

SUPPLEMENTAL OPEN SESSION MATERIALS

AGENDA ITEM C.4

EL 24-86 Terry Johnson v. Town Board, Westfield



Wisconsin Elections Commission

201 West Washington Avenue | Second Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8005 | elections@wi.gov | elections.wi.gov

DATE: For the September 18, 2024 Meeting of the Wisconsin Elections Commission

TO: Members, Wisconsin Elections Commission

FROM: WEC Staff

SUBJECT: Commission Review and Consideration of Wis. Stat. § 5.06 Complaints

Appendix 1 – EL 23-24 – Junior Gurgel v. Sandra Swanson

Appendix 2 – EL 24-69 – Katherine Thomas v. Brian Neumann

Appendix 3 – EL 24-88 – Sharon Galonski v. Brenda Petersen

Appendix 4 – EL 24-86 – Terry Johnson v. Town Board, Westfield

Background:

Prior to September 5, 2024, complaints filed pursuant to Wis. Stat. § 5.06 were decided by the Wisconsin Elections Commission (“the Commission”) via delegation of its authority to the Commission Administrator. However, on September 5, the Waukesha County Circuit Court, Branch 8¹, issued an order holding that this delegation of authority was unlawful, and directing the Commission to decide all future Wis. Stat. § 5.06 complaints by a vote of the Commission.

There are four complaints and draft decisions for the Commission’s review and consideration at today’s meeting, along with a recommended motion for each one.

Appendix 1 - EL 23-24 – Junior Gurgel v. Sandra Swanson

The complaint of Junior Gurgel v. Sandra Swanson pertains to actions taken by Clerk Swanson concerning public notice of the testing of automatic tabulating equipment. The Complainant alleges that proper notice was not given, in violation of Wis. Stat. § 5.84.

Commission legal staff reviewed the complaint, the response, and the reply. In short, and as detailed more extensively in the proposed draft decision letter, Commission staff believe that the Complainant has shown probable cause that a violation of law occurred with relation to Clerk Swanson’s failure to provide proper notice under Wis. Stat. § 5.84.

¹ Pellegrini v. Wisconsin Elections Commission, Case No. 2022CV001656, Decision and Order (September 5, 2024).

This complaint was reviewed and approved by the Commission Administrator and the Commission Chair on September 3, 2024. A copy of the decision letter and complaint materials were circulated to the full Commission also on September 3, 2024. No requests for a special meeting were received.

Recommended Motion for Gurgel v. Swanson: The Commission has reviewed the proposed draft decision letter in **Appendix 1**, and summarily decides this matter pursuant to Wis. Stat. § 5.06(6) by adopting the proposed decision letter in full. The Commission directs staff to immediately transmit a copy of this order to the parties.

Appendix 2 - EL 24-69 – Katherine Thomas v. Brian Neumann

The complaint of Katherin Thomas v. Brian Neumann pertains to allegations that Clerk Neumann has not been sending out absentee ballots to the Complainant and her family until prompted to do so for the November 2022, April 2023, and August 2024 elections. The Complainant alleges Clerk Neumann has accordingly violated Wis. Stat. § 7.15(1)(cm).

Commission legal staff reviewed the complaint, the response, and the reply. In short, and as detailed more extensively in the proposed draft decision letter, Commission staff believe that the Complainant did show probable cause to believe that a violation of law or abuse of discretion occurred. Clerk Neumann admits in his response that he failed to send out absentee ballots, as alleged, during the three previous elections. Staff recommend that the Commission order Clerk Neumann to conform his conduct to the law, and further order him to certify to the Commission that he has completed the remedial training described by the decision letter no later than Friday, September 20, 2024.

This complaint was reviewed and approved by the Commission Administrator and the Commission Chair on August 30, 2024. A copy of the decision letter and complaint materials were circulated to the full Commission also on August 30, 2024. No requests for a special meeting were received.

Recommended Motion for Thomas v. Neumann: The Commission has reviewed the proposed draft decision letter in **Appendix 2**, and summarily decides this matter pursuant to Wis. Stat. § 5.06(6) by adopting the proposed decision letter in full. The Commission directs staff to immediately transmit a copy of this order to the parties.

Appendix 3 – EL 24-88 – Sharon Galonski v. Brenda Petersen

The complaint of Sharon Galonski v. Brenda Petersen pertains to a local recall election that has been called for **September 24, 2024**. The complaint pertains to an alleged abuse of discretion and actions contrary to law regarding a recall petition and challenge that was submitted against the Complainant, which was found sufficient by the Respondent.

Commission legal staff reviewed the complaint, the response, and the reply. In short, and as detailed more extensively in the proposed draft decision letter, Commission staff believe that the Complainant did not show probable cause to believe that a violation of law or abuse of discretion occurred with regard to the finding of sufficiency. The Commission does find an abuse of discretion regarding the acceptance of an assertion not supported by affidavit or other proof as correcting a failure of a circulator and orders the Respondent to apply a higher standard in any future recall petition filing. However, the signatures that should not have been accepted due to this reason do not affect the Respondent's ultimate determination of sufficiency.

This complaint was reviewed and approved by the Commission Administrator on September 16, 2024. The Commission has not yet had a chance to review a draft of the decision letter in Appendix 3, but it is included in the materials for this meeting because the recall election has been scheduled for Tuesday, September 24, 2024.

Recommended Motion for Galonski v. Petersen: The Commission has reviewed the proposed draft decision letter in **Appendix 3**, and summarily decides this matter pursuant to Wis. Stat. § 5.06(6) by adopting the proposed decision letter in full. The Commission directs staff to immediately transmit a copy of this order to the parties.

Appendix 4 – EL 24-86 – Terry Johnson v. Town Board, Westfield

The complaint of Terry Johnson v. Town Board of Westfield also pertains to a local recall election that has been called for **September 24, 2024**. The complaint pertains to an alleged violation of Wis. Stat. § 9.10(4)(d) when the Respondent failed to call a recall election following a finding of sufficiency of a recall petition by the town clerk.

Commission legal staff reviewed the complaint, the response, and the reply. Staff recommend that the Commission find that a violation of law or abuse of discretion occurred with regard to the Respondent's failure to promptly call a recall election. Since it appears as if the parties agree the election will proceed on September 24, the proposed decision would not impact that election date. However, the proposed decision does require that the Respondent meet before the end of Friday, September 20 to officially call the election and clear up voter confusion.

The Commission has not yet had a chance to review a draft of the decision letter in Appendix 4, but it is included in the materials for this meeting because the recall election has been scheduled for Tuesday, September 24, 2024.

Recommended Motion for Johnson v. Town Board, Westfield: The Commission has reviewed the proposed draft decision letter in **Appendix 4**, and summarily decides this matter pursuant to Wis. Stat. § 5.06(6) by adopting the proposed decision letter in full. The Commission directs staff to immediately transmit a copy of this order to the parties.



Wisconsin Elections Commission

201 West Washington Avenue | Second Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8005 | elections@wi.gov | elections.wi.gov

September 18, 2024

Terry Johnson
N5656 County Road A
Westfield, WI 53964

Town Board
Town of Westfield, Marquette County
P.O. Box 157
Westfield WI 53964

Sent via email to: elanson@ammr.net, kmjohnson@maqs.net

Re: In the Matter of Terry Johnson v. Town Board of Westfield (Case No. EL 24–86)

Dear Ms. Johnson and the Town of Westfield Town Board:

This letter is in response to the verified complaint submitted by Terry Johnson (Complainant) to the Wisconsin Elections Commission (Commission), which was filed to challenge actions taken by the Town Board of Westfield (Respondent). The complaint pertains to alleged violation under Wis. Stat. § 9.10(4)(d) of the Respondent to call a recall election following a finding of sufficiency by the town clerk.

The Commission has reviewed the complaint and response. The Commission provides the following analysis and decision. In short, the Commission finds that the Complainant did show probable cause to believe that a violation of law or abuse of discretion occurred with regard to the failure to promptly call a recall election.

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

Under Wis. Stats. §§ 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 this 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.

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.”

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

Complaint Allegations

The complaint alleges that the Respondent Town Board “violated Wis. Stat. § 9.10(4)(d) when they failed to set the required recall election date.” The complaint alleges that the Town Clerk issued a certificate of sufficiency regarding a recall petition on August 13 and that a recall election must be held on September 24. The complaint alleges that “[o]ne supervisor stated that the election should be tabled because he heard someone filed a complaint with the WI Election Commission” but that the complaint was not provided to the board, that another supervisor stated that the September 24 date should be followed, and that the Town Board Chair “stated that we shouldn't have a recall election because she didn't do anything wrong, and she shouldn't be recalled.” The complaint alleges that no action was taken by the board concerning the recall petition or election. The complaint further alleges that “the chairperson has been using her position of authority to derail the recall efforts of many town citizens.” The complaint asks the Commission to order the Respondent to “set the recall election date as required by law.”

Response

The Respondent admits that the Town Clerk issued a Certificate of Sufficiency for a recall petition on August 13, and that the clerk notified the Respondent of that fact. The Response alleges that “the Town Clerk did not request a recall election date of September 24, the Town Clerk merely reported that the recall election date was September 24. This date arises by operation of State law” and cites Wis. Stat. § 9.10(4)(d). The response also admits that no action was taken by the board. The response denies that the chair has been using her position to “derail the recall efforts.” The response admits that the election must be held on September 24 and that ballots have been printed and mailed to electors. The response:

denies that the Town Board sets the date of the recall election, however. The Town Board cannot be ordered to do something it has no legal ability to do. As correctly announced by the Town Clerk at the meeting held on August 19, 2024, the recall election will be held on September 24th as required by Wisconsin Statute Section 9.10(4)(d).

The response also states that: “if members of the public, or the petitioner, did not understand the election dates and deadlines established in the state law, that also does not change the dictates of the statute.”

Reply

The Complainant provided her reply on September 17, 2024. She asserts that the Respondent’s actions “usurped the possibility of anyone wishing to file candidacy documents.” She asserts that Form CF-IL requires candidates to input a date of election, and since the Respondent did not set an election date, the Respondent did not allow the candidates the required time to file the necessary documents.

Neither the Complainant’s original complaint or the Respondent’s response address the impact of the allegations on candidate filing or Form CF-IL. Accordingly, the Commission cannot consider new allegations or arguments raised for the first time in a Complainant’s reply. Furthermore, the Complainant’s reply is required to be “sworn to before a person authorized to administer oaths.” Wis. Admin. Code EL § 20.03(1). The Complainant’s reply did not contain any indication that it was sworn.

Discussion

Both the Complainant and the Respondent appear to agree that the recall election should properly be held on Tuesday, September 24, 2024. Both parties also appear to agree that the recall election has indeed been called and will proceed on September 24. Neither party has asserted that the recall election should be on a different date, or should not be held altogether.

The only dispute appears to be one of the statutory interpretation of Wis. Stat. § 9.10(4)(d) regarding who must be the one to call the recall election—the municipal clerk or the town board—and the answer to that question has no bearing on whether the recall election should proceed. Unambiguously, § 9.10(4)(d) states, in relevant part, that “[p]romptly upon receipt of a [recall petition certification], **the governing body**...shall call a recall election.” (Emphasis added). A “governing body” means “the common council of a city, board of supervisors of a town or board of trustees of a village.” Wis. Stat. § 5.02(6). It does not mean, refer to, or include the municipal clerk.

Accordingly, the Commission finds that the failure of the Respondent to call a recall election promptly upon receipt of the recall petition certification was contrary to law. Although it appears from the response that the Respondent was following the municipal clerk’s lead in setting the recall election on September 24, the Respondent is the proper statutory actor under § 9.10(4)(d). The Respondent asserts, incorrectly, in its response that it has “no legal ability” to set the date of a recall election. This is plainly contrary to law—§ 9.10(4)(d) means what it says.

However, even though the parties appear to agree that there will be, and should be, a recall election on September 24, 2024, that election cannot proceed on the municipal clerk’s decision alone. Accordingly, the Commission orders the Respondent to take all action necessary by Friday, September 20, 2024 to properly call the election for Tuesday, September 24, 2024. The Commission further orders the Respondent to take all action necessary to communicate to their constituents that a recall election will take place on Tuesday, September 24, 2024, and that the recall election has been called by the Respondent upon receipt of a recall petition certificate.

Commission Decision

Based upon the above review and analysis, the Commission finds that the Respondent took actions that were contrary to law when it declined to call a recall election after the municipal clerk issued a certificate of sufficiency to a recall petition. The Respondent is the governing body of the Town of Westfield, and it alone has the responsibility under § 9.10(4)(d) to promptly call a recall election upon receipt of a certificate of sufficiency of a recall petition from the municipal clerk.

Prior to 11:59 p.m. on Friday, September 20, 2024, the Respondent is ordered to complete the following:

1. Take all action necessary to properly call the recall election for Tuesday, September 24, 2024 pursuant to § 9.10(4)(d).
2. Take all action necessary to communicate to the electors of Westfield that a recall election will take place on Tuesday, September 24, and that the recall election has been called by the Respondent upon receipt of a recall petition certificate.

Terry Johnson v. Town Board of Westfield
September 18, 2024
Page 4

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 the Commission at 608-266-8005 or elections@wi.gov.

Sincerely,

WISCONSIN ELECTIONS COMMISSION

DRAFT

**STATE OF WISCONSIN
ELECTIONS COMMISSION**

COMPLAINT FORM

Please provide the following information about yourself:

Name Terry Johnson

Address N5656 County Road A, Westfield, WI 53964

Telephone Number 608 547 9689

E-mail kmjohnson@maqs.net

**State of Wisconsin
Before the Elections Commission**

The Complaint of Terry Johnson

_____, Complainant(s) against

Town Board, Town of Westfield, Marquette County, Respondent, whose

address is P.O.Box, Westfield WI 53964

This complaint is under Wis Stats 9.10(4)(d) (Insert the applicable sections of law in chs. 5 to 10 and 12 and other laws relating to elections and election campaigns, other than laws relating to campaign financing)

I, Terry Johnson, allege that:

See attached narrative.

(Set forth in detail the facts that establish probable cause to believe that a violation has occurred. Be as specific as possible as it relates to dates, times, and individuals involved. Also provide the names of individuals who may have information related to the complaint. Use as many separate pages as needed and attach copies of any supporting documentation.)

Date: 8/20/24

Terry L. Johnson
Complainant's Signature

I, **Terry Johnson**

, being first duly sworn, on oath, state that I personally read the above complaint, and that the above allegations are true based on my personal knowledge and, as to those stated on information and belief, I believe them to be true.

Terry L. Johnson
Complainant's Signature

STATE OF WISCONSIN

County of Marquette,
(county of notarization)

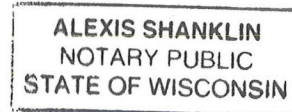
Sworn to before me this 20 day of

August, 20 24.

Terry Johnson
(Signature of person authorized to administer oaths)

My commission expires 3/27/26, or is permanent.

Notary Public or Alexis Shanklin
(official title if not notary)



Please send this completed form to:

Mail: Wisconsin Elections Commission
P.O. Box 7984
Madison, WI 53707-7984

Fax: (608) 267-0500

Email: elections@wi.gov

State of Wisconsin Elections Commission

COMPLAINT NARRATIVE

I, Terry Johnson, allege that the Town Board, Town of Westfield, Marquette County violated Wis Stats 9.10(4)(d) when they failed to set the required recall election date. On August 13, 2024, the Town Clerk issued a Certificate of Sufficiency of Recall Petition. This action was taken within the allowed 31 days. (Copy of certificate of sufficiency which was handed to board members after the Town Board meeting is attached.)

At the Town Board regular meeting, the Town clerk stated that the certificate of sufficiency was issued, and she was requesting a recall election date of September 24. The Town Board is a three-member board with one chairperson and two supervisors. One supervisor stated that the election should be tabled because he heard someone filed a complaint with the WI Election Commission. No proof of complaint was provided to the board. The other supervisor stated that we should follow the law and set the September 24 date. The chairperson stated that we shouldn't have a recall election because she didn't do anything wrong, and she shouldn't be recalled. The chairperson allowed public comment to protest the recall election because it was too expensive. As a result, no action was taken by the board. (Copy of the Town Board meeting agenda is attached.)

FYI - Throughout the recall process, the chairperson has been using her position of authority to derail the recall efforts of many town citizens.

The Town Board should be ordered to set the recall election date as required by law.

August 13, 2024

CERTIFICATE OF SUFFICIENCY OF RECALL PETITION

I am the Town Clerk for the Town of Westfield. In that capacity, I am required to make a determination of whether the recall petition made against Town Chair Sharon Galonski is sufficient or insufficient, pursuant to Wis. Stats. Section 9.10(4)(a). I hereby determine that the recall petition is sufficient.

This certification of sufficiency is attached to the petition. I am hereby transmitting this sufficient recall petition to the Town Board to set a recall election, pursuant to Wis. Stats. Section 9.10(4)(a).

TOWN OF WESTFIELD

Brenda Petersen

Brenda Petersen

Enclosure

cc: Eric Larson, Town Attorney

FINDINGS IN SUPPORT OF CERTIFICATE OF SUFFICIENCY

I received a recall petition on July 15, 2024. I have closely considered the matter, and reserved judgment as to the sufficiency of the recall petition until this time. Between the date of receipt of the petition and today, I received information from the Town Chair and her legal counsel, as well as additional information from the Petitioner. Based upon all information received in this regard, I reach the following conclusions.

1. I previously ruled that the registration statement for the recall committee was sufficient to proceed, and I stand by that determination. The checkbox "oppose" or "support" is arguably ambiguous, and regardless the intent of the registration for recall was clear, so I do not invalidate the process on that basis.
2. The circulator pages prepared by Gary Schaeffer are sufficient. Gary Schaeffer corrected the errors regarding his address by preparing an affidavit with the correct information, as allowed by Wisconsin Statutes Section 9.10(4)(a), 9.10(2)(e) and (r).
3. Virginia Dage's circulation pages are not counted because she listed the Town of Oxford as her residence, when she resides in the Town of Westfield. She did not correct her mistake by affidavit pursuant to Wis. Admin. Code Section EL 2.05(4). As such, pages 7 and 8 of the recall petition, which include 18 signatures, are invalid.
4. The circulation pages of Tim Marotz and Richard F. Murray are sufficient. As initially filed, they did not provide their complete address. The Wisconsin Elections Commission outlined certain insufficiencies which may be corrected in its "Recall of Local Elected Officials" manual:

"Correctable insufficiencies as prescribed by Wis. Stat. § 9.10(2)(e) and (r) include, but are not limited to:

- The failure of the circulator to sign the certification or to include all required information.
- The person signing the petition omitted the date or wrote the incorrect date.
- **The failure of the circulator to write his or her complete address on the certification."**

These were corrected by providing an updated circulation page with the correct address.

5. I received allegations that certain handwriting was the same as another individual's handwriting when filling out information on the petition. Absent additional information that this was completed by another individual, I am not a handwriting expert and am unable to determine whether this was completed by another individual¹. Wisconsin Administrative Code Section EL 2.05(4) states that information on a recall petition is entitled to a presumption of validity.

¹ Please note that this conclusion applies to all claims that information was completed by individuals other than the signatory, including the individual signatures on page 1, line 6, page 1, lines 8-9, page 2, lines 9-10, page 3, lines 3-4, page 14, line 2, and the circulator signature for page 18.

6. I have received allegations that certain signatories reside in another municipality. For these claims, the signatures will be counted. These individuals state on the Petition they are residents of the Town of Westfield, and this is presumed valid pursuant to Wis. Admin. Code Section EL 2.05(4).²
7. For page 1, line 3, this signature is counted. Gary Schaeffer provided an affidavit stating he received signatures only from electors, and clarified the name of this elector is "Dale Meyer."
8. For page 3, line 10, the signature of Jacob Wilson is counted. The signatory initially wrote Oxford as their residence. This was an error that was corrected by the circulator, Gary Schaeffer. Mr. Schaeffer noted, by affidavit, that he only received signatures from Town of Westfield residents.
9. Certain signatures are alleged to be illegible, but I have not rejected those signatures. Wisconsin Statutes Section 8.40(1) only states a printed name must be legible in a space provided next to his or her signature. This does *not* state that the signature itself must be legible.

In addition, the Government Accountability Board (now the WEC) in its "Determination of Sufficiency of Recall Petitions" manual specifically states the following regarding the legibility of a signature on page 2, Section 1(a):

"A signature does NOT need to be legible."

As such, the signatures on page 7, line 4, and page 16, line 2 were sufficient and counted.

10. For page 12, line 3, this printed name is "Allen Janke Sr." and the signature is sufficient and is counted. I was able to discern this individual's name from the printed name on the petition.
11. For page 13, line 2, the signature is sufficient. I do not have sufficient information to prove that the signatory does not have the competency to understand and sign a recall petition.
12. For page 15, line 5, the signature is insufficient because the printed name is illegible. While the Petitioner provided an updated page stating this was Darrel Hanhold, this was not an insufficiency that could be corrected by "other proof" pursuant to Wis. Stats. Sections 9.10(2)(e) or 9.10(2)(r). This signature would have needed to be corrected pursuant to Wis. Admin. Code Section EL 2.05(4) by affidavit, which was not done.
13. For page 19, lines 9 and 10, the signatures are sufficient and are counted. I received certain information stating the signatures were invalid because a change was made to the municipality of residence by someone other than the signatories and it was not initialed. I received no information to show that this correction was not done by the two

² This finding applies to the individual signatures on page 2, line 5, page 4, line 6, page 11, lines 4 and 6, page 11, lines 7-8, page 12, line 2, page 12, lines 9-10, page 14, line 2, and page 14, line 9.

signatories. Simply because the change was not initialed is not sufficient to overturn the signatures.

14. For page 20, lines 1 and 2, only one signature is counted. The name "David Schaefer" appears twice. There is no distinction between the individuals, and electors can only sign a recall petition once. As such, I did not count one of the "David Schaefer" signatures.

I find that the recall petition contains **131 valid signatures**. Based upon the formula provided in Wis. Stats. Section 9.10(1)(b), only 110 valid signatures were required.

TOWN OF WESTFIELD

Brenda Petersen

Brenda Petersen

TOWN OF WESTFIELD
NOTICE OF REGULAR BOARD MEETING
August 19, 2024 – 6 p.m.
Town Hall, W7703 Ember Avenue, Westfield

AGENDA

1. Call meeting to order with Moment of Silence
2. Pledge of Allegiance
3. Roll Call
4. Review and approve July 15, 2024 Regular Board Meeting Minutes
5. Chair's Report –Westfield Fire Department Report; Marquette County National Night Out; Building 2 advertising; Furnace Update; a miscellaneous item or two that might arise prior to the meeting *Gutters*
6. Clerk's Report
- Certificate of Sufficiency of Recall Petition. Set date for recall election.
7. Treasurer's Report
- 2024 Tax Bill Processing
8. Review/Approve Voucher Report

OLD BUSINESS

9. TRID Project Update – Eagle Avenue and Culvert Repairs

NEW BUSINESS

10. Wisconsin Act 73 – Alcohol Beverage Licensing Ordinance
11. Marquette County Highway Agreement Renewal
12. 2025 Budget Preparation Timetable
13. Upcoming Dates: September 15, 2024 – Regular Board Meeting 6 p.m.
14. Adjourn

Brenda Petersen, Clerk
Posted August 15, 2024

Terry Johnson
N5656 Co. Rd. A
Westfield, WI
53964



Wisconsin Elections Commission
P.O. Box 7984
Madison, WI 53707-7984

STATE OF WISCONSIN
WISCONSIN ELECTIONS COMMISSION

IN THE MATTER OF
The Recall Petition of Town of Westfield Town Chair Sharon Galonski,

TERRY JOHNSON,

Complainant,

v.

Case No. EL 24-86

TOWN OF WESTFIELD TOWN BOARD,

Respondent.

RESPONSIVE PLEADING

Respondent Town Board of the Town of Westfield, by its attorneys Municipal Law & Litigation Group, by Attorney Eric J. Larson, hereby responds to the Complaint in this matter as follows;

1. Complaint Allegation: *On August 13, 2024, the Town Clerk issued a Certificate of Sufficiency of Recall Petition. This action was taken within the allowed 31 days. (Copy of certificate of sufficiency which was handed to board members after the Town Board meeting is attached.)*

Respondent's Response: Admit.

2. Complaint Allegation: *At the Town Board regular meeting, the Town clerk stated that the certificate of sufficiency was issued, and she was requesting a recall election date of September 24.*

Respondent's Response: Admit in part and deny in part. Admit that at the meeting the Town Clerk stated that the certificate of sufficiency was issued. Affirmatively state that the Town Clerk did not request a recall election date of September 24, the Town Clerk merely reported that the recall election date was September 24. This date arises by operation of State law. Wisconsin Statutes Section 9.10(4)(d), states:

Promptly upon receipt of a certificate under par. (a), the governing body, school board, or board of election commissioners shall call a recall election. The recall election shall be held on the Tuesday of the 6th week commencing after the date on which the certificate is filed, except that if

Tuesday is a legal holiday the recall election shall be held on the first day after Tuesday which is not a legal holiday. (emphasis added)

The date of the election is strictly defined by the foregoing and must be held on the Tuesday of the 6th week commencing after the date on which the certificate is filed. The recall petition was filed August 13 so the recall election date is September 24, and that is what the clerk announced at the meeting.

3. Complaint Allegation: *The Town Board is a three-member board with one chairperson and two supervisors. One supervisor stated that the election should be tabled because he heard someone filed a complaint with the WI Election Commission. No proof of complaint was provided to the board. The other supervisor stated that we should follow the law and set the September 24 date. The chairperson stated that we shouldn't have a recall election because she didn't do anything wrong, and she shouldn't be recalled. The chairperson allowed public comment to protest the recall election because it was too expensive.*

Respondent's Response: Admit that the Town Board is a three-member board with one chairperson and two supervisors. For all remaining allegations, neither admit nor deny as not relevant to the issues arising in the Complaint, and affirmatively state that the record of the public meeting speaks for itself.

4. Complaint Allegation: *As a result, no action was taken by the board. (Copy of the Town Board meeting agenda is attached.)*

Respondent's Response: Admit that no action was taken by the board. Admit that a copy of the meeting agenda was attached to the Complaint, and affirmatively note that the Town Board meeting agenda lists the recall election issue under a "Clerk's Report" agenda item. While the agenda says "Set date for recall election," that is part of the "Clerk's Report" agenda item, and at that time in the agenda the Town Clerk reported that the election date is September 24, as required by State law.

5. Complaint Allegation: *FYI - Throughout the recall process, the chairperson has been using her position of authority to derail the recall efforts of many town citizens.*

Respondent's Response: Deny as argumentative and inflammatory.

6. Complaint Allegation: *The Town Board should be ordered to set the recall election date as required by law.*

Respondent's Response: Admit and Deny as follows. The Town Board admits that the recall election must be held, per Wisconsin Statutes Section 9.10(4)(d). That process is under way. The Town Board denies that the Town Board sets the date of the recall election, however. The Town Board cannot be ordered to do

something it has no legal ability to do. As correctly announced by the Town Clerk at the meeting held on August 19, 2024, the recall election will be held on September 24th as required by Wisconsin Statute Section 9.10(4)(d). Ballots have been ordered and received, absentee ballots have been mailed to electors, and the election will be held as required on September 24th.

The law is the law. The Town Board cannot change the dictates of the statute, even if one or more of the Town Board members thought they could. If members of the public, or the petitioner, did not understand the election dates and deadlines established in the state law, that also does not change the dictates of the statute. The WEC cannot change the dictates of the statute. The statute says "The recall election shall be held on the Tuesday of the 6th week commencing after the date on which the certificate is filed." That date is September 24th. The recall election will be held that day as required.

While we believe this response of legal counsel does not require a jurat, we have no objection to swearing to the truth of the responses provided as requested in the Notice, so hereby swear upon oath that the foregoing responses are wholly truthful to the best of our knowledge and belief.

Respectfully submitted this 5th day of September, 2024

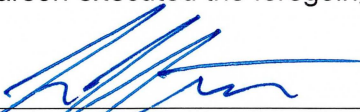
TOWN OF WESTFIELD TOWN BOARD



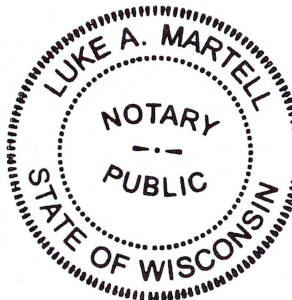
By its Town Attorneys Municipal Law &
Litigation Group, SC
By Attorney Eric J. Larson

STATE OF WISCONSIN)
) ss.
COUNTY OF WAUKESHA)

Personally came before me on this 5th day of September, 2024, the above-named Eric J. Larson executed the foregoing instrument and acknowledged the same.



NOTARY PUBLIC, STATE OF WI
Print Name: Luke Martell
My Commission Expires: permenant



From: [Witecha, James - ELECTIONS](#)
To: [Sharpe, Angela B - ELECTIONS](#); [Hunzicker, Brandon L - ELECTIONS](#)
Subject: Fwd: Formal Wis. Stat.s. 5.06 Complaint Johnson v. Town of Westfield, Westfield (EL-24-86)
Date: Tuesday, September 17, 2024 2:17:42 PM

From: kmjohnson <kmjohnson@maqs.net>
Sent: Tuesday, September 17, 2024 11:39 AM
To: Witecha, James - ELECTIONS <james.witecha@wisconsin.gov>
Subject: Formal Wis. Stat.s. 5.06 Complaint Johnson v. Town of Westfield, Westfield (EL-24-86)

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In response to Complaint Allegation 2:
The governing body, being the the Town of Westfield Town Board, did not set the date for the recall election. I understand the statute. However, the Town Board usurped the possibility of anyone wishing to file candidacy documents. The form CF-IL (local candidate) requires a date of election. Since the governing body did not set a date, the Board did not allow candidates the required time to file the necessary documents. This was done by the Town Board with full knowledge that their actions would have negative consequences.
Sincerely,
s/s Terry L. Johnson