



# Wisconsin Elections Commission

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November 15, 2021

James Sewell  
917 West Lawn Ave.  
Racine, WI 53405

City of Racine  
Clerk/Treasury Manager Tara Coolidge  
730 Washington Avenue  
Racine, WI 53403

**Sent via email:** [sewellja@tds.net](mailto:sewellja@tds.net); [Tara.Coolidge@cityofracine.org](mailto:Tara.Coolidge@cityofracine.org)

Re: In the Matter of: James Sewell v. Theresa Itson Sims et al. (Case No.: EL 21-32)

Dear Mr. Sewell and Ms. Coolidge:

This letter is in response to the verified complaint submitted by James Sewell (“Complainant”) to the Wisconsin Elections Commission (“Commission”), which was filed in reply to actions taken by election officials during the Fall of 2020 General Election in the City of Racine’s 26<sup>th</sup> Ward. The complaint alleges that the City of Racine Clerk and named election inspectors (“Respondents”) violated Sewell and others’ rights under several provisions of Wis. Stat. § 5.85 pertaining to the remaking and marking of duplicated ballots.

Complaints “...shall set forth such facts as are within the knowledge of the complainant to show probable cause to believe that a violation of law or abuse of discretion has occurred or will occur.” Wis. Stat. § 5.06(1). Probable cause is defined in Wis. Admin. Code § EL 20.02(4) to mean “the facts and reasonable inferences that together are sufficient to justify a reasonable, prudent person, acting with caution, to believe that the matter asserted is probably true.”

The Commission has reviewed the complaint. The Respondents’ response was not filed prior to the required deadline (*see* Wisconsin Administrative Code Chapter EL 20), and as such the filing will be given due weight and consideration, or rather a lack thereof. It is of no consequence, however, because the Respondents also admit to a certain level of noncompliance with the requirements of Wis. Stat. § 5.85. The Commission provides the following analysis and decision. In short, the Commission finds that the Complainant did show probable cause to believe that a violation of law or abuse of discretion occurred with relation to the deficient remaking or marking of duplicated ballots under Wis. Stat. § 5.85.

## Complaint Allegations and Response

Mr. Sewell alleges that elections officials and inspectors in Racine Ward 26 did not properly mark duplicated ballots. Specifically, an examination of remade ballots showed that they were not completed as directed by statute:

*Commissioners*

Ann S. Jacobs, chair | Marge Bostelmann | Julie M. Glancey | Dean Knudson | Robert Spindell | Mark L. Thomsen

*Administrator*  
Meagan Wolfe

A careful examination of all of the cast ballot images show none had any markings in the area that should be filled out for remade ballots, see attached ballot with the area that should have been filled out circled. There are 733 ballots with the Clerks initials (TC) marked, but the Inspectors' Statement lists 136 absentee voters. There are 41 ballots with Inspectors' initials, but the Inspectors' Statement implies 38 in person voters (174 minus 136). This implies there were 3 absentee ballots remade with ballots initialed by inspectors, but they were not properly marked as Statutes 5.85(2)(3)(4) and (5) require.

The Response was not timely filed. The WEC completed a Notice of Complaint on May 24, 2021, and the Response was not received by WEC until August 17, 2021. In that document, the Respondents primarily assert various defenses and mitigating factors but do concede the following:

After reviewing the information provided with the Complaint regarding Ward 26 ballots for the November 3, 2020, election, it appears that the numbers provided by the Complainant are correct: There are 41 ballots with inspector's initials and 133 ballots with TC initials. There is a note on page 3 of the inspector's log that indicates 11 ballots were remade. However, page 2 of the inspector' log indicate eight ballots were remade.

Based upon such information, I believe that a person or persons confused remade ballots and spoiled ballots. It appears that three ballots should have been remade, specifically 22-2, 74-2 and 94-1. In retrospect, I believe that if the spoiled ballot folder had been reviewed at the time, it would have shown that eight ballots that were spoiled on election day and then remade by in-person election day officials.

The November 3, 2020, general election was a very high-tempo election, which was complicated by the continuing COVID-19 global public health crisis. More than 32,000 ballots were cast in the City of Racine during that election. I do not remember any election day complaints regarding Ward 26. However, it appears that three ballots were remade on election day and that the ballots were not marked properly.

#### Commission Authority and Role in Resolving Complaints Filed Under Wis. Stat. § 5.06

Under Wis. Stat. §§ 5.05(1)(e) and 5.06(6), the Commission is provided with the inherent, general, and specific authority to consider the submissions of the parties to a complaint and to issue findings. In instances where no material facts appear to be in dispute, the Commission may summarily issue a decision and provide that decision to the affected parties. This letter serves as the Commission's final decision regarding the issues raised by Mr. Sewell's complaint.

The Commission's role in resolving verified complaints filed under Wis. Stat. § 5.06, which challenge the decisions or actions of local election officials, is to determine whether a local official acted contrary to applicable election laws or abused their discretion in administering applicable election laws.

### Commission Findings

The Respondent correctly asserts that Chapter 5 of the Wisconsin Statutes details the processes by which certain non-compliant or overvoted ballots are to be remade. This includes accurate marking and log keeping by elections inspectors. The Complaint does indeed raise probable cause to believe that a violation of law or abuse of discretion occurred with relation to the deficient remaking or marking of duplicated ballots under Wis. Stat. § 5.85 through the evidence submitted. This includes physical records submitted as evidence, documenting the non-compliant processes. However, it is also important to note that the evidence both being considered as part of this decision (*e.g.* the timely filed complaint), and that which is not (*e.g.* the non-timely filed response), acknowledge the non-compliance of Racine elections inspectors and officials. The facts are not materially in dispute, and probable cause is thus established.

### Commission Decision

Based upon the above review and analysis, the Commission finds probable cause to believe that a violation of law or abuse of discretion has occurred with regard to the city's deficiencies in remaking and marking ballots. The Commission orders the Respondent to comply with all requirements contained in Chapter 5 of the Wisconsin Statutes pertaining to marking and remaking ballots during future elections.

### Right to Appeal – Circuit Court

This letter constitutes the Commission's resolution of this complaint. Wis. Stat. § 5.06(2). Pursuant to Wis. Stat. § 5.06(8), any aggrieved party may appeal this decision to circuit court no later than 30 days after the issuance of this decision.

If any of the parties should have questions about this letter or the Commission's decision, please feel free to contact me.

Sincerely,

COMMISSION

A handwritten signature in black ink that reads "Megan L.M. Wolfe". The signature is written in a cursive style with a large, looped 'M' at the beginning.

Meagan Wolfe  
Administrator

cc: Commission Members