

**STATE OF WISCONSIN
BEFORE THE ELECTIONS COMMISSION**

MARTIN PRUJANSKY, MARY IMHOF
PRUJANSKY, KENNETH BROWN, BROOK
HESSE, and DAVID GILES,

Complainants,

Complaint EL 21-29

v.

MEAGAN WOLFE, in her capacity as Administrator
of the Wisconsin Elections Commission, CORY
MASON, in his capacity as Mayor of the City of
Racine, and TARA COOLIDGE, in her capacity as
City Clerk of the City of Racine,

Respondents.

VERIFIED RESPONSE OF RESPONDENTS CORY MASON AND TARA COOLIDGE

Respondents Cory Mason, in his capacity as Mayor of the City of Racine, Wisconsin, and Tara Coolidge, in her capacity as City Clerk of the City of Racine, Wisconsin (collectively, “Racine Respondents”), by and through their attorney, City Attorney Scott R. Letteney, hereby submit the following response to the Complaint filed by Martin Prujansky, Mary Imhof Prujansky, Kenneth Brown, Brooke Hesse, and David Giles (collectively, “Complainants”) with the Wisconsin Elections Commission (“Commission”).

INTRODUCTION

The Wisconsin Elections Commission is charged with administering state and federal election laws as enacted by the Wisconsin Legislature and U.S. Congress and as interpreted by state and federal courts. Chief among the many flaws in the Complainants’ allegations and theories is this plain fact: The claim that Wisconsin municipalities are prohibited from accepting private

funds to assist in the administration of elections has been rejected by the United States District Court for the Eastern District of Wisconsin in the case of *Wisconsin Voters Alliance, et al. v. City of Racine, et al.* No. 20-C-1487, 2020 WL 6129510 (E.D. Wis. Oct. 14, 2020); *Wisconsin Voters All. v. City of Racine*, No. 20-C-1487, 2021 WL 179166 (E.D. Wis. Jan. 19, 2021). While the plaintiffs in that case choose to disregard the requirement in WIS. STAT. § 5.06 that complaints against local election official first be brought to the Commission, now that the Court has ruled, Complainants cannot ask the Commission to disregard the Court’s ruling, especially given that this Complainants’ counsel also represented the plaintiffs in the *Wisconsin Voters Alliance* litigation.

Likewise, the Commission cannot ignore the federal court’s rulings and create a prohibition on municipalities using private grant funds when such a provision appears nowhere in state law. The Legislature has acknowledged that current law includes no such provision by its ongoing attempts to enact such a law. *See 2021 Senate Bill 207 and 2021 Assembly Bill 173.*

The 2020 election season was one like no other, principally because of the 2019 Novel Coronavirus (“COVID-19”) public health crisis. Unfortunately, the November 2020 presidential election has been the subject of extensive misinformation and nefarious, but unfounded, allegations. Chief among those allegations are the claims made by Complainants here—claims that have already been rejected by courts in dozens of lawsuits across the Country—concerning the acceptance and use by municipal governments of grant funds from the Center for Tech and Civic Life (“CTCL”). However ardent their arguments, Complainants fail to identify any law that prohibits a municipal government’s acceptance of outside funds in order to provide a safer voting experience for its electorate or identify any law they claim was violated. As with a recent federal lawsuit in the United States District Court for the Eastern District of Wisconsin, which case will

be addressed within, and in courts numerous other jurisdictions across the country, the allegations in the Complaint fail to state a valid legal basis for any challenge to the City of Racine's or the Racine Respondents' administration of the 2020 elections. Accordingly, the Complaint must be dismissed.

FACTUAL BACKGROUND

Respondents dispute the facts as alleged by Complainants in their entirety as inaccurate, misstated, and inflected with bias. An overarching and tainting flaw in the Complaint is that there was something unique or targeted about the City of Racine's award, acceptance, and use of CTCL COVID-19 elections grant funds, or that of the Cities of Green Bay, Kenosha, Madison, and Milwaukee. Contrary to the Complaints efforts to paint the Cities of Green Bay, Kenosha, Madison, Milwaukee, and Racine as a distinctive, hand-selected group of municipalities, in fact more than 200 cities, villages, towns, and counties in Wisconsin received COVID-19 response grants from CTCL.¹ *See*, <https://www.techandciviclife.org/our-work/election-officials/grants/> and <https://docs.google.com/spreadsheets/d/1pE0OTeAbLMBSW7vFg0KB5byV4ygtY-sLAU2w1HnnCjA/edit#gid=287048536>. The hundreds of diverse municipalities and governmental entities to have received CTCL COVID-19 response grants are situated all over Wisconsin. While Green Bay, Kenosha, Madison, Milwaukee, and Racine may have been among the first municipalities in Wisconsin to receive these grants, they certainly weren't the only municipalities.

The Complaint also suggests that CTCL grant recipients are expected to comply with some altered interpretation of the legal requirements for the operation of an election and that if the funds weren't spent to CTCL's liking, the recipients would have to return the funds. It is axiomatic that

¹ Indeed, CTCL's website states that such grants were provided "to nearly 2,500 election departments across 49 states." <https://www.techandciviclife.org/grant-update-march/>.

municipal governments, such as the City of Racine, are required to comply with state and federal laws. Even so, with respect to the grant agreement the CTCL grant required the City of Racine to sign an agreement “promising to use the grant funds in compliance with United States tax laws.” (*See*, Compl. Ex. p. 439.) Further, the agreement does not state that the City of Racine is required “to return the moneys to . . . CTCL if [CTCL] disagreed how [sic] those moneys were spent.” (Compl. ¶ 23.)

Such additional factual background as may be necessary to a resolution of the issues are set forth within.

ARGUMENT

The Commission should dismiss the instant Complaint for several reasons. First, the Complaint is neither timely nor sufficient as to form, and it does not set forth facts establishing probable cause to believe that any violation of law has occurred. Additionally, the arguments offered by Complainants have no support in Wisconsin law or any other applicable election law, a fact that has been determined by the U.S. District Court for the Eastern District of Wisconsin as well as several other courts. Finally, and perhaps most significantly, Complainants seek to have the Commission do administratively that that is the sole purview of the legislature, namely to craft new election law. For all of these reasons, the Complaint should be dismissed.

I. Timeliness, Sufficiency as to Form, Probable Cause

The Elections Commission Administrative Code contemplates that the Administrator will serve a gatekeeper function with respect to complaints. Specifically, within ten days the Administrator shall determine whether the complaint is timely, is sufficient as to form, and states probable cause. Based on that determination, the Administrator will determine whether to return

the complaint to the complainant to cure any defect or forward it to the respondent for an answer. WIS. ADMIN. CODE §§ EL 20.04(1)-(3).

Administrator Meagan Wolfe is named as a Respondent in the Complaint along with the Racine Respondents, so two adjudicators have been appointed to serve in her place. Although the adjudicators are standing in for the Administrator, it is unclear to the Racine Respondents whether any initial determination has been made as to whether the Complaint is timely, is sufficient as to form, or states probable cause. Racine Respondents respectfully submit that the Complaint is not timely, does not state probable cause, and should therefore be dismissed.

A. Timeliness

The Complaint was made pursuant to Wisconsin Statutes section 5.06, (Compl. at 2.), which requires that “[a] complaint filed under this section shall be filed promptly so as not to prejudice the rights of any other party.” WIS. STAT. § 5.06(3) (2019-20).² Where a term is not defined, “statutory language is given its common, ordinary, and accepted meaning.” *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110. A filing is understood to be “prompt” if it is done at once or without unreasonable delay. The doctrine of laches is also instructive in applying Section 5.06(3). Laches applies to bar a claim when there is an unreasonable delay in bringing the claim, a lack of knowledge the claim would be raised, and prejudice to the responding party. *State ex rel. Wren v. Richardson*, 2019 WI 110, ¶ 15, 389 Wis. 2d 516, 936 N.W.2d 587. Importantly, the Wisconsin Supreme Court has noted the particular applicability of laches in the election context:

Extreme diligence and promptness are required in election matters, particularly where actionable election practices are discovered prior to the election. Therefore, laches is available in election challenges. . . . Such doctrine is applied because the efficient use of public resources demands that a court not allow persons to gamble

² All references to the Wisconsin Statutes are to the 2019-2020 version unless otherwise indicated.

on the outcome of an election contest and then challenge it when dissatisfied with the results, especially when the same challenge could have been made before the public is put through the time and expense of the entire election process.

Trump v. Biden, 2020 WI 91, ¶ 11, 951 N.W.2d 568 (quoting 29 C.J.S. Elections § 459 (2020)).

Complainants unreasonably delayed bringing this Complaint, and their claims should be barred as untimely and prejudicial.

What constitutes an unreasonable delay for purposes of laches varies depending upon the circumstances of a particular case. *Id.* at ¶ 13. Whether a delay is reasonable “is based not on what litigants know, but what they might have known with the exercise of reasonable diligence.” *Id.* The allegations of wrongdoing in the Complaint center around the City of Racine’s acceptance and use of grant funds from CTCL, which occurred during the summer of 2020, yet Complainants waited until April 2021 to file this Complaint. Complainants cannot assert in good faith that they promptly filed the Complaint.

The CTCL grant for the City of Racine was first discussed at the June 2, 2020 meeting of the City of Racine Common Council. CTCL grant issues and the use of CTCL grant funds appeared on the agenda of the Common Council and subordinate committees throughout 2020. Complainants are imputed with knowledge of actions taken in public meetings. Agendas and minutes for all City of Racine governmental bodies is posted as required by the Wisconsin Open Meetings Law. WIS. STAT. § 19.81 *et seq.* Further, the City of Racine’s legislative website is available to any person with internet access. <https://cityofracine.legistar.com/Calendar.aspx>. Any person can discover every time any City of Racine body publicly addressed anything to do with the Center for Tech and Civic Life and the CTCL grants.

When the Wisconsin Supreme Court examined former President Trump’s decision to wait until after the election to challenge certain events that had occurred well before November, despite the fact that it could have made such a challenge when the events were announced, the court called

the delay “patently unreasonable.” *Trump v. Biden*, 2020 WI 91, ¶ 21. The same is true here: Complainants could and should have brought their concerns to the Commission when the grants were accepted; to wait almost nine months before filing the Complaint is patently unreasonable.

In addition, the Wisconsin Voters Alliance filed its federal court complaint asserting that the City of Racine’s acceptance of the CTCL grant violated state or federal law on September 24, 2020. The Court issued a decision denying preliminary relief on October 14, 2020, and issued its final order dismissing the action on January 19, 2021. Despite the fact that Complainants are represented by the same counsel who initiated that litigation, the Complainants failed to bring their identical concerns to the Commission until eight months after the *Wisconsin Voters Alliance* complaint was filed.

Presumably as a justification for the delay, Complainants point to certain Wisconsin Public Records Law requests that were filled in the early part of this year. However, when records requests were submitted or fulfilled is irrelevant to whether a complaint is timely, because the requests themselves do not constitute circumstances giving rise to a complaint. Rather, the pertinent inquiry is when the complainants knew or should have known of those circumstances. In the months following the City of Racine’s acceptance of the CTCL grant funds, none of the Complainants filed any records requests with the City of Racine, nor took any actions to stay abreast of the public actions of the City of Racine. Importantly, many of the issues complained of were repeatedly discussed in open session meetings, which are recorded and posted online for the public to view. <https://cityofracine.legistar.com/Calendar.aspx>. Similarly, the City of Racine’s records are publicly available. That Complainants failed to read public notices or request and/or inspect records in a timely manner—or monitor the proceedings in a high profile litigation involving the same issues and legal counsel—does not excuse their delay in bringing this action.

Moreover, although Complainants go to great lengths to detail the contents of many records request responses, the contents of those responses do not appear to have given rise to new legal arguments, as the arguments proffered in the Complaint mirror those asserted in the unsuccessful cases decided last fall. Additionally, even though they now have extensive records at their disposal, Complainants make many of their allegations “on information and belief,” and ask the Commission to conduct additional investigations based solely on those spurious allegations. All of which, taken together, makes it clear that Complainants and their counsel seek to use the complaint procedure under Section 5.06 to sow further doubt relative to the outcome of the November 2020 election rather than to make any credible allegations of violations of elections law by Respondents. In fact, despite naming Mayor Cory Mason and City Clerk Tara Coolidge as respondents, the allegations have very little to do with their actions. Instead, Complainants challenge many of the actions taken by the City of Racine, *qua* the City of Racine as a corporate entity acting through its Common Council.

The Complainants knew or should have known about the circumstances giving rise to their Complaint in the summer of 2020. Yet they failed to exercise the “[e]xtreme diligence and promptness [that] are required in election matters, particularly where actionable election practices are discovered prior to the election,” *Trump v. Biden*, 2020 WI 91, ¶ 11, and instead unreasonably delayed almost nine months before filing the Complaint, and have provided no justification for such a delay. The first element of laches is therefore satisfied. *Id.* at ¶ 13.

The second element of laches requires that the Respondents lack knowledge that the Complaint would be filed. *Id.* at ¶ 23. Respondents and officials from many other jurisdictions have already had to respond to identical legal arguments in federal court, and, without exception,

those legal arguments have been rejected.³ In fact, Complainants’ counsel brought an action in the U.S. District Court for the Eastern District of Wisconsin against the Cities of Green Bay, Kenosha, Madison, Milwaukee, and Racine—against all of which with complaints substantially similar to the one at issue here—on the same grounds as those asserted in the Complaint. That case was dismissed in its entirety after the judge determined that the plaintiffs were not likely to succeed on the merits. *Wisconsin Voters All. v. City of Racine*, No. 20-C-1487, 2020 WL 6129510 (E.D. Wis. Oct. 14, 2020); *Wisconsin Voters All. v. City of Racine*, No. 20-C-1487, 2021 WL 179166 (E.D. Wis. Jan. 19, 2021). Given the City of Racine’s previous success against the same legal arguments asserted here, as well as the failure of those arguments in federal courts across the country, Racine Respondents did not have any reason to expect that they would be subject to yet another proceeding, with effectively identical claims, in yet another forum, to litigate this matter yet again. In fact, were the Commissions to dismiss the instant Complaint, and were the Complainants subsequently to initiate an appeal of such dismissal of the Complaint to circuit court, the Court is likely to find that Complainants and their counsel were pursuing a frivolous action.

Additionally, the City of Racine had spent the majority of the CTCL grant funds by Election Day. The Racine Respondents had no reason to expect they would be subject to another proceeding about those grant funds when there had been plenty of time between the receipt of the funds and Election Day during which any challenges could have been brought, but none aside from the unsuccessful federal lawsuit had been so brought. The U.S. District Court for the Eastern District of Wisconsin had already issued its order before the election denying preliminary relief

³ Although the plaintiffs in those actions were different from the Complainants here, Complainants’ counsel was an attorney of record for several such cases. *E.g.*, *Wisconsin Voters Alliance v. City of Racine, et al.*, No. 20-C-1487, 2020 WL 6578061 (E.D. Wis. Sept. 25, 2020); *Iowa Voters Alliance v. Black Hawk County*, No. C20-2078-LTS, 2020 WL 5894582 (N.D. Iowa Oct. 1, 2020); *Minnesota Voters Alliance v. City of Minneapolis*, No. 20-cv-2049-MJD-TNL, 2020 WL 5755725 (D. Minn. Sept. 24, 2020); *Pennsylvania Voters Alliance v. Centre County*, No. 4:20-cv-1761-MWB, 2020 WL 6578066 (M.D.Pa. Oct. 12, 2020); *Election Integrity Fund v. City of Lansing*, No. 20-cv-950, 2020 WL 5814277 (W.D. Mich. Sept. 29, 2020).

based on its finding that the plaintiffs in that case were unlikely to succeed on the merits. The second element of laches is therefore satisfied. *See Trump v. Biden*, 2020 WI 91, ¶ 23.

The final element of the laches analysis examines prejudice to respondents. “What amounts to prejudice . . . depends upon the facts and circumstances of each case, but it is generally held to be anything that places the party in a less favorable position.” *Wren*, 389 Wis. 2d 516, ¶ 15. The Racine Respondents are prejudiced in several ways by Complainants’ unreasonable delay.

Plainly, memories fade over time, and accounts and details of events that occurred several months ago are not likely to be as fresh in the mind as they would have been if the Complaint had been filed contemporaneously with the challenged activities. The Racine Respondents are also prejudiced by again having to litigate baseless claims that have already been addressed and rejected in several other fora. Many months ago, in September 2020, Complainants’ counsel, representing a different group of litigants, brought suit against the Cities of Green Bay, Kenosha, Madison, Milwaukee, and Racine, based on the same legal theories. *Wisconsin Voters Alliance v. Racine*, 2020 WL 6578061. Rather than doing so concurrently with that lawsuit—or prior to filing that suit, as required by statute, WIS. STAT. § 5.06(2)—Complainants’ counsel did not complain to the Commission until filing this Complaint six months after Judge Griesbach had already rejected the legal arguments contained therein.⁴ The Racine Respondents should not have to relitigate previously decided issues simply because of Complainants’ counsel’s failure to utilize the proper avenue—that is, filing a complaint with the Commission—from the outset.

⁴ Judge Griesbach’s decision in *Wisconsin Voters Alliance v. City of Racine, et al.*, was one of many federal decisions concluding that, among other things, there was no merit to the claims that acceptance of CTCL grant funds constituted a violation of the Elections clause, the Supremacy Clause, and/or the Help America Vote Act. 2020 WL 6129510; *also see, e.g., Iowa Voter Alliance*, 2020 WL 6151559; *Texas Voters Alliance v. Dallas County*, 495 F. Supp. 3d 441; *Georgia Voter Alliance v. Fulton County*, 499 F. Supp. 3d 1250.

Relatedly, the principles of claim preclusion and issue preclusion are instructive here. Claim preclusion bars the relitigation of an entire *claim* between two parties to a lawsuit who were also parties in a previous lawsuit in which the same claim was resolved; issue preclusion prevents a party from relitigating an *issue* that was resolved in a previous lawsuit, even if the issue is related to a different claim in the new lawsuit. The underlying rationale for both of these doctrines is the idea that parties should not be given multiple “kicks at the can.” Once an issue is decided, the parties cannot continue to sue one another in an attempt to yield a different outcome.

That idea is particularly applicable to this matter. Here, Racine Respondents are prejudiced by having to respond to legal claims and issues identical to ones that have already been considered and rejected in other arenas, including federal court and even complaints before this Commission. Not only have the legal theories advanced in the Complaint been universally rejected by federal courts across the country, as discussed in more detail below, but the Commission itself has already opined on the acceptance and use of private grant funds. Commission Administrator Meagan Wolfe testified to the Wisconsin Assembly Committee on Campaigns and Elections about complaints to the Commission that raised those specific issues, explaining, “[t]he Commission dismissed the complaint, noting that there is nothing in Wisconsin elections statutes which prohibits, proscribes, or even discusses grant funding.” (*Informational Hr’g on Green Bay Election Before the Assemb. Comm. on Campaigns and Elections*, 2021-22 Sess. (March 31, 2021) (testimony of Meagan Wolfe, Administrator, Wisconsin Elections Commission), *available at* <https://wiseye.org/2021/03/31/assembly-committee-on-campaigns-and-elections-14/> (4:40-5:15).)

The principles underlying claim and issue preclusion provide guidance on the issue of prejudice in this matter. In the same way that claim and issue preclusion protect a party to a lawsuit

from harassment by another party who may otherwise endlessly file successive lawsuits and attempt to relitigate settled issues and/or claims, Racine Respondents should be protected from having to relitigate the same specious arguments time and again, especially given that it has already been the subject of numerous lawsuits, appeals, hearings, investigations, and reports focused on substantially the same issues.

Complainants' unreasonable delay further fundamentally prejudices Respondents because, as stated above, Respondents had no reason to expect that a Complaint such as this would be brought against them so long after the complained of events, especially so long after the City of Racine had accepted and spent the CTCL grant funds. The proper time for bringing this matter to the Commission was after the City of Racine had accepted the grant funds or while the money was being spent. A complaint under Section 5.06 would have been more appropriate at that time, as Complainants could have asked the Commission to restrain Racine Respondents from taking any actions the Commission determined were inconsistent with the law—including, if appropriate, spending any more of those funds. WIS. STAT. § 5.06(1). Instead of using section 5.06 to correct erroneous behavior as it is happening—in other words, in the manner in which it was intended to be used— Complainants waited months to file a Complaint that instead asks the Commission to examine the 2020 elections and use its findings to create forward-looking election laws about what money can be received and used by municipalities to fund future elections. A retrospective investigation followed by declarations of law to be applied to future elections is far less helpful than a timely-filed Complaint, and is not in line with the intent of section 5.06.

Racine Respondents needed to know immediately if any error was being made during the administration of any election, so as to correct the error and ensure that the election process is fair and free for its voters. To claim error in this manner several months after an election, when it is

too late for the City to take any corrective action, not only prejudices the Racine Respondents, but it prejudices every voter within the City of Racine.

Finally, the City of Racine has been and continues to be prejudiced by the ceaseless attacks on the free, fair, and lawfully-conducted election that occurred on November 3, 2020. That prejudice has been amplified each time a new action, complaint, investigation, or the like, has been initiated against the City of Racine. One potentially significant impact of such a substantial delay in filing this Complaint is the continued undermining of public confidence in the legitimacy of the City of Racine’s elections over an extended period of time. This is especially true when Complainants waited almost half a year, and then attempt to call the whole election into question yet again by dredging up the same legal arguments that have failed so many times before. Under these circumstances, prejudice to the City of Racine and its entire electorate is obvious, as is the harm to the Racine Respondents’ credibility as public servants. As the Wisconsin Supreme Court succinctly put it:

Unreasonable delay in the election context poses a particular danger—not just to municipalities, candidates, and voters, but to the entire administration of justice. The issues raised in this case, had they been pressed earlier, could have been resolved long before the election. Failure to do so affects everyone, causing needless litigation and undermining confidence in the election results.

Trump v. Biden, 394 Wis. 2d 629, ¶ 30.

Complainants did not file the Complaint “promptly so as not to prejudice the rights of” the Racine Respondents. WIS. STAT. § 5.06(3). They unreasonably delayed filing, doing so in April 2021, rather than July 2020, when the circumstances complained of arose. The Racine Respondents had no reason to suspect that they would be sued again after successfully overcoming a nearly identical challenge in federal court months ago. Respondents have been prejudiced by that unreasonable delay. Accordingly, under both Section 5.06(3) and the doctrine of laches, the Complaint should be dismissed as untimely.

B. Probable Cause

Wisconsin Statutes section 5.06(1) requires that a complaint “set forth such facts . . . to show probable cause to believe that a violation of law or abuse of discretion has occurred or will occur.” *See also* WIS. ADMIN. CODE § EL 20.03(3). “Information which may establish probable cause includes allegations that set forth which persons are involved; what those persons are alleged to have done; where the activity is believed to have occurred; when the activity is alleged to have occurred and who are the witnesses to the events.” *Id.* The Racine Respondents submit that the Complaint does not establish probable cause that a violation of law has occurred, and therefore should have been returned to Complainants upon initial review.⁵

On a most basic level, Respondents are not the proper parties to this Complaint based on the allegations in the Complaint. Beneath the litany of allegations, all of Complainants’ legal arguments center around the acceptance of the CTCL grant funds and approval of how those funds were to be used. Neither the Mayor nor the City Clerk, in any of their professional capacities, had authority to accept the grant on behalf of the City of Racine. The Common Council took that action in the name of the City of Racine, yet the City is not named as a party. The named Respondents are not synonymous with the entire City government. they have specific roles within it, and those roles do not include authority to accept the CTCL grant funds. Further, WIS. STAT. § 5.06 permits an elector to file a complaint against a local election official serving the elector’s jurisdiction. In Wisconsin, a city’s mayor is not a local election official. Complainants have therefore not shown probable cause that *Racine Respondents* have violated any election law.

⁵ Respondents respectfully submit that rather than requiring an Answer from Respondents, the adjudicators, standing in Administrator Wolfe’s position, should have conducted an initial determination as required by Wis. Admin. Code section EL 20.04(1) and sent the Complaint back to Complainants for being untimely and lacking probable cause.

Further, and quite importantly, Complainants have not presented any legal argument in support of a claim of a violation of election laws that has not already been rejected by numerous courts across the country, as discussed in more detail later in this Response. Despite Complainants' counsel having been faulted by numerous courts for failing to articulate a *specific* provision of federal or state law that prohibits the acceptance of private grant funds to fund an election, *see, e.g., Wisconsin Voters Alliance*, 2020 WL 6129510; *Iowa Voter Alliance v. Black Hawk County*, No. C20-2078-LTS, 2020 WL 6151559 (N.D. Iowa Oct. 20, 2020), the instant Complaint also fails to identify with any specificity the election laws containing such a prohibition. (*See generally* Compl.)

Requiring a probable cause finding before requesting an answer of Respondents is intended to screen out frivolous complaints which have no basis in law or fact. If the Commission received a complaint with allegations that contradicted clear statutes or court decisions, or its own precedent – such as an appeal to not enforce the Voter Photo ID Law, or to prohibit municipal clerks from issuing any absentee ballots -- it would reject it out of hand as lacking probable cause. Declining to do so in this instance constitutes a failure to properly administer the § 5.06 process and a tremendous waste of time for the Respondents as well as the Commission.

Additionally, even after 30 pages of allegations related to the November 2020 election, Complainants make a prayer for relief that asks the Commission to conduct an investigation into the election and determine whether any state or federal election laws were violated. (Compl. p. 31.) They even request that said investigation consist of extensive fact-gathering via “document production, depositions, and testimony” of a whole host of individuals. (*Id.*) Even Complainants seem to be aware that they have not sufficiently shown probable cause to believe any election laws were violated: rather than articulating the specific legal and factual bases demonstrating probable

cause, and requesting corresponding relief, Complainants instead ask the Commission to conduct an “investigation”—in essence, a fishing expedition—in the hopes of *possibly* finding some violation of the law. Complainants are far from providing the requisite who, what, where, when, and how required to show probable cause. WIS. ADMIN. CODE § EL 20.03(3).

Without having named the proper parties, nor citing a statute that actually prohibits the conduct complained of, Complainants have fallen well short of demonstrating probable cause to believe that a violation of law or abuse of discretion occurred. Accordingly, the Complaint should be dismissed, both as untimely and for failing to show probable cause to believe that a violation of law had occurred.

II. Complainants’ Theories Have No Basis in Law

Complainants assert that the City of Racine violated both Wisconsin and federal election laws by accepting the CTCL grant funds. Specifically, they assert that by accepting those funds, the City of Racine violated the Electors and Elections Clauses of the U.S. Constitution, as well as provisions of state law that delegate election administration authority exclusively to the Commission. As explained in this section, all of Complainants’ arguments fail—and in fact most have failed before.

Complainants also offer a second argument, alleging that the Racine Respondents also violated state law by agreeing to the conditions placed on the grant of funds by CTCL. Complainants point to no specific statutory provision that prevents a municipality receiving grant funds subject to conditions from the grantor. Moreover, as detailed in this section, multiple courts, including the U.S. District Court for the Eastern District of Wisconsin, have concluded that the arguments asserted in the Complaint fail to support the broader proposition—that is, that *any* receipt of private grant funds is a violation of applicable law. *E.g.*, *Wisconsin Voters Alliance*,

2020 WL 6129510, *2 (“[T]he Court finds nothing in the statutes Plaintiffs cite, either directly or indirectly, that can be fairly construed as prohibiting the defendant Cities from accepting funds from CTCL.”). Given that Complainants have not provided any legal support for their broader argument against all private grant funds, they certainly cannot provide such support for the more specific assertion that receipt of private grant funds *with conditions attached* is also prohibited. Accordingly, these two interrelated arguments will be treated as one for purposes of this Response.

1. *Neither the Elections Clause nor the Electors Clause Prohibits Receipt of Grant Funds*

Complainants also assert that the City’s receipt of the CTCL grant funds violates the Elections and Electors Clauses of the U.S. Constitution. Those same assertions have been rejected in courts across the country, however, for the reasons explained in this section.

The Elections Clause gives state legislatures the authority to set the “times, places and manner” of federal elections, and gives Congress the authority to alter those regulations. U.S. Const. art. I, § 4, cl. 1. Federal laws concerning the time, place, and manner of federal elections are controlling when they directly conflict with state law. *Foster v. Love*, 522 U.S. 67, 69, 118 S. Ct. 464 (1997). Absent a directly contradictory federal law that conflicts with state law, however, state law controls by default. *Texas Voters Alliance v. Dallas Cty.*, 495 F. Supp. 3d 441, 467, (E.D. Tex. 2020).

Complainants allege that “the election authority of Congress, the Wisconsin state legislature, the Commission and the Racine City Clerk” was “diverted” by the Respondents—one of whom is the Racine City Clerk—ostensibly in violation of the Elections Clause. Complainants make no attempt to explain with specificity how the Elections Clause is implicated, however. Additionally, this same argument has already been rejected in other federal actions. Analyzing an

equivalent argument in the *Georgia Voters Alliance* case, Judge May, federal district court judge for the Northern District of Georgia, explained, “Fulton County[, Georgia]’s acceptance of private funds, standing alone, does not impede Georgia’s duty to prescribe the time, place, and manner of elections, and Plaintiffs cite no authority to the contrary.” *Georgia Voter Alliance v. Fulton County*, 499 F. Supp. 3d 1250, 1255 (N.D. Ga. 2020); *see also Iowa Voter Alliance*, 2020 WL 6151559, at *3. Similarly, here, Complainants have not articulated any way in which the City of Racine’s acceptance of the CTCL funds has interfered with either the State of Wisconsin’s ability to prescribe the time, place, and manner of elections, or the ability of the federal government to alter those prescriptions. Accordingly, as they did in the federal cases, Complainants’ arguments on this point must fail.

The other law on which Complainants attempt to base their argument is the Electors Clause, which states that each state shall appoint a number of presidential electors “in such manner as the legislature thereof may direct.” U.S. Const. art. II, § 1, cl. 2. In support of their claim that Respondents may have violated the Electors clause, Complainants rely on a quote from the Seventh Circuit’s decision in *Trump v. Wisconsin Elections Commission*, 983 F.3d 919, in which the court explained that in other cases, courts have found that departure from “legislative scheme for appointing electors”—that is, the statutory apportionment of responsibility for election administration—may constitute a violation of the Electors clause. 983 F.3d at 926-27 (citing *Bush v. Gore*, 531 U.S. 98, 116, 121 S. Ct. 525 (2000) (Rehnquist, C.J., concurring) (finding departure from election administration scheme in when Florida Supreme Court rejected the Secretary of State’s interpretation of election laws); *Carson v. Simon*, 978 F.3d 1051, 1060 (2020) (holding that the Minnesota Secretary of State likely violated the Electors Clause by extending the deadline for receipt of absentee ballots without having statutory responsibility for election administration)).

Complainants conveniently truncated the paragraph when including it in the Complaint, however—the remainder of the paragraph states, “[b]y contrast, whatever actions the Commission took here, it took under color of authority expressly granted to it by the Legislature. And that authority is not diminished by allegations that the Commission erred in its exercise.” *Trump v. WEC*, 983 F.3d at 927. In other words, an officer or entity legislatively endowed with election-administration authority does not violate the Electors Clause when acting under color of that authority.

As part of the “legislative scheme” for appointing electors in Wisconsin, the legislature has divided responsibility for the administration of elections. The legislature created the Commission in 2015 and endowed it with the responsibility for the administration of election laws. WIS. STAT. § 5.05. However, the legislature has also assigned significant authority and duties under state election laws to municipal clerks. *Id.* at § 7.15. Among their many statutory responsibilities, clerks are directed to “[e]quip polling places,” “[p]rovide for the purchase and maintenance of election equipment,” “[p]repare” and “distribute ballots and provide other supplies for conducting all elections,” “[p]repare official absentee ballots,” “[p]repare the necessary notices and publications in connection with the conduct of elections or registrations,” “[t]rain election officials” and “advise them of changes in laws, rules and procedures,” and educate voters. WIS. STAT. §§ 7.15(1), (9), (11). The City Clerk’s office took necessary actions to fulfill its responsibilities for the administration of the elections in 2020. Those actions were taken under color of the authority granted by the Wisconsin Legislature, and, just as in the *Trump v. WEC* case, “that authority is not diminished by allegations that [the Clerk] erred in its exercise.” 983 F.3d 927. Just as with all of the other legal theories they have proffered, Complainants’ Electors Clause argument fails entirely.

2. *Home Rule Authority*

Complainants' arguments also fail for reasons beyond the complete lack of federal or state law prohibiting the use of private grant funds. For one, municipalities, and municipal clerks in particular, possess broad authority with respect to the administration of elections within their jurisdictions. *See, e.g.*, WIS. STAT. § 7.15. This is also consistent with the long-established principles of home rule. Elements of the administration of elections are matters of statewide concern; accordingly, the legislature has created a statutory structure within which all elections must be administered and has designated the Commission as the entity to administrate those laws. Certain other elements of election administration, however, are matters of local concern, subject to local control under municipal home rule authority. Wis. Const. art. XI, § 3. A municipality may exercise its home rule authority to determine and execute the most appropriate solution to fit its unique circumstances. This includes the state leaving it to municipalities to fund election expenditures that exceed federal and state funds. Interpreting a substantially similar provision of Iowa law regarding the authority of counties, which administer elections in that state, the U.S. District Court for the Northern District of Iowa, noted that “the duty to fund elections is delegated to the counties,” and that accepting private grants to assist in fulfilling that obligation was consistent with that home rule authority. *Iowa Voter Alliance*, 2020 WL 6151559, at *3.

In 2020, the City of Racine's unique local circumstances included responding to the COVID-19 pandemic, expecting exponentially higher numbers of absentee ballots than in past years, facing a critical shortage of poll workers, having spent an exceptional percentage of budget for all 2020 elections on the April 2020 election alone, and myriad other difficulties. Due to the absence of additional state funding and restrictions on the ability to municipalities to adequately fund local elections under these circumstances, the only workable solution was an influx of grant

money to ensure that the City had necessary equipment and staff to make the fall elections run efficiently, smoothly, and in accordance with State laws and directives from the Legislature and the Commission. No statutory provision prohibits a Wisconsin municipality from accepting outside funding for the purpose of administering an election. The City of Racine was therefore well within its rights, and within the law, to seek out and accept the grant funds from CTCL and to put those funds to use as described above.

3. *Commission Precedent and Estoppel*

As set forth above, the Commission may have already addressed the issue of municipal receipt of private grant funds. Administrator Wolfe told the Assembly Committee on Campaigns and Elections that Commission staff worked with the City and others “to ensure that local election officials had the information and resources they needed to administer a successful election in November.” (*Informational Hearing on the Green Bay Election Before the Assemb. Comm. on Campaigns and Elections*, 2021-22 Sess. (March 31, 2021) (testimony of Meagan Wolfe, Administrator, Wisconsin Elections Commission), *available at* <https://wiseye.org/2021/03/31/assembly-committee-on-campaigns-and-elections-14/> (4:03-4:16).) Administrator Wolfe further informed the Committee that a complaint concerning whether municipal election entities could accept and use private grant funds had been filed with the Commission, and that “the Commission dismissed the complaint, noting that there is nothing in Wisconsin elections statutes which prohibits, proscribes, or even discusses grant funding.” (*Id.* at 4:40 to 5:15.) The same is true about federal law. In short, there is nothing in any law Complainants cite, whether federal or state, that addresses the issue of private grant funding, let alone prohibits it. Accordingly, consistent with Commission precedent and the many federal cases that have preceded it, the Complaint should be dismissed.

III. Complainants Ask the Commission to Exceed their Authority

Complainants have seemingly chosen to bring their Complaint to the Commission because Complainants believe it provides them yet another venue in which to assert the same legal arguments that courts across the country have rejected. Rather than bringing a complaint alleging violations of specific provisions of state or federal law, however, Complainants instead attempt to politicize the complaint process established in Section 5.06, a manner in which it was not intended to be used.

Perhaps even more egregiously, however, Complainants would have the Commission exceed its statutory authority by creating new election laws—essentially usurping legislative authority to do so. Wisconsin law gives the Commission responsibility for the *administration* of election laws, not authority to create new ones. WIS. STAT. § 5.05(1). That authority lies squarely within the purview of the legislature, as Judge Griesbach aptly explained:

Plaintiffs have presented at most a policy argument for prohibiting municipalities from accepting funds from private parties to help pay the increased costs of conducting safe and efficient elections. . . . These are all matters that may merit a *legislative* response but the Court finds nothing in the statutes Plaintiffs cite, either directly or indirectly, that can be fairly construed as prohibiting the defendant Cities from accepting funds from CTCL.

Wisconsin Voters Alliance, 2020 WL 6129510, *2 (emphasis added). Whether changes to existing laws should be made in order to prevent municipal acceptance of private grant funds is a question most appropriately decided in the legislature, as it is not only far beyond the scope of a complaint under Section 5.06, it also exceeds the Commission's authority. Making election laws are the purview of the legislature; such laws certainly should not be created by the Commission under circumstances such as these. Indeed, the Legislature is currently considering such legislation and if it is enacted the Commission and Wisconsin municipalities will be obligated to comply with it.

CONCLUSION

Concurring in the dismissal of the Wisconsin Voters Alliance's petition for an original action in the Wisconsin Supreme Court, Justice Brian Hagedorn commented on the legal and factual deficiencies in said petition, and offered the following caution:

At stake, in some measure, is faith in our system of free and fair elections, a feature central to the enduring strength of our constitutional republic. . . . Judicial acquiescence to such entreaties built on so flimsy a foundation would do indelible damage to every future election. . . . This is a dangerous path we are being asked to tread. The loss of public trust in our constitutional order resulting from the exercise of this kind of judicial power would be incalculable.

Wisconsin Voters Alliance v. Wisconsin Elections Commission, 2020AP1930-OA, Dismissal Order (Wis. Sup. Ct. Dec. 4, 2020) (Hagedorn, J., concurring). Although this action is before the Commission, rather than the courts, Justice Hagedorn's concerns are no less applicable. Complainants and others, often linked by shared counsel, have continually pursued frivolous claims against the City of Racine despite those same claims having failed in other settings. Respondents respectfully request that the Commission not indulge them any further.

For the foregoing reasons, Respondents respectfully request that the Commission dismiss the Complaint on its merits, with prejudice.

Dated this 14th day of June, 2021.

Respectfully submitted,

s/ Scott R. Letteney

Scott R. Letteney
City Attorney
State Bar No. 1000559
Attorney for City of Racine Respondents
730 Washington Avenue
Room 201
Racine, Wisconsin 53403
Telephone: (262) 636-9115
Facsimile: (262) 636-9570
scott.letteney@cityofracine.org

**STATE OF WISCONSIN
BEFORE THE ELECTIONS COMMISSION**

MARTIN PRUJANSKY, MARY IMHOF
PRUJANSKY, KENNETH BROWN, BROOK
HESSE, and DAVID GILES,

Complainants,

v.

MEAGAN WOLFE, in her capacity as Administrator
of the Wisconsin Elections Commission, CORY
MASON, in his capacity as Mayor of the City of
Racine, and TARA COOLIDGE, in her capacity as
City Clerk of the City of Racine,

Respondents.

VERIFICATION OF RESPONDENT CORY MASON

Respondent Cory Mason, in his capacity as Mayor of the City of Racine, Wisconsin, being first duly sworn on oath, state that I personally read the Verified Answer in the above-entitled matter, and that the contents of the Verified Answer are true and correct based on my personal knowledge, as to those stated on information and belief, I believe them to be true.

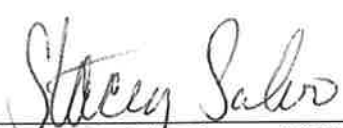
Dated at Racine, Wisconsin, this 14 day of June, 2021.



Cory Mason, Mayor

State of Wisconsin)
) ss
County of Racine)

Subscribed and sworn before me this
14th day of June, 2021.



Notary Public, State of Wisconsin
My commission expires: 12-13-2024



**STATE OF WISCONSIN
BEFORE THE ELECTIONS COMMISSION**

MARTIN PRUJANSKY, MARY IMHOF
PRUJANSKY, KENNETH BROWN, BROOK
HESSE, and DAVID GILES,

Complainants,

v.

MEAGAN WOLFE, in her capacity as Administrator
of the Wisconsin Elections Commission, CORY
MASON, in his capacity as Mayor of the City of
Racine, and TARA COOLIDGE, in her capacity as
City Clerk of the City of Racine,

Respondents.

VERIFICATION OF RESPONDENT TARA COOLIDGE

Respondent Tara Coolidge, in her capacity as City Clerk of the City of Racine, Wisconsin, being first duly sworn on oath, state that I personally read the Verified Answer in the above-entitled matter, and that the contents of the Verified Answer are true and correct based on my personal knowledge, as to those stated on information and belief, I believe them to be true.

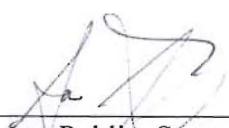
Dated at Racine, Wisconsin, this 14th day of June, 2021.



Tara Coolidge, City Clerk

State of Wisconsin)
) ss
County of Racine)

Subscribed and sworn before me this
14th day of June, 2021.



Notary Public, State of Wisconsin
My commission expires: 2/11/2025

