

**State of Wisconsin
Before The Elections Commission**

IN THE MATTER OF THE COMPLAINT OF:

JUSTIN GAVERY,

Complainant,

v.

CASE NO. EL 26-58

MARICHA HARRIS

and

PAULINA GUTIÉRREZ,

Respondents.

COMPLAINANT’S REPLY

Complainant, by and through undersigned counsel, replies to the response of Ms. Maricha Harris and Ms. Paulina Gutiérrez dated September 30, 2026 (“Response” or “*Resp.*”), as follows:

INTRODUCTION

In its Response, the Milwaukee Election Commission (“MEC”) says two things that cannot both be true. It calls its election-night reporting failure “a technical violation of a timing requirement” and at the same time it denies “that any violation of Wisconsin law or any abuse of discretion occurred.” *Resp.*, pp. 5, 8. The first is an admission. The second is the position that the City of Milwaukee has taken after every failure: attribute the problem to human error and treat that label as the end of the matter, as though a mistake, once named, turns the law into a technicality.

Milwaukee also says the Complaint filed in this matter (“Complaint” or “*Compl.*”) improperly airs “grievances of past elections.” *Resp.*, p. 2. The past *is* the point. MEC has consistently failed to deliver timely results without incident. Each time the explanation was human error, each time the promise was better procedures, and each new election brought a new failure. The record here follows the same pattern. On Count I, MEC’s own tabulator logs contradict its Executive Director’s sworn timeline. *Gutiérrez Decl.*, ¶¶ 12–13.¹ On Count II, its Executive

¹ The Declaration of Paulina Gutiérrez dated September 30, 2026, and attached to MEC’s Response is referred to herein as “*Gutiérrez Decl.*”

Director cannot substantiate after a “diligent search” that the basic required notice of Central Count was ever prepared, let alone posted, *Gutiérrez Decl.*, ¶ 24, while its Deputy Director says it was, on information and belief alone. *Harris Decl.*, ¶ 10.² The evidence that would settle the question was, in their words, “removed.” *Id.* Either the record exists and MEC has not produced it, or it discarded an election notice after the election, long before the one-year period in Wis. Stat. § 7.23(1)(j) ran. *See also* Wis. Stat. § 7.24 (directing the retention of “all election materials until destruction or other disposition is authorized under s. 7.23”). On Count IV, MEC admits it blocked observers’ view in various ways in prior elections and has now built “more permanent barriers” to further obstruct public access to Central Count, even areas where it admits absentee ballot certificate envelopes are handled on Election Day. *Gutiérrez Decl.*, ¶¶ 28–29.

This is not just about one bad night. Milwaukee’s Central Count has a demonstrably poor record. It admits at least two more violations of Wisconsin election law in its Response; and it continues to flout the requirement for timely reporting of results. Resources are not the problem. Milwaukee is the only municipality with a board of election commissioners, Wis. Stat. § 7.20, with hundreds of workers, a large full-time staff, and taxpayer funds of \$6,147,509 in 2026 alone.³ At best this record reflects acute incompetence permitted to continue uncorrected. At worst it reflects willful disregard for the law. The Wisconsin Elections Commission (“WEC”) must recognize that the *status quo* is unacceptable; accountability is required, and an order confirming violations of law and abuses of discretion is necessary to hold MEC and its staff accountable.

Without an order, nothing MEC has promised for November is enforceable, and the next failure will be explained the way this one was. Every time WEC chooses to “let it lay,”⁴ Milwaukee’s elections will remain a national embarrassment.

² The Declaration of Maricha Harris dated September 30, 2026, and attached to Milwaukee’s Response is referred to herein as “*Harris Decl.*”

³ City of Milwaukee, Dep’t of Admin., Budget & Mgmt. Div., *2026 Plan and Budget Summary* 24 (2026), <https://city.milwaukee.gov/ImageLibrary/Groups/boaBudgetOffice/2026-PLAN-AND-BUDGET-SUMMARY.pdf>.

⁴ Evan Casey, *Milwaukee’s Top Election Official Says Steps Taken to Ensure ‘Human Error’ During Primary Will Not Happen Again*, Wis. Pub. Radio (Sept. 14, 2026), <https://www.wpr.org/news/milwaukes-top-election-official-says-steps-taken-to-ensure-human-error-during-primary-will-not-happen-again>.

ARGUMENT

Threshold Claim: The Complaint Is Timely and Its Scope Proper.

MEC calls this Complaint “inappropriate and untimely,” citing only the first sentence of Wis. Stat. § 5.06(3). *Resp.*, p. 2 n.1. It cites no case, no WEC decision, and no analysis. The second sentence, which it omits, is dispositive: the Legislature wrote one hard deadline into Wis. Stat. § 5.06 and limited it to complaints “relating to nominations, qualifications of candidates or ballot preparation.” This Complaint concerns the return of votes, required election notices, and observer access. MEC asks to extend a time bar to subjects the Legislature excluded from it.

What remains of Wis. Stat. § 5.06(3) is a promptness requirement measured by prejudice to “the rights of any other party,” and MEC makes no showing under it. It identifies no party, no right, and no prejudice.

MEC’s broader premise, that “WEC’s review of this current complaint is limited to Gaverty’s allegations concerning the August 11, 2026 primary partisan election,” misunderstands the remedy. *Resp.*, p. 2. Section 5.06(1) lets an elector ask that an official “be required to conform his or her conduct to the law,” and § 5.06(6) authorizes WEC to so order. That relief is prospective, so the pattern matters: WEC cannot decide whether an order is warranted, or what it must contain, without knowing whether it faces an aberration or a pattern of practice.

MEC puts that question in issue itself. It argues no order should issue because MEC “has taken proactive steps” and “[t]he remedial measures available for this complaint pursuant to Wis. Stat. § 5.06(6) have been accomplished.” *Resp.*, pp. 5, 8. A party that asks WEC to withhold relief on the strength of its promises cannot also forbid WEC from examining its record of failures.

Green Bay showed what such assurances are worth. This year, its clerk assured WEC that she would not issue duplicate ballots again and that procedures were in place to prevent recurrence; in the next election the same clerk issued duplicate ballots again.⁵ Without an enforceable order, violations recur and public confidence erodes.

⁵ See *Sipes v. Jeffreys*, EL 26-12.

Count I: MEC Admits a Violation, and Its Own Sworn Account Proves the Rest.

A. MEC concedes the violation.

MEC calls what happened “a technical violation of a timing requirement.” *Resp.*, p. 5. That is an admission. Section 5.06(1) is written in the disjunctive: it reaches conduct that is contrary to law, or an abuse of discretion. Calling a violation “technical” goes to remedy, not to the threshold. Nor is the cause disputed. Gutiérrez swears that Harris “mistakenly selected and downloaded the audit log rather than the election results files for each of the tabulators.” *Gutiérrez Decl.*, ¶ 15. Five of the nine drives carried no votes. *Id.*, ¶ 14.

B. The deadline ran from tabulation, and MEC missed it on every reading.

Section 7.51(4)(c) requires municipalities to report returns to the county clerk “no later than 2 hours after the votes are tabulated.” MEC measures from the download. *Resp.*, p. 4. The statute measures from tabulation, which MEC’s own Precincts Processed Reports place at 8:41 p.m. *Compl.*, ¶¶ 28, 32. The deadline was 10:41 p.m. MEC’s sworn account misses it three ways:

1. By Gutiérrez’s own account, all nine drives reached the County “around 11:00 p.m.,” *Gutiérrez Decl.*, ¶ 13, so even the four correct drives were late.
2. MEC’s own tabulator logs show the corrected exports on the five affected machines ran from 12:22 a.m. to 12:29 a.m. Complete returns could not have reached the County before then, *at least* 1 hour 48 minutes after the deadline.⁶
3. The County uploaded the City’s results at “approximately 1:00 a.m.” *Gutiérrez Decl.*, ¶ 22. That is 4 hours 19 minutes after tabulation, more than twice the time allowed.

MEC calls this a delay of “approximately one hour.” *Resp.*, p. 4. No paragraph of either declaration says so. Gutiérrez’s own sworn timeline, *Gutiérrez Decl.*, ¶¶ 13, 22, puts two hours between delivery and upload alone.

C. MEC’s “team” is a label, not a fact: Harris did the download alone.

Section 5.86(1) does not ask whether a bipartisan team existed somewhere in the building. It requires that “all duties performed by the employees shall be by teams consisting of an equal number of members of each political party whenever sufficient persons from each party are available.” The point is that officials from both parties perform and check each task. The task

⁶ See *Compl.* Ex. A, MEC Tabulator Logs provided to WEC pursuant to MEC’s August 28, 2026 letter.

here was downloading results from the tabulators, and MEC's only defense is that a bipartisan team existed. *Resp.*, p. 4. The Complaint says otherwise: different officials downloaded different tabulators in different "pods," every tabulator Harris handled was done wrong, and every other tabulator was done right. *Compl.*, ¶¶ 38–40. No other election official assisted Harris with these tasks and MEC offers no evidence to the contrary. *Id.*, ¶¶ 42–43.

Gutiérrez says a team existed that "included" Harris, a Republican poll worker, and a Democratic commissioner. *Gutiérrez Decl.*, ¶ 8. Harris says it "consisted of" the same three. *Harris Decl.*, ¶ 3. Neither says what either member did, places any others at Harris' five tabulators, or says either watched a single selection. In fact, Stephanie Rushing was correctly performing the same duties on three other tabulators. *Compl.*, ¶ 28. Gutiérrez cannot fill the gap; she "stepped away from the download process" as it began. *Gutiérrez Decl.*, ¶¶ 6–7. Harris says only that she "led" the team, *Harris Decl.*, ¶ 3, not that anyone else supervised or assisted her at any of her five tabulators. Section 5.86(1) concerns who *performs* the duties, not who was on a list of "team" members.

MEC asks WEC to believe that a Republican, a Democrat, and the Deputy Director each watched the wrong function selected on five machines in a row and none of them caught it. The simpler explanation, supported by the evidence, is that Harris did the work alone and no one checked.

The statute offers no fallback. MEC does not claim Harris was a specially trained technician, the statute's exception. MEC's own fix is the clearest admission: it is now implementing a "point-and-call verification process . . . allowing others to verify each step as it happens." *Gutiérrez Decl.*, ¶ 23. That is the second set of eyes § 5.86(1) exists to supply. By MEC's own account it was missing on August 11.

D. This was *not* a "technicality."

MEC says the two-hour deadline exists "to prevent an inaccurate or unverifiable return." *Resp.*, p. 4. Accuracy is governed elsewhere, in Wis. Stat. § 7.52(8). Section 7.51(4)(c) does one thing: it fixes when the public learns the result, because the gap between tabulation and reporting is where suspicion fills the vacuum. On August 11 it did. With more than 90% of Wisconsin's results in and Milwaukee's absentee ballots poised to decide the Democrats' gubernatorial primary,

NBC's election analyst told a national audience the network was "indefinitely waiting for [Milwaukee] to get their act together."⁷

This was not the first time, and without accountability it will not be the last. MEC says remedial measures "have been accomplished," *Resp.*, p. 5, but its declarant swears only that they have "begun implementing changes." *Gutiérrez Decl.*, ¶ 23. Voluntary measures can be dropped. The relief sought is modest: a written export procedure, independent bipartisan verification of each export, documented training, and proof of filing. MEC's own planned measures show these steps are workable. *Id.* The question is not whether the votes were eventually counted, but whether MEC can be trusted to report them on time going forward.

Count II: MEC Cannot Prove It Gave the Required Notice.

Respondents' entire answer to Count II is that "Gavery obviously had notice and attended in person," paired with the admission that "a record of the posting of the notice of the meeting of the Board of Absentee Ballot Canvassers cannot be located." *Resp.*, p. 5. Neither answers the statute. Section 7.52(1)(a) mandates that MEC "shall give at least 48 hours' notice of any meeting" of the board of absentee ballot canvassers, and it gives "[a]ny member of the public" the right to observe. Wis. Stat. § 7.52(1)(a). ***The duty runs to the public.*** That one experienced observer found his way to Central Count on August 11 does not excuse MEC's failure to notify everyone else.

MEC's own officials cannot say the notice was given or ever existed. Gutiérrez swears that, "[f]ollowing a diligent search," she "ha[s] not been able to substantiate" that notice was posted on MEC's Election Notices page "or posted in any other fashion." *Gutiérrez Decl.*, ¶ 24. Respondent Harris, in a declaration signed the same day, says only "[u]pon information and belief" that it was. *Harris Decl.*, ¶ 10. A belief is not a record, and the official who holds the duty could not find one.

Nor is the missing record a mystery. MEC says it removes each election's notices folder from its website after the election, and it identifies no retained copy. *Gutiérrez Decl.*, ¶ 26; *Harris*

⁷ Alexander Shur, *How Human Error in Milwaukee Delayed Election Night Results*, CAP. TIMES (Aug. 12, 2026) (republished from Votebeat), https://captimes.com/news/elections/how-human-error-in-milwaukee-delayed-election-night-results/article_9316c2df-8852-4ff8-9aac-322abdc0412e.html.

Decl., ¶ 10. But a notice posted to MEC’s website or Google Drive folder leaves upload timestamps, version history, and administrator audit logs, and MEC offers none of them. Wisconsin law contemplates that election notices be kept for a year after the election. Wis. Stat. § 7.23(1)(j). MEC cannot prove it gave the notice, and asks WEC to resolve that failure in its favor. WEC should decline, find that the probable cause standard of Wis. Admin. Code § EL 20.02(4) is met, and order MEC to retain and file proof of each required election notice.

Count III: MEC Met the Statutory Minimum; Not the Public’s Expectations.

MEC published notice of the August 1, 2026 public test of its tabulators in The Daily Reporter on July 30, 2026. *Resp.*, p. 6; *Gutiérrez Decl.*, ¶ 25 & Ex. A; *Harris Decl.*, ¶ 8. Complainant acknowledges that publication and does not press Count III as an independent violation of the newspaper-publication requirement of Wis. Stat. § 5.84(1).

What remains is narrower, and MEC has not answered it. The published notice ran in a column of probate and other legal notices. *Gutiérrez Decl.*, Ex. A. MEC’s own Election Notices page, titled “Official Election Notices,” directs the public to “view official election notices.”⁸ That is where an elector or other observer who wanted to attend the test, which must be open to the public, Wis. Stat. § 5.84(1), would look. MEC’s officials say only, “[u]pon information and belief,” that the notice was also posted there. *Gutiérrez Decl.*, ¶ 26; *Harris Decl.*, ¶ 9. MEC produces no copy, screenshot, or upload record, and says it then removed the folder. *Id.* As with Count II, MEC cannot show the notice was ever posted, and an elector relying on the page Milwaukee holds out as official would have had no notice of the test and no opportunity to attend.

Complainant does not ask WEC to find a statutory violation on this count. Complainant asks for a modest, forward-looking order: that MEC post each statutory notice on its official election notices page when it is published, keep each election’s notices retrievable for at least the one year contemplated by Wis. Stat. § 7.23(1)(j), and file proof of publication and posting for the November 3, 2026 General Election.

⁸ Milwaukee Election Comm’n, *Official Election Notices*, City of Milwaukee, <https://city.milwaukee.gov/election/ElectionInformation/ElectionNotices> (last visited Oct. 6, 2026).

Count IV: MEC Used the Discretion WEC Left It to *Reduce Observation*.

A. Each election, more obstruction.

The pattern is documented, and MEC's officials admit the steps taken. Observers once could see into the windows of the "Secure Ballot Room" and nearby offices, as admitted in *Kopplin*. *Kopplin v. Gutiérrez*, EL 25-64, at 3 (May 7, 2026). By the April 2025 election, those windows were covered and blocked with stacked bins. *Id.* at 2. By August 11, 2026, Gutiérrez admits, "more permanent barriers" had replaced them. *Gutiérrez Decl.*, ¶ 28; *Compl.*, ¶¶ 25–26, 86. MEC calls these changes "irrelevant." *Resp.*, p. 7, n. 8.

They are not. *Kopplin* pointed the other way. WEC found no probable cause on that record, but it noted, as Gutiérrez acknowledged, that "there is nothing preventing additional access," and it "[le]ft the decision to the Respondent regarding whether any portion of absentee ballot sorting and processing may be observed when it is conducted immediately adjacent to activities that are observable." *Id.* at 5. Milwaukee has known since it answered the *Kopplin* complaint in May 2025 that WEC was reviewing these concerns. Yet by August 11, 2026, three months after the *Kopplin* decision, the windows were walls. An official given discretion over public access who uses it to remove access has abused it.

B. The law does not support MEC's reading.

MEC's argument turns on a conspicuous misquotation. In an italicized portion of a block quote, it claims that Wis. Stat. § 7.41(1) protects public "observation of an election and the absentee voting process . . ." *Resp.*, p. 6. The statute says, "the absentee *ballot* voting process." Wis. Stat. § 7.41(1) (emphasis added). The omitted word is not insignificant because the object of observation is how absentee *ballots* and *ballot envelopes* are handled, which is what happens at Central Count. MEC then argues as if "an election" were not in the sentence. Section 7.52(1)(a) gives "[a]ny member of the public" the same right to observe the board of absentee ballot canvassers, and § 5.87(1) provides that "[a]ll proceedings at . . . any central counting location shall be open to the public." A reading that only "voting" is observable would leave § 7.52(1)(a) with nothing to protect, because no one votes at Central Count.

MEC accuses Complainant of omitting a sentence from *Kopplin* while itself omitting the clause that defines its scope. *Resp.*, p. 7. The sentence reads, in full: "However, the initial return of absentee ballots to the Executive Director and the processing and sorting of those ballots, which

are tasks falling under Wis. Stat. §§ 6.86(5) and (6), 6.87(4)(b)1., (6), and (9), and 6.88(1) and (2), are not required to be observable.” *Kopplin*, p. 4. The carve-out is tied to enumerated statutory tasks of a clerk, not of a board of absentee ballot canvassers at a central counting location. Respondents present the remainder as a general rule. Complainant does not concede that the statute permits the discretion *Kopplin* left to MEC, but regardless it abused that discretion to build permanent barriers to observation. Where an official uses discretion to reduce public access, the question is whether the discretion was abused. It was here.

C. The sworn accounts conflict, and WEC should investigate.

Gutiérrez swears the walled-off rooms held only “intake, sorting, and securing absentee ballot certificate envelopes.” *Gutiérrez Decl.*, ¶ 29. The uncontroverted testimony is that officials were handling ballot envelopes in those rooms as part of the board’s election-day activities. *Compl.*, ¶ 87. *Kopplin* drew its line there: the clerk’s initial processing need not be observable, but “ministerial tasks of the board of absentee ballot canvassers” cannot be restricted. *Kopplin*, p. 4. Which side of that line these rooms fall on is a material question of fact.

MEC may point to *Kopplin*’s footnote 1, which says the “decision would not have changed under the new rules.” *Id.*, p. 3 n.1. But that record contained no clear allegation that activity observable under Wis. Stat. § 7.52 occurred in the rooms. *Id.*, p. 4. This record does, and MEC’s contrary account comes only from its own declarant. WEC should resolve the conflict. Wis. Stat. § 5.06(6); Wis. Admin. Code § EL 20.06(1)(a).

D. The November 3 election: a plan for the Italian Community Center.

Milwaukee is moving Central Count to the Italian Community Center, 631 E. Chicago Street, for the November 3, 2026 General Election. A new building can build observation in from the start, or it can carry the walls forward. Complainant asks WEC to order MEC, under Wis. Stat. § 5.06(6), to file with WEC and serve on Complainant by October 27, 2026 a written observation plan for the Italian Community Center that:

1. Provides observation areas with unobstructed sightlines to every room and station where ballot envelopes or ballots are received, reviewed, sorted, opened, tabulated, exported, or packaged for transport or storage;
2. Uses no opaque or permanent barriers between observers and those rooms and stations, and identifies in advance any restricted room, with the reason recorded and sent to WEC under Wis. Admin. Code § EL 4.03(5);

3. Places the results-export stations in view of observers, and requires that a Republican and Democrat election inspector jointly perform and verify each results export, consistent with the relief sought on Count I;
4. Offers Republican and Democrat observers and WEC staff a pre-election walk-through of the site before November 3; and
5. Posts the location, hours, and observer rules on MEC's Official Election Notices page at least 48 hours in advance and keeps all election notices for one year.

Complainant asks for, and the restoration of Wisconsin's reputation requires, the greatest observation consistent with ballot security and orderly election administration.

CONCLUSION

Milwaukee's answer to this Complaint is "mistakes happen," but trust us, we will be better next time. Yet, this is the same election office with nearly a decade of documented failures that also recently saw national ridicule for failing to properly seal its tabulators in the 2024 Presidential Election. It now asks to be believed that next time will be different.

The Legislature did not leave MEC to govern itself. It gave WEC the responsibility for administering election laws, Wis. Stat. § 5.05(1), authority to investigate, *id.* § 5.06(4), and to order an official "to conform his or her conduct to the law." *Id.* § 5.06(6). It should hold MEC accountable so that we are no longer indefinitely waiting for Milwaukee to get its act together.

Complainant asks WEC to find probable cause, investigate, and, before November 3, 2026, order MEC to adopt: (1) a written tabulator export procedure with independent bipartisan verification of each export; (2) documented staff training; (3) retained proof of every statutory notice; and (4) a written observation plan for Central Count at the Italian Community Center.

Dated this 7th day of October 2026.

CHALMERS, ADAMS, BACKER & WALLEN, LLC

/s/ Electronically Signed by Nicholas J. Boerke

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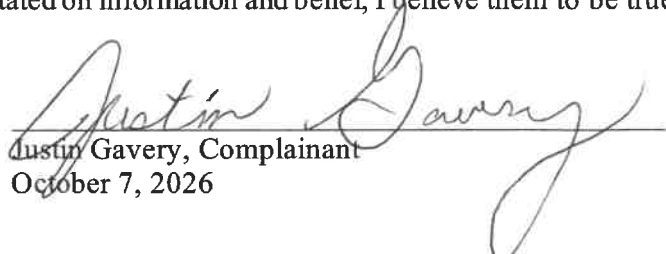
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Attorney for Complainant

[Verification of Reply on following page.]

VERIFICATION

I, Justin Gavery, being duly sworn upon oath, state that I personally read the above Reply and that *to the extent any allegations are contained or restated therein*, they are true and correct based on my personal knowledge and, as to any allegations stated on information and belief, I believe them to be true.


Justin Gavery, Complainant
October 7, 2026

STATE OF WISCONSIN)
) ss.
COUNTY OF Milwaukee)

Subscribed and sworn to before me
by Justin Gavery, this 7th day of October 2026.

[SEAL]


Trey Howicz
Notary Public, State of Wisconsin
My commission 4/6/2030

