

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 15

DANE COUNTY

Complaint of

Case No. _____

Jodell Ann Gilligan
2501 Independence Lane
Madison, WI 53704

Complainant,

against

City of Madison and

Maribeth Witzel-Behl
City Clerk—City of Madison
City Clerk's Office
210 Martin Luther King Jr Blvd
Room 103, City-County Building
Madison, Wisconsin 53703

Respondents.

COMPLAINT

For my complaint, the Plaintiff alleges the following.

Parties

1. Plaintiff Jodell Ann Gilligan is an elector residing at 2501 Independence Lane, Madison, Wisconsin 53704.
2. Defendant City of Madison is in the State of Wisconsin.
3. Defendant Maribeth Witzel-Behl is Clerk of City of Madison.

Jurisdiction

4. The Court has jurisdiction under Wisconsin Statutes § 5.06(2) (direct action against election officials).

5. The Court has jurisdiction under Wisconsin Statutes § 806.04 (declaratory judgment act).

6. The Plaintiff has exhausted any administrative remedies by filing a complaint with Wisconsin Elections Commission which was closed without investigation. *See Exhibits A and B.*

7. And, Wisconsin Elections Commission indicated it would not take any more § 5.06 complaints on the subject matter presented. *See Exhibit B.*

COUNT

The City of Madison used unmanned absentee ballot drop boxes in the November 2020 election.

8. The City of Madison used unmanned absentee ballot drop boxes in the November 2020 election and did use or may use them in subsequent elections.

9. The City has no published policy discontinuing the City's use of unmanned absentee ballot drop boxes.

10. The Wisconsin Elections Commission has adopted no rule restricting the use of absentee ballot drop boxes.

The use of unmanned absentee ballot drop boxes has been successfully challenged as being inconsistent with Wisconsin law.

11. The use of absentee ballot drop boxes, outside of narrow exceptions, has been successfully challenged as being inconsistent with Wisconsin law. In a case in the

Wisconsin Circuit Court for Waukesha County, the plaintiffs sued the WEC to challenge 2020 guidance memos that the WEC issued to municipal clerks. Complaint, *Teigen v. Wisconsin Elections Commission*, No. 21-CV-958 (Wis. Cir. Ct. for Waukesha Cnty. June 28, 2021) (under review by Wisconsin Supreme Court). In particular, the plaintiffs challenged a memo that purported to authorize unstaffed ballot drop boxes:

Despite this requirement in the statutes [i.e., the requirement that an absentee ballot either be returned by mail or be returned by the voter “in person, to the municipal clerk.” Wis. Stat. § 6.87(4)(b)(1)], WEC Commissioners sent a memo to municipal clerks dated August 19, 2020, (the “August 2020 WEC Memo”) stating that absentee ballots do not need to be mailed by the voter or delivered by the voter, in person, to the municipal clerk but instead could be dropped into a drop box and that the ballot drop boxes could be unstaffed, temporary, or permanent. (A true and correct copy of the August 2020 WEC Memo is attached hereto as Exhibit B.)

Id. 10.

12. The court granted the plaintiffs summary judgment and declared the use of ballot drop boxes, outside of narrow exceptions, to be inconsistent with Wisconsin law:

For the reasons set forth by the Court on the record at the January 13, 2022 hearing, the Court hereby declares that WEC’s interpretation of state statutes in the Memos is inconsistent with state law, to the extent they conflict with the following: (1) an elector must personally mail or deliver his or her own absentee ballot, except where the law explicitly authorizes an agent to act on an elector’s behalf, (2) the only lawful methods for casting an absentee ballot pursuant to Wis. Stat. § 6.87(4)(b)(1). are for the elector to place the envelope containing the ballot in the mail or for the elector to deliver the ballot in person to the municipal clerk, (3) the use of drop boxes, as described in the Memos, is not permitted under Wisconsin law unless the drop box is staffed by the clerk and located at the office of the clerk or a properly designated alternate site under Wis. Stat. § 6.855.

Order Granting Summary Judgment for Plaintiffs, *Teigen v. Wisconsin Elections Commission*, No. 21-CV-958 (Wis. Cir. Ct. for Waukesha Cnty. January 20, 2020).

Madison's use of unmanned absentee ballot drop boxes is legally unauthorized.

13. For the general election of 2020 and subsequent election cycles, the City of Madison purchased absentee ballot boxes, subsidized by Center for Tech and Civic Life, and placed them in certain city neighborhoods.

14. The City of Madison did not man the absentee drop boxes consistent with statutory mandates as found under § 6.855.

15. Consequently, Madison's use of unmanned absentee drop boxes is legally unauthorized under Wisconsin Statutes § 6.87(4)(b)(1) and § 6.855.

Prayer for Relief

WHEREFORE, the Plaintiff respectfully requests:

- (a) a court order declaring that Madison's use of unmanned absentee drop boxes is legally unauthorized under Wisconsin Statutes § 6.87(4)(b)(1) and § 6.855;
- (b) and, any other relief it deems proper, necessary, or just, consistent with the law and under the circumstances of this case.

Dated: _____, 2022.

Erick G. Kaardal, No. 1035141
Mohrman, Kaardal & Erickson, P.A.
Special Counsel for Thomas More Society
150 South Fifth Street, Suite 3100
Minneapolis, MN 55402
Telephone: (612) 341-1074
Facsimile: (612) 341-1076
Email: kaardal@mklaw.com
Attorneys for the Complainant

