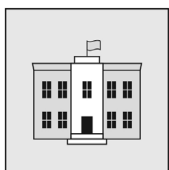
- **Your voter information:** this section is usually completed by your clerk and includes the date of the election, the county and municipality in which you are registered, your name, the address where you are registered, city, and zip code.
- **Voter Signature:** you (or your assistant) must sign in the Certification of Voter section.
- **Witness Signature and Address:** your witness must sign and provide their **full** address (street number, street name, city) in the Certification of Witness section.
- Make sure your ballot is in your envelope and make sure the envelope is sealed properly.

If any of the required information above is missing, your ballot **will not be counted**.

- 6 Return your ballot.



- Your ballot must be received in time to be delivered to your polling place **no later than 8:00 p.m. on Election Day**. There are a few options for returning your ballot.
You can:
 - Mail it back
 - Drop it off at your municipal clerk's office
 - Drop it off at your polling place or central count location



- The United States Postal Service recommends mailing your ballot at least one week before Election Day. Returning a ballot from overseas may take longer.
- **Absentee ballots may not be returned by email or fax.**

Getting Assistance

If you need help reading or filling out your ballot or absentee return envelope, you may ask for assistance from anyone who is not your employer or a representative of your labor union. Your assistant may also serve as your witness. Explaining how to fill out your ballot or return envelope is not “assistance.”

With your ballot

- Your assistant must sign in the Certification of Voter Assistance section.
- Your assistant can read your ballot to you or fill out your ballot under your direction, but cannot tell you how to vote.

With your absentee return envelope

- If someone signs your absentee return envelope on your behalf, make sure they also sign in the Certification of Assistant section.
- Your assistant may also serve as your witness.

Correcting Ballot Mistakes

- If you make a mistake while marking your ballot or otherwise require a replacement ballot, contact your municipal clerk. Your municipal clerk’s contact information is listed below.
- If there is not enough time to request a replacement ballot and you have not returned your ballot, you may still vote in-person at the polls on Election Day.
- Different types of voters have different deadlines for requesting a replacement ballot. Please see below for additional details.

5:00 p.m. on the Thursday before the election

- Regular absentee voters
- Permanent overseas voters
- Temporary overseas voters

5:00 p.m. on the Friday before the election

- Military voters*
- Indefinitely confined voters

*If the ballot contains federal offices, military voters away from home may request replacement ballots until 5:00 p.m. on Election Day

Voter Photo Identification Information

- If you have received your ballot, then a copy of your photo ID is already on file or you are exempt from the requirement. You do not need to provide another copy of photo ID unless instructed by your clerk.
- If you have questions about the photo ID requirement, please contact your municipal clerk.

If you have any questions, please contact your municipal clerk for assistance.

Municipal Clerk Contact Information

(Name of Municipal Clerk)

(Name of Municipality)

Phone:

Email:

Fax:

State Election Official Contact Information

Wisconsin Elections Commission

Help Desk: (608) 261-2028

Email: elections@wi.gov

For voter information, check out MyVote.wi.gov