

STATE OF WISCONSIN  
BEFORE THE ELECTION COMMISSION

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Robert Pellegrini  
425 E. Capital Drive  
Hartland, WI 53029

Complainant

v.

Darlene Igl  
Village Clerk  
210 Cottonwood Avenue  
Hartland, WI 53029

Defendant

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COMPLAINT

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The complainant, Robert Pellegrini alleges as follows:

1. Complainant is a registered Wisconsin voter and qualifies as an elector within the meaning of Chapters 5 and 6 of the Wisconsin Statutes. Complainant resides in the Village of Hartland, Waukesha County.

2. The Defendant, Darlene Igl, is the Village Clerk of the Village of Harland. Ms. Igl is an "election official" within the meaning of Chapters 5 and 6 of the Wisconsin Statutes and is sued in that capacity.

**JURISDICTION**

3. This case is brought against Ms. Igl under Wisconsin Statute § 5.06 which provides that:

Whenever any elector of a jurisdiction or district served by an election official believes that a decision or action of the official or the failure of the official to act with respect to any matter concerning nominations, qualifications of candidates, voting qualifications, including residence, ward division and numbering, recall, ballot preparation, election administration or conduct of elections is contrary to law, or the official has abused the

discretion vested in him or her by law with respect to any such matter, the elector may file a written sworn complaint with the commission requesting that the official be required to conform his or her conduct to the law, be restrained from taking any action inconsistent with the law or be required to correct any action or decision inconsistent with the law or any abuse of the discretion vested in him or her by law.

4. Ms. Igl has allowed voters to cast absentee ballots in the Village of Hartland contrary to law, and the Wisconsin Election Commission should require her to conform her conduct to the law and restrain her from taking any action inconsistent with the law.

5. Wis. Stat. § 6.84(1) provides that the while voting is a constitutional right, the vigorous exercise of which should be strongly encouraged, “voting by absentee ballot is a privilege exercised wholly outside the traditional safeguards of the polling place.” As a result, in § 6.84(1), the Legislature concluded “that the privilege of voting by absentee ballot must be carefully regulated to prevent the potential for fraud or abuse.”

6. To further implement this finding, Wis. Stat. § 6.84(2) specifically directs that the provisions of § 6.87(3) to (7) (which would obviously include § 6.87(4)(b)1) “shall be construed as mandatory.”

7. The Wisconsin Supreme Court has held that where an election statute is mandatory, its exercise requires strict compliance (citing *State ex rel. Ahlgrimm v. State Elections Bd.*, 82 Wis. 2d 585, 597, 263 N.W.2d 152 (1978)) and that consequently, “[b]allots counted in contravention of the procedures ... may not be included in the certified result of any election.” *Jefferson v. Dane Cty.*, 2020 WI 90, ¶ 16, 394 Wis. 2d 602, 951 N.W.2d 556, 561.

8. Wis. Stat. § 6.87(4)(b)1 requires that when voting an absentee ballot “[t]he envelope [containing the ballot] shall be mailed by the elector, or delivered in person, to the municipal clerk issuing the ballot or ballots” and under § 6.84(2) the requirements in this provision are mandatory and, as a result, require strict compliance.

9. Under § 6.87(4)(b)1, there are only two methods allowed for casting an absentee ballot: (1) the U.S. mail, and (2) delivering the envelope containing the ballot in person to the municipal clerk.

10. This requirement with respect to how to cast an absentee ballot must be read in conjunction with Wis. Stat. § 12.13(3)(n) which provides that no person may “receive a ballot from or give a ballot to a person other than the election official in charge.”

11. Together these statutes require that the *voter* shall mail the envelope containing the ballot, or the *voter* shall deliver it “in person” to the municipal clerk. There is no statutory basis to permit a third person to take possession of the ballot to mail it or to deliver it in person and there is no statutory basis to deliver the ballot in person anywhere except in person to the municipal clerk.

12. Moreover, because Wis. Stat. § 12.13 provides that no person may “Receive a ballot from or give a ballot to a person other than the election official in charge,” the only person who can be authorized to receive absentee ballots is an “election official in charge.”

13. The phrase “municipal clerk” is defined in the election statutes as “the city clerk, town clerk, village clerk and the executive director of the city election commission and their authorized representatives.” *See*, Wis. Stat. § 5.02(10).

14. Because § 12.13 requires that only the “election official in charge” may receive the ballot, any “authorize representative” must, themselves, be an election official under the statutes. Under Wisconsin law, all election officials must be appointed under the provisions of Wis. Stat. § 7.30(2)(a).

15. Despite the clarity of the law, Ms. Igl has allowed individuals in the Village of Hartland to cast absentee ballots by placing them in outdoor, unstaffed drop boxes—specifically in drop boxes located outside the Village Hall and near the exit from the Library parking lot.

16. Certainly an inanimate object like a drop box is not the “municipal clerk” and cannot be classified as an “authorized representative” of the municipal clerk.

17. Thus, putting an absentee ballot into an outdoor, unstaffed drop box does not satisfy and is not strict compliance with the mandatory requirements for casting an absentee ballot set forth in § 6.87(4)(b)1.

18. Further, Wis. Stat. § 6.855 provides that the office of the municipal clerk is the default location “to which voted absentee ballots shall be returned by electors for any election.”

19. Any other location must be designated in the manner set forth in § 6.855 and “[t]he designated site shall be located as near as practicable to the office of the municipal clerk or board of election commissioners and no site may be designated that affords an advantage to any political party.”

20. Further, if the governing body of a municipality makes an election to designate an alternate site to the clerk’s office under this section, then “no function related to voting and return of absentee ballots that is to be conducted at the alternate site may be conducted in the office of the municipal clerk or board of election commissioners.”

21. The result of this provision of the statutes is that all absentee ballots must be returned by the voter to the office of the municipal clerk, unless a different site is designated under § 6.855, in which case absentee ballots must be returned to the designated location and not to the municipal clerk’s office.

22. The municipal clerk may not accept absentee ballots at any other location. Not at a drop box; not in some other part of the Village Hall; and not at the library.

23. Despite these statutory requirements, Ms. Igl allowed ballots to be deposited in drop boxes while also accepting ballots at the office of the municipal clerk.

24. The Complainant seeks an order from the Wisconsin Election Commission directing that in her administration of the 2022 primary election and general election, that Ms. Igl conform her conduct to the law and ensure that: (a) absentee ballots can be cast only by the two methods allowed under § 6.87(4)(b)1: (1) by the voter placing the envelope containing the ballot in the U.S. mail, or (2) the voter handing the envelope containing the ballot in person to the municipal clerk at the office of the municipal clerk or at an alternate site designated under Wis. Stat. § 6.855; and (b) that handing the envelope containing the ballot to the municipal clerk means handing it to the actual municipal clerk or to an election official appointed pursuant to Wis. Stat. § 7.30 to act as the authorized representative of the municipal clerk.

#### **PRAYER FOR RELIEF**

WHEREFORE, the Complainant requests the following relief:

A. That Ms. Igl be directed to conform her conduct to the law as described above.

B. That Ms. Igl be restrained from counting any absentee ballots that are cast other than as required under § 6.87(4)(b)1, i.e., (a) by the voter placing the envelope containing the ballot in the U.S. mail, or (b) the voter handing the envelope containing the ballot in person to the municipal clerk (meaning the actual municipal clerk or to an election official appointed pursuant to Wis. Stat. § 7.30 to act as the authorized representative of the municipal clerk) at the office of the municipal clerk or at an alternate site designated under Wis. Stat. § 6.855; and

C. Such equitable or other relief as is just and appropriate.

Respectfully submitted this 29th day of June, 2021.

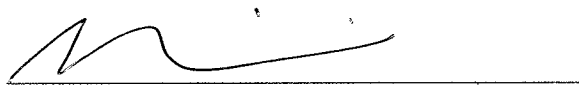
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The Complainant, Robert Pellegrini being first duly sworn, state that he has personally read the above complaint, and that the above allegations are based on information and belief and the complainant believes them to be true.



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Subscribed and sworn to before me  
this 28<sup>th</sup> day of June, 2021.



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Notary Public, State of Wisconsin  
My Commission ~~expires~~ is permanent