

**STATE OF WISCONSIN
ELECTIONS COMMISSION**

Amended Complaint/Original 12/7/20
COMPLAINT FORM

Please provide the following information about yourself:

Name Dean Knudson
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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 Ave, Third Floor, PO Box 7984, Madison, WI 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
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 9, 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 9 day of
December, 20 20.


(Signature of person authorized to administer oaths)



My commission expires 10/29/23, 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. The Electoral College meeting date was December 19, 2016 with the safe harbor date 6 days prior. In 2016 Governor Walker sent his certificate of ascertainment just prior to the safe harbor deadline. The statewide recount had been completed and no “controversy or contest concerning the appointment of all or any of the electors” existed at the time he

sent his certificate.

47. In contrast, in 2020 Governor Evers signed the certificate on November 30 when the petitioner for the recount had publicly stated the intention to appeal, when several legal controversies were pending action before courts, and before the time period for requesting a statewide recount had expired.

48. 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.

49. It is important that Administrator Wolfe and future administrators conform their actions to comply with the law.