

WISCONSIN ELECTIONS COMMISSION

ROBERT PELLEGRINI,

Complainant,

Case No.: EL 21-35

vs.

DARLENE IGL,

Respondent.

IGL RESPONSE TO COMPLAINT

Respondent Darlene Igl (“Igl”), by her attorneys, Schmidt & Wirth Law Offices, hereby responds to Complainant’s complaint and alleges as follows:

ANSWER

1. Answering paragraph 1 of the Complaint, deny knowledge or information sufficient to form a belief as to the truth of the matters asserted therein.

2. Answering paragraph 2 of the Complaint, admit only that respondent Igl is the Village Clerk for the Village of Hartland (“Village”) and that she is an “election official” as that term is defined by Wis. Stat. § 5.02(4e). Deny knowledge or information sufficient to form a belief as to the capacity in which complainant believes he is making a complaint against Igl.

3. Answering paragraph 3 of the Complaint, admit only that Wis. Stat. § 5.06(1) so provides in part. Deny knowledge or information sufficient to form a belief as to what complainant believes is the legal basis for his complaint.

4. Answering paragraph 4 of the Complaint, admit only that the Wisconsin Elections Commission (“WEC”) has authority to require election officials to conform to or

refrain from certain conduct, procedures and election operations. Deny that Igl allowed any electors in the Village to cast ballots in violation of the law as alleged, or otherwise. Voters who have returned their absentee ballots as directed by their municipal clerk have “delivered [them] in person, to the municipal clerk” as directed by Wis. Stat. § 6.87(4)(b)1. *Trump v. Biden*, 2020 WI 91, ¶ 54, 394 Wis. 2d 629, 951 N.W.2d 568 (Hagendorn, J. concurring), *cert. denied*, 141 S. Ct. 1387 (2021). Affirmatively assert that the complaint fails to identify where any allegedly illegal activity occurred and/or to identify witnesses to the allegedly illegal activity in contravention of Wis. Admin. Code § EL 20.03(3).

The Wisconsin Legislature delegated authority to WEC to interpret and enforce Wis. Stat. Chs. 5-10 and 12, and election laws other than those related to campaign financing. Wis. Stat. § 5.05; *State ex rel. Zignego v. Wisconsin Elections Comm'n*, 2021 WI 32, ¶ 18, 396 Wis. 2d 391, 957 N.W.2d 208; *Trump v. Wisconsin Elections Comm'n*, 983 F.3d 919, 923, 927 (7th Cir. 2020), *cert. denied*, 141 S. Ct. 1516 (2021); *Jefferson v. Dane Cty.*, 2020 WI 90, ¶ 24, 394 Wis. 2d 602, 951 N.W.2d 556. WEC issued at least two guidance documents to municipal clerks and election officials in 2020 specifically approving of and discussing best practices for the use of drop boxes for the return of absentee ballots. See WEC guidance attached hereto; *Trump v. Wisconsin Elections Comm'n*, 983 F.3d at 923. The Legislature authorized WEC to issue this guidance. *Id.* at 924, 927. WEC need only follow its own precedent to find that Igl complied with state law and dismiss complainant’s complaint.

Courts have approved the use of drop boxes for the return of absentee ballots in other jurisdictions with statutes containing very similar language to Wis. Stat. § 6.87(4)(b)1, requiring return of absentee ballots by mail or personal delivery. See *Ohio Democratic Party v. LaRose*, 2020-Ohio-4778, ¶¶ 21-22, 26, 39-41, 45, 159 N.E.3d 1241, 1250 (statute silent as to the use of

drop boxes, but Secretary of State has authority to implement election laws and permitted their use); *A. Philip Randolph Inst., of Ohio v. LaRose*, 493 F. Supp. 3d 596, 609 (N.D. Ohio 2020), *appeal dismissed*, No. 20-4063, 2020 WL 7980224 (6th Cir. Oct. 28, 2020) (off-site drop boxes for return of absentee ballots are neither prohibited nor compelled under Ohio law); *Pennsylvania Democratic Party v. Boockvar*, 238 A.3d 345, 361 (Pa. 2020), *cert. denied sub nom. Republican Party of Pennsylvania v. Degraffenreid*, 141 S. Ct. 732 (2021) (election code permits acceptance of absentee ballots via drop box where statutory language provides for return by mail or delivery in person to county board of election); *New Georgia Project v. Raffensperger*, 976 F.3d 1278, 1281 (11th Cir. 2020) (drop boxes are a valid option for return of absentee ballot under Georgia statute that requires return by mail or personal delivery); *Democratic Nat'l Comm. v. Reagan*, 329 F. Supp. 3d 824, 839 (D. Ariz.), *aff'd*, 904 F.3d 686 (9th Cir. 2018) (drop boxes available under statute that provides for return of absentee ballot, by delivery or mail), *aff'd sub nom. Brnovich v. Democratic Nat'l Comm.*, No. 19-1257, *4, 2021 WL 2690267 (U.S. July 1, 2021) (availability of drop boxes not affected by new law restricting who can collect absentee ballots).

5. Answering paragraph 5 of the Complaint, admit only that Wis. Stat. § 6.84(1) so provides in part. Denies that the allegations contain a materially complete recitation of legislative findings and intent with respect to voting by absentee ballot.

6. Answering paragraph 6 of the Complaint, admit only that Wis. Stat. § 6.84(2) so provides in part. Denies that the allegations contain a materially complete recitation of legislative findings and intent with respect to voting by absentee ballot. Denies that the allegations contain a materially complete recitation of the principles of statutory interpretation or that complainant's proposed interpretations are legally permissible or correct.

7. **Answering paragraph 7 of the Complaint**, admits only that *Jefferson v. Dane Cty.*, 2020 WI 90, ¶ 16, 394 Wis. 2d 602, 951 N.W.2d 556 so provides in part. Denies that the allegations contain a materially complete recitation of the principles of statutory interpretation or that complainant’s proposed interpretations are legally permissible or correct. Voters who have returned their absentee ballots as directed by their municipal clerk have “delivered [them] in person, to the municipal clerk” as directed by Wis. Stat. § 6.87(4)(b)1. *Trump v. Biden*, 2020 WI 91, ¶ 54, 394 Wis. 2d 629, 951 N.W.2d 568 (Hagendorn, J. concurring), *cert. denied*, 141 S. Ct. 1387 (2021).

8. **Answering paragraph 8 of the Complaint**, affirmatively allege and aver that the allegations contained in said paragraph are legal conclusions to which no response is required. In the event, and to the extent, the allegations are deemed factual, admits only that Wis. Stat. § 6.87(4)(b)1 so provides in part. Denies that the allegations contain a materially complete recitation of the requirements and permissible acts under said statutes. Voters who have returned their absentee ballots as directed by their municipal clerk have “delivered [them] in person, to the municipal clerk” as directed by Wis. Stat. § 6.87(4)(b)1. *Trump v. Biden*, 2020 WI 91, ¶ 54, 394 Wis. 2d 629, 951 N.W.2d 568 (Hagendorn, J. concurring), *cert. denied*, 141 S. Ct. 1387 (2021).

9. **Answering paragraph 9 of the Complaint**, affirmatively allege and aver that the allegations contained in said paragraph are legal conclusions to which no response is required. In the event, and to the extent, the allegations are deemed factual, denies that the allegations contain a materially complete recitation of the requirements and permissible acts under said statute. Voters who have returned their absentee ballots as directed by their municipal clerk have “delivered [them] in person, to the municipal clerk” as directed by Wis. Stat. § 6.87(4)(b)1.

Trump v. Biden, 2020 WI 91, ¶ 54, 394 Wis. 2d 629, 951 N.W.2d 568 (Hagendorn, J. concurring), *cert. denied*, 141 S. Ct. 1387 (2021).

Wis. Stat. § 6.87(4)(b)1 does not require personal delivery of absentee ballots be made only to the municipal clerk. As complainant acknowledges in paragraph 13 of his complaint, the definition of “municipal clerk” under Wis. Stat. § 5.02(10) includes the clerk’s authorized representatives. Moreover, “[e]ven if ‘municipal clerk’ were not a specially-defined term, the only reasonable reading of the law would allow those acting on a clerk’s behalf to receive absentee ballots, not just the clerk by him or herself. After all, many clerks manage a full office of staff to assist them in carrying out their duties.” *Trump v. Biden*, 2020 WI 91, ¶ 54 (Hagendorn, J. concurring).

The Wisconsin Legislature delegated authority to WEC to interpret and enforce Wis. Stat. Chs. 5-10 and 12, and election laws other than those related to campaign financing. Wis. Stat. § 5.05; *State ex rel. Zignego v. Wisconsin Elections Comm’n*, 2021 WI 32, ¶ 18, 396 Wis. 2d 391, 957 N.W.2d 208; *Trump v. Wisconsin Elections Comm’n*, 983 F.3d 919, 923, 927 (7th Cir. 2020), *cert. denied*, 141 S. Ct. 1516 (2021); *Jefferson v. Dane Cty.*, 2020 WI 90, ¶ 24, 394 Wis. 2d 602, 951 N.W.2d 556. WEC issued at least two guidance documents to municipal clerks and election officials in 2020 specifically approving of and discussing best practices for the use of drop boxes for the return of absentee ballots. See WEC guidance attached hereto; *Trump v. Wisconsin Elections Comm’n*, 983 F.3d at 923. The Legislature authorized WEC to issue this guidance. *Id.* at 924, 927. WEC need only follow its own precedent to find that Igl complied with state law and dismiss complainant’s complaint.

Courts have approved the use of drop boxes for the return of absentee ballots in other jurisdictions with statutes containing very similar language to Wis. Stat. § 6.87(4)(b)1 requiring

return of absentee ballots by mail or personal delivery. See *Ohio Democratic Party v. LaRose*, 2020-Ohio-4778, ¶¶ 21-22, 26, 39-41, 45, 159 N.E.3d 1241, 1250 (statute silent as to the use of drop boxes, but Secretary of State has authority to implement election laws and permitted their use); *A. Philip Randolph Inst., of Ohio v. LaRose*, 493 F. Supp. 3d 596, 609 (N.D. Ohio 2020), *appeal dismissed*, No. 20-4063, 2020 WL 7980224 (6th Cir. Oct. 28, 2020) (off-site drop boxes for return of absentee ballots are neither prohibited nor compelled under Ohio law); *Pennsylvania Democratic Party v. Boockvar*, 238 A.3d 345, 361 (Pa. 2020), *cert. denied sub nom. Republican Party of Pennsylvania v. Degraffenreid*, 141 S. Ct. 732 (2021) (election code permits acceptance of absentee ballots via drop box where statutory language provides for return by mail or delivery in person to county board of election); *New Georgia Project v. Raffensperger*, 976 F.3d 1278, 1281 (11th Cir. 2020) (drop boxes are a valid option for return of absentee ballot under Georgia statute that requires return by mail or personal delivery); *Democratic Nat'l Comm. v. Reagan*, 329 F. Supp. 3d 824, 839 (D. Ariz.), *aff'd*, 904 F.3d 686 (9th Cir. 2018) (drop boxes available under statute that provides for return of absentee ballot, by delivery or mail), *aff'd sub nom. Brnovich v. Democratic Nat'l Comm.*, No. 19-1257, *4, 2021 WL 2690267 (U.S. July 1, 2021) (availability of drop boxes not affected by new law restricting who can collect absentee ballots).

10. Answering paragraph 10 of the Complaint, affirmatively allege and aver that the allegations contained in said paragraph are legal conclusions to which no response is required. In the event, and to the extent, the allegations are deemed factual, admits only that Wis. Stat. § 12.13(3)(n) states “Receive a ballot form or give a ballot to person other than the election official in charge.” As to all remaining allegations, denies as they contain a materially incomplete recitation of the requirements and permissible acts under the statutes.

Complainant’s reading of Wis. Stat. §§ 6.87(4)(b)1 and 12.13(3)(n) ignores the statutory definition of “election official” and the fact that a municipal clerk’s authorized representatives are necessarily election officials. “Election official” is defined as “an individual who is charged with any duties relating to the conduct of an election.” Wis. Stat. § 5.02(4e). A municipal clerk’s employees assist the municipal clerk in carrying out his or her duties. *Trump v. Biden*, 2020 WI 91, ¶ 54, 394 Wis. 2d 629, 951 N.W.2d 568 (Hagendorn, J. concurring), *cert. denied*, 141 S. Ct. 1387 (2021). Thus, to the extent that a municipal clerk’s duties include conducting an election, and the municipal clerk’s employees are assisting in carrying out those election duties, the municipal clerk’s employees are “charged with duties relating to the conduct of the election” and are election officials by definition under Wis. Stat. § 5.02(4e). As election officials, a municipal clerk’s authorized representatives are permitted to receive absentee ballots under Wis. Stat. §§ 6.87(4)(b)1 and 12.13(3)(n). “[T]he only reasonable reading of the law would allow those acting on a clerk’s behalf to receive absentee ballots, not just the clerk by him or herself.” *Trump v. Biden*, 2020 WI 91, ¶ 54 (Hagendorn, J. concurring). Voters who have returned their absentee ballots as directed by their municipal clerk have “delivered [them] in person, to the municipal clerk” as directed by Wis. Stat. § 6.87(4)(b)1. *Id.*

11. Answering paragraph 11 of the Complaint, affirmatively allege and aver that the allegations contained in said paragraph are legal conclusions to which no response is required. In the event, and to the extent, the allegations are deemed factual, denies.

Wis. Stat. §§ 6.87(4)(b)1 and 12.13(3)(n) do not require personal delivery of absentee ballots be made only to the municipal clerk. As complainant alleges in paragraph 13 of his complaint, the definition of “municipal clerk” under Wis. Stat. § 5.02(10) includes the clerk’s authorized representatives. Moreover, “election official” is defined as “an individual who is

charged with any duties relating to the conduct of an election.” Wis. Stat. § 5.02(4e). A municipal clerk’s employees and authorized representatives assist the municipal clerk in carrying out his or her duties. *Trump v. Biden*, 2020 WI 91, ¶ 54, 394 Wis. 2d 629, 951 N.W.2d 568 (Hagendorn, J. concurring), *cert. denied*, 141 S. Ct. 1387 (2021). Thus, to the extent that a municipal clerk’s duties include conducting an election, and the municipal clerk’s employees and authorized representatives are assisting in carrying out those election duties, the municipal clerk’s employees are “charged with duties relating to the conduct of the election” and are election officials by definition under Wis. Stat. § 5.02(4e). As election officials, a municipal clerk’s authorized representatives are permitted to receive absentee ballots under Wis. Stat. §§ 6.87(4)(b)1 and 12.13(3)(n). “[T]he only reasonable reading of the law would allow those acting on a clerk’s behalf to receive absentee ballots, not just the clerk by him or herself.” *Trump v. Biden*, 2020 WI 91, ¶ 54 (Hagendorn, J. concurring). Voters who have returned their absentee ballots as directed by their municipal clerk have “delivered [them] in person, to the municipal clerk” as directed by Wis. Stat. § 6.87(4)(b)1. *Id.*

Nor does Wis. Stat. § 6.87(4)(b)1 require that in-person delivery be made only by the elector. The statute states that the absentee ballot “shall be mailed by the elector,” but does not so limit personal delivery, providing only that the ballot be “delivered in person[.]” Wis. Stat. § 6.87(4)(b)1. Wisconsin courts will not add words into a statute where the Legislature chose not to use them. *Jefferson v. Dane Cty.*, 2020 WI 90, ¶ 25, 394 Wis. 2d 602, 951 N.W.2d 556.

There is no discernible or consequential difference between (1) a voter placing an absentee ballot into their own mailbox or a blue United States Postal Service collection box, where the envelope is delivered in person to at least one mail sorting or office facility and handled by multiple individuals before being delivered by a mail carrier to the municipal clerk’s

postal box or being held at the post office pending pick up by an employee of the municipal clerk; and (2) a voter placing an absentee ballot into a secure drop box provided for the sole purpose of collecting absentee ballots, and being collected by or delivered directly to the municipal clerk from there. Statutory language is interpreted in context, to avoid absurd or unreasonable results, and to give reasonable effect to every word possible. *State ex rel. Kalal v. Cir. Ct. for Dane Cty.*, 2004 WI 58, ¶ 46, 271 Wis. 2d 633, 681 N.W.2d 110 (internal citations omitted). Complainant’s interpretation of Wis. Stat. §§ 6.87(4)(b)1 and 12.13(3)(n) as prohibiting drop boxes would lead to absurd results, effectively banning the very activities that he claims are permitted via mailing.

The Wisconsin Legislature delegated authority to WEC to interpret and enforce Wis. Stat. Chs. 5-10 and 12, election laws other than those related to campaign financing. Wis. Stat. § 5.05; *State ex rel. Zignego v. Wisconsin Elections Comm'n*, 2021 WI 32, ¶ 18, 396 Wis. 2d 391, 957 N.W.2d 208; *Trump v. Wisconsin Elections Comm'n*, 983 F.3d 919, 923, 927 (7th Cir. 2020), *cert. denied*, 141 S. Ct. 1516 (2021); *Jefferson v. Dane Cty.*, 2020 WI 90, ¶ 24. WEC issued at least two guidance documents to municipal clerks and election officials in 2020 specifically approving the use of drop boxes for the return of absentee ballots and discussing best practices for their use. *See* WEC guidance attached hereto; *Trump*, 983 F.3d at 923. The Legislature authorized WEC to issue this guidance. *Id.* at 924, 927. WEC need only follow its own precedent to find that Igl complied with state law and dismiss complainant’s complaint.

12. Answering paragraph 12 of the Complaint, affirmatively allege and aver that the allegations contained in said paragraph are legal conclusions to which no response is required. In the event, and to the extent, the allegations are deemed factual, admits only that Wis. Stat. § 12.13(3)(n) states “Receive a ballot form or give a ballot to person other than the

election official in charge.” As to all remaining allegations, denies as they contain a materially incomplete recitation of the requirements and permissible acts under the statutes.

Wis. Stat. § 6.87(4)(b)1 does not require personal delivery of absentee ballots be made only to the municipal clerk. As complainant alleges in paragraph 13 of his complaint, the definition of “municipal clerk” under Wis. Stat. § 5.02(10) includes the clerk’s authorized representatives. In turn, “election official” is defined as “an individual who is charged with any duties relating to the conduct of an election.” Wis. Stat. § 5.02(4e). A municipal clerk’s employees and authorized representatives assist the municipal clerk in carrying out his or her duties. *Trump v. Biden*, 2020 WI 91, ¶ 54, 394 Wis. 2d 629, 951 N.W.2d 568 (Hagendorn, J. concurring), *cert. denied*, 141 S. Ct. 1387 (2021). Thus, to the extent that a municipal clerk’s duties include conducting an election, and the municipal clerk’s employees are assisting in carrying out those election duties, the municipal clerk’s employees and authorized representatives are “charged with duties relating to the conduct of the election” and are election officials by definition under Wis. Stat. § 5.02(4e). As election officials, a municipal clerk’s authorized representatives are permitted to receive absentee ballots under Wis. Stat. §§ 6.87(4)(b)1 and 12.13(3)(n). “[T]he only reasonable reading of the law would allow those acting on a clerk’s behalf to receive absentee ballots, not just the clerk by him or herself.” *Trump v. Biden*, 2020 WI 91, ¶ 54 (Hagendorn, J. concurring). Voters who have returned their absentee ballots as directed by their municipal clerk have “delivered [them] in person, to the municipal clerk” as directed by Wis. Stat. § 6.87(4)(b)1. *Id.*

There is no discernible or consequential difference between (1) a voter placing an absentee ballot into their own mailbox or a blue United States Postal Service collection box, where the envelope is delivered in person to at least one mail sorting or office facility and

handled by multiple individuals before being delivered by a mail carrier to the municipal clerk's postal box or being held at the post office pending pick up by an employee of the municipal clerk; and (2) a voter placing an absentee ballot into a secure drop box provided for the sole purpose of collecting absentee ballots, and being collected by or delivered directly to the municipal clerk from there. Statutory language is interpreted in context, to avoid absurd or unreasonable results, and to give reasonable effect to every word possible. *State ex rel. Kalal v. Cir. Ct. for Dane Cty.*, 2004 WI 58, ¶ 46, 271 Wis. 2d 633, 681 N.W.2d 110 (internal citations omitted). Complainant's interpretation of Wis. Stat. §§ 6.87(4)(b)1 and 12.13(3)(n) as prohibiting drop boxes would lead to absurd results, effectively banning the very activities that he claims are permitted via mailing.

The Wisconsin Legislature delegated authority to WEC to interpret and enforce Wis. Stat. Chs. 5-10 and 12, and election laws other than those related to campaign financing. Wis. Stat. § 5.05; *State ex rel. Zignego v. Wisconsin Elections Comm'n*, 2021 WI 32, ¶ 18, 396 Wis. 2d 391, 957 N.W.2d 208; *Trump v. Wisconsin Elections Comm'n*, 983 F.3d 919, 923, 927 (7th Cir. 2020), *cert. denied*, 141 S. Ct. 1516 (2021); *Jefferson v. Dane Cty.*, 2020 WI 90, ¶ 24, 394 Wis. 2d 602, 951 N.W.2d 556. WEC issued at least two guidance documents to municipal clerks and election officials in 2020 specifically approving the use of drop boxes for the return of absentee ballots and discussing best practices for their use. *See* WEC guidance attached hereto; *Trump v. Wisconsin Elections Comm'n*, 983 F.3d at 923. The Legislature authorized WEC to issue this guidance. *Id.* at 924, 927. Voters who have returned their absentee ballots as directed by their municipal clerk have “delivered [them] in person, to the municipal clerk” as directed by Wis. Stat. § 6.87(4)(b)1. *Trump v. Biden*, 2020 WI 91, ¶ 54 (Hagendorn, J. concurring). WEC need

only follow its own precedent to find that Igl complied with state law and dismiss complainant's complaint.

13. Answering paragraph 13 of the Complaint, admits only that Wis. Stat. § 5.02(10) so provides in part as to how the phrase “municipal clerk” is used in Wis. Stat. Chs. 5 to 12. Denies all allegations inconsistent with this response.

14. Answering paragraph 14 of the Complaint, affirmatively allege and aver that the allegations contained in said paragraph are legal conclusions to which no response is required. In the event, and to the extent, the allegations are deemed factual, admit only that Wis. Stat. § 12.13(3)(n) states “Receive a ballot from or give a ballot to a person other than the election official in charge.” As to all remaining allegations, denies, as they contain a materially incomplete recitation of the requirements and permissible acts under the statutes.

Complainant's reading of Wis. Stat. §§ 6.87(4)(b)1 and 12.13(3)(n) ignores the statutory definition of “election official” and the fact that a municipal clerk's authorized representatives are necessarily election officials. “Election official” is defined as “an individual who is charged with any duties relating to the conduct of an election.” Wis. Stat. § 5.02(4e). A municipal clerk's employees and authorized representatives assist the municipal clerk in carrying out his or her duties. *Trump v. Biden*, 2020 WI 91, ¶ 54, 394 Wis. 2d 629, 951 N.W.2d 568 (Hagendorn, J. concurring), *cert. denied*, 141 S. Ct. 1387 (2021). Thus, to the extent that a municipal clerk's duties include conducting an election, and the municipal clerk's employees are assisting in carrying out those election duties, the municipal clerk's employees and authorized representatives are “charged with duties relating to the conduct of the election” and are election officials by definition under Wis. Stat. § 5.02(4e). As election officials, a municipal clerk's authorized representatives are permitted to receive absentee ballots under Wis. Stat. §§

6.87(4)(b)1 and 12.13(3)(n). “[T]he only reasonable reading of the law would allow those acting on a clerk's behalf to receive absentee ballots, not just the clerk by him or herself.” *Trump v. Biden*, 2020 WI 91, ¶ 54 (Hagendorn, J. concurring). Voters who have returned their absentee ballots as directed by their municipal clerk have “delivered [them] in person, to the municipal clerk” as directed by Wis. Stat. § 6.87(4)(b)1. *Id.*

Complainant’s reading of Wis. Stat. §7.30 is as overbroad as his interpretation of Wis. Stat. §§ 6.87(4)(b)1 and 12.13(3)(n) is narrow. Statutory language is interpreted in context, to avoid absurd or unreasonable results, and to give reasonable effect to every word possible. *State ex rel. Kalal v. Cir. Ct. for Dane Cty.*, 2004 WI 58, ¶ 46, 271 Wis. 2d 633, 681 N.W.2d 110 (internal citations omitted). Under complainant’s interpretation of the statutes, since an elector’s delivery of an absentee ballot by mail is expressly permitted by Wis. Stat. § 6.87(4)(b)1, all United States postal workers would necessarily have to be “authorized representatives” of a municipal clerk, “election official[s] in charge” under Wis. Stat. § 12.13(3)(n), and “appointed” under Wis. Stat. § 7.30(2)(a). But postal workers are not authorized representatives of the municipal clerk or appointed as election officials, and complainant does not assert that they are. Come election season, postal workers are not screened before handling envelopes containing absentee ballots to determine whether they reside in the same county as the electors whose ballots they are handling, as appointed election officials are required to be under Wis. Stat. §7.30(2)(a). They are not asked whether they have received pre-authorization from a municipal clerk to perform their federal job duties before handling absentee ballots so as to be considered authorized representatives of the municipal clerk under Wis. Stat. §5.02(10).

The Wisconsin Legislature delegated authority to WEC to interpret and enforce Wis. Stat. Chs. 5-10 and 12, election laws other than those related to campaign financing. Wis. Stat. § 5.05;

State ex rel. Zignego v. Wisconsin Elections Comm'n, 2021 WI 32, ¶ 18, 396 Wis. 2d 391, 957 N.W.2d 208; *Trump v. Wisconsin Elections Comm'n*, 983 F.3d 919, 923, 927 (7th Cir. 2020), *cert. denied*, 141 S. Ct. 1516 (2021); *Jefferson v. Dane Cty.*, 2020 WI 90, ¶ 24, 394 Wis. 2d 602, 951 N.W.2d 556. WEC issued at least two guidance documents to municipal clerks and election officials in 2020 specifically approving the use of drop boxes for the return of absentee ballots and discussing best practices for their use. *See* WEC guidance attached hereto; *Trump v. Wisconsin Elections Comm'n*, 983 F.3d at 923. The Legislature authorized WEC to issue this guidance. *Id.* at 924, 927. Voters who have returned their absentee ballots as directed by their municipal clerk have “delivered [them] in person, to the municipal clerk” as directed by Wis. Stat. § 6.87(4)(b)1. *Trump v. Biden*, 2020 WI 91, ¶ 54 (Hagendorn, J. concurring). WEC need only follow its own precedent to find that Igl complied with state law and dismiss complainant’s complaint.

15. Answering paragraph 15 of the Complaint, admits only that Igl permitted electors in the Village to submit absentee ballots via outdoor drop boxes. Denies that claimant’s interpretation of the law is “clear” from or supported by the statutory language.

The Wisconsin Legislature delegated authority to WEC to interpret and enforce Wis. Stat. Chs. 5-10 and 12, election laws other than those related to campaign financing. Wis. Stat. § 5.05; *State ex rel. Zignego v. Wisconsin Elections Comm'n*, 2021 WI 32, ¶ 18, 396 Wis. 2d 391, 957 N.W.2d 208; *Trump v. Wisconsin Elections Comm'n*, 983 F.3d 919, 923, 927 (7th Cir. 2020), *cert. denied*, 141 S. Ct. 1516 (2021); *Jefferson v. Dane Cty.*, 2020 WI 90, ¶ 24, 394 Wis. 2d 602, 951 N.W.2d 556. WEC issued at least two guidance documents to municipal clerks and election officials in 2020 specifically approving the use of drop boxes for the return of absentee ballots and discussing best practices for their use. *See* WEC guidance attached hereto; *Trump v.*

Wisconsin Elections Comm'n, 983 F.3d at 923. The Legislature authorized WEC to issue this guidance. *Id.* at 924, 927. Voters who have returned their absentee ballots as directed by their municipal clerk have “delivered [them] in person, to the municipal clerk” as directed by Wis. Stat. § 6.87(4)(b)1. *Trump v. Biden*, 2020 WI 91, ¶ 54, 394 Wis. 2d 629, 951 N.W.2d 568, *cert. denied*, 141 S. Ct. 1387 (2021) (Hagendorn, J. concurring). WEC need only follow its own precedent to find that Igl complied with state law and dismiss complainant’s complaint.

16. Answering paragraph 16 of the Complaint, admits only that a drop box is an inanimate object. As to all remaining allegations, denies as they contain a materially incomplete recitation of the requirements and permissible acts under the statutes. Affirmatively allege and aver that individual employees of the Village directed by Igl to retrieve absentee ballots from drop boxes and return them to her office are her authorized representatives under Wis. Stat. § 5.02(10), election officials under Wis. Stat. § 5.02(4e), and permitted to receive and transmit absentee ballots under Wis. Stat. § 6.87(4)(b)1. Denies all allegations inconsistent with this response.

17. Answering paragraph 17 of the Complaint, assert that this paragraph contains legal conclusions to which no response is required. In the event, and to the extent, the allegations are deemed factual, denies. Affirmatively allege and aver that individual employees of the Village directed by Igl to retrieve absentee ballots from drop boxes and return them to her office are her authorized representatives under Wis. Stat. § 5.02(10), election officials under Wis. Stat. § 5.02(4e), and permitted to receive and transmit absentee ballots under Wis. Stat. § 6.87(4)(b)1. In addition, placing absentee ballots in drop boxes is the functional equivalent of mailing them, and therefore permissible under Wis. Stat. § 6.87(4)(b)1. There is no discernible or consequential difference between (1) a voter placing an absentee ballot into their own mail box or a blue

United States Postal Service collection box, where the envelope is delivered in person to at least one mail sorting or office facility and handled by multiple individuals before being delivered by a mail carrier to the municipal clerk's postal box or being held at the post office pending pick up by an employee of the municipal clerk; and (2) a voter placing an absentee ballot into a secure drop box provided for the sole purpose of collecting absentee ballots, and being delivered directly to the municipal clerk from there.

The Wisconsin Legislature delegated authority to WEC to interpret and enforce Wis. Stat. Chs. 5-10 and 12, election laws other than those related to campaign financing. Wis. Stat. § 5.05; *State ex rel. Zignego v. Wisconsin Elections Comm'n*, 2021 WI 32, ¶ 18, 396 Wis. 2d 391, 957 N.W.2d 208; *Trump v. Wisconsin Elections Comm'n*, 983 F.3d 919, 923, 927 (7th Cir. 2020), *cert. denied*, 141 S. Ct. 1516 (2021); *Jefferson v. Dane Cty.*, 2020 WI 90, ¶ 24, 394 Wis. 2d 602, 951 N.W.2d 556. WEC issued at least two guidance documents to municipal clerks and election officials in 2020 specifically approving the use of drop boxes for the return of absentee ballots and discussing best practices for their use. *See* WEC guidance attached hereto; *Trump v. Wisconsin Elections Comm'n*, 983 F.3d at 923. The Legislature authorized WEC to issue this guidance. *Id.* at 924, 927. Voters who have returned their absentee ballots as directed by their municipal clerk have “delivered [them] in person, to the municipal clerk” as directed by Wis. Stat. § 6.87(4)(b)1. *Trump v. Biden*, 2020 WI 91, ¶ 54, 394 Wis. 2d 629, 951 N.W.2d 568, *cert. denied*, 141 S. Ct. 1387 (2021) (Hagendorn, J. concurring). WEC need only follow its own precedent to find that Igl complied with state law and dismiss complainant's complaint.

Courts have approved the use of drop boxes for the return of absentee ballots in other jurisdictions with statutes containing very similar language to Wis. Stat. § 6.87(4)(b)1 requiring return of absentee ballots by mail or personal delivery. *See Ohio Democratic Party v. LaRose*,

2020-Ohio-4778, ¶¶ 21-22, 26, 39-41, 45, 159 N.E.3d 1241, 1250 (statute silent as to the use of drop boxes, but Secretary of State has authority to implement election laws and permitted their use); *A. Philip Randolph Inst., of Ohio v. LaRose*, 493 F. Supp. 3d 596, 609 (N.D. Ohio 2020), *appeal dismissed*, No. 20-4063, 2020 WL 7980224 (6th Cir. Oct. 28, 2020) (off-site drop boxes for return of absentee ballots are neither prohibited nor compelled under Ohio law); *Pennsylvania Democratic Party v. Boockvar*, 238 A.3d 345, 361 (Pa. 2020), *cert. denied sub nom. Republican Party of Pennsylvania v. Degraffenreid*, 141 S. Ct. 732 (2021) (election code permits acceptance of absentee ballots via drop box where statutory language provides for return by mail or delivery in person to county board of election); *New Georgia Project v. Raffensperger*, 976 F.3d 1278, 1281 (11th Cir. 2020) (drop boxes are a valid option for return of absentee ballot under Georgia statute that requires return by mail or personal delivery); *Democratic Nat'l Comm. v. Reagan*, 329 F. Supp. 3d 824, 839 (D. Ariz.), *aff'd*, 904 F.3d 686 (9th Cir. 2018) (drop boxes available under statute that provides for return of absentee ballot, by delivery or mail), *aff'd sub nom. Brnovich v. Democratic Nat'l Comm.*, No. 19-1257, *4, 2021 WL 2690267 (U.S. July 1, 2021) (availability of drop boxes not affected by new law restricting who can collect absentee ballots).

18. Answering paragraph 18 of the Complaint, admits only that Wis. Stat. §6.855(1) provides that “[t]he governing body of a municipality may elect to designate a site other than the office of the municipal clerk or board of election commissioners as the location from which electors of the municipality may request and vote absentee ballots and to which voted absentee ballots shall be returned by electors for any election.” Denies that Wis. Stat. §6.855 is relevant to complainant’s complaint, which focuses on drop boxes, as that statute deals only with in-person absentee voting, i.e. “early voting.” *See Luft v. Evers*, 963 F.3d 665, 674 (7th

Cir. 2020); *One Wisconsin Inst., Inc. v. Nichol*, 186 F. Supp. 3d 958, 963, n.2 (W.D. Wis. 2016). An alternative absentee ballot site authorized by Wis. Stat. §6.855 is one where electors not only return absentee ballots, but where they may request and vote absentee ballots as well. Wis. Stat. § 6.855(1); *Trump v. Biden*, 2020 WI 91, ¶ 56, 394 Wis. 2d 629, 951 N.W.2d 568 (Hagendorn, J. concurring), *cert. denied*, 141 S. Ct. 1387 (2021). Because a drop box for the return of absentee ballots is not a location where electors can request or receive ballots, Wis. Stat. §6.855 does not apply. Denies all allegations inconsistent with this response.

19. Answering paragraph 19 of the Complaint, admits only that Wis. Stat. §6.855(1) contains the quoted language. Denies that Wis. Stat. §6.855 is relevant to complainant’s complaint, which focuses on drop boxes, as that statute deals only with in-person absentee voting, i.e. “early voting.” See *Luft v. Evers*, 963 F.3d 665, 674 (7th Cir. 2020); *One Wisconsin Inst., Inc. v. Nichol*, 186 F. Supp. 3d 958, 963, n.2 (W.D. Wis. 2016). An alternative absentee ballot site authorized by Wis. Stat. § 6.855 is one where electors not only return absentee ballots, but where they may request and vote absentee ballots as well. Wis. Stat. § 6.855(1); *Trump v. Biden*, 2020 WI 91, ¶ 56, 394 Wis. 2d 629, 951 N.W.2d 568 (Hagendorn, J. concurring), *cert. denied*, 141 S. Ct. 1387 (2021). Because a drop box for the return of absentee ballots is not a location where electors can request or receive ballots, Wis. Stat. §6.855 does not apply. Denies all allegations inconsistent with this response.

20. Answering paragraph 20 of the Complaint, admits only that Wis. Stat. §6.855(1) contains the quoted language. Denies that Wis. Stat. §6.855 is relevant to complainant’s complaint, which focuses on drop boxes, as that statute deals only with in-person absentee voting, i.e. “early voting.” See *Luft v. Evers*, 963 F.3d 665, 674 (7th Cir. 2020); *One Wisconsin Inst., Inc. v. Nichol*, 186 F. Supp. 3d 958, 963, n.2 (W.D. Wis. 2016). An alternative

absentee ballot site authorized by Wis. Stat. § 6.855 is one where electors not only return absentee ballots, but where they may request and vote absentee ballots as well. Wis. Stat. § 6.855(1); *Trump v. Biden*, 2020 WI 91, ¶ 56, 394 Wis. 2d 629, 951 N.W.2d 568 (Hagendorn, J. concurring), *cert. denied*, 141 S. Ct. 1387 (2021). Because a drop box for the return of absentee ballots is not a location where electors can request or receive ballots, Wis. Stat. §6.855 does not apply. Denies all allegations inconsistent with this response.

21. Answering paragraph 21 of the Complaint, affirmatively allege and aver that the allegations contained in said paragraph are legal conclusions to which no response is required. In the event, and to the extent, the allegations are deemed factual, denies.

Wis. Stat. §6.855 is not relevant to the complaint, which focuses on drop boxes, as the statute deals only with in-person absentee voting, i.e. “early voting.” See *Luft v. Evers*, 963 F.3d 665, 674 (7th Cir. 2020); *One Wisconsin Inst., Inc. v. Nichol*, 186 F. Supp. 3d 958, 963, n.2 (W.D. Wis. 2016). An alternative absentee ballot site authorized by Wis. Stat. §6.855 is one where electors not only return absentee ballots, but where they may request and vote absentee ballots as well. Wis. Stat. §6.855(1); *Trump v. Biden*, 2020 WI 91, ¶ 56, 394 Wis. 2d 629, 951 N.W.2d 568 (Hagendorn, J. concurring), *cert. denied*, 141 S. Ct. 1387 (2021). Because a drop box for the return of absentee ballots is not a location where electors can request or receive ballots, Wis. Stat. §6.855 does not apply.

Even if Wis. Stat. §6.855 did apply, complainant’s interpretation of it as allowing only one physical location for the return of absentee ballots is not supported. First, Wis. Stat. §6.855(5) expressly permits the designation of more than one alternate site. Second, if Wis. Stat. §6.855 were to be interpreted as suggested by claimant and allowing only one physical location for the return of absentee ballots, it would effectively prohibit the return of absentee ballots by

mail because multiple mail boxes and post office locations are used simultaneous to return absentee ballots by mail. Further, a mail box, post office box, or blue United States Postal Service collection box is neither the office of the municipal clerk nor a designated alternate site. Statutory language must be interpreted in context, to avoid absurd or unreasonable results, and to give reasonable effect to every word possible. *State ex rel. Kalal v. Cir. Ct. for Dane Cty.*, 2004 WI 58, ¶ 46, 271 Wis. 2d 633, 681 N.W.2d 110 (internal citations omitted).

22. Answering paragraph 22 of the Complaint, affirmatively allege and aver that the allegations contained in said paragraph are legal conclusions to which no response is required. In the event, and to the extent, the allegations are deemed factual, denies.

Wis. Stat. §6.855 has no relevance to the complaint, which focuses on drop boxes, as the statute deals only with in-person absentee voting, i.e. “early voting.” *See Luft v. Evers*, 963 F.3d 665, 674 (7th Cir. 2020); *One Wisconsin Inst., Inc. v. Nichol*, 186 F. Supp. 3d 958, 963, n.2 (W.D. Wis. 2016). An alternative absentee ballot site authorized by Wis. Stat. §6.855 is one where electors not only return absentee ballots, but where they may request and vote absentee ballots as well. Wis. Stat. § 6.855(1); *Trump v. Biden*, 2020 WI 91, ¶ 56, 394 Wis. 2d 629, 951 N.W.2d 568 (Hagendorn, J. concurring), *cert. denied*, 141 S. Ct. 1387 (2021). Because a drop box for the return of absentee ballots is not a location where electors can request or receive ballots, Wis. Stat. §6.855 does not apply.

Even if Wis. Stat. §6.855 did apply, complainant’s interpretation of it as allowing only one physical location for the return of absentee ballots is not supported. First, Wis. Stat. §6.855(5) expressly permits the designation of more than one alternate site. Second, if Wis. Stat. §6.855 were to be interpreted as suggested by claimant and allowing only one physical location for the return of absentee ballots, it would effectively prohibit the return of absentee ballots by

mail because multiple mail boxes and post office locations are used simultaneous to return absentee ballots by mail. Further, a mail box, post office box, or blue United States Postal Service collection box is neither the office of the municipal clerk nor a designated alternate site. Statutory language must be interpreted in context, to avoid absurd or unreasonable results, and to give reasonable effect to every word possible. *State ex rel. Kalal v. Cir. Ct. for Dane Cty.*, 2004 WI 58, ¶ 46, 271 Wis. 2d 633, 681 N.W.2d 110 (internal citations omitted).

The Wisconsin Legislature delegated authority to WEC to interpret and enforce Wis. Stat. Chs. 5-10 and 12, and election laws other than those related to campaign financing. Wis. Stat. § 5.05; *State ex rel. Zignego v. Wisconsin Elections Comm'n*, 2021 WI 32, ¶ 18, 396 Wis. 2d 391, 957 N.W.2d 208; *Trump v. Wisconsin Elections Comm'n*, 983 F.3d 919, 923, 927 (7th Cir. 2020), *cert. denied*, 141 S. Ct. 1516 (2021); *Jefferson v. Dane Cty.*, 2020 WI 90, ¶ 24, 394 Wis. 2d 602, 951 N.W.2d 556. WEC issued at least two guidance documents to municipal clerks and election officials in 2020 specifically approving of and discussing best practices for the use of drop boxes for the return of absentee ballots. *See* WEC guidance attached hereto; *Trump v. Wisconsin Elections Comm'n*, 983 F.3d at 923. The Legislature authorized WEC to issue this guidance. *Id.* at 924, 927. WEC need only follow its own precedent to find that Igl complied with state law and dismiss complainant's complaint.

23. Answering paragraph 23 of the Complaint, admits only that Igl allowed electors to return absentee ballots to secured outdoor drop boxes and to designated locations as permitted by statute and WEC direction, and that ballots were cast at voting locations. As to all remaining allegations, denies.

The Wisconsin Legislature delegated authority to WEC to interpret and enforce Wis. Stat. Chs. 5-10 and 12, election laws other than those related to campaign financing. Wis. Stat. § 5.05;

State ex rel. Zignego v. Wisconsin Elections Comm'n, 2021 WI 32, ¶ 18, 396 Wis. 2d 391, 957 N.W.2d 208; *Trump v. Wisconsin Elections Comm'n*, 983 F.3d 919, 923, 927 (7th Cir. 2020), *cert. denied*, 141 S. Ct. 1516 (2021); *Jefferson v. Dane Cty.*, 2020 WI 90, ¶ 24, 394 Wis. 2d 602, 951 N.W.2d 556. WEC issued at least two guidance documents to municipal clerks and election officials in 2020 specifically approving of and discussing best practices for the use of drop boxes for the return of absentee ballots. See WEC guidance attached hereto; *Trump v. Wisconsin Elections Comm'n*, 983 F.3d at 923. The Legislature authorized WEC to issue this guidance. *Id.* at 924, 927. WEC need only follow its own precedent to find that Igl complied with state law and dismiss complainant's complaint.

24. Answering paragraph 24 of the Complaint, denies knowledge or information sufficient to form a belief as to the relief complainant seeks or that he believes is legally permissible. Affirmatively allege and aver that the order ostensibly sought by complainant is contrary to Wisconsin law as outlined above.

The Wisconsin Legislature delegated authority to WEC to interpret and enforce Wis. Stat. Chs. 5-10 and 12, election laws other than those related to campaign financing. Wis. Stat. § 5.05; *State ex rel. Zignego v. Wisconsin Elections Comm'n*, 2021 WI 32, ¶ 18, 396 Wis. 2d 391, 957 N.W.2d 208; *Trump v. Wisconsin Elections Comm'n*, 983 F.3d 919, 923, 927 (7th Cir. 2020), *cert. denied*, 141 S. Ct. 1516 (2021); *Jefferson v. Dane Cty.*, 2020 WI 90, ¶ 24, 394 Wis. 2d 602, 951 N.W.2d 556. WEC issued at least two guidance documents to municipal clerks and election officials in 2020 specifically approving of and discussing best practices for the use of drop boxes for the return of absentee ballots. See WEC guidance attached hereto; *Trump v. Wisconsin Elections Comm'n*, 983 F.3d at 923. The Legislature authorized WEC to issue this guidance. *Id.*

at 924, 927. WEC need only follow its own precedent to find that Igl complied with state law and dismiss complainant's complaint.

WHEREFORE, this respondent demands that complainant's complaint be dismissed, as the conduct complained of is permitted under Wisconsin Statutes and complainant's requested relief is contrary to law.

Dated this 8th day of July, 2021.

SCHMIDT & WIRTH LAW OFFICES
Attorneys for Respondent Darlene Igl

By: Electronically signed by Joseph M. Wirth
JOSEPH M. WIRTH
State Bar No.: 1012080

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The Respondent, Darlene Igl, Clerk of the Village of Hartland, being first duly sworn under oath, deposes and says that I have reviewed the responses to the Complaint in this matter, as contained in the above paragraphs, and I believe them to be true and correct, and hereby adopt them as my sworn responses to the Complaint.

Darlene Igl
Darlene Igl, Village Clerk, Village of Hartland

Subscribed and sworn to before me
this 8th day of July, 2021.

Deidre Bushey
Notary Public, State of Wisconsin
My commission expires: 5-27-24

