

WISCONSIN ELECTIONS COMMISSION

VAN WANGAARD,

Complainant,

No. EL 22-30

v.

TARA COOLIDGE and, CORY MASON,

Respondents.

**VERIFIED RESPONSE OF RESPONDENTS
TARA COOLIDGE AND CORY MASON**

Complainant Van Wangaard filed a Complaint with the Wisconsin Elections Commission (“WEC” or “Commission”), alleging that City of Racine City Clerk Tara Coolidge and Mayor Cory Mason engaged in violations of election law. Separating out the chaff, the Complaint alleges (1) that Respondents provided “false information” (Compl. ¶ 7) about the process for returning absentee ballots and (2) accepted ballots in violation of Wisconsin Statutes section 6.87(4)(b)1.

Complainant’s allegation that Respondents are providing false information or taking impairer actions is based on unsettled law and a court decision that does not apply to Respondents. Contrarily, Respondents’ actions are consistent with a fair interpretation of Wisconsin Statutes, especially when considering federal law. Further, Complainant does not make any specific allegations about absentee ballots received, even accepting Complainant’s reading of the relevant statute. The Complaint must be dismissed.

Anyone paying attention to elections issues in Wisconsin recently knows that there is a question being adjudicated as to the meaning of one sentence in Wisconsin Statutes section

6.87(4)(b)1. That sentence, which refers to a sealed return envelope containing the marked ballot of an absentee elector, reads: “The envelope shall be mailed by the elector, or delivered in person, to the municipal clerk issuing the ballot or ballots.”

Respondents acknowledge that there is a court case currently pending addressing the meaning of that sentence. That case is *Teigen, et al, v. Wisconsin Election Commission*, Waukesha County Circuit Court Case Number 2021 CV 958. A decision was issued by the circuit court in January 2022, which decision was considered by the Wisconsin Court of Appeals thereafter in January 2022, and by the Wisconsin Supreme Court on February 11, 2022.

According to the Order of the Wisconsin Supreme Court in *Richard Teigen v. Wisconsin Election Commission*, No. 2022AP91 (February 11, 2022), plaintiffs there

challenged certain guidance that the Wisconsin Elections Commission (“Commission”) issued on March 31, 2020, and August 19, 2020, pertaining to whether drop-boxes for the collection of absentee ballots are permitted, whether electors are required to mail or deliver their absentee ballots, and other matters. The plaintiffs sought a declaration from the circuit court that the challenged guidance contravenes Wisconsin law, specifically, Wis. Stat. §§ 6.87 and 6.855, as well as an injunction requiring the Commission to cease issuing such guidance. ...

On January 13, 2022, the circuit court conducted a hearing and issued an oral ruling granting the plaintiffs’ motion for summary judgment. The circuit court declared that the Commission's guidance on these matters contravenes the statutes and that the guidance documents constituted administrative rules under Chapter 227, which were invalid because they were not duly promulgated as rules. The court directed the Commission to withdraw the disputed guidance and to advise the clerks, no later than January 27, 2022, that the guidance had been declared invalid. The court then permanently enjoined the Commission from issuing future guidance conflicting with Wis. Stat. §§ 6.87 and 6.855. A written order incorporating this oral decision was entered on January 19, 2022.

Teigen v. WEC, No. 2022AP91, pp. 1-2.

In the written order that had been issued January 19, 2022, the circuit court stated, as to the referenced sentence in Wisconsin Statutes section 6.87(4)(b)1:

(1) an elector must personally mail or deliver his or her own absentee ballot, except where the law explicitly authorizes an agent to act on an elector's behalf, (2)

the only lawful methods for casting an absentee ballot pursuant to Wis. Stat. § 6.87(4)(b)1. are for the elector to place the envelope containing the ballot in the mail or for the elector to deliver the ballot in person to the municipal clerk.

The court of appeals stayed the circuit court's order through February 15, 2022. On February 11, 2022, the Wisconsin Supreme Court declined to further extend the stay.

ARGUMENT

I. Cory Mason is not a Proper Respondent

Mayors of Wisconsin cities are not “election officials” as that term is defined in Wisconsin Statutes section 5.02(4e). Certainly, a mayor is the “chief executive officer” of their city, per Wisconsin Statutes section 62.09(8)(a), responsible for assuring “that all city officers and employees discharge their duties.” However, a mayor is not an “election official.” Further, Complainant has made no supported allegation that Mayor Mason personally engaged in any activity, much less unlawful activity.

The Complaint as to Cory Mason should be dismissed irrespective of any other outcome.

II. Respondents did not Provide False Information on VoteRacine.org.

It is incontrovertible that neither of the Respondents, nor any other employee or official of the City of Racine, was or is a party to the *Teigen* case. The Waukesha County Circuit Court judge did not issue any order to either of the Respondents, nor to any employee or official of the City of Racine. The Waukesha County Circuit Court ordered the Commission to withdraw its previous guidance.¹ The circuit court did not order any other person, including either Respondent or any other employee or official of the City of Racine, to do anything.

Complainant apparently agrees with the Waukesha County Circuit Court that additional words should be added to Wisconsin Statutes section 6.87(4)(b)1, to give it the meaning that Complainant desires. Again, the particular sentence, which refers to the sealed return envelope

¹ On March 31, 2020, WEC has issued a memo stating that “[a] family member or another person may also return [an absentee] ballot on behalf of the voter.”

containing the marked ballot of an absentee elector, reads, “The envelope shall be mailed by the elector, or delivered in person, to the municipal clerk issuing the ballot or ballots.” Complainant would prefer the statute to read “The envelope shall be mailed by the elector, or delivered in person by the elector, to the municipal clerk issuing the ballot or ballots.” (underlined words added based upon Complainant’s presumed preferred interpretation)

Complainant’s preferred interpretation is not supported by a plain reading of the language of the sentence. The Wisconsin Legislature chose to use “by the elector” to modify only the clause “the envelope shall be mailed.” The Legislature did not chose to use “by the elector” to modify the phrase “delivered in person.” The Legislature chose “by the elector” as a limit only on the means of mailing. The Legislature did not say who may deliver a ballot in person to a municipal clerk.

In fact, in another statutory section, the Legislature chose to use a different construction which made clear the process for returning a ballot and by whom. Wisconsin Statutes section 6.86(3) addresses the process for a hospitalized elector in obtaining, making, and returning a ballot by an agent. In such case, per subsection 6.86(3)(c), the statute provides that “[t]he ballot shall be sealed by the elector and returned to the municipal clerk either by mail *or by personal delivery of the agent.*” (emphasis added) That subsection makes very clear that, under these circumstances, a ballot may be returned “by personal delivery of the agent.” Subsection 6.86(3)(c) does not require words to be added to create a desired meaning, because a simple reading provides a plain-language interpretation.

It is clear that, under some circumstances, a ballot may be delivered by a person other than the elector. Wisconsin Statutes section 6.86(3)(c) demonstrably allows an agent to deliver, in person, a ballot for a hospitalized elector. Further, under the Voting Rights Act of 1965, an elector with a disability, or become of other enumerated circumstances, may be assisted by a person

chosen by the elector. “Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter’s choice, other than the voter’s employer or agent of that employer or officer or agent of the voter’s union.” 52 U.S.C. § 10508. That assistance certainly could be for a person to deliver a ballot to the municipal clerk on behalf of the elector.

For nearly two years before the circuit court’s decision in *Teigen*, the Commission’s guidance stated that “[a] family member or another person may also return [an absentee] ballot on behalf of the voter.” That interpretation of the sentence, “The envelope shall be mailed by the elector, or delivered in person, to the municipal clerk issuing the ballot or ballots,” is a reasonable one, which is consistent with a plain-language reading of the statute.

As of this writing, there is *no* interpretation of that portion of Wisconsin Statutes section 6.87(4)(b)1, which carries any precedential value, contrary to the statement on VoteRacine.org that “a ballot can be returned by someone who is not the voter.” The court of appeals did not decide the merits of the law the *Tiegen* case when issuing its stay. The Wisconsin Supreme Court has not yet addressed the merits of *Teigen* case. *Teigen v. WEC*, No. 2022AP91, p. 2. With all respect to the honorable judge of the Waukesha County Circuit Court, although “circuit-court opinions may be persuasive because of their reasoning, they are *never* ‘precedential.’” *Raasch v. City of Milwaukee*, 2008 WI App 54, ¶8, 310 Wis. 2d 230, 750 N.W.2d 492. (emphasis in original). The decision of the Waukesha County Circuit Court is not an order with which Respondents are required to comply or even required to consider.

The challenged statement on VoteRacine.org patently is not false.

III. Complainant has Provided no Evidence, nor Made a Specific Allegation, that Respondents Illegally Accepted Ballots.

In an unsupported statement, Complainant alleges that the City of Racine and City Clerk Coolidge “are knowingly and intentionally accepting absentee ballots from individuals who are not the electors who cast that absentee ballot.” (Compl. ¶ 18.) There is nothing in the Complaint describing what ballot or whose ballot was accepted in such way. It is black letter law that bare conclusory statements are insufficient to prove anything. See, e.g., *Driver v. Hous. Auth.*, 2006 WI App 42, ¶ 17, 289 Wis. 2d 727, 741, 713 N.W.2d 670, 677; *State ex rel. Di Salvo v. County Court of Washington County, Branch II*, 79 Wis. 2d 27, 32, 255 N.W.2d 459, 462. The Complaint is deficient with regard to this allegation.

CONCLUSION

Taken as a whole, Complainant’s Complaint does not demonstrate that the “election administration or conduct of elections [by Respondents or either of them] is contrary to law, or [Respondents or either of them have] abused the discretion vested in him or her by law with respect to any such matter.” Wis. Stat. § 5.06. The Complaint should be dismissed.

Dated this 26th day of April, 2022.


Tara Coolidge

County of Racine)
) ss.
State of Wisconsin)

Subscribed and sworn to before me by Tara Coolidge
this 26th day of April, 2022.


Notary Public, State of Wisconsin

My Commission Expires:



Dated this 26th day of April, 2022.

Respectfully submitted,

s/ Scott R. Letteney

Scott R. Letteney

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