

**STATE OF WISCONSIN  
BEFORE THE ELECTIONS COMMISSION**

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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.

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**VERIFIED SUR-REPLY OF RESPONDENTS CORY MASON AND TARA COOLIDGE**

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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 Sur-Reply to the Reply filed by Martin Prujansky, Mary Imhof Prujansky, Kenneth Brown, Brooke Hesse, and David Giles (collectively, “Complainants”) with the Wisconsin Elections Commission (“Commission”) on August 19, 2021.

**INTRODUCTION**

It is undisputed that the City of Racine, (“City” or “Racine”), accepted grants from the Center for Tech and Civic Life, (“CTCL”), in 2020 for a general election held in November 2020, many months before Complainants filed their Complaint. That Racine had accepted the CTCL grants well before such election is also undisputed. Nevertheless, Complainants delayed filing their

Complaint for an unreasonable time. The Complaint could be dismissed for this reason alone.

However, a more fundamental basis for dismissal exists inasmuch as there is an absence of substance to Complainants' claims. As they have since the commencement of this matter, Racine Respondents, in sur-reply to Complainants' August 19, 2021, Reply Brief, urge the Wisconsin Elections Commission determine there is no probable cause to support the Complaint. Despite painstaking efforts, Complainants have not identified a single unlawful act committed by Racine Respondents. Therefore, the Commission should dismiss the Complaint.

## ARGUMENT

### **I. Allegations Regarding any Actions of the Racine Respondents are not Violations of the Law and do not Support a Finding of Probable Cause.**

Despite no material foundation for Complainants' Complaint, they argue for many dozens of pages, with hundreds of pages of attachments, that because they do not like the fact that Racine Respondents and the cities of Kenosha, Green Bay, Madison, and Milwaukee accepted grants from CTCL that there must be *something* wrong in the evident hope that the Commission will decide there must be *something* to investigate. Although nominally a Complaint about actions in or by Racine, interlacing allegations about Racine with allegations about the cities of Kenosha, Green Bay, Madison, and Milwaukee obviously furthers Complainants' intent to suggest some sort of conspiratorial activity.

Complainants' continuing use of the term "Wisconsin 5 cities" throughout their filings is clear evidence of such obfuscatory intent. The second sentence of the Introduction to the August 19, 2021, Reply, states that the City of Racine is "self-proclaimed" member of the "Wisconsin 5 cities." (August 19, 2021, Reply, p. 1) There still does not seem to be anything within any of the materials by Complainants demonstrating that the Racine Respondents used such term.

Interestingly, however, a word search of the August 19, 2021, Reply, reveals that "Racine" was

used 65 times in the 101-page document; “Wisconsin Five” or “Wisconsin 5” were used 249 times. It is also worth noting that the names “Cory Mason” and “Tara Coolidge,” the actual Racine Respondents, appear only in the caption. There is nothing in the entire August 19, 2021, Reply that addresses any of their actions. Again, decisions made and actions taken by officials of any or all of Green Bay, Kenosha, Madison, or Milwaukee are not the decisions and actions of the Racine Respondents.

The argument in the Complainants’ August 19, 2021, Reply continues to be so contorted that is impossible to determine what the Complainants alleges the Racine Respondents did, as opposed to respondents in the complaints regarding Green Bay, Kenosha, Madison, or Milwaukee. There is a fundamental unfairness in refusing to specify the individual allegations against the Racine Respondents.

Any complaint about the Racine Respondents should be required to stand on its own. Contrarily, Complainants’ filings demonstrate that allegations regarding the Racine Respondents do not stand at all.

Further, Complainants have not responded to the argument that the Complaint fails to make a showing of probable cause that the Racine Respondents violated any election law. Beneath the litany of allegations, all of Complainants’ legal arguments center around the acceptance of the CTCL grant funds and how those funds were to be used. Complainants have identified no law that was violated.

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 *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, et al.*, No. 20-C-1487, 2021 WL 179166 (E.D. Wis. Jan. 19, 2021). Complainants ask the Commission to disregard the federal

court's ruling without providing any legitimate rationale that would justify the Commission in so doing. The federal court did not find that the use of the CTCL grant funds alleged in this matter violated federal or state law. The court opined it was a matter for the Legislature to address. *Wisconsin Voters' Alliance at 5-7*. 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.

**II. Respondent Cory Mason is not an Election Official within the meaning of Wisconsin Statutes, so the Complaint does not Establish Probable Cause as to Him.**

As mayor of the City of Racine, Cory Mason is not an election official. Based upon this fact alone, he must be dismissed from the action. See *Trump v. Wisconsin Elections Comm 'n*, 506 F.Supp. 3D, 620, 626 (E.D. Wis. Dec. 12, 2020), *affd*, 983 F.3d 919 (7th Cir. 2020), *cert. denied*, 141 S. Ct. 1516 (2021) (“Under Wisconsin's election statutes, mayors play no formal role in presidential elections.”); WIS. STAT. § 5.06(1) (“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.” (emphasis added)). Thus, he must be dismissed and all claims specific to him must also be dismissed. Because the CTCL grant agreement was signed by him, Complainants’ arguments regarding the propriety of Racine’s acceptance of or the substance of the grant agreement must be dismissed for want of jurisdiction, as they regard an official beyond the WEC’s jurisdiction. If for no other reason, the Complaint must be dismissed for this fundamental failure.

**III. The Complaint was Untimely.**

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.

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.

#### **IV. Complainants Misunderstand Wisconsin Statutes section 7.15.**

Complainants’ arguments regarding Wisconsin Statutes section 7.15 are circular and senseless. Complainants argue that Wisconsin Statutes section 7.15 is a delegation of authority to municipal clerks over elections which usurps the ability of the common council to accept the CTCL grants. Complainants misunderstand the nature of municipal government in Wisconsin. Similarly, the home rule provisions of municipal law clearly anticipate and authorize municipal governments to manage their finances independently, including the authority to apply for, accept and administer grant funds from a variety of sources. A city’s common council is responsible for the funding of a department’s budget, under Wisconsin Statutes section 62.11(5), no matter the source of the funds; the city clerk is responsible for the conduct of an election within a city. Those are separate and distinct duties and one does not supplant the other.

The Wisconsin Legislature has assigned the municipal clerks significant duties, authorities and discretion under Wisconsin law. 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). This statutory scheme also provides a very broad grant of discretionary authority. The undisputed facts in this record demonstrate that Racine’s City Clerk office took appropriate and necessary actions within the scope of its authority to fulfill its responsibilities in administration of the November 2020 election.

**V. Complainant’s Public Policy Argument is Without Merit.**

Once again, Complainants ask the Commission to exceed its authority. Complainants now argue for the first time that the Wisconsin Safe Voters Plan is against public policy, citing case law where courts have declared certain contracts void as against public policy. Whatever the merits of the public policy argument are, the Commission cannot declare a contract void under Wisconsin Statutes section 5.06. The Commission may only address on whether an election official violated state law. Policy determinations are not within the scope of the Wisconsin Elections Commission’s authority.

In any event, 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. Were the state legislature to determine municipalities should not be so permitted, it can make such grant funding illegal in the future. Furthermore, 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-141> (4:40-5: 15).)

## **VI. Complainants' Equal Protection Argument Fails.**

Complainants raise a new legal argument, commencing in their Reply Brief at page 67, that the Wisconsin Safe Voters Plan violates the Equal Protection clause. However, Complainants' argument relies on what activities the City could have undertaken pursuant to the Wisconsin Safe Voters Plan, in theory; not the activities that actually occurred.

Additionally, Complainants' equal protection arguments center on an alleged burden on their voting right. *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 197–98, 128 S. Ct. 1610, 1620–21 (2008) (Stevens, J., lead opinion) (Roberts, C.J., and Kennedy, J., joining); *id.* at 204–05 (Scalia, J., concurring) (joined by Thomas and Alito, JJ); *Anderson v. Celebrezze*, 460 U.S. 780, 782, 103 S. Ct. 1564, 1566 (1983). The Complainants do not allege any actions by the Racine Respondents that infringe their voting rights, so they cannot bring the claim. Furthermore, alleging that the Complainants think their right was infringed, but that they do not know how, certainly falls below the requirement to state probable cause. WIS. STAT. § 5.06(1).

Regardless of the proper level of scrutiny that would apply in properly assessing an equal protection claim, the City certainly had a compelling governmental interest in safely administering elections to reduce the risk of exposure to coronavirus for City residents and election officials and poll workers.

Finally, Complainants cannot properly raise an equal protection claim with respect to voters outside Racine. Any city can only properly act with respect to the people who reside within its borders.

## 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.

The Complaint is fatally deficient. None of the activities in the Wisconsin Safe Voting Plan have been shown to constitute violations of state or federal law, nor have the Complainants provided any actual, verified facts from which a contrary conclusion can be made. No verified facts have shown that the Racine City Clerk delegated her authority or her supervision of the election to an outside party. No verified facts have shown that any of the activities funded by the grant monies had any illegal effect on the outcome of the election. Complainants even included the Mayor of Racine as a Respondent, who is not an election official subject to the procedures or jurisdiction of Wisconsin Statutes section 5.06.

All of Complainants' legal claims fail, including those raised for the first time in their Reply. Complainants have failed to show the Commission why it should not follow and be bound



by the federal court precedent, which already determined that there is no prohibition under state or federal law from accepting the grants. Nor have they showed the Commission why the Commission should usurp the Legislature's prerogative to make public policy and enact sound laws governing our election processes in our state.

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

Dated this 27th day of September, 2021.

Respectfully submitted,

s/ Scott R. Letteney

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VERIFICATION

I, Scott R. Letteney, being first duly sworn upon oath, state that I personally read the above verified Sur-Reply, and that the above Sur-Reply is true and correct based upon my personal knowledge.

Dated September 27, 2021



Scott R. Letteney  
City Attorney, City of Racine  
State Bar No. 1000559

STATE OF WISCONSIN    )  
  )ss.  
COUNTY OF RACINE    )

Subscribed and sworn to before me this 27<sup>th</sup> day of Sept., 2021, by

KAREN J. WIRTZ



Signature  
Notary Public, State of Wisconsin

My commission expires: Feb. 16, 2023