

**STATE OF WISCONSIN
ELECTIONS COMMISSION**

COMPLAINT FORM

Please provide the following information about yourself:

Name Dean Knudson
Address 1753 Laurel Avenue, Hudson, WI 54016
Telephone Number 715-220-4946
E-mail dean.knudson@wisconsin.gov

**State of Wisconsin
Before the Elections Commission**

The Complaint of Dean Knudson, Commissioner,
Wisconsin Elections Commission, Complainant(s) against
Meagan Wolfe, Administrator, Respondent, whose
address is 212 East Washington Avenue, Third Floor P.O. Box 7984 | Madison, Wisconsin 53707-7984

This complaint is under Sec 7.70(5) (Insert the applicable sections of law in chs. 5 to 10 and 12 and other laws relating to elections and election campaigns, other than laws relating to campaign financing)

I, Dean Knudson, allege that:

Meagan Wolfe violated Wisconsin Statute 7.70(5)

by preparing and sending a document titled "Certificate

of Ascertainment" to Governor Evers without statutory authority, and sending

the Certificate before the time allowed for petition for a full

statewide recount had passed, and before the time

allowed for filing an appeal of the recount had passed.

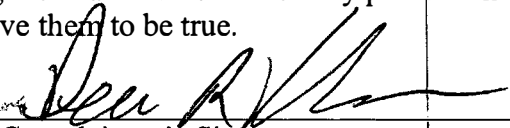
See attached document.

(Set forth in detail the facts that establish probable cause to believe that a violation has occurred. Be as specific as possible as it relates to dates, times, and individuals involved. Also provide the names of individuals who may have information related to the complaint. Use as many separate pages as needed and attach copies of any supporting documentation.)

Date: December 7, 2020


Complainant's Signature

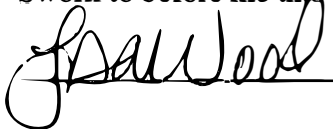
I, Dean Knudson, being first duly sworn, on oath, state that I personally read the above complaint, and that the above allegations are true based on my personal knowledge and, as to those stated on information and belief, I believe them to be true.

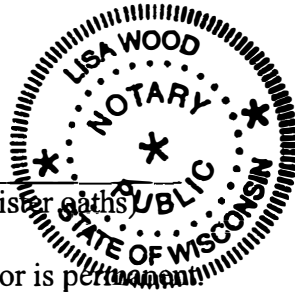

Complainant's Signature

STATE OF WISCONSIN

County of St. Croix,
(county of notarization)

Sworn to before me this 7 day of December, 2020

 20X



(Signature of person authorized to administer oaths)

My commission expires 4-1-23, or is permanent

Notary Public or _____
(official title if not notary)

Please send this completed form to:

Mail: Wisconsin Elections Commission
P.O. Box 7984
Madison, WI 53707-7984

Fax: (608) 267-0500

Email: elections@wi.gov

Sworn Complaint against Meagan Wolfe under Section 5.06

1. I am a resident of Wisconsin and a duly qualified elector in the State of Wisconsin
2. I am a member of the Wisconsin Elections Commission. As a member of the Commission, I have sworn that I will support the constitution of the United States and the constitution of the State of Wisconsin, and will faithfully discharge the duties of said office to the best of my ability.
3. The Wisconsin Elections Commission has the responsibility for administration of chs. 5 to 10 and 12 and other laws relating to elections and election campaigns. Wis Stats 5.05(1)
4. As defined in Section 5.025, "In chs. 5 to 10 and 12, "commission" means the elections commission."
5. The elections commission consists of 6 members who are appointed for terms of 5 years. Wis Stat 15.61
6. The elections commission has the responsibility for the administration of chs. 5 to 10 and 12. Wis Stat 5.05(2w)
7. Any action by the commission, except an action relating to procedure of the commission, requires the affirmative vote of at least two-thirds of the members. Wis Stat 5.05(1e)
8. The commission shall appoint an administrator. The administrator shall appoint such other personnel as she requires to carry out the duties of the commission. The administrator shall perform such duties as the commission assigns to him or her in the administration of chs. 5 to 10 and 12. Wis Stat 5.05(3d)
9. The commission appointed Meagan Wolfe as administrator. Meagan Wolfe was confirmed by the senate to a four year term expiring in 2023.
10. The commission has assigned duties and delegated responsibilities to Administrator Wolfe through adoption of a Delegation of Authority document. At the February 27, 2020 meeting of the elections commission amendments were adopted modifying the Delegation of Authority document previously adopted on January 9, 2018.
11. A copy of the staff memo provided to the commission members for the meeting is attached. In the memo proposed additions are underlined and proposed deletions have strikethrough.
12. One of the amendments was to conform the language of the document to the statutory language in Sec 5.05(1e). The new language requires the administrator to consult with

the chairperson before exercising the delegated authority to determine whether a special meeting is conducted before action is taken.

13. The 2020 Delegation of Authority document does not authorize the administrator or the staff of the elections commission to “prepare a certificate showing the determination of the results of the canvass and the names of the persons elected” as presidential electors. Wis Stat 7.70(5)(b)
14. The elections commission is required by law to “prepare a certificate showing the determination of the results of the canvass and the names of the persons elected” as presidential electors. Wis Stat 7.70(5)(b)
15. A regular quarterly meeting of the elections commission was scheduled for December 1, 2020. The dates for regular meetings of the commission have sometimes been adopted by the commission well in advance based on input from staff regarding election events and deadlines. For example, the January 18, 2020 meeting date was set by commission action in 2018. The December 1, 2020 meeting was set by commission action at the September 24, 2019 meeting. One of the reasons for choosing the date of the December 1, 2020 meeting was to coincide with statutory deadlines related to the fall general election.
16. On November 30, 2020, the day before the regular quarterly meeting of the commission which had been scheduled more than a year in advance, commission staff prepared a certificate showing the determination of the results of the canvass and the names of the persons elected” as presidential electors. The certificate was delivered to Governor Tony Evers who signed the certificate and immediately forwarded the signed certificate to the National Archives in Washington, DC.
17. This action was not approved by an affirmative vote of at least two-thirds of the members of the commission as required by Sec 5.05(1e).
- 18. The commission staff, at the direction and under the supervision of Administrator Wolfe, violated the law by taking this action. This is the first violation alleged in this complaint. Wis Stat 7.70(5)(b); Wis Stat 5.05(1e)**
19. There is no dispute that preparation of the certificate for the governor is a duty of the commission. The preparation of the certificate can not be considered as “procedural” under the limited exception allowed in Sec 5.05(1e). The decision of when to prepare the certificate and when to send it to the governor was a duty given to the commission by law.
20. Even if Administrator Wolfe mistakenly believed she had the independent authority to “prepare a certificate showing the determination of the results of the canvass and the names of the persons elected” as presidential electors, despite there being no mention

of this action in the Delegation of Authority document, there was no reason to take that action after 4pm the day before a regular meeting of the commission.

21. During the November 18, 2020 meeting of the commission, I requested a meeting of the commission to be held prior to taking action on this matter. On November 23, 2020 I wrote to Administrator Wolfe again expressing my request for a meeting prior to sending a certificate to the governor.
22. On November 30, 2020, Administrator Wolfe and commission staff began referring to the certificate required by law to be sent to the governor as a "statement of ascertainment". This term appeared in a press release posted on November 30, 2020 at 2:25pm, "As part of today's determination, a copy of the canvass determination for president and a *statement of ascertainment* will be sent to the Governor's office" ["https://elections.wi.gov/node/7258"](https://elections.wi.gov/node/7258)
23. The press release also quoted Administrator Wolfe stating, "There is no certificate of election in a presidential contest."
24. Approximately 2 hours later the commission staff at her direction prepared and sent to the governor a document titled as a "certificate" of ascertainment. The term certificate of ascertainment does not originate in Wisconsin law but is a term used by federal officials.
25. The statutory framework provided in Sec 7.70(5) clearly intends that the recount including any appeals to the recount should be complete prior to sending the certificate to the governor.
26. On November 29, 2020, Administrator Wolfe wrote to Chairperson Jacobs that it would be premature to prepare a certificate to send to the governor because "because the timeframe for appeal has not passed". Email from Wolfe to Jacobs attached.
27. Wisconsin law requires that when a petition for recount is filed, the governor or commission may not issue a certificate of election until the recount has been completed and the time allowed for filing an appeal has passed, or if appealed until the appeal is decided. Wis Stat 7.70(5)(a)
28. Wisconsin law requires that certificates of election be prepared by the Commission. Wis Stat 7.70(5)(a)
29. Wisconsin law requires "The certificate shall be countersigned by the secretary of state. Wis Stat 7.70(5)(a)
30. For presidential electors, the commission shall prepare a certificate showing the determination of the results of the canvass and the names of the persons elected, and the governor shall sign, affix the great seal of the state, and transmit the certificate by

registered mail to the U.S. administrator of general services. Section 7.70(5)(b)

31. Commission staff prepared a certificate of ascertainment and transmitted the certificate to the governor between 4pm and 5:02pm on November 30, 2020. Email Wilman to Wolfe attached.
32. Governor Evers released a statement in the evening of November 30, 2020 announcing that he had signed a Certificate of Ascertainment to be sent to the National Archives.
33. A copy of the document sent by Evers to the National Archives was already available online in the evening of December 1, 2020. The time stamp on the document posted on the Archives website shows posting at 2:59pm December 1, 2020. Accessed at <https://www.archives.gov/files/electoral-college/2020/ascertainment-wisconsin.pdf>
34. Wisconsin law allows for an aggrieved candidate to petition for a partial recount. In such cases, the law states "the opposing candidate, or any voter or other interested party including a municipality if on a referendum question, may similarly file a petition for recount in any or all of the remaining wards or municipalities in the jurisdiction or district. The petition shall be filed not later than 5 p.m. 2 days after the board of canvassers completes the first recount." Wis Stat 9.01(4)
35. In the current instance the time the period allowed for petition for full recount started upon the determination of the state canvass by the commission chairperson at approximately 3:30pm November 30, 2020. The commission administrator and the commission chairperson stated that the determination of the state canvass started the time for appeal under 9.01(6)(a) because the appeal would be made on the basis of the official result. The same reasoning must apply to Section 9.01(4) because until the recount results were canvassed by the chairperson, and the determination of the chairperson had been made, the interested parties could not know whether they had any reason to ask for a full recount.
36. In the current instance any voter, or other interested party, had the right to petition for a full statewide recount as long as the petition filed not later than 5pm on December 2, 2020.
37. Wisconsin law allows for the appeal of a recount to district court. The time period allowed for the appeal to be filed is 5 business days after the determination of the commission chairperson. The law prohibits the issuance of a certificate of election until the time allowed for an appeal has passed.
38. In Wisconsin under state law the appointment of presidential electors is by "election". The United States Constitution, in Article II, Section 1, Clause 2 grants the authority over this process to the state legislatures. The constitutional wording, "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors"

has long been interpreted to grant maximum flexibility to the state legislatures as to the method of selecting those electors to be appointed.

39. Wisconsin law makes clear that presidential electors are elected. Section 5.10 states *"Although the names of the electors do not appear on the ballot and no reference is made to them, a vote for the president and vice president named on the ballot is a vote for the electors of the candidates for whom an elector's vote is cast."* Under chs. 5 to 12, all references to the presidential election, the casting of votes and the canvassing of votes for president, or for president and vice president, mean votes for them through their pledged presidential electors." Wis Stat 5.10
40. Wisconsin law makes clear that the certificate sent to the federal authorities must be a certificate showing the determination of the results of the canvass and **the names of the persons elected"**. Wis Stat 7.70(5)(b)
41. The certificate of ascertainment prepared by commission staff and sent to Governor Evers constitutes a certificate of election under Wisconsin law because electors are elected in Wisconsin, and state law requires that the governor send a "certificate" showing "the persons elected".
42. Upon information and belief, Administrator Wolfe has relied upon advice from Attorney General Josh Kaul, or individuals working under the supervision of Kaul, in claiming that Section 7.70(5)(a) does not apply to presidential elections because it is "superseded" by Section 7.70(5)(b).
43. Governor Evers had the Secretary of State countersign the Certificate prior to sending to Washington as required by Section 7.70(5)(a). Governor Walker did the same in 2016.
44. **On November 30, 2020, Administrator Wolfe, or her staff at her direction, prepared the certificate showing the election of the Wisconsin electors, and sent the certificate to the governor, prior to the expiration of the time to request a full statewide recount. This is a violation of Sec 7.70(5)(a) as regards to the time period in Sec 9.01(4). This is the second violation alleged in this complaint.**
45. **On November 30, 2020, Administrator Wolfe, or her staff at her direction, prepared the certificate showing the election of the Wisconsin electors, and sent the certificate to the governor, prior to the expiration of the time to appeal the recount. This is a violation of Sec 7.70(5)(a) as regards to the time period in Sec 9.01(6)(a). This is the third violation alleged in this complaint.**
46. In contrast, in 2016 Governor Walker signed the certificate on December 12, 2016 after the time period for appeal of the 2016 recount had expired.

47. A document posted on the website of the National Archives instructs state officials to:
“Send these (Certificate of Ascertainment) to the Archivist as soon as possible **after the general election results for your state are finalized.** This instruction from the Archivist is consistent with our Wisconsin law directing that a certificate shall not be prepared until the time period for recounts and appeals have expired or have been decided. It is also the precedent in Wisconsin.
48. It is important that Administrator Wolfe and future administrators conform their actions to comply with the law.

Willman, Riley P - ELECTIONS

Mon 11/30/2020 5:02 PM

To:

- Magney, Reid - ELECTIONS;
- Wolfe, Meagan - ELECTIONS;
- Rydecki, Richard H - ELECTIONS

RE: Electoral College: Letter from the Archivist

4 MB

Yes, sorry I forgot to copy you on that email, Reid. Attached is what was sent to the Governor's office.

I will leave releasing the certificate of ascertainment up to Meagan.

Riley

Wolfe, Meagan - ELECTIONS

Sun 11/29/2020 12:42 PM

Chair Jacobs,

As a result of our discussion this morning, I would like to outline the following reasons that I feel I am unable to assist with the process of issuing of the certificates of the Presidential election at this time. Namely, because the timeframe for appeal has not passed, the voting equipment audits have not yet been completed as directed by the Commission, and the meeting has not been properly noticed.

Staff is currently receiving certified canvass statements from the counties who conducted a recount. This includes minutes and explanations of changes. Staff will then need time to analyze the data and prepare a determination of the recount; this will include a canvass statement for the Chair's signature and is considered the statement of total votes cast in this contest. This analysis and preparation will take time and should not be rushed if it can be avoided. We are prepared to have this canvass available for the Chair to sign, along with canvass statements for other contests on December 1. Then, as outlined by Wisconsin Statute Sections 9.01(6) and 7.70 the timeline begins for appealing the certified results of the election made by the Chair of the Commission after the recount has been completed. An aggrieved candidate is allowed up to 5 business days to file an appeal of the Chair's determination in circuit court. Until the time period for an appeal of the recount has passed, a certificate of nomination or election is not issued. For presidential electors, the certificate showing the determination of the results of the canvass and the names of the individuals elected must be completed and transmitted on or before December 14, 2020, which is the date of the Presidential electors meeting, Wis. Stat. § 7.70(5)(a) and (b). To ensure any appeals may be timely filed, the Chair should sign the canvass statement certification of the results after the recount by December 1 as the statute prescribes, so that the time period to file an appeal commences. We cannot prepare or issue the certificates of election until the time period for appeal has passed.

On September 25, 2018 the Commission unanimously voted to adopt an updated version of the voting equipment audit program. At that 2018 meeting, the Commission unanimously directed that the number of audits be increased from 3% to 5% and that the audits must be completed by the time that the election is certified. Further, at the Commission's September 16, 2020 meeting, the Commission again unanimously affirmed their directive and timeline and made additional modifications to the audit selection criteria. Separately, at the November 18, 2020 Commission meeting, the Commission further, unanimously voted that the 2020 audits be completed by November 27, 2020 and that the findings be presented to the Commission on December 1, 2020. Unless the Commission votes to modify this directive, that is the timeline that the staff, including me, are required to operate under the current directive. As has been reported to the Commission, 185 of the 190 municipalities selected will complete their audits by November 27. There are five municipalities who cannot complete their audits until November 30 due to scheduling and COVID-related delays. Staff is working tirelessly to process the results of the audit and believes that all audits will be completed by the end of the day on

November 30 and results from the completed audit will be presented to the Commission at their December 1, 2020 meeting.

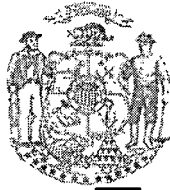
Further, 24 hours public notice has always been the practice of the WEC for the signing of election certifications. The Attorney General Opinion from 2014 (OAG-05-14) regarding canvassing of results says the state canvass can happen outside of a public meeting because the activities are conducted by a single election official and not a collective body. The chair or designee "shall publicly canvass the returns and make his or her certifications and determinations." But that opinion also says that as a matter of agency practice, "public notice of the state-level canvass that conforms to the notice requirements of Wis. Stat. s. 19.84 is routinely given. Although that practice is not required by the open meetings law, it is a reasonable method of ensuring that the public is notified of the precise time and location of the state canvass and serves the important public interest in transparency and accessibility in elections." With very few exceptions, the canvassing and ultimate signing of the certifications of an election by the chair or designee have been noticed as part of a public meeting 24 hours in advance. Transparency is a pillar of elector confidence. I am not persuaded that any deviation from the standard practice of noticing the meeting 24 hours in advance is warranted as the statutory deadline to certify is December 1, 2020 and a meeting has already been noticed for this purpose.

It is my obligation as the non-partisan, apolitical, Administrator to abide by the directives of the Commission and to uphold the integrity of the work completed by our staff and local election officials by remaining impartial in decisions about the use of staff time and resources.

I want to make it exceedingly clear that by reaching the conclusion that staff cannot offer assistance with certification before the audit is complete, that I am in no way condoning the unfounded conspiracies about our election. Nor do I condone any attempts to delay or prevent the certification of the election. I stand behind the results of the 2020 election and behind your desire to ensure that every valid vote in our state is counted and represented as part of the electoral college. The local canvass and certification, the recount, and the voting equipment audits all add additional data points that prove that our election was fair, accurate, secure, and legal. It is my hope that on December 1 that the Commission will afford me the opportunity to highlight the many reasons we have to be confident in the results of Wisconsin's November 3 General Election and that as the Chair certifies the results, under the timeframe provided by statute, that we all unanimously express confidence in the result.

While this the conclusion that I have reached as the agency's Administrator, it is one that was reached based on lengthy discussions of WEC management and legal staff. It is not a conclusion that was reached lightly. The reasons outlined in this email are endorsed by all WEC senior staff copied on this email.

Meagan



Tony Evers

Office of the Governor | State of Wisconsin

**CERTIFICATE OF ASCERTAINMENT
FOR
PRESIDENT, VICE PRESIDENT AND PRESIDENTIAL ELECTORS
GENERAL ELECTION - NOVEMBER 3, 2020**

I, TONY EVERS, Governor of the State of Wisconsin, DO HEREBY CERTIFY that the following is a true listing of the votes cast for the election of Presidential Electors, at a General Election held in the several towns, villages, cities, wards and election districts within the State of Wisconsin, on the Tuesday next succeeding the first Monday in November 2020, being the THIRD day of said month.

That from the certified returns, the total number of votes cast for the election of Electors for President and Vice President of the United States was 3,298,041, of which number:

JOSEPH R. BIDEN and KAMALA D. HARRIS, candidates of the Democratic Party for President and Vice President, and each of their electors, Meg Andrietsch, Shelia Stubbs, Ronald Martin, Mandela Barnes, Khary Penebaker, Mary Arnold, Patty Schachtner, Shannon Holsey, Tony Evers, and Benjamin Wikler received 1,630,866 votes;

DONALD J. TRUMP and MICHAEL R. PENCE, candidates of the Republican Party for President and Vice President, and each of their electors, Carol Brunner, Edward Scott Grabins, Bill Feehan, Robert F. Spindell, Jr., Tom Schreiber, Darryl Carlson, Pam Travis, Kelly Ruh, Andrew Hitt, and Mary Buestrin received 1,610,184 votes;

DON BLANKENSHIP and WILLIAM MOHR, candidates of the Constitution Party for President and Vice President, and each of their electors, Nigel Brown, Dan Herro, Matthew Kloskowski, Colin Hudson, Thomas Harland, Andrew Zuelke, Elizabeth Lindee, Josh Young, Glenn Petroski, and Lorraine Decker received 5,146 votes;

JO JORGENSEN and JEREMY SPIKE COHEN, candidates of the Libertarian Party for President and Vice President, and each of their electors, Darek Raese, Patrick Baird, Stephen Ecker, Kristin Walker, Jeff Kortsch, Brian Defferding, Nathan Gall, Mike Hammond, Kevin Litten, David Grover received 38,491 votes;

BRIAN CARROLL and AMAR PATEL, candidates of the American Solidarity Party for President and Vice President, and each of their electors, Christopher E. Hansen, Thuy Quyen Tran, Steven L. Carlson, Stephen M. Beall, Patrick William Malone, Charles Adams, Fergus E. McKiernan, Riley Martin Drew, David S. Bovee, and Marianne F. Bovee received 5,259 votes;

REGISTERED WRITE-IN CANDIDATES and other individuals received a combined total of 8,095 write-in votes.

CERTIFICATE OF ASCERTAINMENT

November 30, 2020

Page 2

I DO, THEREFORE, HEREBY DETERMINE AND CERTIFY that all the candidates for Presidential Elector on the Democratic Ticket, having received the greatest number of votes, are duly appointed Presidential Electors for the State of Wisconsin:

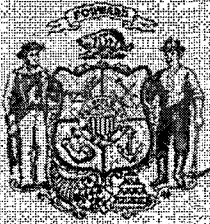
Meg Andrietsch
Shelia Stubbs
Ronald Martin
Mandela Barnes
Khary Pennebaker
Mary Arnold
Patty Schachtner
Shannon Holsey
Tony Evers
Benjamin Wikler

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Wisconsin to be affixed. Done at the Capitol, in the City of Madison, this 30th day of November Two Thousand and Twenty.

TONY EVERS
Governor

By the Governor:

DOUGLAS LA FOLLETTE
Secretary of State



SCOTT WALKER
OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

P.O. Box 7863
MADISON, WI 53707

CERTIFICATE OF ASCERTAINMENT
FOR
PRESIDENT, VICE PRESIDENT AND PRESIDENTIAL ELECTORS
GENERAL ELECTION - NOVEMBER 8, 2016

I, SCOTT WALKER, Governor of the State of Wisconsin, DO HEREBY CERTIFY that the following is a true listing of the votes cast for the election of Presidential Electors, at a General Election held in the several towns, villages, cities, wards and election districts within the State of Wisconsin, on the Tuesday next succeeding the first Monday in November 2016, being the EIGHTH day of said month.

That from the certified returns, the total number of votes cast for the election of Electors for President and Vice President of the United States was 2,976,150, of which number:

DONALD J. TRUMP and MICHAEL R. PENCE, candidates of the Republican Party for President and Vice President, and each of their electors, Kim Travis, Kim Babler, Brian Westrate, Brad Courtney, Kathy Kiernan, Dan Feyen, Jim Miller, Bill Berglund, Steve King and Mary Buestrin received 1,405,284 votes;

HILLARY CLINTON and TIM Kaine, candidates of the Democratic Party for President and Vice President, and each of their electors, Randy Bryce, Gretchen Lowe, Ryan Greendeer, Martha Love, Khary Penebaker, John W. Miller, Michael Childers, Mary Ginnebaugh, Martha Laning and Julilly Kohler received 1,382,536 votes;

DARRELL L. CASTLE and SCOTT N. BRADLEY, candidates of the Constitution Party for President and Vice President, and each of their electors, Nigel Brown, Dino Bohlman, Lorraine Rose Decker, Colin L. Hudson, William Hemenway, Robert E. Desjarlais, Larry A. Oftedahl, Mark H. Gabriel, Michelle J. Gabriel, Jerry Broitzman received 12,162 votes;

GARY JOHNSON and BILL WELD, candidates of the Libertarian Party for President and Vice President, and each of their electors, Jason Lebeck, Patrick Baird, Todd Daniel Welch, Andy Craig, Jeff Kortsch, Brian Defferding, Jim Maas, Kevin Winterstein, Joseph Kexel and Phillip Anderson received 106,674 votes;

JILL STEIN and AJAMU BARAKA, candidates of the Wisconsin Green Party for President and Vice President, and each of their electors, Shanon L. Page, Nelson Z. Eisman, Michael J. White, Tiffany Anderson, Mike McCallister, Jeff Reese, Lawrence E. Dale, Wendy L. Gribben, Cynthia S. Stimmler and Angela M. Aker received 31,072 votes;

CERTIFICATE OF ASCERTAINMENT

December 12, 2016

Page 2

MONICA MOOREHEAD and LAMONT LILLY, candidates of the Workers World Party for President and Vice President, and each of their electors, Bernadine Theresa Jackson, Ron Blascoe, Michael Landers, Babette Grunow, Ian Michel, Lynne Pfeifer, Philip Anderson, Dennis Kelln, John Stoltzenberg and Eric Jefferson received 1,770 votes;

ROCKY ROCQUE DE LA FUENTE and MICHAEL STEINBERG, candidates of the American Delta Party, for President and Vice President, and each of their electors, Joseph Lelac, Brad Engel, John Lloyd, John Ewing, George F. Anderson, Arthur Deleon, Jim A. Lewis, Stewart Smith, Janice Lahey and Ron Jacobs received 1,502 votes;

REGISTERED WRITE-IN CANDIDATES and other individuals received a combined total of 35,150 write-in votes.

I DO, THEREFORE, HEREBY DETERMINE AND CERTIFY that all the candidates for Presidential Elector on the Republican Ticket, having received the greatest number of votes, are duly appointed Presidential Electors for the State of Wisconsin:

Kim Travis
Kim Babler
Brian Westrate
Brad Courtney
Kathy Kiernan
Dan Feyen
Jim Miller
Bill Berglund
Steve King
Mary Buestrin

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Wisconsin to be affixed. Done at the Capitol, in the City of Madison, this twelfth day of December, Two Thousand and Sixteen.

SCOTT WALKER
Governor

By the Governor:

Douglas LaFollette

DOUGLAS LAFOLLETTE
Secretary of State



2020 Electoral College

Instructions and Guidance for State Officials and Points of Contact

Before this year's election, OFR's Legal Staff will contact your Secretary of State's Office or other appropriate election officials to identify designated points of contact for your State.

OFR prepared this material to help you carry out the activities required under 3 U.S.C. 6, 11, 12, and 13.

The term "Governor" includes the Mayor of the District of Columbia and the term "State" includes the District of Columbia.

Before the General Election

Make sure that you are in communication with OFR. If you have not completed the following steps, please contact OFR.

Sign up to receive important email announcements and reminders from OFR.

Duties of State Officials for the Electoral College

Appoint electors

Following the general election, appoint electors following your State's established procedures.

Note: Under the Constitution, State legislatures have broad powers to direct the process for selecting electors, with one exception: Article II, section 1, clause 2 provides that "no Senator, Representative, or Person holding an Office of Trust or Profit under the United States" may be appointed as an elector. Since it is not settled as to whether this restriction extends to all Federal officials regardless of their level of authority or the capacity in which they serve, it is possible that the restriction could disqualify any person who holds a Federal government job from serving as an elector.

Prepare Certificates of Ascertainment

After the general election, your Governor signs no fewer than SEVEN (7) original Certificates of Ascertainment along with TWO (2) certified copies. Alternatively, your Governor may sign NINE (9) original Certificates of Ascertainment.

Federal law does not govern the general appearance of the Certificate of Ascertainment. The format can vary from State to State and from year to year, generally conforming to State law or custom. You can view your State's (and others') recent Certificates in the Results section of this website.

However, Federal law does require that you prepare and authenticate the original Certificates of Ascertainment as follows:

Each of the SEVEN (7) (or NINE (9)) original Certificates MUST meet the following four (4) requirements:

- ☐ List the names of the electors chosen by the voters and the number of votes each received.
- ☐ List the names of all other candidates for elector and the number of votes each received.
- ☐ Be signed by the Governor (auto-pen signatures or stamps are not permitted).
- ☐ Carry the State seal.

Distribute Certificates of Ascertainment

- ☐ Send ONE (1) of the SEVEN (7) original Certificates of Ascertainment along with TWO (2) certified copies (or THREE (3) originals, if NINE (9) were prepared) to the Archivist of the United States:

David S. Ferriero, c/o Office of the Federal Register (F).

Send these to the Archivist *as soon as possible* after the general election results for your state are finalized.

Once we receive them, OFR's Legal Staff will examine the Certificates of Ascertainment for the requirements listed above. If the certificates meet all the requirements, OFR will post a digital copy of the certificate to the Results section of this website.

If the certificates do not contain all the required elements, OFR's Legal Staff will notify your State's designated point of contact. We will work with you to resolve outstanding problems within the prescribed timeline.

- ☐ Retain the other SIX (6) original Certificates of Ascertainment for the meeting of the electors. (You will pair them with the SIX (6) Certificates of Vote executed at the meeting of the electors.)

Decide any controversy or contest concerning the appointment of electors

Resolve any controversy or contest concerning the appointment of electors according to the process and procedures determined by your State's law *at least six days before the meeting of the electors*. (See Title 3, Section 6 of the U.S. Code.)

Hold the meeting of electors

Your State's electors will meet in your State on the same day all the other electors meet in their respective States. Federal law does not permit your State to choose an alternate date for the meeting of electors. However, your State may designate where the meeting will take place. At this meeting, the electors vote for President and Vice President.

If a designated elector is unable to carry out the required duties on this day, follow the laws of your State to fill the vacancy. When appointing a replacement elector, create SIX (6) identical original documents establishing the appointment.

Prepare Certificates of Vote

The electors must execute SIX (6) original Certificates of Vote.

Federal law does not govern the general appearance of the Certificate of Vote. The format can vary from State to State and from year to year, generally conforming to State law or custom. You can view your State's (and others') recent Certificates in the Results section of this website.

However, Federal law requires that you prepare and authenticate the Certificates of Vote as follows:

Each of the SIX (6) original Certificates MUST meet the following requirements:

- ☐ Contain two (2) distinct lists, one for President and one for Vice President that:
 - ☐ List all persons who received electoral votes for President and the number of electors who voted for each person.
 - ☐ List all persons who received votes for Vice President and the number of electors who voted for each person.
- ☐ Not include the names of any persons who did not receive electoral votes.
- ☐ Be signed by all of the electors.

THEN, pair the Certificates as follows:

- ☐ The SIX (6) original Certificates of Ascertainment provided to the electors by the Governor must be paired with the SIX (6) original Certificates of Vote.
- ☐ Each of the SIX (6) pairs must include any documentation regarding the substitution of elector(s).

The electors must seal and certify that each of the SIX (6) pairs of Certificates contain the list of electoral votes of your State for President and Vice President.

Distribute Paired Certificates of Ascertainment and Vote

Distribute the SIX (6) pairs of Certificates to the designated Federal and State officials as follows:

- ☐ Send ONE (1) pair to the President of the Senate,
The Honorable Michael R. Pence.
- ☐ Send TWO (2) pairs to the Archivist of the United States,
David S. Ferriero, c/o Office of the Federal Register (F).
- ☐ Send TWO (2) pairs to the Secretary of State in your State.
- ☐ Send ONE (1) pair to the Chief Judge of the Federal District Court located
where your State's electors met.

Meet Statutory Deadline for Receipt of Certificates

Send the pairs of Certificates as soon as possible after the meeting of electors. The statutory deadline for the designated Federal and State officials to receive the paired Certificates is *9 days after the meeting*.

We strongly recommend that you send the pairs of Certificates either the day of or, if necessary, no later than the morning after, the meeting of electors to minimize delays that could occur during the holiday season.

Once we receive them, OFR's Legal Staff will examine the pairs of Certificate for the required elements listed above. If the certificates meet all the requirements listed above, OFR will post a digital copy of the Certificate of Vote to the Results section of this website.

If the certificates do not meet all the requirements listed above, OFR's Legal Staff will notify your State's designated point of contact. We will work with you to resolve outstanding problems within the prescribed timeline.

Once validated pairs of Certificates have been received by the designated Federal and State officials listed above, your State's Electoral College duties are complete.

OFR Contact Information

Request permission to sign up for OFR's email list by sending an email to election.officials+subscribe@nara.gov from your official government email account.



Wisconsin Elections Commission

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DATE: For the February 27, 2020 Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Meagan Wolfe, Administrator
Wisconsin Elections Commission

SUBJECT: Delegation of Authority to Administrator

Background

At its January 9, 2018 meeting, the Elections Commission approved a Delegation of Authority document to outline the actions and decisions that the Administrator could implement without prior Commission action. The Delegation of Authority is used to maintain and improve the agency's administrative efficiencies for routine decisions and transactions, and also require the Administrator to report actions to the Commission and, in some cases, to consult with the Chair prior to taking action. This memorandum proposes modifications to the current Delegation of Authority for the Commission's consideration.

By statute, the Wisconsin Elections Commission has general authority over the state's election laws. In various provisions of the election laws, the Commission is given a series of specific powers in addition to its general authority. Pursuant to Wis. Stat. § 5.05(3g), the Administrator of the Commission serves as the State's chief election officer, and pursuant to Wis. Stat. § 5.05(3d), the Administrator shall perform such duties as the Commission assigns to her in the administration of the election laws. The Delegation of Authority facilitates the agency's day-to-day management and clarifies the scope of staff's authority to act without prior specific approval of the oversight body. Given the nature of the Commission's oversight of the agency and its meeting schedule, the Delegation of Authority aims to permit the Administrator to effectively manage the daily responsibilities of the agency while maintaining the Commission's role in making policy determinations, setting agency priorities, and directing significant staff initiatives.

The Delegation of Authority was reviewed and approved by the Commission most recently in January 2018. The Commission Chair has requested that the Commission review and approve the document after considering the following changes recommended by the Chair:

- 1) Modify the introductory language in section 1 to require that the Administrator consult with the Commission Chair prior to taking specified actions "to determine whether a special meeting is conducted before action is taken."
- 2) Institute more transparency into the Wis. Stat. § 5.06 complaint process through the following changes:

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

- A. Commission staff shall share filings in Section 5.06 review cases with the Commissioners as they are received and post the filings on the WEC website.
 - B. If time permits, as determined by the Administrator in consultation with the Chair, staff shall provide draft decisions to all Commissioners prior to their issuance. The Administrator and Chair shall determine whether it is feasible to permit Commissioners to submit comments regarding the draft decision given statutory and administrative deadlines, and the amount of time allowed to submit comments.
 - C. If time permits, Commissioners who wish to comment on the draft decision may contact the Administrator but shall not discuss the case with other Commissioners. The Administrator shall determine whether any comments or input provided by Commissioners will be incorporated into the final decision.
 - D. If two or more Commissioners ask the Administrator to request a special meeting on a Section 5.06 complaint, the Administrator will discuss with the Commission Chair such requests and the Chair will determine whether to hold a special meeting to discuss the matter prior to release of the Commission decision.
- 3) Revise the language in section 1 regarding communication with litigation counsel to read: "To communicate with litigation counsel representing the Commission in order to advise the Commission regarding necessary decisions related to Commission litigation. This delegation is intended to require Commission input regarding significant litigation decisions such as the filing of an appeal, but is not intended to require consultation with the Chair or the Commission prior to communicating with litigation counsel regarding routine matters such as feedback pertaining to briefs and other legal filings, discovery procedures and Commission staff's participation in court proceedings."
- 4) Delete the language in section 1 allowing the Administrator, after consultation with the Chair to make a finding pursuant to Executive Order #50, Sec. IV(8) that a proposed administrative rule does not have an economic impact. Such findings would be made by the Commission during the administrative rule promulgation process.
- 5) Move the language in section 2 authorizing of non-appointment of an individual nominated by the political parties to serve as a first-choice nominee election official under Wis. Stat. § 7.30(4)(e) into section 1 requiring prior consultation with the Commission Chair.

A "redlined" version of the January 2018 Delegation of Authority detailing the changes outlined above is set out below. Should the Commission adopt the proposed changes, the "redlined" changes would be accepted, and a final version would be provided to Commission members for reference.

Delegation of Authority (January 2018) with Proposed Modifications

Pursuant to the Commission Administrator's role as agency head and the State's chief election official, the Wisconsin Elections Commission delegates the authority described below to its Administrator. In exercising all delegated authority, the Administrator is required to report, at the Commission meeting immediately following the delegated action, the specifics of the action taken, the basis for taking the action, and the outcome of that action.

1. The following authority is delegated to the Administrator subject to the requirement that before it is exercised, the Administrator consult with the Commission Chair to determine whether a special meeting is conducted before action is taken should be held:
 - To issue compliance review orders under the provisions of Wis. Stat. § 5.06. Prior to compliance review orders being issued, the following actions shall be taken:
 - Commission staff shall provide to Commissioners the parties' filings as they are received and post the filings on the Commission's website.
 - If time permits, as determined by the Administrator in consultation with the Chair, staff shall provide draft decisions to all Commissioners prior to their issuance. The Administrator and Chair shall determine whether it is feasible to permit Commissioners to submit comments regarding the draft decision given statutory and administrative deadlines, and the amount of time allowed to submit comments.
 - If time permits, Commissioners who wish to comment on the draft decision may contact the Administrator but shall not discuss the case with other Commissioners. The Administrator shall determine whether any comments or input provided by Commissioners will be incorporated into the final decision.
 - If two or more Commissioners ask the Administrator to request a special meeting regarding a Section 5.06 draft decision, the Administrator will discuss with the Commission Chair such requests and the Chair will determine whether to hold a special meeting prior to release of the decision.
 - To certify and sign election related documents including candidate certifications, certificates of election, and certifications of election results on behalf of the Commission;
 - To accept, review, and exercise discretion to approve applications for voting system modifications characterized as engineering change orders (ECOs) for systems previously approved for use in Wisconsin;
 - To implement the Commission's determinations regarding sufficiency of nomination papers or qualifications of candidates;
 - To communicate with litigation counsel representing the Commission in order to ~~make~~ timely advise the Commission regarding necessary decisions regarding related to Commission litigation. This delegation is intended to require Commission input regarding significant litigation decisions such as the filing of an appeal, but is not intended to require consultation with the Chair or the Commission prior to communicating with litigation

counsel regarding routine matters such as feedback pertaining to legal briefs and other legal filings, discovery procedures and Commission staff's participation in court proceedings;

- ~~To make a finding pursuant to Executive Order #50, Sec. IV(8) that a proposed administrative rule does not have an economic impact.~~
- To execute and sign contracts on behalf of the Commission, except related to special investigators as provided in Wis. Stat. § 5.05(2m), subject to the further provisions of this paragraph. The Administrator is required to request approval from the Commission for contracts involving a sum exceeding \$100,000, or for purchases from a statewide contract over \$100,000. The Administrator is required to request approval from the Commission prior to posting a Request for Proposal or Request for Bid. In addition, the Administrator may enter into a sole source contract only after obtaining approval from Commission Chair and providing five days' prior notice to the Commission regardless of the dollar amount.
- To authorize the non-appointment of an individual who is nominated by a political party to serve as a first choice nominee election official under the provisions of Wis. Stat. § 7.30(4)(e).

2. The following authority is delegated to the Administrator without the requirement for prior consultation with the Commission Chair before action is taken:

- To exempt municipalities from polling place accessibility requirements pursuant to the provisions of Wis. Stat. § 5.25(4)(a);
- To exempt municipalities from the requirements for the use of voting machines or electronic voting systems pursuant to the provisions of Wis. Stat. § 5.40(5m);
- ~~To authorize the non-appointment of an individual who is nominated to serve as an election official under the provisions of Wis. Stat. § 7.30(4)(e);~~
- To execute and sign contracts on behalf of the Commission, except related to special investigators as provided in Wis. Stat. § 5.05(2m), for contracts involving a sum not exceeding \$100,000, or for purchases from a statewide contract involving sums not exceeding \$100,000.
- To issue written informal advisory opinions pursuant to Wis. Stat. § 5.05(6a) related to recurring issues or issues of first impression for which no formal advisory opinion has been issued.

Additional Considerations

Commission staff believes the following considerations may help provide context to past and current use of the Delegation of Authority and the proposed modifications.

Under the Commission's administrative rules, Section 5.06(1) complaints require that the parties involved submit their filings by specific deadlines. Many complaints involve time sensitive ballot access issues decided by local clerks, which can impact ballot preparation, ballot printing, distribution of ballots to absentee voters and programming of electronic voting equipment by local election officials. In such cases Commission staff encourages the parties to submit filings under shortened timeframes in order to permit a timely decision that may be appealed to court. Several complaints during the 2020 Spring Election cycle required expedited pleadings and decisions, which would have made it impossible to solicit feedback during a meeting of the full Commission. Commission decisions are based upon the legal requirements of relevant statutes, administrative rules and court decisions.

The proposed modifications to the process would allow the Administrator and Chair to determine whether Commissioners should have an opportunity to review draft decisions and provide comments prior to the issuance of the final decision. The current administrative rules permit the Chair to determine whether a Section 5.06 complaint should be considered at a Commission meeting prior to a decision being issued. Wis. Stat. 5.06(7) also permits the Commission to withdraw, modify or correct a decision within a timely period if it find such action to be appropriate.

Regarding the Administrator's communications with litigation counsel, the Department of Justice regularly consults with the Administrator and legal staff regarding litigation activities, including the development of legal arguments, drafting of pleadings and briefs, discovery requirements, witness testimony, and the administrative implications of litigation positions and potential outcomes. The proposed modification is not intended to restrict such routine communications or require prior consultation with the Chair or Commission. The proposed modification does not authorize the Administrator to communicate a position regarding significant litigation decisions, such as whether to appeal a court decision, without prior approval of the Chair and/or full Commission.

The proposed modification also requires the Administrator to consult with the Chair prior to authorizing a municipal clerk to "non-appoint" an individual nominated by a political party as a first-choice nominee to serve as an election official. It is rare that a municipal clerk invokes the non-appointment procedure under Wis. Stat. 7.30(4)(e) but it has happened in rare cases of uncooperative or unqualified nominees. The remaining proposed modification would remove the Administrator's authority to determine that a proposed administrative rule has no economic impacts pursuant to an existing Executive Order. Instead such determinations would be made by the Commission as part of the rulemaking process.

Regarding some of the existing delegation provisions, applications for exemption from accessibility requirements are rare and generally involve last minute construction issues. Permitting a municipality to use paper ballots instead of electronic voting equipment is a fairly routine decision that is predicated on unique circumstances such as the cost of programming electronic voting equipment when there is only one race on the ballot. Post-election certifications are generally administrative in nature, time sensitive and necessary to ensure an orderly transition of leadership following an election. These election-related certifications cannot be completed while a recount or litigation challenging a recount is pending. Wis. Stat. § 7.70 (5)(a). Regarding contract authority,

agency purchases are governed by state procurement requirements, and very few contracts involve an amount exceeding \$100,000.

Finally, Wis. Stat. §5.05(6a) specifically permits the Commission to authorize the Administrator to issue informal written advisory opinions subject to any limitations the Commission deems appropriate. This provision was more relevant under the Government Accountability Board which issued informal advisory opinions related to statutes governing campaign finance, lobbying and the code of ethics for public officials. Elections Commission staff is rarely asked to issue such informal advisory opinions. Each informal advisory opinion must be consistent with applicable formal advisory opinions issued by the Commission or applicable statutes or case law, and the Administrator is required to review any such opinions issued at the next meeting of the Commission. The Commission may choose to issue a formal advisory opinion adopting or modifying the informal advisory opinion, and if the Commission disagrees with an opinion issued by the Administrator, it may withdraw the opinion or request an opinion of the Attorney General.