

FILED
11-09-2021
Clerk of Circuit Court
Waukesha County
2021CV001620

STATE OF WISCONSIN CIRCUIT COURT WAUKESHA COUNTY

PAUL ARCHAMBAULT,
301 Darlene Drive
Waukesha, WI, 53189

Plaintiff,

and

JANE DOE,
Involuntary Plaintiff,

v.

WISCONSIN ELECTIONS COMMISSION,
Marge Bostelmann, Julie M. Glancey,
Ann S. Jacobs, Dean Knudson,
Robert F. Spindell, Jr.,
Mark L. Thomsen, Commissioners
212 East Washington Avenue,
Third Floor,
Madison, WI 53703,

Case No. _____

Case Code: 30701

JOHN DOES I and II,
In their individual and Official capacities as
Unknown Staff members and employees
Of the Wisconsin Elections Commission,
212 East Washington Avenue,
Third Floor,
Madison, WI 53703,

MEAGAN WOLFE,
In her Individual Capacity and as Administrator
of the Wisconsin Elections Commission,
212 East Washington Avenue,
Third Floor,
Madison, WI 53703,

RICHARD RYDECKI
in his Individual Capacity and as Assistant
Administrator of the Wisconsin Elections Commission,
212 East Washington Avenue,
Third Floor,
Madison, WI 53703,

RENEE TADYCH
in her official capacity as

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Interim Clerk of the City of Brookfield
City Hall
2000 N Calhoun Rd.
Brookfield, WI 53005,

and

CITY OF BROOKFIELD
City Hall
2000 N Calhoun Rd.
Brookfield, WI 53005,

Defendants.

SUMMONS

STATE OF WISCONSIN:

To the above-named Defendants:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within forty-five (45) days of receiving this Summons, you must respond with a written Answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the Complaint. The court may reject or disregard an Answer that does not follow the requirements of the statutes. The Answer must be sent or delivered to the Court, whose address is: **Clerk of Circuit Court, Monica Paz, Waukesha County Courthouse, 515 W. Moreland Boulevard, Waukesha, Wisconsin 53188**, and to Plaintiff's attorneys, whose address is **The Law Office of Kevin M. Scott LLC, 2665 S. Moorland Road, Suite 200, New Berlin, Wisconsin 53151**. You may have an attorney help or represent you.

If you do not provide a proper answer within forty-five (45) days, the court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future and may also be enforced by garnishment or seizure of property.

If you require assistance or auxiliary aids or services because of a disability, call 608-266-4311 (TDD 608-266-4625), and ask for the Court ADA Coordinator.

Dated at New Berlin, Wisconsin, this 9th day of November, 2021.

Electronically filed by Kevin M. Scott, Esq.

Kevin M. Scott (SBN 1036825)
THE LAW OFFICE OF KEVIN M. SCOTT LLC
2665 S. Moorland Road
Suite 200
New Berlin, WI 53151
Telephone: (414) 899-8273
Facsimile: (262) 785-1729
Email: kevin@kevinscottlaw.com

Electronically signed by Joseph W. Voiland, Esq.

VETERANS LIBERTY LAW
519 Green Bay Road
Cedarburg, WI 53012
joseph.voiland@veteranslibertylaw.us
Telephone: 262.343.5397

Attorneys for Plaintiff

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PAUL ARCHAMBAULT,

Plaintiff,

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Involuntary Plaintiff,

v.

WISCONSIN ELECTIONS COMMISSION,
Marge Bostelmann, Julie M. Glancey,
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Mark L. Thomsen, Commissioners,

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JOHN DOES I and II,
Unknown Staff members and employees
Of the Wisconsin Elections Commission,

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MEAGAN WOLFE,
in her individual capacity and
as Administrator of the
Wisconsin Elections Commission,

RICHARD RYDECKI
in his Individual Capacity and as Assistant
Administrator of the Wisconsin Elections Commission,

RENEE TADYCH
in her official capacity as
Interim Clerk of the City of Brookfield,

and

CITY OF BROOKFIELD,

Defendants.

COMPLAINT

This case is brought against the Wisconsin Elections Commission, its Administrators and Staff relating to unlawful action taken by those defendants. Under the guise of “administering” Wisconsin election law, these defendants have evaded the rule-making process that is required by statute and have directed or encouraged others to violate state election law in doing so. Plaintiff seeks an injunction prohibiting the defendants from issuing, publishing or distributing any directive that interprets or implements Wisconsin election law without first complying with the statutorily required rule-making procedures set forth in Wisconsin Statutes Chapter 227.

To that end, Plaintiff Paul Archambault, by and through his attorneys, and as for a Complaint against Defendants the Wisconsin Election Commission, Marge Bostelmann, Julie M. Glancey, Ann S. Jacobs, Dean Knudson, Robert F. Spindell, Jr., Mark L. Thomsen as Commissioners; John Does I and II in their individual capacity and in their official capacity as unknown staff members of the Wisconsin Election Commission; Meagan Wolfe in her individual capacity and as Administrator of the Wisconsin Elections Commission; Richard Rydecki in his Individual Capacity and as Assistant Administrator of the Wisconsin Elections Commission; Renee Tadych in her official capacity as Interim Clerk of the City of Brookfield; and the City of Brookfield, alleges and states as follows:

PARTIES

1. Plaintiff Paul Archambault is an adult resident of the State of Wisconsin. Who resides at 301 Darlene Drive, Waukesha, Wisconsin 53189.
2. Involuntary Plaintiff Jane Doe is an adult resident of the State of Wisconsin who, at all relevant times, has resided in the City of Brookfield.

2. Defendant Wisconsin Elections Commission is a political subdivision of the State of Wisconsin, Marge Bostelmann, Julie M. Glancey, Ann S. Jacobs, Dean Knudson, Robert F. Spindell, Jr. and Mark L. Thomsen are the Commissioners of the Wisconsin Elections Commission, and their address is 212 East Washington Avenue, Third Floor, Madison, WI 53703.

3. Defendants John Does I and II are unknown staff members of the Wisconsin Elections Commission, employed by the Wisconsin Election Commission and their official address is 212 East Washington Avenue, Third Floor, Madison, WI 53703.

4. Defendant Meagan Wolfe is an adult resident of the State of Wisconsin and is employed as the Administrator of the Wisconsin Election Commission. Her official address is 212 East Washington Avenue, Third Floor, Madison, WI 53703.

5. Defendant Richard Rydecki is the Assistant Administrator of the Wisconsin Election Commission. His official address is 212 East Washington Avenue, Third Floor, Madison, WI 53703.

6. Defendant Renee Tadych is and has been the Interim City Clerk for the City of Brookfield, Wisconsin. She is sued in this case in her official capacity, and her official address is City Hall 2000 North Calhoun Road, Brookfield, WI 53005.

7. Defendant City of Brookfield is a political subdivision of the State of Wisconsin with its principal address at City Hall 2000 North Calhoun Road, Brookfield, WI 53005.

JURISDICTION AND VENUE

8. This Court has jurisdiction to hear this case pursuant to Wis. Stat. §§ 806.04 (1) and(2), and section 227.40.

9. Venue in this Court is proper pursuant to Wis. Stat. §§ 801.50(2) and (3).

FACTS

10. Involuntary Plaintiff Jane Doe is Plaintiff's mother.

11. Jane Doe was adjudicated as incompetent by the Waukesha County Circuit Court due to a degenerative brain disorder on June 23, 2015 (the "Guardianship Order").

12. Plaintiff was named Jane Doe's Guardian of the Person in the Guardianship Order.

13. Jane Doe's rights to register to vote or to vote in an election were revoked in full in the Guardianship Order.

14. The Guardianship Order provides that Jane Doe's rights to register to vote or to vote in an election "may not be exercised by any person."

15. Since the Guardianship Order was entered, Plaintiff was unaware of any attempts to assist Jane Doe in registering to vote or to vote in an election until December of 2020.

16. In December of 2020, Plaintiff checked the website known as "My Vote Wisconsin," found at <https://myvote.wi.gov/en-us/> ("My Vote") for information regarding whether votes had been cast on behalf of Jane Doe in any election since her right to vote had been removed in full.

17. Plaintiff believed that Jane Doe had last voted in 2014.

18. Plaintiff discovered that, according to My Vote, after her rights to register to vote or to vote had been removed in full, Jane Doe had cast ballots in the August 11, 2020, Partisan Primary and the November 2020 General Election.

19. Plaintiff never attempted in any way to assist Jane Doe to register to vote or to cast a ballot after her voting rights were removed via the Guardianship Order.

20. Plaintiff never gave anyone permission to assist Jane Doe to register to vote or to cast a ballot after her voting rights were removed via the Guardianship Order.

21. Wis. Stat § 6.875 is entitled “Absentee voting in certain residential care facilities and retirement homes.”

22. Section 6.875(2)(a) provides—

Absentee voting in person inside residential care facilities and qualified retirement homes **shall be conducted by municipalities only in the manner prescribed in this section**. At any residential care facility or qualified retirement home where a municipality dispatches special voting deputies to conduct absentee voting in person under this section, the procedures prescribed in this section are the exclusive means of absentee voting in person inside that facility or home for electors who are occupants of the facility or home.

(emphasis added)

23. Section 6.875(4)(a) provides—

For the purpose of absentee voting in qualified retirement homes and residential care facilities, **the municipal clerk or board of election commissioners of each municipality in which one or more qualified retirement homes or residential care facilities are located shall appoint at least 2 special voting deputies for the municipality**. Except as provided in par. (am), upon application under s. 6.86 (1), (2), or (2m) by one or more qualified electors who are occupants of a home or facility, **the municipal clerk or board of election commissioners of the municipality in which the home or facility is located shall dispatch 2 special voting deputies to visit the home or facility for the purpose of supervising absentee voting procedure by occupants of the home or facility**. The clerk or board of election commissioners shall maintain a list, available to the public upon request, of each home or facility where special voting deputies are dispatched. The list shall include the date and time the deputies intend to visit each home or facility. The 2 deputies designated to visit each qualified retirement home and residential care facility shall be affiliated with different political parties whenever deputies representing different parties are available.

(emphasis added)

24. Section 6.875(4)(at) provides in pertinent part—

...if a qualified elector of a municipality who is an occupant of a residential care facility or qualified retirement home in that municipality requests an absentee ballot for an election and the municipal clerk or board of election commissioners dispatches special voting deputies to that facility or home, the clerk or board of election commissioners shall give the absentee ballot to the special voting deputies who shall personally deliver the ballot to the elector at the time of their visit if they have not finished visiting the facility or home when the request is received.

25. Section 6.875(4)(b) provides in pertinent part—

No individual who is employed or retained, or within the 2 years preceding appointment has been employed or retained, at a qualified retirement home or residential care facility in the municipality, or any member of the individual's immediate family, as defined in s. 19.42 (7), may be appointed to serve as a deputy.

26. On March 12, 2020, Wisconsin Governor Evers issued Executive Order No. 72, declaring a public health emergency resulting from the COVID-19 pandemic in Wisconsin and invoking the Governor's powers under a state of emergency pursuant to Wis. Stat. § 323.10.

27. Also on March 12, 2020, the Wisconsin Election Commission ("WEC") unanimously passed the following motion (the "March 12 Motion")—

In light of Executive Order #72 and directives of the Department of Health Services, the Commission **finds that Special Voting Deputies are "non-essential" individuals who are not permitted to enter nursing homes and other care facilities** without completing a screening process that is not feasible to implement prior to the Spring Election and Presidential Primary. For that election and the May 12, 2020, Special Election in the 7th Congressional District, **the Commission directs that municipalities shall not use the Special Voting Deputy process to serve residents in care facilities and instead shall transmit absentee ballots to those voters by mail.**

(emphasis added)

28. A true and correct copy of the March 12, 2020, Open Meeting Minutes is attached as **Exhibit A**.

29. Defendant Meagan Wolfe authored a Memorandum as Administrator of WEC dated March 13, 2020 (the “March 13 Memorandum”) addressed to Wisconsin Municipal Clerks, the City of Milwaukee Election Commission, the Wisconsin County Clerks, and the Milwaukee County Election Commission (collectively the “Clerks”) with the subject line “COVID-19 Frequently Asked Questions (FAQ’s) and Guidance on Procedural Changes for Care Facility Absentee Voting and Polling Place Relocation”

30. In the March 13 Memorandum Wolfe stated—

In light of Executive Order #72 and directives of the Department of Health Services, the Wisconsin Elections Commission held a special Commission meeting concerning Special Voting Deputy voting in care facilities and the relocation of polling places located in care facilities for the upcoming Spring Election and Presidential Preference Primary and Special Election in the 7th Congressional District. The Commission decided the following:

- **Municipalities shall not use the Special Voting Deputy process to serve residents in care facilities for these two elections and instead shall transmit absentee ballots to those voters by mail. At this point, we are asking clerks to suspend scheduling SVD visits and wait for direction from our office in terms of how to engage with care facilities that are typically served by SVDs to ensure all voters who usually use that process are able to request that a ballot be sent to them.**

(emphasis original)

31. A true and correct copy of the March 13 Memorandum is attached as **Exhibit B.**

32. Executive Order No. 72 and the state of emergency remained in effect for 60 days. Executive Order No. 72 and the state of emergency expired on May 11, 2020, pursuant to Wis. Stat. § 323.10.

33. Wolfe and Defendant Richard Rydecki, in their respective capacities as Administrator and Assistant Administrator of WEC, authored another memorandum dated June 24, 2020 (the “June 24 Memorandum”) addressed to the Clerks with the

subject line “Special Voting Deputies for the August 11, 2020, and November 3, 2020 Elections.”

34. The June 24 Memorandum provided the following directive to the Clerks (the “Directive”)—

The Wisconsin Elections Commission today directed that municipal clerks shall not send Special Voting Deputies (SVDs) into care facilities for the remaining elections in 2020.

The Commission directed that local election officials shall instead mail an absentee ballot to those registered voters who reside in care facilities that are typically served by SVDs if they request an absentee ballot or have an active request on file. Therefore, if you have voters who reside in an SVD facility with an active request on file, you should prepare to mail them a ballot for the August 11 election. Clerks should not attempt to send SVDs into care facilities and should instead fulfill these absentee requests by mail. In regard to the prohibition on sending SVDs to care facilities, the Commission’s motion and guidance is the same for the remaining 2020 elections as it was for the April 7, 2020 election.

(emphasis added)

35. A true and correct copy of the June 24 Memorandum is attached as

Exhibit C.

36. The June 24 Memorandum further provided—

The Governor’s public health order is no longer in effect, but the state and federal agencies that regulate nursing homes and care facilities have issued guidance that non-essential visitors to these facilities, such as SVDs, should be restricted. Therefore, the Commission directed that clerks should not send SVDs into care facilities for the August or November election and should instead mail absentee ballots to residents who request them.

(emphasis added)

37. The June 24 Letter further provided a “Process Overview” for the Clerks to follow regarding registered voters who reside in care facilities that stated—

- Clerks should not send Special Voting Deputies (SVDs) to care facilities to conduct voting with residents.

- Clerks should send absentee ballots, by mail, to care facility residents who request them or residents with active requests on file.
- The regular rules for absentee voting by mail will apply to ballots sent by mail to care facility voters.

38. According to a Memorandum authored by Wolfe and Rydecki in their respective capacities as Administrator and Assistant Administrator of WEC, dated September 25, 2020 (the “September 25 Memorandum”) and addressed to the Clerks, WEC “reaffirmed” the Directive on September 16, 2020 (the “Reaffirmation”).

39. A true and correct copy of the September 25 Memorandum is attached as **Exhibit D**.

40. According to the September 25 Memorandum—

Many nursing home and care facility residents rely on assistance from others to vote. Because most nursing homes and care facilities are not allowing guests at this time, some voters may require assistance from care facility staff to vote. **Facility administrators and staff are able to assist residents in filling out their ballots or certificate envelopes and assist in completing voter registration forms and absentee requests, witness ballots, or sign a special certificate envelope (EL-122sp) if necessary.** WEC staff created two documents, a letter for facility administrators and a training overview document, for you to distribute to care facilities to make absentee voting and registering to vote as smooth as possible for their facility and residents.

(emphasis added)

41. In the September 25 Memorandum, WEC “recommended” to the Clerks that they distribute the “letter for facility administrators” and the “training overview document” to nursing homes and care facilities in their municipality.

42. According to the September 25 Memorandum, the Training Documents were “created” by WEC staff.

43. A true and correct copy of the “letter for facility administrators” (the “Nursing Home Letter”) is attached as **Exhibit E**.

44. A true and correct copy of the “training overview document” referred to in the September 25 Letter (the “Training Document”) is attached as **Exhibit F**. The “Nursing Home Letter” and the “Training Document” will be collectively referred to as the “Training Documents.”.

45. According to the September 25 Letter, the Nursing Home Letter can be updated and sent on the Clerk’s letterhead, and “covers important deadlines and basic information regarding assisting and witnessing ballots.”

46. According to the September 25 Letter the Training Document—

includes training resources regarding assisting voters, witnessing ballots, the EL-122sp Special Certificate Envelope, registering to vote, and requesting an absentee ballot. It also includes template certificate forms (EL-122sp & EL- 122), a registration form (EL-131), and an absentee request form (EL-121) with required fields highlighted.

47. WEC had previously distributed the Nursing Home Letter and the Training Document to “various agencies that work with nursing homes and care facilities.”

48. In a Memorandum dated January 15, 2021 (the “January 15 Memorandum”) authored by Wolfe and Rydecki in their respective capacities as Administrator and Assistant Administrator of WEC and addressed to the Clerks, the authors state that “SVDs will not be dispatched to care facilities or nursing homes to administer voting for the February 16, 2021 Spring Primary” and that “Due to prohibitions of visitors at qualified care facilities, the required two visits by SVDs will not be allowed, and clerks should mail absentee ballots to residents of care facilities with absentee requests on file who would normally be served by SVDs.”

49. A true and correct copy of the January 15 Memorandum is attached as **Exhibit G**.

50. Upon information and belief, the decision by WEC outlined in the January 15 Memorandum was approved by motion made that day at a WEC meeting (the “January 15 Motion”).

51. Upon information and belief, the January 15 Motion stated—

Because of the prohibition on visitors in care facilities, including Special Voting Deputies (SVD), clerks will be unable to accomplish the two in- person SVD visits and should therefore proceed directly to mailing ballots to voters who request them who reside in a care facility that would be otherwise served by SVD’s for the February 16, 2021 primary.

52. Wis. Stat. § 5.05(1) provides that WEC “shall have the responsibility for the administration of chs. 5 to 10 and 12 and other laws relating to elections and election campaigns.”

53. Section 5.05(1) further provides that “[p]ursuant to such responsibility, the commission may” take action as described in subsections (b) through (f).

54. Section 5.05(1)(f) provides that WEC may—

Promulgate rules under ch. 227 applicable to all jurisdictions for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns, other than laws regulating campaign financing, or ensuring their proper administration.

55. Nowhere in section 5.05 is WEC authorized to issue any directive to the Clerks advising them to ignore Wisconsin law, including the statutory mandates found in Wis. Stat. § 6.875.

56. Nowhere in section 5.05 is WEC, its Administrator, its Assistant Administrator, or any WEC staff authorized to issue any official or unofficial document, the purpose of which is to interpret or implement Wisconsin election laws, outside of the rule-making procedure found in Chapter 227 of the Wisconsin Statutes. Despite the lack

of such authority, WEC, its Administrator, its Assistant Administrator, and its Staff have done so repeatedly since March of 2020.

57. In the March 13 Memorandum, WEC and/or Wolfe instructed the Clerks to violate Wisconsin law by stating that they “**shall not use** the Special Voting Deputy process to serve residents in care facilities...and instead **shall** transmit absentee ballots to those voters by mail” (emphasis added).

58. In the June 24 memorandum WEC, Wolfe, and/or Rydecki instruct the Clerks—

- “[M]unicipal clerks **shall not** send Special Voting Deputies (SVDs) into care facilities for the remaining elections in 2020;”
- The Commission directed that local election officials **shall instead** mail an absentee ballot to those registered voters who reside in care facilities that are typically served by SVDs if they request an absentee ballot or have an active request on file;”
- In regard to **the prohibition** on sending SVDs to care facilities, the Commission’s motion and guidance is the same for the remaining 2020 elections as it was for the April 7, 2020 election.

(emphasis added)

59. In the September 25 Memorandum WEC, Wolfe, and/or Rydecki stated that—

Special Voting Deputies (SVDs) **will not be** dispatched to nursing homes and care facilities to administer voting for the remaining elections in 2020. Residents of facilities normally served by SVDs **will instead** be mailed absentee ballots for each remaining 2020 election.

(emphasis added)

60. In the January 15 Memorandum WEC, Wolfe and/or Rydecki instructed the Clerks that—

(WEC) determined on January 15, 2021 that Special Voting Deputies (SVDs) **will not be** dispatched to care facilities or nursing homes to administer voting for the February 16, 2021 Spring Primary. Due to prohibitions of visitors at qualified care facilities, the required two visits by SVDs **will not be allowed**...

(emphasis added)

61. In the Training Documents, WEC, Wolfe, Rydecki and/or WEC staff provide advice on assisting residential care facility residents to register to vote, as well as with voting and returning absentee ballots in the absence of SVDs being dispatched to a care facility.

62. The directives found in the Memoranda and the Training Documents issued by WEC directly instructed the Clerks to violate Wisconsin law by not “dispatch[ing] 2 special voting deputies” to residential care facilities where such procedure is statutorily mandated by section 6.875.

63. Pursuant to Wis. Stat. 5.05(2m)(a) “The commission **shall investigate violations of laws administered by the commission** and may prosecute alleged civil violations of those laws, directly or through its agents under this subsection, pursuant to all statutes granting or assigning that authority or responsibility to the commission.”

(emphasis added)

64. WEC has the power to engage in civil prosecution of any violation of Wisconsin elections law.

65. WEC has the power to refer matters to the District Attorney or the Wisconsin Attorney general in lieu of civil prosecution if there is probable cause to believe that there has been a violation of Wisconsin election laws.

66. As such, WEC was instructing the Clerks, over whom WEC possesses regulatory power, to violate the laws of Wisconsin—which violations WEC is statutorily charged with investigating, prosecuting, and/or referring for criminal prosecution.

67. At no time prior to issuing the Memoranda or the Training Documents, or prior to taking any official action by approving any Motion that had the effect of interpreting or implementing Wisconsin election law, did WEC take any action to begin the process of promulgating a rule per the tenets of Wisconsin Statutes Chapter 227.

68. Upon information and belief, neither Wolfe nor Rydecki are attorneys licensed to practice in the State of Wisconsin.

69. In their individual capacity, neither Wolfe nor Rydecki nor any other WEC staffer has the authority to provide legal advice to anyone regarding compliance with Wisconsin Election laws.

70. In their official capacity, neither Wolfe nor Rydecki nor any other WEC staffer has any authority to provide legal advice or guidance regarding compliance with Wisconsin Election Law except as authorized by a majority vote of the Wisconsin Elections Commission.

71. WEC recently stated in a press release dated October 28, 2021 (the “Press Release”) that, in issuing the Memoranda and Training Documents that directed the Clerks to not dispatch SVDs to residential care facilities, and to violate Wisconsin Election Law, that WEC “did not break the law.”

72. A true and correct copy of the Press Release is attached as **Exhibit H**.

73. Defendant Renee Tadych, in her capacity as interim Clerk for the City of Brookfield, was charged with complying with the statutory mandates of Wisconsin Law, including section 6.875, in regard to any elections held in the City of Brookfield.

74. Upon information and belief, Tadych did not dispatch SVDs to the residential care facility at which Jane Doe resided during the following elections—

- a. April 7, 2020;
- b. August 11, 2020;
- c. November 3, 2020.

75. Tadych's failure to do so violated Wisconsin law.

76. Through the Memoranda, WEC, the governmental body with regulatory power over Tadych, instructed her not to do so.

77. Upon information and belief, Tadych relied on the Memoranda when she failed to comply with section 6.875.

COUNT I: WISCONSIN STATUTE SECTION 227.40
DECLARATORY JUDGMENT

78. Plaintiff realleges and incorporates the allegations of this complaint as if fully set forth herein.

79. The sole authority possessed by WEC in regard to interpreting and applying Wisconsin election laws is to "promulgate rules under ch. 227," as granted by the Legislature via Wis. Stat. § 5.05(1)(f).

80. As such, Plaintiff seeks a Declaratory Judgment that the Wisconsin Elections Commission, its Administrator and its Assistant Administrator exceeded their statutory authority by issuing and/or authorizing the above-described Memoranda and

Training Documents containing instructions and directives to Wisconsin's election officials for the purpose of interpreting and applying Wisconsin election laws.

81. Neither WEC, its Administrator, Assistant Administrator or any staff member has the statutory power to issue "Guidance Documents" as set forth in section 227.112, and as such to the extent that the Memoranda and Training Documents were issued as Guidance Documents, they are invalid as ultra vires acts.

82. Furthermore, a Guidance Document does not have the force of law and does not provide the authority for implementing or enforcing a standard, requirement, or threshold, including as a term or condition of any license.

83. The Memoranda and Training Documents were issued by WEC, Wolfe, Rydecki, and/or WEC Staff with the intent and effect of waiving the statutory requirements found in section 6.875 and therefore were improperly intended to "have the force of law."

84. Therefore, as Guidance Documents the Memoranda are invalid and exceed the statutory authority of WEC.

85. Section 227.11 bestows rule making authority upon Wisconsin governmental agencies, including WEC.

86. Pursuant to section 227.11(1), such rule-making authority is expressly limited to that set forth in chapter 227.

87. Section 227.10(2) expressly provides that "[n]o agency may promulgate a rule which conflicts with state law."

88. The Memoranda and Training Documents, to the extent they were an attempt at rule-making by WEC, are invalid as they violate section 227.10(2) and therefore exceed the statutory authority of WEC.

89. Furthermore, to the extent that they are an attempt at rule-making, the Memoranda and Training Documents were promulgated or adopted without compliance with statutory rule-making or adoption procedures, all in a manner as set forth in Chapter 227.

90. Section 227.40(1) of the Wisconsin Statutes provides: “Except as provided in sub. (2), the exclusive means of judicial review of the validity of a rule or guidance document shall be an action for declaratory judgment as to the validity of the rule or guidance document brought in the circuit court for the county where the party asserting the invalidity of the rule or guidance document resides or has its principal place of business or, if that party is a nonresident or does not have its principal place of business in this state, in the circuit court for the county where the dispute arose. The officer or other agency whose rule or guidance document is involved shall be the party defendant. The summons in the action shall be served as provided in s. 801.11 (3) and by delivering a copy to that officer or, if the agency is composed of more than one person, to the secretary or clerk of the agency or to any member of the agency. The court shall render a declaratory judgment in the action only when it appears from the complaint and the supporting evidence that the rule or guidance document or its threatened application interferes with or impairs, or threatens to interfere with or impair, the legal rights and privileges of the plaintiff. A declaratory judgment may be rendered whether or not the plaintiff has first requested the agency to pass upon the validity of the rule or guidance document in question.”

91. Section 220.40(4)(a) provides—

In any proceeding pursuant to this section for judicial review of a rule or guidance document, **the court shall declare the rule or guidance document invalid if it finds that it violates**

constitutional provisions or exceeds the statutory authority of the agency or was promulgated or adopted without compliance with statutory rule-making or adoption procedures.

(emphasis added)

92. As such, pursuant to section 220.40(4)(a), Plaintiff seeks a declaration that WEC, Wolfe, Rydecki and./or WEC Staff violated Wisconsin law by issuing and distributing the Memoranda and Training Documents, and by taking other official action in violation of statutorily required rule making procedures and which had the intent or effect of encouraging and/or mandating violation of Wisconsin law on the part of persons over whom WEC has regulatory authority.

WHEREFORE, Plaintiff respectfully requests that this Court issue:

- A. A declaration that the Wisconsin Election Commission violated Wisconsin Statutes in issuing the Memoranda and the Training Documents;
- B. A declaration that the Wisconsin Election Commission violated Wisconsin Statutes in taking any official action, the purpose of which was to interpret or implement Wisconsin law, outside of the rule-making procedures found in Chapter 227;
- C. A declaration that, to the extent that the Memoranda are intended as “guidance documents,” they are invalid;
- D. A declaration that, to the extent that the Memoranda are intended as agency rules, they are invalid;
- E. Enter an injunction directing the Wisconsin Elections Commission to refrain from authoring, issuing, and/or distributing any directive or document that has the intent or effect interpreting or implementing Wisconsin election law outside of the agency rule-making procedures found in Wisconsin Statutes Chapter 227, except as otherwise expressly authorized by Wis. Stat. 5.05(1)(b)-(e);
- F. Enter an injunction barring the Wisconsin Elections Commission from authorizing any employee or staffer from issuing, publishing or distributing any directive or document that has the intent or effect interpreting or implementing Wisconsin election law outside of the agency rule-making procedures found in Wisconsin Statutes Chapter 227, except as otherwise expressly authorized by Wis. Stat. 5.05(1)(b)-(e);

- G. Enter an injunction directing the Administrator of the Wisconsin Elections Commission to refrain from issuing, publishing or distributing any directive or document under the purported authority of WEC that has the intent or effect of interpreting or implementing Wisconsin election law that does not comply with the statutorily required rule-making procedures set forth in Wisconsin Statutes Chapter 227, except as otherwise expressly authorized by Wis. Stat. 5.05(1)(b)-(e);
- H. Enter an injunction directing the Assistant Administrator of the Wisconsin Elections Commission to refrain from issuing, publishing or distributing any directive or document under the purported authority of WEC that has the intent or effect of interpreting or implementing Wisconsin election law that does not comply with the statutorily required rule-making procedures set forth in Wisconsin Statutes Chapter 227, except as otherwise expressly authorized by Wis. Stat. 5.05(1)(b)-(e);
- I. Enter an injunction directing all staff of the Wisconsin Elections Commission to refrain from issuing, publishing or distributing any directive or document under the purported authority of WEC that has the intent or effect of interpreting or implementing Wisconsin election law that does not comply with the statutorily required rule-making procedures set forth in Wisconsin Statutes Chapter 227, except as otherwise expressly authorized by Wis. Stat. 5.05(1)(b)-(e);
- J. Enter an injunction against Interim Clerk Tadych and the City of Brookfield prohibiting them from relying on any directives or documents issued, published or distributed by the Wisconsin Elections Commission, its Administrator(s) or staff that were or are not lawfully promulgated under Wisconsin Statute Chapter 227, except as otherwise expressly authorized by Wis. Stat. 5.05(1)(b)-(e);
- K. Grant such further relief as the court deems appropriate, including costs of this action.

Dated at New Berlin, Wisconsin, this 9th day of November, 2021.

Electronically filed by Kevin M. Scott, Esq.

Kevin M. Scott (SBN 1036825)

THE LAW OFFICE OF KEVIN M. SCOTT LLC

2665 S. Moorland Road

Suite 200

New Berlin, WI 53151

Telephone: (414) 899-8273

Facsimile: (262) 785-1729

Email: kevin@kevinscottlaw.com

Electronically signed by Joseph W. Voiland, Esq.

VETERANS LIBERTY LAW

519 Green Bay Road

Cedarburg, WI 53012

joseph.voiland@veteranslibertylaw.us

Telephone: 262.343.5397

Attorneys for Plaintiff