

STATE OF WISCONSIN
ELECTIONS COMMISSION

Amended Complaint/Original 12/7/20
COMPLAINT FORM

Please provide the following information about yourself:

Name Dean Knudson
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E-mail dean.knudson@wisconsin.gov

State of Wisconsin
Before the Elections Commission

The Complaint of Dean Knudson, Commissioner,
Wisconsin Elections Commission, Complainant(s) against
Tony Evers, Governor, State of Wisconsin, Respondent, whose
address is Office of the Governor, State Capital, Box 7863, Madison, WI 53707

This complaint is under 5.10,9.01,7.70 (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, Dean Knudson, allege that:

Governor Tony Evers violated Wisconsin Statute 7.70(5)
by signing and sending a document titled "Certificate
of Ascertainment" to National Archives before the time
allowed for petition for a full statewide recount had
passed and before the time allowed for filing an
appeal of the recount had passed. See attached
document.

(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: December 9, 2020

Dean R. Knudson
Complainant's Signature

I, Dean Knudson, 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.

Dean R. Knudson
Complainant's Signature

STATE OF WISCONSIN

County of St. Croix,
(county of notarization)

Sworn to before me this 9 day of
December, 2020.

Catherine J. Van Dong
(Signature of person authorized to administer oaths)



My commission expires 10/29/23, or is permanent.

Notary Public or _____
(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

Sworn Complaint against Governor Tony Evers under Section 5.06

1. I am a resident of Wisconsin and a duly qualified elector in the State of Wisconsin
2. I am a member of the Wisconsin Elections Commission. As a member of the Commission, I have sworn that I will support the constitution of the United States and the constitution of the State of Wisconsin, and will faithfully discharge the duties of said office to the best of my ability.
3. The Wisconsin Elections Commission has the responsibility for administration of chs. 5 to 10 and 12 and other laws relating to elections and election campaigns. Wis Stats 5.05(1)
4. The Constitution of Wisconsin requires the Governor shall take care that the laws be faithfully executed. Wis. Cons. Art V Sec 4
5. Governor Tony Evers abused the discretion vested in him under Wis Stats 7.70(5) by sending to the National Archives on November 30, 2020 a document titled "Certificate of Ascertainment". The document contained this statement: "I DO, THEREFORE, HEREBY DETERMINE AND CERTIFY that all the candidates for Presidential Elector on the Democratic Ticket, having received the greatest number of votes, are duly appointed Presidential Electors for the State of Wisconsin: Meg Andrietsch, Shelia Stubbs, Ronald Martin, Mandela Barnes, Khary Penebaker, Mary Arnold, Patty Schachtner, Shannon Holsey, Tony Evers, Benjamin Wikler".
6. Wisconsin law allows for any qualified elector to bring a complaint against an official for violations of the law regarding election administration or the conduct of an election. The role of the governor is included in Chapter 7 "ELECTION OFFICIALS; BOARDS; SELECTION AND DUTIES; CANVASSING". In his official capacity as governor, Tony Evers is subject to a formal sworn complaint under Section 5.06.
7. Wisconsin law requires that when a petition for recount is filed, the governor or commission may not issue a certificate of election until the recount has been completed and the time allowed for filing an appeal has passed, or if appealed until the appeal is decided. Wis Stat 7.70(5)(a)
8. Wisconsin law requires that certificates of election be prepared by the Commission. Wis Stat 7.70(5)(a)
9. Wisconsin law requires "The certificate shall be countersigned by the secretary of state. Wis Stat 7.70(5)(a)
10. For presidential electors, the commission shall prepare a certificate showing the determination of the results of the canvass and the names of the persons elected, and

the governor shall sign, affix the great seal of the state, and transmit the certificate by registered mail to the U.S. administrator of general services. Section 7.70(5)(b)

11. Governor Evers released a statement in the evening of November 30, 2020 announcing that he had signed a Certificate of Ascertainment to be sent to the National Archives.
12. A copy of the document sent by Evers to the National Archives was already available in the evening of December 1, 2020. The time stamp on the document posted on the Archives website shows posting at 2:59pm December 1, 2020. Accessed at <https://www.archives.gov/files/electoral-college/2020/ascertainment-wisconsin.pdf>
13. Wisconsin law allows for an aggrieved candidate to petition for a partial recount. In such cases, the law allows "the opposing candidate, or any voter or other interested party including a municipality if on a referendum question, may similarly file a petition for recount in any or all of the remaining wards or municipalities in the jurisdiction or district. The petition shall be filed not later than 5 p.m. 2 days after the board of canvassers completes the first recount." Wis Stat 9.01(4)
14. In the current instance the time the period allowed for petition for full recount started upon the determination of the state canvass by the commission chairperson at approximately 3:30pm November 30, 2020. The commission administrator and the commission chairperson stated that the determination of the state canvass started the time for appeal under 9.01(6)(a) because the appeal would be made on the basis of the official result. The same reasoning must apply to Section 9.01(4) because until the recount results were canvassed by the chairperson, and the determination of the chairperson had been made, the interested parties could not know whether they had any reason to ask for a full recount.
15. In the current instance any voter, or other interested party, had the right to petition for a full statewide recount as long as the petition filed not later than 5pm on December 2, 2020.
16. Wisconsin law allows for the appeal of a recount to district court. The time period allowed for the appeal to be filed is 5 business days after the determination of the commission chairperson. The law prohibits the issuance of a certificate of election until the time allowed for an appeal has passed.
17. In Wisconsin under state law the appointment of presidential electors is by "election". The United States Constitution, in Article II, Section 1, Clause 2 grants the authority over this process to the state legislatures. The constitutional wording, "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors" has long been interpreted to grant maximum flexibility to the state legislatures as to the method of selecting those electors to be appointed.

18. Wisconsin law makes clear that presidential electors are elected. Section 5.10 states “Although the names of the electors do not appear on the ballot and no reference is made to them, *a vote for the president and vice president named on the ballot is a vote for the electors of the candidates for whom an elector’s vote is cast.* Under chs. 5 to 12, all references to the presidential election, the casting of votes and the canvassing of votes for president, or for president and vice president, mean votes for them through their pledged presidential electors.” Wis Stat 5.10
19. Wisconsin law makes clear that the certificate sent to the federal authorities must be a certificate showing the determination of the results of the canvass and **the names of the persons elected**”. Wis Stat 7.70(5)(b)
20. The certificate of ascertainment signed and sent to Washington by Governor Evers constitutes a certificate of election under Wisconsin law because electors are elected in Wisconsin, and state law requires that the governor send a “certificate” showing “the persons elected”.
21. Upon information and belief, the Governor has relied upon advice from Attorney General Josh Kaul, or individuals working under the supervision of Kaul, in claiming that Section 7.70(5)(a) does not apply to presidential elections because it is “superseded” by Section 7.70(5)(b).
22. Governor Evers had the Secretary of State countersign the Certificate prior to sending to Washington as required by Section 7.70(5)(a). Governor Walker did the same in 2016.
23. On November 30, 2020, Tony Evers signed the certificate showing the election of the Wisconsin electors, and sent the certificate to the National Archives, prior to the expiration of the time to request a full statewide recount.
24. On November 30, 2020, Tony Evers signed the certificate showing the election of the Wisconsin electors, and sent the certificate to the National Archives, prior to the expiration of the time to appeal the recount.
25. The federal “Safe Harbor” law in 3 U.S. Code § 5 provides that “If any State shall have provided, by laws enacted prior to the day fixed for the appointment of the electors, for its final determination of any controversy or contest concerning the appointment of all or “any of the electors of such State, by judicial or other methods or procedures, and such determination shall have been made at least six days before the time fixed for the meeting of the electors, such determination made pursuant to such law so existing on said day, and made at least six days prior to said time of meeting of the electors, shall be conclusive, and shall govern in the counting of the electoral votes as provided in the Constitution, and as hereinafter regulated, so far as the ascertainment of the electors appointed by such State is concerned.”

26. The Electoral College meeting date was December 19, 2016 with the safe harbor date 6 days prior. In 2016 Governor Walker sent his certificate of ascertainment just prior to the safe harbor deadline. The statewide recount had been completed and no “controversy or contest concerning the appointment of all or any of the electors” existed at the time he sent his certificate.
27. In contrast, in 2020 Governor Evers signed the certificate on November 30 when the petitioner for the recount had publicly stated the intention to appeal, when several legal controversies were pending action before courts, and before the time period for requesting a statewide recount had expired.
28. A document posted on the website of the National Archives instructs state officials to: “Send these (Certificate of Ascertainment) to the Archivist as soon as possible **after the general election results for your state are finalized.** This instruction from the Archivist is consistent with our Wisconsin law directing that a certificate shall not be prepared until the time period for recounts and appeals have expired or have been decided. It is also the precedent in Wisconsin.
29. It is important that Governor Evers and future Governors conform their actions to comply with the law.