



Wisconsin Elections Commission

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(608) 266-8005 | elections@wi.gov | elections.wi.gov

January 4, 2022

W. Stephen Lush, II
540 West Olin Ave. Apt. 307
Madison, WI 53715

Sent via email: StephenLush2@gmail.com

Re: Complaint EL 22–107, Lush v. Verbick, Filed with the Wisconsin Elections Commission

On December 28, 2022, the Wisconsin Elections Commission (Commission) received a sworn complaint from you naming Deputy Clerk Verbick as the respondent. Wis. Admin. Code § EL 20.04(1) requires that I review each complaint and determine within 10 business days whether the complaint is timely, is sufficient as to form, and states probable cause.

Your complaint is timely and is in proper form, but it fails to meet the probable cause requirements for consideration. Your complaint cites an election law but does not allege facts that could, if true, demonstrate a failure to comply with the law. Therefore, I am returning the complaint to you without prejudice pursuant to Wis. Stat. § 5.06 and Wis. Admin. Code § EL 20.04(1) and (2).

Sufficiency as to Probable Cause

Your complaint form cites Wis. Stat. § 7.15(1)(f), names your deputy municipal clerk as the respondent, and involves the conduct of the November 7, 2022, General Election. For this reason, and due to the absence of anything appearing to be a criminal allegation, I am treating your complaint as a Wis. Stat. § 5.06 compliance review complaint, though Wis. Stat. § 5.06 is not cited on the form. For more information about the kinds of complaints that can be filed with the Wisconsin Elections Commission, please see the Commission's website here: <https://elections.wi.gov/filing-sworn-complaint>.

Wis. Stat. § 7.15(1)(f) allows a municipal clerk to “discharge election officials for improper conduct or willful neglect of duties.” This statute describes a power of a municipal clerk to remove an election official from his or her appointed position due to misconduct, thus creating a vacancy that the clerk would need to fill for future elections. Though your complaint alleges that election officials “sat around and did nothing,” you do not appear to be alleging that any election official acted improperly and further state that “all duties were finished.” Instead, you appear to be alleging that the Chief Inspector, who is not a named respondent, and the deputy clerk did not allow election inspectors to go home as soon as the work was finished.

Since your complaint does not allege that any election inspectors acted improperly or argue that the municipal clerk had a duty to remove any election inspectors from their appointed positions, your complaint could not lead to a finding of probable cause for a failure to comply with Wis. Stat. § 7.15(1)(f).

Wisconsin Elections Commissioners

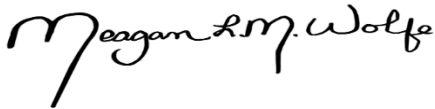
Don M. Millis, chair | Marge Bostelmann | Julie M. Glancey | Ann S. Jacobs | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

Conclusion

I am returning your complaint, without prejudice, as it fails to meet the complaint requirements described in Wis. Stat. § 5.06 and Wis. Admin. Code § EL 20. I have specified the defects in the complaint and provided information needed to cure the defects (cite a statutory basis upon which you allege that the respondent has failed to meet the obligations of the position, describe the alleged failures in detail, and provide any evidence relevant to the allegations). In accordance with Wis. Admin. Code § EL 20.04(2), this correspondence is also being provided to the named Respondent. The Commission now considers this matter closed.

Sincerely,

A handwritten signature in black ink that reads "Megan M. Wolfe". The signature is written in a cursive style with a large initial "M" and a distinct "W" at the end.

Meagan Wolfe
Administrator
Wisconsin Elections Commission

cc: Commission Members
Jim Verbick