

**BEFORE THE STATE OF WISCONSIN
ELECTIONS COMMISSION**

RICHARD CARLSTEDT, et al.,
Complainants,

Case No. EL 21-24

v.

MEAGAN WOLFE, et al.,
Respondents.

MARTIN PRUJANSKY, et al.,
Complainants,

Case No. EL 21-29

v.

MEAGAN WOLFE, et al.,
Respondents.

BRIAN THOMAS, et al.,
Complainants,

Case No. EL 21-30

v.

MEAGAN WOLFE, et al.,
Respondents.

CYNTHIA WERNER, et al.,
Complainants,

Case No. EL 21-31

v.

MEAGAN WOLFE, et al.,
Respondents.

YIPING LIU, et al.,
Complainants,

Case No. EL 21-33

v.

MEAGAN WOLFE, et al.,
Respondents.

COMPLAINANTS' MEMORANDUM OF LAW

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Introduction

The self-proclaimed “Wisconsin 5 cities” include the Cities of Milwaukee, Madison, Green Bay, Kenosha and Racine. All seek to seek to dismiss the five complaints of the complainants.¹ They make similar arguments: timeliness, lack of sufficiency as to form, no probable cause to believe a violation has occurred, and that the underlying issues are political questions suggesting that the Complainants seek to have the Wisconsin Election Committee exceed its authority by creating new law.² Respondents Meagan Wolfe and Kris Teske also filed motions to dismiss, essentially stating that the complaints are against the Wisconsin 5 cities and do not involve them as a Commission administrator or as a former City Clerk for Green Bay, respectively. Additionally, the Wisconsin 5 cities generally claim that federal court decisions are binding, but they are not. Federal courts have not ruled on the merits of the claims asserted in these proceedings. Moreover, any decision of a federal court is not binding on the Commission. The underlying Wisconsin 5 cities’ complaints concern the influence of private funding from a private corporation and the slippery slope of possible governmental manipulation, involving election administration, funded and guided by private

¹ Milwaukee: Cynthia Werner, Rochar C. Jeffries, Mark Azinger, Dave Bolter and Daniel Joseph Miller, v. Meagan Wolfe, Mayor Tom Barrett, and Jim Owczarski. Madison: Yiping Liu, Kathleen Johnson, Susan N. Timmerman, Mayor Baldwin, and Bonnie Held, v. Meagan Wolfe, Mayor Satya Rhodes-Conway, and Maribeth Witzel-Behl. Green Bay: Richard Carlstedt, Sandra Duckett, James Fitzgerald, Thomas Sladek, Lark Wartenberg, v. Meagan Wolfe, Mayor Eric Genrich, Celestine Jeffries, and Kris Teske. Kenosha: Brain Thomas, Tamara Weber, Matthew Augustine, Kevin Mathewson, Mary Magdalen Moser, Pamela Mundling v. Meagan Wolfe, Mayor John M. Antaramian, Matt Krauter. Racine: Martin Prujansky, Mary Imhof Prujansky, Kenneth Brown, Brook Hesse, and David Giles, v. Meagan Wolfe, Mayor Cory Mason and Tara Coolidge.

² See e.g., Milwaukee Memo. at 6-7, 12, 14, 18, 20; Madison Memo. at 3, 14, 18; Green Bay Memo. at 4, 17, 20, 22; Kenosha Memo. at 4, 18, 32; Racine Memo. at 4, 14, 20

corporations. The private funding was merely the catalyst to entice the Wisconsin 5 cities' officials to invite and accept influences from private corporations on a core governmental function—election administration.

No one should dispute that the conduct of elections are a core governmental function. And, no one should dispute the Commission plays a key role in the conduct of Wisconsin elections as a core governmental function. Here, a Commission investigation is warranted as probable cause is shown when past events and actions of the Wisconsin 5 cities have established a dangerous precedent that, in 2020, allowed private corporations to influence election administrative conduct and that, in the 2022 election and beyond, offers private corporations a perennial crack in the door to enter the sanctity of Wisconsin's election process meant to protect the fundamental right to vote. As one city interim city clerk administering the 2020 federal elections stated, "As far as I'm concerned I am taking all of my cues from CTCL and work with those you [CTCL] recommend." Compl. App. 173.³

Summary of Case

In the 2020 federal elections, there is probable cause under Wisconsin Statutes § 5.06 (1) that the actions of the Wisconsin 5 cities unconstitutionally depart from Wisconsin's

³This memorandum is defending five complaints against each of the Wisconsin 5 cities. For everyone's convenience, the appendixes to each of the serially-filed five complaints had common appendix page numbers 1 through 392. The last of the five filed complaints was against Madison which has appendix page numbers 1 through 871. All of the complaint appendixes have common page numbers, but only Madison's complaint has all 871 pages. So, a copy of the Madison complaint appendix, as well as the other complaint appendixes, is being provided to all counsel for reference. In this memorandum, "Compl. App. ___" refers to the complaint appendix page in the specific complaint against a city or the Madison complaint appendix which has been provided to each counsel—and filed with the Commission.

election law scheme, violate the Equal Protection Clause, and violate Wisconsin state law. Therefore, the Commission should reject the Respondents' arguments for dismissal, but instead should investigate and adjudicate the complainants' claims against Respondents.

First, the Wisconsin 5 cities have unconstitutionally departed from Wisconsin's election law scheme. The Wisconsin 5 cities do not have the legal authority to depart from the Wisconsin's election law scheme which includes federal laws like the U.S. Constitution, and state laws like Wisconsin Statutes, the Commission's administrative rules and the Commission's 250-page Election Administration Manual for Wisconsin Municipal Clerks. The U.S. Court of Appeals for the Seventh Circuit, in a recent 2020 Wisconsin case, suggested that the Electors Clause may apply when Wisconsin public officials have engaged in a "departure" from the state's election law scheme. *Trump v. Wisconsin Elections Commission*, 983 F.3d 919, 927 (7th Cir. 2020), *citing Carson v. Simon*, 978 F.3d 1051, 1059–60 (8th Cir. 2020) (preliminary injunction against Minnesota Secretary of State changing November 2020 absentee ballot receipt deadline).

Specifically, the Wisconsin 5 cities' unconstitutional departure is characterized (1) by the Wisconsin 5 cities jointly applying and accepting an enormous private grant of \$8.8 million for 2020 election administration, (2) by the violative contract provisions in the Wisconsin Safe Voting Plan (WSVP) picking and choosing among groups of similarly situated voters to get-out-the-vote, typically associated with campaigning, and (3) by the ubiquitous involvement of private corporations in the Wisconsin 5 cities' election administration prior to, during and after the election.

Second, the Wisconsin 5 cities are not “permitted to pick and choose among groups of similarly situated voters to dole out special voting privileges.” *Obama for America v. Husted*, 697 F.3d 423, 435 (6th Cir. 2012) (affirming preliminary injunction against Ohio statute authorizing three extra days of in-person voting for military personnel residing in Ohio only as an unconstitutional favoring of a demographic group). In *Bush v. Gore*, the U.S. Supreme Court emphasized that equal protection restrictions apply not only to the “initial allocation of the franchise,” but “to the manner of its exercise” as well. *Bush*, 531 U.S. 98, 104 (2000). The state may not subject voters to “arbitrary and disparate treatment” that “value[s] one person's vote over that of another.” *Id.*

The Wisconsin 5 cities’ WSVP provisions violate the Equal Protection Clause because it contains contract provisions picking and choosing among groups of similarly situated voters for improved in-person and absentee voting access. These privately-funded WSVP provisions do not survive strict scrutiny—the appropriate judicial standard of review for privately-funded municipal election administration in a federal election—because the classifications of voters used by the Wisconsin 5 cities to get-out-the-vote, generally, Wisconsin 5 residents, as opposed to Wisconsinites statewide, and, specifically, Wisconsin 5 cities’ “communities of color” or “historically disenfranchised communities and individuals,” as opposed to other communities and individuals in the Wisconsin 5 cities, are not narrowly tailored to meet a compelling state interest.

Third, the Wisconsin 5 cities have no legal authority to deviate from Wisconsin’s state election law. As previously mentioned, Wisconsin’s state election law consists of Wisconsin Statutes, the Commission’s administrative rules and the 250-page Election Administration

Manual for Wisconsin Municipal Clerks. These statutes, rules and manual clearly identify that the municipal clerks are to have “charge and supervision of elections and registration in the municipality” and that the Commission has the “responsibility” for administration of election law—not the Wisconsin 5 cities’ common councils, Mayors and private corporations. Wis. Stat. §§ 5.05(1), 7.15 (1). The Wisconsin 5 cities have violated Wisconsin’s state election law, usurping the municipal clerks’ and Commission’s authority, by jointly applying and accepting an enormous private grant of \$8.8 million for 2020 election administration, by contract provisions in the WSVP picking and choosing among groups of similarly situated voters for favorable in-person and absentee voting treatment and by ubiquitous involvement of private corporations in election administration prior to, during and after the election.

Statement of Facts

- A. Under federal and Wisconsin state law, the state legislature, the Commission and the municipal clerks, not the cities, nor private corporations, have the authority and responsibility to administer the laws relating to Wisconsin’s federal elections.**

Wisconsin’s election law scheme is based on federal and state law. The Elections Clause of the U.S. Constitution states that the state legislatures and Congress set the conditions for Congressional elections:

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.

U.S. Const., Art. I, § 4, cl. 1. And, the Electors Clause of the U.S. Constitution states that the state legislatures exclusively set the conditions for choosing Presidential Electors:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress.

U.S. Const., Art. II, § 1, cl. 2.

Pursuant to its constitutional authority, the Wisconsin Legislature statutorily empowered the Commission, not the Wisconsin Five cities, nor Center for Tech and Civic Life (CTCL), nor the other private corporations involved, to have “the responsibility for the administration of ... laws relating to elections,” Wisconsin Statutes § 5.05(1). *Trump v. Wisconsin Elections Commission*, 983 F.3d 919, 927 (7th Cir. 2020).

Further, under Wisconsin Statutes § 7.15(1), the municipal clerk has “charge and supervision” of federal elections within a municipality:

- (1) SUPERVISE REGISTRATION AND ELECTIONS. Each municipal clerk has charge and supervision of elections and registration in the municipality...

In Wisconsin, the municipal clerks are provided the Commission’s 250-page Election Administration Manual for Wisconsin Municipal Clerks providing great detail of the rules, regulations and laws (including Wisconsin Statutes § 7.15) pertaining to the city clerk’s responsibilities for planning and conducting elections. The Commission issues the election administration manual, as authorized under Wisconsin Statutes § 7.08 (3), “explaining the duties of the election officials, together with notes and references to the statutes.” *Id.* According to the Commission’s Election Administration Manual for Wisconsin Municipal Clerks, “The municipal clerk’s election duties include, but are not limited to, supervision of elections and voter registration in the municipality, equipping polling places, purchasing and

maintaining election equipment, preparing ballots and notices, and conducting and tracking the training of other election officials.”⁴

In turn, the Commission and its municipal clerks, in their administration of Wisconsin’s elections, are constitutionally obligated to follow the legal conditions set by the state legislature. Wis. Stat. §§ 5.05(1), 7.15(1).

B. Center for Tech and Civic Life gives 86% of its election administration grant funds to the Wisconsin 5 Cities—\$8.8 million—with about \$1.5 million to 190 other Wisconsin municipalities; and, two non-profit corporations have each published 2021 reports complaining about it.

In early 2020, the “Chan Zuckerberg Initiative” donated approximately \$400 million to Center for Tech and Civic Life to fund election administration during the recent 2020 Presidential election.⁵ In spring of 2020, Center for Tech and Civic Life (CTCL) solicited the Mayors of the Wisconsin 5 cities to enter an election administration grant agreement called the “Wisconsin Safe Voting Plan” (WSVP). Resp. App. 146-149.⁶ In July of 2020, CTCL agreed with the Wisconsin 5 cities that it would be transferred \$6.3 million to the Wisconsin 5 cities—Milwaukee, Madison, Green Bay, Kenosha and Racine. Resp. App. 6. That number would grow to about \$8.8 million for those five cities, while another \$1.5 million was allocated to more than 190 Wisconsin municipalities. *Id.* Thus, the Wisconsin 5 cities received 86% of all CTCL grant funds in Wisconsin. Resp. App. 4.

⁴ See <https://elections.wi.gov/sites/elections.wi.gov/files/2021-04/Election%20Administration%20Manual%20%282020-09%29.pdf>, p. 123 (last visited: May 24, 2021).

⁵ “Priscilla Chan and Mark Zuckerberg Increase Support for Safe and Reliable Voting by \$19.5 Million,” Center for Election Innovation & Research (2020). <https://electioninnovation.org/press/chan-zuckerberg-increase-2020-support/>.

⁶ “Resp. App.” refers to the “Complainants’ Response Appendix” which has been served with this response memorandum. Its pages are numbered 1 through 162.

As a preliminary matter, it is important to note that two non-profit corporations have analyzed the Wisconsin 5 cities' acceptance and use of the CTCL moneys and published analytical reports in 2021. Resp. App. 1-27. Both reports are consistent with the complainants' complaints against the respondents. *Id.*

First, the Wisconsin Institute for Law & Liberty (WILL) in a June 9, 2021 report titled "Finger on the Scale: Examining Private Funding of Elections in Wisconsin" had the following "key takeaways":

- Wisconsin Municipalities Received Over \$10 million from CTCL. WILL received records from 196 communities that received a total \$10.3 million in funding from CTCL. These grants ranged from a high of \$3.4 million for the City of Milwaukee to \$2,212 for the Town of Mountain in Oconto County.
- Large Cities got the Lion's Share of Funding. The largest five cities in the state (Milwaukee, Madison, Green Bay, Kenosha, and Racine) received nearly 86% of all CTCL grant funds in Wisconsin.
- Large Cities Spent Tens of Thousands on Voter Education. While most small towns used CTCL resources for voting equipment and COVID-related equipment, Milwaukee, Green Bay, and Madison spent close to or above \$100,000 on ostensibly "non-partisan" voter education efforts.
- Spending Increased Turnout for Joe Biden. Areas of the state that received grants saw statistically significant increases in turnout for Democrats. Increases in turnout were not seen for Donald Trump.
- Wisconsin Needs Reform. This report highlights the inequitable distribution of private resources that came into the state during the 2020 election. Reforms that are designed to ensure that any grant money is distributed in a per capita manner across the state will go a long way in increasing faith that our elections are being conducted in an open and honest manner.

Resp. App. 4.

The WILL report also calculated the CTCL funding per 2016 voter in Wisconsin's ten largest cities showing a huge amount of CTCL funding went to the Wisconsin 5 cities per voter and in total and showing only a small amount of CTCL funding went to the Wisconsin cities which were not Wisconsin 5 cities:

<u>Municipality</u>	<u>CTCL Funding Per 2016 Voter</u>	<u>Total CTCL Grant Amount</u>
Milwaukee*	\$13.82	\$3,409,500
Madison*	\$8.30	\$1,271,788
Green Bay*	\$36.00	\$1,600,000
Kenosha*	\$20.94	\$862,799
Racine*	\$53.41	\$1,699,100
Appleton	\$0.51	\$18,330
Waukesha	\$1.18	\$42,100
Eau Claire	\$2.01	\$71,000
Oshkosh	\$0.00	\$0.00
Janesville	\$6.11	\$183,292

Resp. App. 13 (“* ” denotes Wisconsin 5 city).

Notably, the WILL Report concluded that the CTCL funding affected Wisconsin’s 2020 election outcomes in favor of Biden over Trump by more than 8,000 votes:

For President Biden there was a statistically significant increase in turnout in cities that received CTCL grants. In those cities, President Biden received approximately 41 more votes on average. While the coefficient was also positive for President Trump, it did not reach traditional levels of statistical significance. This means that we cannot say that turnout for Republicans in CTCL receiving areas was any different than it would have been without the grants. Given the number of municipalities in the state that received grants, this is a potential electoral impact of more than 8,000 votes in the direction of Biden.

Resp. App. 16.

Second, the Foundation for Government Accountability (FGA) in a June 14, 2021 report titled “How Zuckerbucks Infiltrated the Wisconsin Election” made five key findings:

- More than 200 local Wisconsin jurisdictions received “Zuckerbucks” for the 2020 election, totaling more than \$9 million.
- Nearly \$3.5 million was funneled into the City of Milwaukee via two grants.
- Green Bay spent only 0.8 percent of funds on personal protective equipment—instead purchasing two new 2020 Ford 550s and paying a public relations firm nearly \$150,000 for voter outreach.
- A representative of CTCL had behind-the-scenes access to election administration in Green Bay and Milwaukee.
- A former Governor Evers staffer worked for the grantor to coordinate grant applications in Eau Claire.

Resp. App. 21. The “bottom line” of the FGA report is “Wisconsin can—and should—prohibit local jurisdictions from accepting private money for election administration.” *Id.*

C. The Wisconsin 5 cities agreed to the Wisconsin Safe Voting Plan which contains geographic and demographic classifications to get-out-the-vote, increase in-person voting and absentee voting for targeted areas and groups, typically associated with campaigning.

The Wisconsin Safe Voting Plan (WSVP) is part of the grant agreement between CTCL and the Wisconsin 5 cities. Resp. App. 103-123 (WSVP), 124-126 (Milwaukee), 127-130 (Madison), 131-133 (Kenosha), 134-136 (Green Bay), 137-145 (Racine). The WSVP contains provisions to increase in-person voting and absentee voting for targeted areas and groups. Resp. App. 103-123. Typically, candidates and campaigns, not cities, engage in get-out-to-vote efforts targeting areas and groups; CTCL provided the Wisconsin 5 cities about \$8.8 million to carry out the WSVP provisions. Resp. App. 124-126, 127-130, 131-133, 134-136, 137-145. The following WSVP provisions are geographic and demographic classifications to increase in-person voting for targeted areas and groups, or to increase absentee voting for targeted areas and groups, or both.

1. “[T]o be intentional and strategic in reaching our historically disenfranchised residents and communities”

On page 1, the WSVP states the Wisconsin 5 cities to “be intentional and strategic in reaching our historically disenfranchised residents and communities; and, above all, ensure the right to vote in our dense and diverse communities” within the Wisconsin 5 cities. Resp. App. 103. This election administration provision, promoting in-person voting and absentee voting, is privately-funded, disfavors Wisconsinites outside the Wisconsin 5 cities and favors “historically disenfranchised residents and communities” as opposed to the rest of the residents and communities within the Wisconsin 5 cities. *Id.*

2. “[A]n opportunity to plan for the highest possible voter turnouts”

On page 2, the WSVP states, “The time that remains now and the November election provides an opportunity to plan for the highest possible voter turnouts...” in the Wisconsin 5 cities. Resp. App. 104. This election administration provision, promoting in-person voting and absentee voting, is privately-funded and disfavors Wisconsinites outside the Wisconsin 5 cities. *Id.*

3. “[E]ncourage and increase ... in-person” voting and to “dramatically expand strategic voter education & outreach efforts”—“particularly to historically disenfranchised residents”

On pages 5 and 6, the WSVP states that about one-half of the grant money will be used by the Wisconsin 5 cities to “encourage and increase ... in-person” voting and “dramatically expand strategic voter education & outreach efforts”—“particularly to historically disenfranchised residents” --within the Wisconsin 5 cities.

Recommendation	Green Bay	Kenosha	Madison	Milwaukee	Racine	Totals
Encourage and Increase Absentee Voting By Mail and Early, In-Person	\$277,000	\$455,239	\$548,500	\$998,500	\$293,600	\$2,572,839
Dramatically Expand Strategic Voter Education & Outreach Efforts	\$215,000	\$58,000	\$175,000	\$280,000	\$337,000	\$1,065,000
Totals:	\$1,093,400	\$862,779	\$1,271,788	\$2,154,500	\$942,100	\$6,324,567

Resp. App. 107-8. These election administration provisions, promoting in-person voting, are privately-funded, disfavor Wisconsinites outside the Wisconsin 5 cities and favor “historically disenfranchised residents” as opposed to the rest of the residents within the Wisconsin 5 cities. *Id.*

4. “Dramatically Expand Voter & Community Education & Out, Particularly to Historically Disenfranchised Residents”

On page 15, the WSVP states, “Dramatically Expand Voter & Community Education & Outreach, Particularly to Historically Disenfranchised Residents” within the Wisconsin 5 cities:

All five municipalities expressed strong and clear needs for resources to conduct voter outreach and education to their communities, with a particular emphasis on reaching voters of color, low-income voters without reliable access to internet, voters with disabilities, and voters whose primary language is not English.

Resp. App. 117. Each of the Wisconsin 5 cities had their own plans to “target” certain residents and communities for higher in-person voter turnout. *Id.*

In Green Bay, private grant funds “would be distributed in partnership with key community organizations including churches, educational institutions, and organizations serving African immigrants, LatinX residents, and African Americans.” Resp. App. 117-118. Green Bay’s privately-funded classification leaves out electors who don’t live in Green Bay and leaves out electors in Green Bay who are not African immigrants, LatinX residents and African Americans. *Id.*

In Kenosha, grant funds would be used “for social media advertising, including on online media like Hulu, Spotify, and Pandora (\$10,000) and for targeted radio and print advertising (\$6,000) and large graphic posters (\$3,000) to display in low-income neighborhoods, on City buses, and at bus stations, and at libraries (\$5,000).” Resp. App. 118. Kenosha’s privately-funded classification leaves out electors who don’t live in Kenosha and leaves out electors in Kenosha who don’t live in low-income neighborhoods. *Id.*

In Madison, private funds would support partnering “with community organizations and run ads on local Spanish-language radio, in the Spanish-language newspapers, on local hip hop radio stations, in African American-focused printed publications, and in online publications run by and for our communities of color (advertising total \$100,000).” Resp. App. 118. Madison’s privately-funded classification leaves out electors who don’t live in Madison and leaves out electors in Madison who are not Spanish-speaking, who do not listen to hip hop radio stations, who do not read African American-focused printed

publications, and who do not read online publications run by and for Madison's communities of color. *Id.*

In Milwaukee, the private funds would support a “communications effort would focus on appealing to a variety of communities within Milwaukee, including historically underrepresented communities such as LatinX and African Americans, and would include a specific focus on the re-enfranchisement of voters who are no longer on probation or parole for a felony.” Resp. App. 118-19. Milwaukee's privately-funded classification leaves out electors who don't live in Milwaukee and leaves out electors in Madison who are not members of Milwaukee's historically underrepresented communities such as LatinX and African American. *Id.*

In Racine, the private funds would support renting “billboards in key parts of the City (\$5,000) to place messages in Spanish to reach Spanish-speaking voters” and “targeted outreach aimed at City residents with criminal records to encourage them to see if they are not eligible to vote.” Resp. App. 119. Racine's privately-funded classification leaves out electors who don't live in Racine and leaves out electors in Racine who are not Spanish-speaking. *Id.*

Additionally, in Racine, private funds would be used “to purchase a Mobile Voting Precinct so the City can travel around the City to community centers and strategically chosen partner locations and enable people to vote in this accessible (ADA-compliant), secure, and completely portable polling booth on wheels, an investment that the City will be able to use for years to come.” *Id.* Racine's privately-funded classification leaves out electors

who don't live in Racine and leaves out electors in Racine who do not live near "strategically chosen partner locations." *Id.*

Individually and collectively, these election administration provisions, promoting in-person voting classifications, are privately-funded, disfavor Wisconsinites outside the Wisconsin 5 cities and favor "historically disenfranchised residents and communities" as opposed to the rest of the residents and communities within the Wisconsin 5 cities. Resp. App. 117-119.

5. WSVP's "Absentee Voting" provisions.

On page 4, the WSVP states the following for the Wisconsin 5 cities:

Absentee Voting (By Mail and Early, In-Person)

1. Provide assistance to help voters comply with absentee ballot requests & certification requirements
2. Utilize secure drop-boxes to facilitate return of absentee ballots
3. Deploy additional staff and/or technology improvements to expedite & improve accuracy of absentee ballot processing
4. Expand In-Person Early Voting (Including Curbside Voting)

Resp. App. 106. This election administration provision, promoting absentee voting, are privately-funded and disfavor Wisconsinites outside the Wisconsin 5 cities. Only electors in the Wisconsin 5 cities benefit from the "assistance," "drop-boxes," "improvement" and increased "early voting." *Id.*

6. “[E]ncourage and increase absentee voting by mail and early” and to “dramatically expand strategic voter education & outreach efforts”—“particularly to historically disenfranchised residents”

On pages 5 and 6, the WSVP states that about one-half of the grant money will be used by the Wisconsin 5 cities to “encourage and increase absentee voting by mail and early” and “dramatically expand strategic voter education & outreach efforts”—“particularly to historically disenfranchised residents” --within the Wisconsin 5 cities.

Recommendation	Green Bay	Kenosha	Madison	Milwaukee	Racine	Totals
Encourage and Increase Absentee Voting By Mail and Early, In-Person	\$277,000	\$455,239	\$548,500	\$998,500	\$293,600	\$2,572,839
Dramatically Expand Strategic Voter Education & Outreach Efforts	\$215,000	\$58,000	\$175,000	\$280,000	\$337,000	\$1,065,000
Totals:	\$1,093,400	\$862,779	\$1,271,788	\$2,154,500	\$942,100	\$6,324,567

Resp. App. 107-8. These election administration provisions, promoting absentee voting, are privately-funded and disfavor Wisconsinites outside the Wisconsin 5 cities and favor “historically disenfranchised residents as opposed to the rest of the residents and communities within the Wisconsin 5 cities. *Id.*

7. “Provide assistance to help voters comply with absentee ballot request & certification requirements”

On pages 9 and 10, the WSVP states, “Provide assistance to help voters comply with absentee ballot request & certification requirements” within the Wisconsin 5 cities. Resp. App. 111-2. None of the private funding in this regard would benefit residents outside the Wisconsin 5 cities. *Id.*

In Green Bay, the city would use the private money to fund bilingual LTE “voter navigators” to help Green Bay residents properly upload valid photo ID, complete their ballots and comply with certification requirements, offer witness signatures and assist voters prior to the elections. Resp. App. 111. Green Bay would also utilize the private funds to pay for social media and local print and radio advertising to educate and direct Green Bay voters in how to upload photo ID and how to request and complete absentee ballots. *Id.*

In Kenosha, the city would use the private money to have Clerk’s staff train Kenosha library staff on how to help Kenosha residents request and complete absentee ballots. *Id.*

In Madison, the city used the private money to hold curbside “Get your ID on File” events for Madison voters. *Id.* The city used private money to purchase large flags to draw attention to these curbside sites and for mobile wifi hotspots and tablets for all of these sites so Madison voters could complete their voter registration and absentee requests all at once, without having to wait for staff in the Clerk’s office to follow up on paper forms. *Id.*

In Milwaukee, the city used private money to promote and train Milwaukee Public Library branch staff prior to each election to assist any potential Milwaukee absentee voters with applying, securing, and uploading images of their valid photo ID. *Id.*

In Racine, the city used private funds to recruit and promote, train and employ paid Voter Ambassadors who would set up at the City's community centers to assist voters with all aspects of absentee ballot request, including photo ID compliance. *Id.* at 111-2.

These election administration provisions, promoting absentee voting, are privately-funded and disfavor Wisconsinites outside the Wisconsin 5 cities. *Id.* The only ones who benefit from these absentee balloting provisions are residents of the Wisconsin 5 cities. *Id.*

8. "Utilize Secure Drop-Boxes to Facilitate Return of Absentee Ballots"

On pages 10 and 11, the WSVP states, "Utilize Secure Drop-Boxes to Facilitate Return of Absentee Ballots" within the Wisconsin 5 cities. Resp. App. 112-113. None of the private funding in this regard would benefit residents outside the Wisconsin 5 cities. *Id.*

In Green Bay, the City intended to use private money to add ballot drop-boxes at a minimum of the transit center and two fire stations and possibly at Green Bay's libraries, police community buildings, and potentially several other sites including major grocery stores, gas stations, University of Wisconsin Green Bay, and Northern Wisconsin Technical College, in addition to the one already in use at City Hall. *Id.* at 112.

In Kenosha, the city intended to use the private money to install 4 additional internal security boxes at Kenosha libraries and the Kenosha Water Utility so that each side of town has easy access to ballot drop-boxes. *Id.* at 112.

In Madison, the city intended to use the private money to have one secure drop box for every 15,000 voters, or 12 drop boxes total and to provide a potential absentee ballot witness at each drop box. *Id.* at 112.

In Milwaukee, the city intended to use the private money to install secure 24-hour drop boxes at all 13 Milwaukee Public library branches. *Id.* at 112-3.

In Racine, the city intended to use the private money to have 3 additional drop boxes to be installed at key locations around the City. *Id.* at 113.

These election administration provisions, promoting absentee voting, are privately-funded and disfavor Wisconsinites outside the Wisconsin 5 cities. *Id.* at 112-3. The only ones who benefit from these absentee ballot drop box provisions are residents of the Wisconsin 5 cities. *Id.* at 112-3.

9. “Expand In-Person Early Voting (Including Curbside Voting)”

On pages 12-14, the WSVP states, “Expand In-Person Early Voting (Including Curbside Voting)” (EIPAV) within the Wisconsin 5 cities. Resp. App. 114. None of the private funding in this regard would benefit residents outside the Wisconsin 5 cities. *Id.*

In Green Bay, the city intended to use private money to expand and establish at least three EIPAV sites in trusted locations, ideally on the east (potentially UWGB) and west sides (potentially NWTC or an Oneida Nation facility) of the City, as well as at City Hall. *Id.* at 115. The City used the private money to print additional ballots, signage, and materials to have available at these early voting sites. *Id.*

In Kenosha, the city intended to use private money to offer early drive thru voting on City Hall property and for staffing for drive thru early voting. *Id.*

In Madison, the city intended to use private money to provide 18 in-person absentee voting locations for the two weeks leading up to the August election, and for the four weeks leading up to the November election. *Id.* The city intended to use private money to

purchase and utilize tents for the curbside voting locations in order to protect the ballots, staff, and equipment from getting wet and to purchase and utilize large feather flags to identify the curbside voting sites. *Id.*

In Milwaukee, the city intended to use private money to set up 3 in-person early voting locations for two weeks prior to the August election and 15 in-person early voting locations and 1 drive-thru location. *Id.* at 115-6.

In Racine, the city intended to use private money to offer a total of 3 EIPAV satellite locations for one week prior to the August election, as well as offering in-person early voting – curbside. *Id.* at 116. For the November election, Racine intended to use private money to offer EIPAV at 4 satellite locations two weeks prior to the election and at the Clerk’s office 6 weeks prior. *Id.*

These election administration provisions, promoting early in-person voting, are privately-funded and disfavor Wisconsinites outside the Wisconsin 5 cities. *Id.* at 114-6. The only ones who benefit from these EIPAV provisions are residents of the Wisconsin 5 cities. *Id.*

D. Each of the Wisconsin 5 cities completed the CTCL’s planning document which shows the Wisconsin 5 cities’ intention of using the private funding to get-out-the-vote in their respective city, generally, and to get-out-the-vote in their respective city’s “communities of color,” specifically.

As part of the CTCL process approving the WSVP, each of the Wisconsin 5 cities completed the CTCL’s planning document. Resp. App. 28-34 (CTCL blank form), 35-52 (Green Bay), 53-66 (Kenosha), 67-78 (Madison), 79-90 (Milwaukee), 91-102 (Racine). The completed forms show the intention of the Wisconsin 5 cities was to get-out-the-vote

generally and among “communities of color” specifically. *Id.* at 35-102. An example for each of the Wisconsin 5 cities’ answer will show the intention of get-out-the-vote. *Id.*

For Milwaukee, in the section of the CTCL form on “equity & voter outreach, particularly to communities of color,” CTCL asked the following question:

What other activities would your municipality like to engage in to ensure that historically disenfranchised communities within your municipality are able to cast ballots in the remaining elections of 2020, and what resources would you need to accomplish those efforts/activities? (including, but not limited to, printing, postage, staffing, translation, advertising, processing, training, etc.)

Resp. App. 86. Milwaukee responded by stating that it intended to engage in get-out-to-vote (GOTV) efforts based on race, criminal status and harnessing “current protests”:

The City would like to work with a communications consultant to create a communications plan around GOTV efforts. The campaign would focus on appealing to a variety of communities within Milwaukee, including LatinX and African American voters. One specific target would be creating a campaign focusing on the re-enfranchisement of voters who are no longer on probation or parole for a felony. Additionally, we would like to find a marketing consultant who could create an edgy but non-partisan and tasteful campaign to harness current protests that are highlighting inequity.

Id.

For Green Bay, in the section of the CTCL form on “equity & voter outreach, particularly to communities of color,” CTCL asked the following question:

What specific outreach would your municipality like to do for the remaining 2020 elections to reach voters of color, including Spanish-speaking voters? Please describe the outreach you’d like to do to reach these voters (i.e. informational mailings, billboards, radio or print advertisements, social media advertisements, phone calls specifically about photo ID, text messages, virtual events, etc., etc.) what impact you think it might have on voter turnout and provide estimated costs.

Resp. App. 59. Green Bay responded that it had a goal to “increase voter participation in underrepresented groups by 25% for November”:

As with our plan above, we'd like to reach out to the Hmong, Somali and Spanish-communities with targeted mail, geo-fencing, posters (billboards), radio, television and streaming PSAs, digital advertising, robo calls and robo texts, as well as voter-navigators. We would also employ our voter navigators to have town halls, registration drives in trusted locations and conduct virtual events.

We believe this would establish trust and encourage voters from underrepresented groups to participate in greater numbers, especially as we look forward to the spring election in 2021. Our goal would be to increase voter participation in underrepresented groups by 25% for November.

Id.

Madison responded to the same question about “voters of color” by indicating its plans to run ads targeting “voters of color” to increase their voter turnout:

We would like to run ads on Spanish language radio and in our municipality's Spanish language newspapers. We would also like to run ads on our local hip hop radio station, in our local African-American print publications, and in our online publications run by and for communities of color.

Resp. App. 74.

Kenosha responded to the same question stating that “Care-a-vans” would be utilized to transport “people of color”—instead of all people—to the polls:

Care-a-vans, team up with a local van service, would provide much more affordable and practical transportation for the elderly, people of color and disabled voters who prefer to vote in person. The vans could also be used to transport the voters before election day to the municipal building to early vote, or to a library to request a ballot.

Resp. App. 59.

Racine responded to the same question about “voters of color” by indicating its plans would “greatly increase our number of early voters”:

Billboards, voter ambassadors, and social media outreach. I believe this will greatly increase our number of early voters, especially new registered voters.

Resp. App. 97.

E. CTCL and its private corporate allies were ubiquitous in the Wisconsin 5 cities' election administration before, during and after the election.

Because the Wisconsin 5 cities agreed to the WSVP with CTCL, CTCL and its private corporate allies were ubiquitous in the Wisconsin 5 cities' election administration before, during and after the election.

1. Conception of the Plan

Although Plaintiffs have not been entitled to traditional courtroom discovery, the record created by public document requests shows that CTCL, a private company headquartered in Chicago⁷, reached out to the City of Racine to allow CTCL to provide grant money to certain handpicked cities in Wisconsin. Compl. App. 699. This first grant of \$100,000 was to be split among the five largest cities in Wisconsin at \$10,000 per city, plus an extra \$50,000 to Racine for organizing the five cities. Compl. App. 699. This first grant required the mayors of the five largest cities in Wisconsin and their respective staffs to complete CTCL election administration forms, including goals and plans to increase voter turnout in their respective cities and “communities of color” and develop a joint plan for their elections—not statewide. Compl. App. 394.

Christie Baumel wrote on June 9, 2020 regarding CTCL and “Election Cost Grant:”

My understanding is that this is a small planning grant that Racine received from the Center for Tech & Civic Life to produce, by June 15th, a proposal for safe and secure election administration, according to the **needs identified by the five largest municipalities**. In other words, this information informs the Center for Tech & Civic Life in their consideration of where and how to support complete, safe, secure elections in Wisconsin.

⁷ Admitted in Megan Wolfe Brief at 3; Carlstedt Answer, par. 18; see also Compl. App. 1-2.

Resp. App. 147 (emphasis added.)

In short, CTCL was reaching out to the five largest cities in Wisconsin, and CTCL wanted information from those cities in determining how to provide support to those cities. *Id.* This program and the larger amount of grant money was not available to any cities or counties in Wisconsin other than the five largest cities, which later became known as the “Wisconsin 5.” *Id.*

The attempt of CTCL to target the five largest cities in Wisconsin for election support had been ongoing since earlier in 2020, as indicated in emails and invitations from Vicky Selkove, a Racine employee, to Kenosha, Madison, Milwaukee, and Green Bay mayors, and a few other city officials from the Wisconsin 5 cities. Compl. App. 464-482; 689-698; 863-869. Only those four cities plus Racine were invited to “Apply for a COVID-19 Grant” from CTCL and to thus be in on the “plan” to impact the 2020 election. Resp. App. 147.

These five cities began to identify themselves and to be identified by CTCL as the “Wisconsin 5,” including a letterhead with the five cities’ seals.⁸ Compl. App. 139-41, 487. Whitney May, Director of Government Services at CTCL, wrote to representatives of the other Wisconsin Five cities on August 18, 2020, stating, “You are the famous WI-5...excited to see November be an even bigger success for you and your teams.” Compl. App. 566-567.

⁸ And a proposal to create T-shirts for the “famous WI-5,” as encouraged by Whitney May, the Director of Government Services for CTCL. (566-567)

The CTCL Agreement required the Wisconsin 5 Mayors and their respective staffs to develop a joint plan for the Wisconsin 5's elections, not statewide, pursuant to the agreement by June 15, 2020:

The City of Racine, and any cities granted funds under paragraph 4, shall produce, by June 15th, 2020, a plan for a safe and secure election administration in each such city in 2020, including **election administration** needs, budget estimates for such assessment, and an assessment of the impact of the plan on voters.

Compl. App. 394 (emphasis added).

The carrot for the Wisconsin 5 to provide this information for CTCL was to get part of a \$100,000 grant. Once the Wisconsin 5 expressed interest in receiving the \$10,000 grants from CTCL, then the "Wisconsin 5" Cities quickly provided information to Vicky and CTCL on CTCL's form so they could "develop a robust plan for **election administration** for all five of our communities," by June 15, 2020. Resp. App. 147 (emphasis added).

Following the expected "Council approval" on June 2, Vicky Selkove of Racine sought to "immediately" connect to "municipal clerks and other relevant staff" to "swiftly gather information about" the cities' "election administration needs." Resp. App. 148.

Vicky Selkove obtained the information from the Wisconsin 5 cities through the five completed CTCL forms, then either Racine or CTCL used that information to prepare the Wisconsin Safe Voting Plan ("WSVP"), as requested by CTCL. Resp. App. 28-34 (CTCL blank form), 35-52 (Green Bay), 53-66 (Kenosha), 67-78 (Madison), 79-90 (Milwaukee), 91-102 (Racine). Vicky expressed that she was the point person for communicating with the different city staffs to begin gathering information to prepare this plan." *Id.* at 148.

2. The First Contract between CTCL and the Wisconsin 5 cities

On about May 28, 2020, the Racine Common Council approved, and signed, the CTCL conditional grant in the amount of \$100,000 to recruit and then coordinate, with the Wisconsin Five cities, to join the Wisconsin Safe Voting Plan 2020 submitted to CTCL on June 15, 2020. Comp. App. 393-394, 699-702.

The \$100,000 was targeted to the Wisconsin 5 cities, which are also the five largest cities in Wisconsin. Compl. App. 464-482; 689-698; 863-869. This grant and distribution to the Wisconsin 5 cities was not random, rather it was the intentional culmination of meetings or virtual meetings on May 16, 2020, June 13, 2020, and August 14, 2020. *Id.* These meetings were also secretive in that the mayors and their staff were invited to the meeting, but Common Council members were not informed of the meetings, nor was the public informed of the meetings. *Id.* The Common Council members of Racine were later asked to vote to approve what was decided at the meetings. Compl. App. 868-869. It is not believed that the Common Councils of the other four cities of the Wisconsin 5 were asked to vote on the \$100,000 grant, except perhaps long after they had already received the money and committed to accepting the larger grant and its conditions. *Id.* For example, the city of Madison received the \$10,000 even though as of the week of July 10 the Common Council had not accepted it yet. Resp. App. 153. Maribeth of Madison wrote on July 13 that “Common Council has yet to accept the \$10,000.” Resp. App. 153-4.

The grant approved by the Racine Common Council stated, "The grant funds must be used exclusively for the public purpose of planning safe and secure election administration in the City of Racine in 2020, and coordinating such planning." Compl. App.

701. Thus, the consideration for the Wisconsin 5 cities to receive the first, small grant, was that they provide information for CTCL to use in preparing the WSVP for the large grant.

Id.

3. Creation of the Wisconsin Safe Voting Plan (“WSVP”) would provide the rationale for CTCL and the allied private corporations to engage in election administration to get-out-the-vote.

The WSVP was developed ostensibly “in the midst of the COVID-19 Pandemic” to ensure voting could be “done in accordance with prevailing public health requirements” to “reduce the risk of exposure to coronavirus.” Further, it was intended to assist with “a scramble to procure enough PPE to keep polling locations clean and disinfected.” Compl. App. 487-507, 711-735. However, another purpose existed as evidenced by the documents quoted and identified above; the other purpose was to incorporate CTCL, the allied private corporations and the Wisconsin 5 cities—and \$8.8 million of private funding—into joint get-out-the-vote operations in the Wisconsin 5 cities, including increasing voter turnout in their particular cities and, particularly, in their particular “communities of color.” *See, e.g.,* Resp. App. 103-123 (WSVP).

4. Having agreed to the initial \$10,000 per city grants (plus \$50,000 extra for Racine), the Wisconsin 5 Cities entered new grant agreements for the large grants, including CTCL’s “conditions.”

On or about July 6, 2020, Vicky Selkove announced that the Wisconsin Safe Voting Plan (“WSVP”) had been “fully approved for funding by the Center for Tech & Civic Life”; the initial \$10,000 grant was the first step for the Wisconsin 5 cities to get an even larger grant from CTCL. Compl. App. 393-394, 703-704.

Also, on July 6, Tiana Epps-Johnson of CTCL emailed Vicky stating CTCL intends to fund each of the Wisconsin 5 Cities with far larger sums of money: Green Bay--\$1,093,400; Kenosha--\$862,779; Madison--\$1,271,788; Milwaukee--\$2,154,500; and Racine--\$942,100. The total of the grants to the Wisconsin 5 cities was therefore \$6,324,567.00. Compl. App. 17-18, 393-394, 419-420, 487-507, 551-553, 689-698, 711-735. Each of the Wisconsin 5 cities, expressly or impliedly, accepted the large grant money. For example, sometime in July 2020 the City of Madison accepted \$1,271,788 by vote of Common Council; a Madison city employee email dated July 17 states, "I believe they adopted this under suspension of rules on 7/14." Resp. App. 153.

Concurrently with CTCL's plans to provide the Wisconsin 5 cities with \$6,324,567.00 in grant money, the Wisconsin 5 cities began to be informed of the conditions or the consideration for that grant money. Resp. App. 124-145. On July 10, Vicky Selkove started contacting each of the Wisconsin 5 cities to let them know Tiana Epps-Johnson will contact them to start introducing the Wisconsin 5 cities to CTCL's "partners." Compl. App. 821-2. "Tiana and her team have arranged for extensive expert technical assistance from fantastic and knowledgeable partners across the country, to help each City implement our parts of the Plan." *Id.* Tiana will send a "draft grant agreement" for the city's review and "approval on Monday." *Id.* It was assumed that each City would vote to accept the money, and the terms of the agreement were not important. *Id.*

On July 10, 2020, Vicky Selkove sent an email to Celestine Jeffreys and copied Tiana Epps-Johnson stating that Green Bay should work with CTCL, along with several of the other largest Wisconsin cities to "implement our parts of the Plan," and to allow the City of

Green Bay to “understand the resources she’s [Tiana Epps-Johnson of CTCL] bringing to each of our Cities [the “cities” of Milwaukee, Racine, Madison, Kenosha and hopefully Green Bay] to successfully and quickly implement the components of our Plan.” Compl. App. 269-270.

By approximately July 24, 2020, each of the Wisconsin 5 cities had agreed to contracts with CTCL, along with the conditions, rules and regulations CTCL attached to the grants. Compl. App. 17-18 (Green Bay), 393-394 (Racine), 419-420 (Racine), 551-552 (Kenosha), 689-698 (Milwaukee), 703-707 (Madison).

5. The grant agreements and the WSVP between CTCL and the Wisconsin 5 cities contain conditions regarding election administration.

In addition to being informed that the Wisconsin 5 should work with CTCL’s “partners,” the grant agreement contained express conditions that each of the Wisconsin 5 cities had to follow in order to receive and keep the grant funds. *Id.* The grant agreement included the WSVP. *Id.* And, the consideration for the second contract was that the Wisconsin 5 cities were to use CTCL’s “partners” for election administration, and the Wisconsin 5 cities had to expressly agree to the written conditions in the Grant Agreements. *Id.* Those conditions in the second contract included:

- a. “The **grant funds must be used exclusively for the public purpose of planning and operationalizing** safe and secure **election administration** in the City of _____ in accordance with the Wisconsin Safe Voting Plan 2020.”
- b. **Requiring each city or county receiving the funds to report back to CTCL by January 31, 2021 regarding the moneys used to conduct federal elections;**

c. “The City of _____ shall not reduce or otherwise modify planned municipal spending on 2020 elections, including the budget of the City Clerk of _____ (‘the Clerk’) or fail to appropriate or provide previously budgeted funds to the Clerk for the term of this grant. **Any amount reduced or not provided in contravention of this paragraph shall be repaid to CTCL up to the total amount of this grant.**”

d. The City of _____ “shall not use any part of this grant to give a grant to another organization unless CTCL agrees to the specific sub-recipient in advance, in writing.”

Resp. App. 124-5 (Milwaukee), 127-8 (Madison), 131-2 (Kenosha), 134-5 (Green Bay), 139-40 (Racine). (emphasis added; name of city omitted). CTCL provided a grant tracking form the Wisconsin 5 cities to keep track of their expenditures, which they would later have to report to CTCL. Resp. App. 160.

Thus, the text of the grant document provides the conditions clearly: the grant funds had to be used for “planning and operationalizing ... election administration.” Resp. App. 124-5 (Milwaukee), 127-8 (Madison), 131-2 (Kenosha), 134-5 (Green Bay), 139-40 (Racine). The Wisconsin 5 cities had to “report back to CTCL by January 31, 2021” regarding the moneys they used. Any moneys used “in contravention” of the Grant agreement would have to be “repaid to CTCL” up to the whole amount of the grant. *Id.* The Wisconsin 5 cities were not allowed to pay any part of the grant money to another organization “unless CTCL agrees ... in advance, in writing.” *Id.* These were the rules imposed by CTCL on the Wisconsin 5 cities. *Id.*

It has been admitted that these were “conditions” and that generally the money from CTCL was “conditional.” To underscore the conditions on the grant money, on July 24, 2020, Dennis Granadas of CTCL wrote Celestine Jeffreys of Green Bay:

Please find attached the revised grant agreement for review and signature. Please note that we made a few edits to clean up language, but this did not change the substance of the agreement, unless an update was requested. If you have any concerns please let me know. In addition, we also updated Section 7 for clarity to the following (changes highlighted in bold): **"The City of Green Bay shall not reduce or otherwise modify planned municipal spending on 2020 elections, including** the budget of the City Clerk of Green Bay ("the Clerk") or fail to appropriate or provide previously budgeted funds to the Clerk for the term of this grant. Any amount reduced or not provided in contravention of this paragraph shall be repaid to CTCL up to the total amount of this grant." I look forward to receiving the signed agreement. Please let me know if you have any questions/concerns. Have a great weekend.

These provisions requiring repayment of the grant moneys are referred to as "claw-back" provisions, and require the Wisconsin 5 to return the moneys to CTCL if CTCL disagreed with how the Wisconsin 5 spent the money and conducted their 2020 elections. Compl. App. 018, 393, 419, 552, 689-698, 711-714. After the election in November 2020, CTCL has demanded that the grant recipient cities, i.e. the Wisconsin 5, submit forms to CTCL to prove they complied with the grant conditions by January 31, 2021. Resp. App. 160. These conditions were not merely "boilerplate" provisions; rather, CTCL intended to, and did enforce them. *Id.*

6. CTCL pushed onto the Wisconsin 5 Cities the CTCL "partners" who, in some instances, would effectively administer the election.

CTCL promoted to the Wisconsin 5 cities numerous entities, CTCL's "partners," that CTCL recommended that the Wisconsin 5 cities connect with and use in the administration of the election. Compl. App. 36-49, 51-67, 76-78. But, since the Wisconsin 5 were contractually bound to use only the "organizations" that CTCL approved "in advance, in writing," the "partner" referrals that CTCL made were more than mere "suggestions," they

were part of the CTCL's contractual agreement with the Wisconsin 5 cities. Compl. App. 018, 393, 419, 552, 689-698, 711-714.

In late July of 2020, CTCL's Director of Government Services Whitney May hosted a series of separate "kick off" for each of the Wisconsin 5 city's public officials, where she introduced and provided an overview of CTCL's allied corporations (sometimes-called "technical partners") to engage in that city's election administration. Compl. App. 812-820, 852. CTCL's "partners" introduced to the Wisconsin 5 were private corporations to aid or administer the city's election administration:

- The National Vote At Home Institute ("VoteAtHome" or "NVAHI") who was represented as a "technical assistance partner" who could consult about among other things, "support outreach around absentee voting," voting machines and "curing absentee ballots," and to even take that duty (curing absentee ballots) off of the city's hands. Compl. App. 36-49, 51-67. The NVAHI also offered advice and guidance on accepting ballots and streaming central count during election night and on the day of the count. Compl. App. 68-75.
- The Elections Group and Ryan Chew were represented to be able to provide "technical assistance partners to support your office" and "will be connecting with you in the coming days regarding drop boxes" and technical assistance to "support your office," and worked on "voter outreach." Compl. App. 76-8, 205, 79-81. Elections Group Guide to Ballot Boxes. Compl. App. 82-121.
- Ideas42 was represented by CTCL as using "behavioral science insights" to help with communications. Compl. App. 392.
- Power the Polls was represented by CTCL to help recruit poll workers (Compl. App. 122) and discuss ballot curing. Compl. App. 123-4.
- The Mikva Challenge was recommended to recruit high school age poll workers (Compl. App. 125-6, 404) and then to have the poll workers to "serve as ballot couriers," and for "ballot drop-off/voter registrations." Compl. App. 125-7.

- US Digital Response was suggested to help with and then take over “absentee ballot curing,” and to “help streamline the hiring, onboarding, and management” of Green Bay’s poll workers. Compl. App. 128-136.
- Center for Civic Design to design absentee ballots and the absentee voting instructions, including working directly with the Commission to develop a “new envelope design” and to create “an advertising/targeting campaign.” Compl. App. 137-155, 190-201.
- Eric Ming, the Communications Director for CSME, to serve as a “communications consultant to review your [City of Green Bay] advertising plan for November.” Compl. App. 156-7.
- The Brennan Center which focuses on “election integrity” including “post-election audits and cybersecurity.” Compl. App. 158-160.
- HVS Productions to add “voter navigator” FAQs and Election Countdown Copy for the city of Green Bay. Compl. App. 161-6.
- Modern Selections to address Spanish language. Compl. App. 167-9.

Interestingly, none of the referenced “partners” mandated by CTCL were health or medical experts; rather, as the grant contracts required, these were “experts” in “election administration.” *See* Compl. App. 812-820, 852. Defendant Kris Teske has admitted this usurpation by CTCL and its “partners” of election administration. She stated in her Answer:

- “others in the Mayor’s office began to hold meetings and make decisions relating to the election outside of the Clerk’s office.” Answer at 3.
- “This caused planning for the election to become VERY dysfunctional and caused great confusion in the Clerk’s office as many of the meetings and decisions were driven by the Mayor’s chief of staff and other senior officials without the knowledge or consent of the Clerk’s office.” *Id.*
- “I wrote several emails outlining my concerns with meetings that excluded the Clerk’s office and decisions that were made without consulting the Clerk’s office.” *Id.* at 2.
- “the office’s [Clerk’s office] ability to fulfill the obligations for the election were greatly hindered and diminished by outside interference.” *Id.* at 4.

7. The projects that CTCL’s partners promoted had nothing to do with Covid-19 safety.

As set forth, neither CTCL nor its “partners” were medical or health professionals. Instead, CTCL did boast that it had a “network of current and former election administrators and election experts available” to “scale up your vote by mail processes,” and “ensure forms, envelopes, and other materials are understood and completed correctly by voters.” Compl. App. 35.

Shortly after the grant agreements was negotiated and agreed upon, on July 31, 2020, CTCL’s Director of Government Services suggested to Maribeth of Madison the “projects” CTCL wished to focus on:

Hi Maribeth:

Reflecting on your Safe Voting Plan and the kickoff call last week. I wanted to get your feedback about the **projects** our technical partners should tackle first. What are the most urgent areas where you’d like support from the partners? Here’s what we captured in our notes as the likely top 3-4:

- **Adding satellite locations and drop boxes**—help site locations and provide tailored guidelines and implementation support (Elections Group)
- **Printing materials for mail ballots** – redesign bilingual **absentee ballot** instruction sheet and letter (Center for Civic Design, who is working with WEC on envelope design)
- **Targeting communities with election information** – NVAHA is launching a communications toolkit on August 5 to support **outreach** around **absentee voting** (National Vote at Home Institute), share research insights about how to engage people who might not trust the **vote by mail** process (Center for Civic Design)
- **Training election officials** – review quick guides and other training materials (Elections Group)

Compl. App. 848.

Explaining this “targeting” of communications, Celestine Jeffreys wrote to Whitney May of CTCL on August 27, 2020 that “There are probably 5 organizations that are focused on working with disadvantaged populations and/or with voters directly.” Compl. App. 34, 42.

CTCL, when working with the Wisconsin 5 cities, had other conditions that had nothing to do with COVID prevention, including:

- Employing “voter navigators” to help voters “complete their ballots” Compl. App. 30-1.
- The “voter navigators” would later be “trained and utilized as election inspectors” Compl. App. 31.
- “Utilize paid social media” and “print and radio advertising” to direct voters “to request and complete absentee ballots” Compl. App. 30.
- “enter new voter registrations and assist with all election certification tasks” Compl. App. 30.
- “reach voters and potential voters through a multi-prong strategy utilizing ‘every door direct mail,’ targeted mail, geo-fencing, billboards radio, television, and streaming-service PSAs, digital advertising, and automated calls and texts,” and direct mail to “eligible but not registered voters” Compl. App. 32.
- Assist new voters to “obtain required documents” to get valid state ID needed for voting, targeting African immigrants, LatinX residents, and African Americans. *Id.*
- “facilitate Election day Registrations and verification of photo ID.” Compl. App. 32.

Thus, after the grant agreement were agreed upon, CTCL promoted election activities having nothing to do with Covid-19 safety, and which instead focused on voter outreach, absentee voting, and targeting specific geographic and demographic voters. Resp. App. 103-

21. Using the grant funds to perform the voter outreach desired by CTCL was one of the conditions. *Id.*

Not only did CTCL and its partners have no medical or health experience, and the “projects” had nothing to do with Covid-19 safety, but CTCL actually recommended moving the little, allegedly Covid-19 safety money away from health concerns and toward more “voter outreach.” Compl. App. 351-352, 358, 366. Shortly after the Wisconsin 5 cities agreed to the grants, Whitney May of CTCL wrote to Green Bay about “reallocating funds for Voter outreach,” including increasing “absentee voting” and to move funds from “PPE/cough guards or the ballot folder lines” to transfer those funds to the “voter outreach bucket.” *Id.*

8. After the Wisconsin 5 cities agreed to the large grants, and CTCL convinced the Wisconsin 5 cities to utilize CTCL’s “partners,” CTCL sought to embed those “partners” into the Wisconsin 5 cities’ election administration.

After the Wisconsin 5 cities agreed to the large grants, CTCL offered Milwaukee to provide “an experienced elections staffer [from the Elections Group] that could potentially **embed** with your staff in Milwaukee in a matter of days and fill that kind of a role.” Compl. App. 626 (emphasis added).

CTCL and its partners pushed to get involved with, and take over other parts of the election administration also. One of CTCL’s recommended “partners” was the National Vote at Home Institute (“NVAHI”). Michael Spitzer-Rubenstein, NVAHI’s employee, wrote to Claire Woodall-Vogg, the Executive Director of the City of Milwaukee Election Commission: “can you connect me to Reid Magney and anyone else who might make sense

at the WEC? Would you also be able to make the connection with the Milwaukee County Clerk?” Compl. App. 600.

CTCL and its “partners” made many other attempts to, if not to “embed,” at least to access information to which private entities were obviously not entitled. *Id.* The following communications demonstrate:

- **If you could send the procedures manual and any instructions for *ballot reconstruction*, I'd appreciate that.** On my end: • **By Monday, I'll have our edits on the absentee voter instructions.** • We're pushing Quickbase to get their system up and running and I'll keep you updated. • I'll revise the planning tool to accurately reflect the process. Compl. App. 600 (Michael Spitzer-Rubenstein emailing to Claire Woodall-Vogg of Milwaukee).
- I'll create a flowchart for the VBM [vote by mail] processing that we will be able to share with both inspectors and also observers. • **I'll take a look at the reconstruction process** and try to figure out ways to make sure it's followed. Compl. App. 600 (Michael Spitzer-Rubenstein emailing to Claire Woodall-Vogg of Milwaukee)
- “That sounds like a real pain. It would be helpful to just understand the system and maybe the USDR folks can figure out a way to simplify something for you. ... if it's okay with you, **they'd also like to record the screen-share to refer back to, if needed.**” **We're hoping there's an easier way to get the data out of WisVote than you having to manually export it every day or week.** To that end, we have two questions: 1. **Would you or someone else on your team be able to do a screen-share so we can see the process for an export?** 2. **Do you know if WisVote has an API or anything similar so that it can connect with other software apps?** **That would be the holy grail** (but I'm not expecting it to be that easy). Compl. App. 659 (Michael Spitzer-Rubenstein to Claire Woodall-Vogg).
- I know you won't have the final data on absentee ballots until Monday night but I imagine you'll want to set things up beforehand. **Just let me know your timeline for doing so and if you get me the absentee data a day ahead of time and I can set things up.** **And as a reminder, here's what I'll need: 1) Number of ballot preparation teams 2) Number of returned ballots per ward 3) Number of outstanding ballots per ward.** Compl. App. 673 (Michael Spitzer-Rubenstein to Claire Woodall-Vogg).

- **In order to get the data by ward, are you able to run a summary in WisVote or do you have to download all the active voters, absentee applications, etc. and then do an Excel pivot table or something similar?** We added Census data and zip codes to the map and so now we're moving to figure out how we'll update this. Also, **if you can send these reports (whether in summary form or just the raw data), we can put them in: Active voters, Absentee applications, Ballots received, Ballots rejected/returned to be cured.** Compl. App. 677, Michael Spitzer-Rubenstein to Claire Woodall-Vogg.
- “I’ll try and do a better job clarifying the current need. We are not actually using anything visual right now (though will in the future). In the state of affairs now, **we are just looking for raw data. The end result of this data will be some formulas, algorithms and reports that cross reference information about ballots and the census data.** For example, **we want to deliver to Milwaukee + Voteathome answers to questions like “How many of age residents are also registered to vote?” or “what percentage of ballots are unreturned in areas with predominantly minorities?”.** To do that, we need a clear link between address + Census Tract. We need this for all ~300k voters and the ~200k+ absentee ballots, and it needs to be able automatic as we perform more inserts. To accomplish this, we were making calls to the Census API. They allow you to pass in an address and get the Census Tract. That solution “works”, but is far too slow. Their batch solution isn’t working either.” Compl. App. 653-658 (emphasis added).

CTCL and its partners were influencing public officials while they were doing their jobs to administer the election. *See, e.g.*, Compl. App. 600, 653-658, 673, 677. Although some of these attempts of CTCL and its partners to tamper with, or take over the Wisconsin 5’s election administration, may have been rebuffed, others were agreed on. *Id.* The Wisconsin 5 cities apparently agreed that some of CTCL’s attempts would have left a record making the election officials look bad or were too egregious. Compl. App. 659 For example, Claire Woodall-Vogg responded:

While I completely understand and appreciate the assistance that is trying to be provided, *I am definitely not comfortable having a non-staff member involved in the functions of our voter database, much less recording it.* While it is a pain to have to remember to generate a report each night and less than ideal, it takes me less than 5 minutes. Without consulting with the state, which I know they don’t have the capacity or interest in right now, I don’t think I’m comfortable having USDR get involved when it comes to our voter database. I hope you can see where I am coming

from – this is our secure database that is certainly already receiving hacking attempts from outside forces.

Compl. App. 659 (Claire Woodall-Vogg to Michael Spitzer-Rubenstein) (emphasis added).

Respondent Kris Teske confirmed that CTCL and its “partners” sought to improperly interject or “embed” themselves into the election administration. Teske Answer, p. 3. She admitted in her Answer: “A further complicating factor arose when outside (private) organizations were engaged to participate in the planning and administration of the election.” *Id.*

Another example of embedding is in Milwaukee. The Elections Group employee Ryan Chew wrote at 4:07 a.m. on November 4, 2020, the day after the Presidential election, to Milwaukee election official Claire Woodall-Vogg:

Damn Claire, you have a flair for drama, delivering just the margin needed at 3:00 a.m. I bet you had those votes counted at midnight, and just wanted to keep the world waiting.

Resp. App. 161. Woodall-Vogg responded, “LOL. I just wanted to say I had been awake for a full 24 hours.” *Id.*

9. Given a blank check to run the election, CTCL and its “partners” took full advantage of the opportunity to administer the election in at least one of the Wisconsin 5 Cities.

The Wisconsin 5 cities used at least the following of CTCL’s allied corporations to engage in election administration: Center for Civic Design (Compl. App. 809-11, 827-31, 839, 842, 846, Vote at Home Institute (*id.* at 804, 807, 825-826, 845); Voter Participation Center (*id.* at 843); healthyvoting.org (*id.* at 802); Elections Group (*id.* at 801); Brennan Center (*id.* at 793); Simon and Company, Inc. (*id.* at 806, 808). CTCL and its partners assumed numerous aspects of administration of Wisconsin 5 cities’ election processes. *See,*

e.g., id. at 809-11, 827-831. For example, in Green Bay, the private corporations and their employees engaged in the following aspects of election administration.

- a. Vote at Home volunteered to take curing of ballots off of a municipality's plate; (*id.* at 179-181)
- b. Offered to "lend a hand" to Central Count stations; (*id.* at 182) Elections Group offer; (*id.* at 183)
- c. Offered to connect a municipality to "partners like Power the Polls" to recruit poll workers; to partner with CTCL to send out e-mails to recruit poll workers; (*id.* at 184)
- d. Advised the City as to using DS200 voting machines; (*id.* at 185-188)
- e. Provided a "voter navigator" job description; (*id.* at 189)
- f. Advised a municipality regarding moving the "Central Count" from City Hall to a different location, which was wired to provide election results directly to private corporate employees; (*id.* at 270)
- g. The Center for Civic Design offered a municipality to design the absentee voting instructions and the absentee envelopes; (*id.* at 190-203)
- h. The Elections Group issued a Guide to Ballot Drop Boxes, a report on Planning Drop Boxes, Voter Outreach, and Communication; (*id.* at 204-238)
- i. Provided advice about procedures for challenging an elector's ballot; (*id.* at 239-243) and
- j. Conservation Voices and curing. (*id.* at 244-247)

Whitney May of CTCL advised Milwaukee's Information Coordinator Michelle Nelson on how to request from Milwaukee administration additional funding for election administration and encouraging her to consult with other Wisconsin Five clerks:

Below is some language I drafted along with 2 links that may help you frame the need for more staff. And have you asked Kris in Green Bay or Tara in Racine about their staffing levels? If they have similar numbers of registered voters as Kenosha, but more staff than Kenosha, then I think that's also a way to make your case to Admin.

Compl. App. 576. This email raises the concern that CTCL was drafting documents regarding municipal funding for election administration for the Wisconsin Five cities. *Id.*

Based on CTCL contact with the Commission, the CTCL and its partners may have drafted documents for Commission staff as well. *Id.*

CTCL attempted to cover its tracks, somewhat. Compl. App. 252-3. Whitney May emailed to Celestine Jeffreys of Green Bay on 8-17-20 stating: “moving forward we would like to have Kris [Teske, Green Bay’s City Clerk who was supposed to administer the election] join the implementation calls. We ask because we want to ensure that Kris understands all the recommendations the project partners make, and we want to give her an opportunity to ask questions, too. Both of these things are really critical to the ultimate success of our partnership.” *Id.* CTCL’s statements admit that Kris Teske, the City Clerk who was in charge of running the election, had not been included previously, and CTCL, Celestine Jeffreys (of the Mayor of Green Bay’s office), and others were going behind Kris Teske’s back. *Id.* After the fact, they wanted to give the impression she was actually involved. *Id.*

Kris Teske has admitted in her communications much of the usurpation also. Compl. App. 338-9. As early as July, she claimed that the Mayor’s office was diverting her authority as a result of the CTCL Contract. She wrote in an e-mail:

“I haven’t been in any discussions or emails as to what they are going to do with the money. I only know what has been on the news/in the media...Again, I feel I am being left out of the discussions and not listened to at the meetings.”

Id. at 338. Kris Teske also wrote, “Celestine also talked about having advisors from the organization giving the grant who will be ‘helping us’ with the election and I don’t know anything about that.” *Id.* at 339. “I don’t understand how people who don’t have the

knowledge of the process can tell us how to manage the election.” *Id.* Teske expressed concern that voting laws may be being broken. She wrote:

“I just attended the Ad Hoc meeting on Elections....I also asked when these people from the grant give us advisors who is going to be determining if their advice is legal or not...I don’t think it pays to talk to the Mayor because he sides with Celestine, so I know this is what he wants. I just don’t know where the Clerk’s Office fits in anymore.”

Id. at 338-9.

Kris Teske’s concern was repeated later on October 5, 2020 when she expressed concern that Michael Spitzer-Rubenstein of NVAHI was taking over ballot curing. Compl. App. 123-4. Kris Teske wrote on October 7, 2020, “I didn’t purchase this. Celestine did and should be the one signing this. She is the one working with them. I’m not signing an affidavit for things Celestine did or purchased because she doesn’t know election law.” *Id.*

Some of the most aggressive and egregious usurpation of election administration was performed by Michael Spitzer-Rubenstein of NVAHI. Mr. Spitzer-Rubenstein performed tasks such as:

- a. Providing a document and further instructions for the Central Count workers, (Compl. Ap. 248-9, 313-25)
- b. Augmenting the City of Green Bay’s “guide with the DS450” voting machine instructions; purchase order (*id.* at 310). Asking about 62001 openers, (*id.* at 250).
- c. Corresponding with the Green Bay City Attorney and other employees to interpret Wisconsin law and even to develop absentee voting protocols potentially inconsistent with Wisconsin Law;
- d. Offering to take “curing ballots” off of the City of Green Bay’s plate; (*id.* at 124, 179, 181).
- e. “helping Milwaukee assign inspectors to Central Count stations,” and offering to do the same for Green Bay; (*id.* at 179-81, 252-6).
- f. Setting up the voting machines and patterns in the Central Count location;

- g. Offering “additional resources” such as “funding available, both from ourselves, and the Center for Tech and Civic Life (thanks to Priscilla Chan and Mark Zuckerberg)” (*id.* at 122);
- h. Determining whether to accept ballots after the deadline of 8 pm (*id.* at 299)
- i. Allocating poll workers on election day.
- j. Monitoring numbers of absentee ballots by precinct.
- k. Teske tells finance person does not want NVAHI person in office, but Chief of Staff running show. (*id.* at 257-9).
- l. Central Count guidance # of poll workers. (*id.* at 260)

Emails between Brown County Clerk Sandy Juno and Mr. Spitzer-Rubenstein of NVAHI regarding vote counting machines at Central Count for the City of Green Bay demonstrate that Mr. Spitzer-Rubenstein was effectively in control of the vote count and the election. For example, Mr. Spitzer-Rubenstein wrote leading up to the election:

Subject: Question about Green Bay Central Count “Hi Sandy, I’m Michael Spitzer-Rubenstein, an advisor to the City of Green Bay through the National Vote at Home Institute. I’m helping the city set up Central Count for Tuesday. I heard from Kim there was some sort of issue with using DS200’s at Central Count. I’m trying to get the full backstory to advise her and the mayor.”

Mr. Spitzer-Rubenstein advised and set up the Central Count headquarters. On the hotel contract, Mr. Rubenstein was granted primary access to the room, ballot counters and absentee ballot openers. The Interim City Clerk provided specific instructions regarding Mr. Rubenstein and his leadership of Central Count:

“Number of keys to provide: 5 (4 to group and 1 for hotel to keep-Kristine Hall will hold for hotel). Deliver keys to: Michael Spitzer-Rubenstein” “Michael Spritzer-Rubenstein will be the on-site contact for the group.”

“DO NOT UNLOCK GRAND BALLROOM UNTIL MICHAEL SPITZER-RUBENSTEIN RQUESTS AND IS WITH SECURITY WHEN UNLOCKING THE GRAND BALLROOM DOOR.”

Further, it was written: “Michael Spitzer-Rubenstein will be the on-site contact for

the group [on Election Day].” Compl. App. 265-9. Mr. Spitzer-Rubenstein was one of three people providing “supervision and check-in duties” for workers on the days of the election and subsequent vote counting. Compl. App. 314.

Mr. Spitzer-Rubenstein had access to the Central Count, ballots, and ballot counting:

- a. Mr. Spitzer-Rubenstein negotiated directly with Trent Jameson of the Hyatt Regency and KI Convention Center so that “both networks reach my hotel room on the 8th floor” including “passwords” for /Wifi results of the election; (Compl. App. 270-4)
- b. Mr. Spitzer-Rubenstein developed a diagram and map of the “Central Count” area of the election and developed roles for the staff to handle and count ballots, and Central Count procedures. (Compl. App. 275-96)
- c. assigned inspectors for vote counting and polling places (Compl. Ap. 252)
- d. pushed for control of ballot curing process (Compl. App. 179-180)
- e. provided advice to Green Bay’s City Attorney regarding interpretation of Wisconsin statutes governing the timing and receipt of ballots (Compl. App. 297-300)
- f. To “pull the numbers on the absentee ballots returned and outstanding per ward” information on vote results and to determine which wards were on which voting machines. (Compl. App. 301-3)
- g. Created a pollworker needs spreadsheet (Compl. App. 304-6)
- h. He put himself in charge of transporting ballots to City Hall and then to Central Count on election day; and then counting them. (Discussion of “moving ballot boxes in the morning and evening.” November, 2, 2020, (Compl. App. 297, 0307-9).
- i. “I’m putting together instructions for the Central Count workers, ...” (Compl App. 310);
- j. Corresponding with Saralynn Flynn, also of Vote at Home, who wrote: “here is the document I made to hand out to central count observers.” (Compl. App. 248) The “document” created warned Election Observers to “NOT interfere in any way with the election process,” while CTCL personnel, partners, “pollworkers” and others deputized by CTCL, transported ballots, counted ballots, and “cured” defective mail in and absentee ballots, and otherwise exercised considerable control over the election process. (Compl. App. 311)
- k. On Election Day, Mr. Spitzer-Rubenstein had unfettered access to the Central Count floor.

On Election Day, Mr. Spitzer-Rubenstein had access to ballots, transporting ballots, and determining which ones would be counted or not counted.

Mr. Spitzer-Rubenstein wrote to Vanessa Chavez, Green Bay City Attorney, on November 3, 2020 (Election Day) at 9:29 pm: “Be prepared: ballots delayed.” The text stated: “I think we’re probably okay; **I don’t think anyone challenged the ballots when they came in.**” (Compl. App. 312) (emphasis added)

Mr. Spitzer-Rubenstein explained that someone “prevented one of the dropbox deliveries from getting to City Hall by 8 PM,” so the ballots were “delayed,” i.e. did not arrive on time as required by law. Forty-seven boxes of ballots were expected to be delivered and apparently according to Mr. Spitzer-Rubenstein’s email, some of them were late but he decided that despite some of them being late, they were counted anyway because no one “challenged them.”

10. The “private corporate partners” were from out of state, and not necessarily knowledgeable about Wisconsin election law, or concerned about it.

Notably, CTCL’s “private corporate partners” were from out of state, and not necessarily knowledgeable about Wisconsin election law, or concerned about it. Ryan Chew of the Elections Group was located outside of Wisconsin. “I’ve probably missed the mark in a number of ways. It’s tough to do this from the distance of another state.” Further, Mr. Chew was represented by Whitney May of CTCL to “have decades of election experience working with the Cook County Clerk in Illinois. They [Mr. Chew and Gail, also from the Elections Group] are available to discuss your dropbox plans (and more!).” Compl. App. 563. CTCL is from the state of Illinois. Michael Spitzer-Rubenstein appears to have been from New York or nearby.

Kris Teske admitted in her Answer that “Many of these [election administration] decisions were made by persons who were not authorized to do so and some were made by people not qualified to make them as, again, election laws need to be followed to ensure the integrity of the election.” *Teske Answer*, p. 3.

11. Safe voting was a pretext—the real reason for CTCL grants was to conduct voter outreach, get-out-the-vote, registration of additional voters in specific targeted regions inside the Wisconsin 5 Cities.

The real reason for CTCL grants was to conduct voter outreach, get-out-the-vote, registration of additional voters in specific targeted regions inside the Wisconsin 5 Cities. Resp. App. 148. Safe voting was a pretext. On June 10, 2020, Vicky Selkove of Racine informed the representatives of the other Wisconsin 5 cities that: “Our national funding partner, the Center for Tech & Civic Life, has one additional question area they’d like answered: “What steps can you take to update registered voters’ addresses before November? What steps can you take to register new voters? How much would each cost?”

Id.

12. Wisconsin’s municipal clerks are provided training on administering elections, including being provided a 250-page Election Administration Manual for Wisconsin Municipal Clerks; but, there is no evidence that CTCL and its “partners” from outside of Wisconsin received similar training in Wisconsin law.

Importantly, Wisconsin’s municipal clerks are provided training on administering elections, including being provided a 250-page Election Administration Manual for Wisconsin Municipal Clerks; but, there is no evidence that CTCL and its “partners” from outside of Wisconsin received similar training in Wisconsin law. According to the Election Administration Manual for Wisconsin Municipal Clerks, “The municipal clerk’s election

duties include, but are not limited to, supervision of elections and voter registration in the municipality, equipping polling places, purchasing and maintaining election equipment, preparing ballots and notices, and conducting and tracking the training of other election officials.”⁹ There is no evidence that CTCL or its “partners,” who made recommendations to the Wisconsin 5 cities as to how to run their elections, were provided the Election Administration Manual for Wisconsin Municipal Clerks, or otherwise were trained in Wisconsin election law as municipal clerks would be trained.

13. The Wisconsin 5 cities became beholden to CTCL as a result of the private funding, WSVP and the provisions contained therein.

The documents show that the Wisconsin 5 cities became beholden to CTCL as a result of the private funding, WSVP and the provisions contained therein. Celestine Jeffreys of Green Bay expressed the sentiment on behalf of the entire Wisconsin 5 cities: “As far as I’m concerned I am taking all of my cues from CTCL and work with those you recommend.” Celestine Jeffreys of Green Bay email, July 13, 2020. Compl. App. 439.

On August 1, 2020, Maggie McClain of Madison email to Maribeth stating: “is there an approval/letter giving the go-ahead for this? Or an okay from CTCL saying the *grant funds could be used for this?* I need something to attach to the requisition.” Resp. App. 155.

On August 31, 2020, Kenosha sought and obtained CTCL approval of purchasing 3 DS450 high speed ballot tabulators for use at Absentee Central Count locations at an amended cost of \$180,000 instead of \$172,000. Compl. App. 584-586. Madison was seeking

⁹ See <https://elections.wi.gov/sites/elections.wi.gov/files/2021-04/Election%20Administration%20Manual%20%282020-09%29.pdf>, p. 123 (last visited: May 24, 2021).

similar approval from CTCL corporations regarding election administration financing.
Compl. App. 790-792, 797-799, 803, 808, 837-838)

On September 22, 2020, Karalyn Kratowitz, the interim deputy mayor of Madison asks CTCL for instruction and permission on how to spend the money. Resp. App. 158.

On January 7, 2021, CTCL tells Madison to report in pursuant to the agreement. Report by January 31, 2021. Resp. App. 160.

The Wisconsin 5 cities were periodically required to report to CTCL on election administration. For example, Green Bay officials began reporting to CTCL of the City's efforts regarding:

- a. Voter outreach/education;
- b. Drop boxes;
- c. Poll books;
- d. Community groups; and
- e. Badger books.

Resp. App. 261-264. Madison engaged in the same type of reporting to CTCL, to comply with CTCL's conditions. Resp. App. 712, 737. All the Wisconsin 5 cities were required to report to CTCL of their expenditures by January 31, 2021. Resp. App. 60. "Requiring each city or county receiving the funds to report back to CTCL by January 31, 2021 regarding the moneys used to conduct federal elections." Compl. App. 018, 393, 419, 552, 689-698, 711-714.

14. The Wisconsin 5 cities ceded at least some administrative control over the election to CTCL and its private partners so they could collectively get-out-the-vote in the 2020 election.

As set forth above, CTCL's stated and implied conditions led to the Wisconsin 5 cities' municipal clerks and other staff to sometimes eagerly step aside, and other times to be

pushed aside, to let CTCL and its private corporate partners engage in aspects of election administration. *See, e.g.*, Resp. App. 103-23. CTCL and the private corporations, in light of the documents, had an ulterior motive in the WSVP to get-out-the-vote in the Wisconsin 5 cities and in their respective communities of color. *Id.* But, get-out-the-vote efforts are for the candidates and campaign, not cities, to conduct. *Id.* The Wisconsin 5 cities ceded administrative control over the election to CTCL and its private partners so they collectively got-out-the-vote in the 2020 election. *Id.*

Argument

The Wisconsin 5 cities seek to dismiss the five complaints. Their reasons include timeliness, the complaint's sufficiency as to form, and failure to establish probable cause. On top of that, the Wisconsin 5 cities claim the allegations have no basis in law, as determined by federal courts, and that the Commission cannot provide a remedy, suggesting only the state legislature can address the issues presented to this administrative body.

We suggest the Commission is not impotent as the state legislature provided it with an arsenal of weapons to exercise its powers and duties. The Commission has statutory authority to administer laws relating to elections. It has the authority to investigate, to take testimony, to bring civil actions, sue for injunctive relief, and issue certain orders as the circumstances may require. *See e.g.*, Wisc. Stat. § 5.05.

Here, the five complaints are timely. The Wisconsin 5, during the last election, has established a dangerous precedent that is likely to repeat in future elections. The allegations asserted with the supporting documents, establish sufficient probable cause for the Commission to investigate the conduct of public officials in the administration of elections.

And, the federal court is not in a position to dictate to the Commission, or Wisconsin state courts, what is or might be Wisconsin law. The Commission need not adopt the federal court rulings, even if relevant, which they are not. The issues presented in the complaints do not challenge the outcome of any past election, but establish a need to examine what one might characterize as a nefarious opening of a government's core function of conducting elections to private corporations to gain access in a manner that interferes with the fundamental right to vote. Such is the case here, where the access is gained through seemingly benign purposes—safe and secure election administration—but, ultimately it is asserted contrary to public policy and election laws. In short, there are a myriad of reasons why the complaints should not be dismissed to allow the Commission to perform its function in the election law processes of Wisconsin.

I. The five complaints are timely.

The five filed complaints deal with the “election administration or conduct of elections [that are] contrary to law...or the official has abused the discretion vested in him or her by law with respect to any such matter...” Wisc. Stat. § 5.06 (1). The Commission may request “the official be required to conform his or her conduct to the law...or be required to correct any action or decision inconsistent with the law...or decision inconsistent with the law or any abuse of discretion vested in him or her by law.” *Id.* The statute is written in a manner that also reflects past actions of the official—“abused the discretion,” for instance, and to correct past conduct to prevent lawlessness in the future.

Here, the past misconduct of private entities engaged in the Wisconsin 5 cities’ municipal election administration to get-out-the-vote in certain cities or in certain

communities within the cities, backed by private funding, and allowed by the Wisconsin 5 cities in 2020, is the precedent that must not be repeated in the 2022 and future elections. The precedent allows *any* private entity, including major political parties, to interfere with municipal election administration to affect election outcomes. It is the repetition of this now-established precedent that the complainants fear.

The Wisconsin 5 cities assert that the five complaints are untimely because of the language of § 5.06(3): “A complaint filed under this section shall be filed promptly so as not to prejudice the rights of any other party.” Ostensibly, the Wisconsin 5 contend that the five complaints should have been filed with the Commission in 2020 and not April of 2021.¹⁰ They contend that the “Complainants knew or should have known of the circumstances giving rise to this Complaint long ago....”¹¹ Not true.

The acceptance of the conditional grants are one thing as is the general outlined use of the funds as indicated in the Wisconsin Save Voting Plan (WSVP). It is quite another thing to know of how the Wisconsin 5 implemented the WSVP’s provisions. Moreover, the Wisconsin’s *obligations* to CTCL did not end until the Wisconsin 5 cities’ final report back to the CTCL on January 31, 2021. In fact, CTCL continues to have a possible breach of contract claim against the Wisconsin 5 cities until the statute of limitations runs out after January 31, 2021 reports are submitted. So, the relationship between CTCL and the Wisconsin 5 cities arising from the WSVP isn’t over yet.

¹⁰ See *e.g.*, Madison Memo. at 5; Milwaukee Memo. at 7.

¹¹ Milwaukee Memo. at 7.

We begin with the closed meetings of the Wisconsin 5 cities' Mayors, initiated by the City of Racine. The Wisconsin Open Meeting Law¹² applies to “government bodies.” Wisconsin Statutes define “government body” as any “state or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order.”¹³ “Rule or order” is to be liberally construed, according to the Wisconsin Attorney General responsible for interpreting the Open Meeting Law, to include any directive, formal or informal, creating a body and assigning it duties.¹⁴ This includes directives not only from formal governmental bodies, but also from certain governmental officials, such as mayors.¹⁵

On June 2, 2020, the City Council for the City of Racine passed a resolution, No. 0318-20, in which the Council granted the Mayor the authority to create a body for “planning safe and secure election administration in the City of Racine in 2020, and coordinating such planning with other cities in Wisconsin” identified as the remaining cities of the Wisconsin 5— Green Bay, Kenosha, Madison, and Milwaukee.¹⁶ The resolution identified moneys received from a private non-profit corporation, CTCL of \$100,000, and the distribution of \$40,000 evenly between the identified four cities while Racine retained \$60,000 for the planning.

¹² Wisc. Stat. §§ 19.81–19.98.

¹³ *Id.* § 19.82(1).

¹⁴ *State v. Beaver Dam Area Dev. Corp.*, 752 N.W.2d 295 (Wis. 2008); 78 Wis. Op. Att’y Gen. 67, 68–69 (1989).

¹⁵ 78 Wis. Op. Att’y Gen. 67, 69–70 (1989).

¹⁶ Racine Wisc. Res. No. 0318-20 (June 2, 2020).

The Mayors and other city officials from each of the respective Wisconsin 5 cities did meet and coordinate efforts relating to the administrative planning of elections in 2020. How or what the involvement of the CTCL in these meetings was never apparent. In fact, as previously mentioned, only as of July 26, 2021, did the Complainants learn of the basis of the WSVP which in turn raised questions about what entity actually created the document—the City of Racine staff or the private entity CTCL. While this may have preceded the latter conduct of election officials, knowing the basis for the catalyst to grant CTCL and its partners access to the election administrative process is to understand the underlying establishment of the illicit relationship between the private entity and the Wisconsin 5 cities.

Nevertheless, the Wisconsin 5 cities suggest that through other public meetings of their respective councils occurring in July 2020, regarding the adoption of the WSVP is sufficient notice and knowledge to assert the allegations of the Complaints.¹⁷ Yet, the Wisconsin 5 cities' implementation of the Safe Voting Plan, with CTCL and its partners would not be revealed until 2021 in response to public records requests. The implementation revealed that other private entities and their private employees, through CTCL, were engaged in the statewide and federal congressional election administrative processes, all with the approval of each city of the Wisconsin 5 cities to a varying degree. The extent of the private influence on a core governmental function—the election process—is yet to be determined because of the paucity of documents so far revealed.

¹⁷ See *e.g.*, Green Bay Memo. at 6; Madison Memo. at 5.

The Wisconsin 5 cities also assert that the meaning of “prompt” as used in § 5.06(3) can be best understood under the doctrine of laches.¹⁸ Generally, their argument asserts that the Complainants unreasonably delayed bringing their complaints and therefore, the complaints should be “barred as untimely and prejudicial.”¹⁹ Here, the Wisconsin 5 cities also rely on the Wisconsin Supreme Court’s ruling in *Trump v. Biden*, 951 N.W.2d 568, 572 (Wis. 2020), *cert. denied*, 141 S. Ct. 1387 (2021). As an initial matter, federal district court cases are not binding authority on the Commission or for that matter any Wisconsin state court.²⁰ Nevertheless, quoting from the Supreme Court’s *Trump* decision, the Wisconsin 5 cities assert the decision’s applicability to the five complaints:

Extreme diligence and promptness are required in election-related matters, particularly where actionable election practices are discovered prior to the election. Therefore, laches is available in election challenges. In fact, in election contests, a court especially considers the application of laches. Such doctrine is applied because the efficient use of public resources demands that a court not allow persons to gamble on the outcome of an election contest and then challenge it when dissatisfied with the results, especially when the same challenge could have been made before the public is put through the time and expense of the entire election process. Thus if a party seeking extraordinary relief in an election-related matter fails to exercise the requisite diligence, laches will bar the action.

Id. at 752 *quoting* 29 C.J.S. Elections § 459 (2020) (footnotes omitted). Yet, the applicability the Supreme Court speaks of is does not apply to the five complaints before the Commission.

¹⁸ See *e.g.*, Madison Memo. at 4–5; Milwaukee Memo at 8; Green Bay Memo. at 6.

¹⁹ Madison Memo. at 5.

²⁰ See *State v. Mechtel*, 176 Wis.2d 87, 94–95, 499 N.W.2d 662 (1993).

The allegations asserted regarding the relationships and the extent of those relationships in the election administrative process were not known prior to the 2020 election. As previously stated, the revelations of the extent of interactions, involvement and influence of private entities with the Wisconsin 5 cities did not occur until 2021, after the election. The post-election 2021 complaints are not about the 2020 election outcomes regarding statewide or federal congressional elections. There is no claim here representing dissatisfaction with the electoral outcomes. Instead, the complainants' focus is on the Wisconsin 5 cities' election processes in 2022, 2024 and beyond. Moreover, the relief requested is not extraordinary, but within the ordinary jurisdiction and authority of the Commission.

Contrary to the Wisconsin 5 cities's assertions, the complainants could not have known in 2020 the extent of the private-public relationships each city granted in an election process that has potential implications on the fundamental right to vote.

Most disturbing is the assertions of the Wisconsin 5 cities that the underlying claims are "baseless" and, hence, prejudicial as having been addressed by the federal courts and claims rejected, citing *Wisconsin Voters Alliance v. Racine*, 2020 WL 6578061.²¹ Here, the Wisconsin 5 cities inaccurately represent the district court's decision. As the court opined, "Though this is a federal lawsuit seeking relief in a federal court, Plaintiffs offered only a political argument for prohibiting municipalities from accepting money from private entities

²¹ See e.g., Madison Memo. at 9 citing, *Wisconsin Voters Alliance v. Racine*, 2020 WL 6578061.

to assist in funding of elections for public offices. They *do not challenge any specific expenditure of the money; only its source.*”²²

The five complaints now before the Commission are challenging the expenditure of the moneys received as it relates to its implementation, including the CTCL’s private partners who participated in the election administrative process as part of the conditional grant. The Wisconsin 5 cities are not prejudiced. The complainants are seeking the Commission to investigate the allegations and claims and come to its own conclusions and provide the appropriate relief to minimize or prevent the repetition of the dangerous precedent already established. Hence, contrary to the Wisconsin 5 cities’ arguments, they are not prejudiced by “having to respond to legal claims and issues identical to ones that have already been considered and rejected in other fora.”²³ Again, while the federal court decisions are not binding on the Commission, the claims and issues are *not* identical. The parties are not the same. There wasn’t an opportunity to litigate the five complaints’ legal claims in the previous federal case. Therefore, there is no “issue preclusion”²⁴ applicable to the five complaints.

Other arguments, such as that of Madison, are also spurious. It contends that “a retrospective investigation followed by declarations of law to be applied to future elections is far less helpful than a timely-filed Complaint, and is not in line with the intent of section 5.06.”²⁵ Madison further contends that “Respondents needed to know immediately if any

²² U.S. Distr. Ct., Dec. and Or. Granting Defs. Mot. to Dismiss, Case No. 20-C-1487 (January 19, 2021) (Dckt. No. 49) (emphasis added).

²³ *See e.g.*, Madison Memo. at 10; Kenosha Memo. at 12.

²⁴ *Id.*

²⁵ Madison Memo. at 11.

error is made during the administration of any election...it is too late for the City to take any corrective action...[and] prejudices every voter within the City of Madison who participated in the election....”²⁶ First, there was no ability of the Complainants to know the extent of the implementation of the Safe Voting Plan and the interactions between the municipal governments and the private entities during the election. Simply put, the Wisconsin 5 cities have never made all their interactions with CTCL and the allied private corporations public.

Second, the Wisconsin 5 cities are effectively admitting they cannot or are not willing to acknowledge the implications or illegalities of their past actions to act in accordance with the law in the future. So, in effect, the Commission must act because the Wisconsin 5 cities lack the self-reflection to consider why the complainants are concerned about future departures and violations from Wisconsin’s election law scheme in the 2022 elections and beyond. For example, Green Bay Mayor Eric Genrich previously described state legislative presentations of the facts referred to in the five complaints against the Wisconsin 5 cities as a “Stalinist show trial and a three-ring circus.”²⁷ Of course, this Commission proceeding is different than a legislative proceeding. That is why it is so important that the complainants and the Wisconsin 5 cities are engaged in this statutorily-authorized litigation process. None of the Wisconsin 5 cities’ Mayors are calling this proceeding a “Stalinist show trial” nor “a three-ring circus.” The opportunity is here for the Commission to investigate the complainants’ allegations and adjudicate the claims, requiring the Wisconsin 5 cities to defend their actions with something more than name-calling.

²⁶ *Id.*

²⁷ Found at <https://apnews.com/article/trials-wisconsin-elections-green-bay-2057c168d7c3ce487a988105b314d89c> (last visited on July 27, 2021)

Finally, the complainants do not assert how the voters are prejudiced as each were unknowingly subjected to the Wisconsin 5' cities' invitation of private entities to the election process. While there may have been a breach of public policy, for instance, the five complaints are focused on the future; the five complaints do not constitute a contest of the 2020 election results.

II. The five complaints are sufficient as to form.

The Wisconsin 5 cities asserted that the Complaints are not “sufficient as to form.”²⁸ None of the Wisconsin 5 cities argue how the complaints are “not sufficient as to form” as found under Wisconsin Statutes § 20.02(2). The Complainants followed the requirements of the complaint procedure as found under Wisconsin Statutes § 20.03(2). However, each of the Wisconsin 5 cities have raised issues regarding “probable cause” which is referenced under § 20.03(3), “The complaint shall specify the statutory basis for the complaint and shall set forth the facts which are alleged to establish probable cause.” While the Complainants attest to the five complaints’ sufficiency of meeting the requirements of § 20.03(3), the Wisconsin 5 cities take issue as to whether “probable cause” has been met. That, however, is a different issue addressed below.

III. The Wisconsin 5, as municipalities, have limited authority in the administration of statewide and federal congressional elections.

The Elections Clause under Article I, § 4, cl. 1, of the U.S. Constitution is our starting point. “The Elections Clause has two functions. Upon the States it imposes the duty (“*shall* be prescribed”) to prescribe the time, place, and manner of electing Representatives and

²⁸ See e.g., Madison Memo. at 3; Kenosha Memo. at 5.

Senators; upon Congress it confers the power to alter those regulations or supplant them altogether.”²⁹ Where Congress has not acted, the *states* may as long as any state law is not contrary to federal law:

The Clause's substantive scope is broad. “Times, Places, and Manner,” we have written, are “comprehensive words,” which “embrace authority to provide a complete code for congressional elections...” “In practice, the Clause functions as “a default provision; it invests the States with responsibility for the mechanics of congressional elections, but only so far as Congress declines to pre-empt state legislative choices.” *Foster v. Love*, 522 U.S. 67, 69 (1997) (citation omitted). The power of Congress over the “Times, Places and Manner” of congressional elections “is paramount, and may be exercised at any time, and to any extent which it deems expedient; and so far as it is exercised, and no farther, the regulations effected supersede those of the State which are inconsistent therewith.” *Ex parte Siebold*, 100 U.S. 371, 392 (1880).³⁰

Municipalities in Wisconsin are not independent “states.” Moreover, “municipalities have no authority but what they are given.”³¹ Municipalities in Wisconsin have no inherent powers. *City of Madison v. Schultz*, 98 Wis.2d 188, 195, 295 N.W.2d 798, 801 (Wisc. App. 1980). However, they are authorized to regulate local affairs by the Wisconsin Constitution and by sec. 62.11(5). Article II, sec. 3, of the Wisconsin Constitution, known as the home rule amendment, provides in part:

- (1) Cities and villages organized pursuant to state law may determine their local affairs and government, subject only to this constitution and to such enactments of the legislature of statewide concern as with uniformity shall affect every city or every village. The method of such determination shall be prescribed by the legislature.

²⁹ *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 8 (2013) *citing* *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 804–805 (1995); *id.*, at 862 (Thomas, J., dissenting).

³⁰ *Inter Tribal Council of Arizona, Inc.*, 570 U.S. at 9.

³¹ *Wisconsin Carry, Inc. v. City of Madison*, 892 N.W.2d 233, 241 n16 (Wis. 2017) *citing* *Willow Creek Ranch, LLC v. Town of Shelby*, 2000 WI 56, ¶17, 235 Wis.2d 409, 611 N.W.2d 693 (*citing* *First Wis. Nat'l Bank of Milwaukee v. Town of Catawba*, 183 Wis. 220, 224, 197 N.W. 1013 (1924) (“Municipal bodies have only such powers as are expressly conferred upon them by the legislature or are necessarily implied from the powers conferred.”)).

Section 62.11(5), provides for the powers of common councils and how they are limited:

POWERS. Except as elsewhere in the statutes specifically provided, the council shall have the management and control of the city property, finances, highways, navigable waters, and the public service, and shall have power to act for the government and good order of the city, for its commercial benefit, and for the health, safety, and welfare of the public, and may carry out its powers by license, regulation, suppression, borrowing of money, tax levy, appropriation, fine, imprisonment, confiscation, and other necessary or convenient means. The powers hereby conferred shall be in addition to all other grants and shall be limited only by express language.

Because Wisconsin cities are created by state statute they cannot exercise any power unless specifically provided for by state law:

The legislative power in this state is lodged in the legislature. When it exerts that power, it exerts it on behalf of and in the name of the people of the State of Wisconsin.” *Van Gilder v. City of Madison*, 222 Wis. 58, 67, 267 N.W. 25 (1936). Conversely, “cities are creatures of the state legislature [that] have no inherent right of self-government beyond the powers expressly granted to them.”

Black v. City of Milwaukee, 882 N.W.2d 333, 342–43 (Wis. 2016).

The Wisconsin 5 cities assert that they have home rule authority regarding the “administration of elections within their jurisdiction” citing Wisconsin Statutes § 7.15:³²

Each municipal clerk has charge and supervision of elections and registration in the municipality. The clerk shall perform the following duties and any others which may be necessary to properly conduct elections or registration....

Yet, Wisconsin Statutes § 62.11 (5) on common council powers allows for statutory limitations on common council’s powers, “The powers hereby conferred shall be in addition to all other grants, and shall be limited only by express language.” (Emphasis added.) So, Wisconsin Statutes § 7.15, unambiguously, authorizes the municipal clerk to have “charge

³² See e.g., Milwaukee Memo. at 18; Kenosha Memo. at 27–28; Madison Memo. at 18.

and supervision of elections and registration in the municipality” and is an express statutory limitation of the common council’s powers under Wisconsin Statutes § 62.15 (5) over “charge and supervision of elections and registration in the municipality.”

As mentioned above, the Commission under Wisconsin Statutes § 7.08 (3) has issued its Election Administration Manual for Wisconsin Municipal Clerks recognizing that municipal clerks have exclusive “charge and supervision of elections and registration in the municipality.” Nowhere in this statutorily-authorized manual is there provision for the Mayors, Common Councils, and private corporations to engage in municipal election administration—and for good reason, because any such suggestion would violate Wisconsin Statutes § 7.15.

Below § 7.15 is a list of the clerk’s prescribed duties found under §§ 7.15 (1)(a)–(k); (1m), (2)–(15). Notably, none of the duties prescribe either the acceptance of conditional monetary grants, or allowing for private entities and their employees through a monetary conditional grant to engage and participate in the election administrative process for statewide or federal congressional elections. The Wisconsin 5 cities admit that “[e]lements of the administration of elections are matters of statewide concern”³³ as it would be for statewide and federal congressional elections. Here, the Wisconsin 5 cities admit that the state legislature created a statutory scheme within which all elections must be administered.³⁴ However, the Wisconsin 5 cities also assert that “[c]ertain other elements of election administration...are matters of local concern.”³⁵ The Wisconsin 5 cities cite to the COVID-

³³ Kenosha Memo. at 28. *See also*, Madison Memo. at 18.

³⁴ *Id.*

³⁵ *Id.*

19 pandemic as an issue of local concern and associated problems with the election process.³⁶ The Wisconsin 5 cities then rely upon a federal court unpublished opinion in *Iowa Voter All. v. Black Hawk Cty.*, No.C20-2078-LtS, 2020 WL 6151559 at *3 (N.D. Iowa Oct. 20, 2020). The Iowa federal court noted that an Iowa county had the authority to accept CTCL funding because the county has the authority to “perform any function it deems appropriate to protect and preserve rights, privileges, and preserve...and improve the peace, safety, health, welfare, comfort, and convenience” of its residents. *Id.*

However, the Wisconsin 5 cities failed to mention the Wisconsin appellate court decision in *Loc. Union No. 487, LAFF AFL-CIO v. City of Eau Claire*, 415 N.W.2d 543, 546 (Wis. App. 1987), *aff'd sub nom. Loc. Union No. 487, LAFF-CIO v. City of Eau Claire*, 433 N.W.2d 578 (Wis. 1989). The appellate court analyzed the Wisconsin Supreme Court’s four-criteria test to determine whether home rule power exists in areas determined to be matters of state-wide concern:

- (1) whether the legislature has expressly withdrawn the power of municipalities to act;
- (2) whether the ordinance logically conflicts with the state legislation;
- (3) whether the ordinance defeats the purpose of the state legislation; or
- (4) whether the ordinance goes against the spirit of the state legislation.

Anchor Savings & Loan Association v. Equal Opportunity Commission, 355 N.W.2d 234, 238 (1984) (citations omitted).

³⁶ Kenosha Memo. at 29; Madison Memo. at 19.

We begin here with the accepted principle that the Wisconsin Supreme Court, “as early as 1875, in its decision in *Slinger v. Henneman*, 38 Wis. 504, 510 (1875), determined that our legislature had no power to delegate to county boards the right to legislate on all matters of state-wide concern, even though the attempted delegated power was to be exercised only within the boundaries of the county.” *Muench v. Pub. Serv. Commn.*, 55 N.W.2d 40, 42 (Wis. 1952). Likewise, the Wisconsin Supreme Court has recognized as early as 1931 that “elections are matters of state-wide concern. *State v. Richter*, 234 N.W. 909, 911 (Wis. 1931).

Even if it is accepted that the state legislature did not expressly allow municipalities to accept conditional grants from private entities for election administrative purposes, the Wisconsin 5 cities’ acceptance of CTCL grants do not meet the remaining criteria of determining matters of state-wide concern. Under the second criteria, the Legislature provided an extensive list of duties municipal clerks are to perform and the acceptance of conditional grants that also allowed for private entities to engage in the election administrative process would be contrary to the intent of the state legislature policies expressed under state election laws. As a further example, the state legislature provided for itself a law and procedure regarding the acceptance of grants. Under Wisconsin Statutes § 20.907(1), the state legislature declared that

Unless otherwise provided by law, all gifts, grants, bequests, and devises to the state or to any state agency for the benefit or advantage of the state, whether made to trustees or otherwise, shall be legal and valid when approved by the joint committee on finance and shall be executed and enforced according to the provisions of the instrument making the same, including all provisions and directions in any such instrument for accumulation of the income of any fund or rents and profits of any real estate without being subject to the limitations and restrictions provided by law in other cases; but no such accumulation shall be allowed to produce a fund more than 20 times as great as that originally given.

The acceptance of the conditional grants under the circumstances expressed by the complainants reveals that the Wisconsin 5 cities' actions are contrary to legislative intent regarding the conduct of elections, especially as it relates to statewide and federal congressional elections.

Under the third criteria, the actions of the Wisconsin 5 cities defeats the uniformity of election processes the Legislature established regarding the duties of municipal clerks. The Wisconsin 5 cities, by accepting the private conditional grants and thereby engaging private entities to engage in the election administrative process have compromised the core governmental function to protect the fundamental right to vote. By allowing this to occur, the Wisconsin 5 cities' actions conflict with the purposes and admitted structures in the conduct of elections throughout the state of Wisconsin.

Finally, as to the fourth criteria, the actions of the Wisconsin 5 cities as described, is contrary to the spirit of the state legislature's election scheme to maintain control over the election process for statewide and federal congressional elections. Here, the Wisconsin 5 cities have engaged a local element of inviting private entities to engage in the election process, versus the exclusive control of the state through the municipal clerks only and throughout the state. The court's declaration in *Loc. Union No. 487, IAFF AFL-CIO v. City of Eau Claire*, is applicable in this case because Eau Claire's police safety officer program conflicted with the statewide concern of the Legislature:

If the legislature intends municipalities to be empowered to establish PSO programs and combine the police and fire functions, it should expressly act. However, in the absence of any legislative action, we conclude that the legislature has implicitly withdrawn the municipalities' authority to establish PSO programs such as the one proposed by Eau Claire.

Loc. Union No. 487, LAFF AFL-CIO, 415 N.W.2d 543 at 546. Here, the absence of any legislative action is the legislative rejection of the Wisconsin 5 cities’ authority to accept conditional grants for statewide and federal congressional elections that allow the engagement of private entities into the core governmental function of election processes through the municipal clerk.

Likewise, the Wisconsin 5 cities’ acceptance of the grants for election administration purposes violates federal and state law because it is a substantial departure from the state’s election law scheme. As previously noted, the Elections Clause and Electors Clause of the United States Constitution requires that federal elections be exclusively publicly-funded, unless the state legislature has legally authorized grants for election administration. U.S. Const., Art. I, § 4, cl. 1; Art. II, § 1, cl. 2. The Elections Clause of the U.S. Constitution states that the state legislatures shall prescribe “the times, places and manner of holding election for Senators and Representatives”—not cities.

On December 24, 2020, the U.S. Court of Appeals for the Seventh Circuit, in rejecting the Trump campaign’s Electors Clause arguments in a Wisconsin case, suggested that the Electors Clause may apply when Wisconsin public officials have engaged in a “departure” from the state’s election law scheme:

The Wisconsin Legislature expressly assigned to the Commission “the responsibility for the administration of ... laws relating to elections,” WIS. STAT. § 5.05(1), just as Florida’s Legislature had delegated a similar responsibility to its Secretary of State. See *Bush*, 531 U.S. at 116, 121 S.Ct. 525 (Rehnquist, C.J., concurring). Florida’s legislative scheme included this “statutorily provided apportionment of responsibility,” *id.* at 114, 121 S. Ct. 525, and three Justices found a departure from that scheme when the Florida Supreme Court rejected the Secretary’s interpretation of state law. See *id.* at 119, 123, 121 S.Ct. 525. And it was the Minnesota Secretary of State’s lack of a similar

responsibility that prompted two judges of the Eighth Circuit to conclude that he likely violated the Electors Clause by adding a week to the deadline for receipt of absentee ballots. See *Carson*, 978 F.3d at 1060.

Trump v. Wisconsin Elections Commission, 983 F.3d 919, 927 (7th Cir. 2020). To be sure, in that case, the Trump campaign’s 2020 Electors Clause claims regarding “indefinitely confined” voters, endorsing the use of absentee ballot drop boxes, and best practices for correcting a witness's address on an absentee ballot certificate were dismissed by the federal courts.

The claims in this matter relating to the Wisconsin 5 cities accepting \$8.8 million of private moneys for federal election administration are distinguishable from those facts in the *Trump* case because these legal claims relate to the Wisconsin’s diversion of the election law authority of Congress, the Wisconsin State Legislature, the Wisconsin Elections Commission, and the City Clerk. In this way, the complainants’ Elections Clause and Electors Clause claims against the municipalities accepting private moneys for federal election administration without express state law authorizing such grants are similar to the claims considered by the three Supreme Court justices finding a “departure from that scheme” in the Florida case and the claim considered by the two Eighth Circuit judges to be a “likely” violation of the Electors Clause in the Minnesota case. *Trump v. Wisconsin Elections Commission*, 983 F.3d 919, 927 (2020).

IV. The WSVP provisions to increase in-person and absentee voting targeted to certain demographic and geographic classifications, violate federal and state law and public policy.

Wisconsin Statutes § 5.06 provides electors with a private cause of action to sue their public officials for violating election law or abusing their discretion—and provides remedies against future, similar violations. Both federal law and state law limit the Wisconsin 5 cities’

powers regarding election laws. Federal law preempts municipal powers. *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 605 (U.S. 1991). Wisconsin law supersedes municipal powers. *Wisconsin's Environmental Decade, Inc. v. Department of Natural Resources*, 271 N.W.2d 69, 76 (Wis. 1978); *Fox v. Racine*, 275 N.W. 513, 514 (Wis. (1937)). And, under federal and state common law, contracts are void if they violate federal or state law or public policy. *Hedges v Dixon County*, 150 U.S. 182 (1893); *Hazelton v Sheckells*, 202 U.S. 71 (1906); *Associated Wisconsin Contractors v. Lathers*, 291 N.W. 770 (Wis. 1940); *Chippewa Valley & S. Ry. Co. v. Chicago, St. P., M. & O. Ry. Co.*, 44 N.W. 17 (Wis. 1889); *Wells v. Waukesha County Marine Bank*, 401 N.W.2d 18 (Wis. App. 1986).

The Wisconsin Supreme Court in *Associated Wisconsin Contractors v. Lathers*, 291 N.W. 770, 771 (Wis. 1940) states the general rule that contracts are illegal if against public policy:

If the mere tendency or purpose of a contract works against public policy, it is illegal, even though no actual damage be shown. 12 Am.Juris. p. 664, § 672; *Houlton v. Nichol*, 93 Wis. 393, 67 N.W. 715, 33 L.R.A. 166, 57 Am.St.Rep. 928, 2 Page, Contracts, 2d Ed., p. 1164, § 672.

291 N.W. at 771. The Wisconsin Court of Appeals in *Wells v. Waukesha County Marine Bank*, 135 Wis.2d 519 (Wis.App. 1986) held a contract provision between an international union and local union as void against public policy. The specific provision of the contract between local union and international union required turnover of the treasury to the international union upon the local union's disaffiliation. The Court of Appeals found the contractual provision void as against public policy:

We conclude that the public policy of Wisconsin does not allow the enforcement of this contract provision, as applied to require the forfeiture of a local union's property to the international union, *which has no other claim to that property*, upon the local members' exercise of their statutory right to discontinue affiliation with the international.

Id. at 23.

In 2008, the Wisconsin Court of Appeals, relying on this *Wells* decision, struck down a similar contractual provision in 2008 as void against public policy:

We conclude that the present case is factually and legally indistinguishable from *Wells v. Waukesha County Marine Bank*, 135 Wis.2d 519, 401 N.W.2d 18 (Ct.App. 1986), and that *Wells* controls the outcome.

American Federation of State, Mun., and County Employees v. Wisconsin Law Enforcement Ass'n, 2008 WI App 51, ¶ 1, 2008 WL 516738, at *1 (Wis.App. 2008).

Earlier, the Wisconsin Supreme Court in *Chippewa Valley & S. Ry. Co. v. Chicago, St. P., M. & O. Ry. Co.*, , 44 N.W. 17 (Wis. 1889), held void specific contractual provisions between two railway companies as against public policy.

A contract between two railroad companies, by which one of them, in consideration of contingent compensation, among other things a part of the grant, agrees to refrain from applying to the legislature for a land grant, and to assist the other in getting it, is void, as against public policy, though it stipulates that the means to be used in securing the grant shall be reasonable and proper.

Id. at 20. In so doing, the Wisconsin Supreme Court, quoted with approval from *Clippinger v. Hepbaugh*, 5 Watts & S. 315, 1843 WL 5037 (Pa. 1843), “it matters not that nothing improper is done or expected to be done. It is enough if such is the tendency of the contract—that it is contrary to sound morality and public policy, leading necessarily, in the hands of designing and corrupt persons, to improper tampering with public officers, and the use of an extraneous secret influence over an important branch of the government. It may not corrupt, but if it corrupts or tends to corrupt, or if it deceives or tends to deceive, that is

sufficient to stamp its character with the seal of disapproval before a judicial tribunal.” 44 N.W. at 23.

Similarly, the WSVP provisions violate federal and state law and public policy for three reasons. First, the WSVP provisions are an unconstitutional departure from the Wisconsin state election law scheme—as explained above. Second, the WSVP provisions are illegal and violate public policy because they treat geographic and demographic groups differently in the same election. Third, the WSVP is illegal and violates public policy because its privately-funded absentee voting contractual provisions contain geographic and demographic classifications amongst voters in the same election which violate state statutes—and, in turn, violate the Elections Clause and Electors Clause which grants to the state legislatures, not municipalities, the power to make federal election law. Wis. Stat. § 6.84, et seq. (absentee voting laws); U.S. Const., Art. I, § 4, cl. 1, Art. II, § 1, cl. 2.

The Complainants in this case have brought their complaint under Wisconsin Statutes § 5.06 (1) requesting the Commission to issue an order under Wisconsin Statutes § 5.06 (6) requiring, restraining and correcting the Wisconsin 5 cities so that these violations never occur again.

A. The WSVP is illegal and against public policy because its privately-funded provisions are a substantial departure from Wisconsin’s election law scheme.

The arguments regarding the WSVP being an unconstitutional departure from the Wisconsin’s election law scheme is explained above. Here, a similar argument is incorporated by reference that WSVP is illegal and against public policy because its privately-funded provisions are a substantial departure from Wisconsin’s election law scheme because its privately-funded provisions violate federal and state law and public policy. How the

WSVP's privately-funded provisions violate federal and state law and public policy is further explained below.

B. The WSVP is illegal and against public policy because its in-person voting provisions have geographic and demographic classifications treating voters in the same election differently—and which were privately-funded.

The appropriate standards of review in this case for the Equal Protection Clause claims are *Anderson-Burdick* scrutiny for the disparate treatment of voters and, actually, strict scrutiny because of the private funding. When a plaintiff alleges that a state has burdened voting rights through the disparate treatment of voters, the legal standard used is generally found in *Anderson v. Celebrezze*, 460 U.S. 780 (1983) and *Burdick v. Takushi*, 504 U.S. 428 (1992). *See also Clements v. Fashing*, 457 U.S. 957, 965 (1982).

Although *Anderson* and *Burdick* were both ballot-access cases, the Supreme Court has confirmed their vitality in a much broader range of voting rights contexts. *See Cranford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 204 (2008) (Scalia, J., concurring.) (“To evaluate a law respecting the right to vote—whether it governs voter qualifications, candidate selection, or the voting process—we use the approach set out in *Burdick*....”). The *Burdick* Court stated the standard as follows:

A court considering a challenge to a state election law must weigh “the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate” against “the precise interests put forward by the State as justifications for the burden imposed by its rule,” taking into consideration “the extent to which those interests make it necessary to burden the plaintiffs' rights.”

Burdick, 504 U.S. at 434, (quoting *Anderson*, 460 U.S. at 789). This standard is sufficiently flexible to accommodate the complexities of state election regulations while also protecting

the fundamental importance of the right to vote. *Obama for America v. Husted*, 697 F.3d 423, 428–30 (6th Cir. (Ohio) 2012). There is no “litmus test” to separate valid from invalid voting regulations; courts must weigh the burden on voters against the state's asserted justifications and “make the ‘hard judgment’ that our adversary system demands.” *Crawford*, 553 U.S. at 190 (Stevens, J., announcing the judgment of the Court).

Similar to the federal constitution, Wisconsin’s Constitution requires equality from the government, including the Wisconsin 5 cities:

Equality; inherent rights. Section 1. All people are born equally free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness; to secure these rights, governments are instituted, deriving their just powers from the consent of the governed.

Art. I, sec. 1. The same legal standard of review applies for complainants’ state constitutional claims.

Complainants, here, have demonstrated that their right to vote is unjustifiably burdened by the Wisconsin 5 cities targeting geographic and demographic groups for increased voting. The Wisconsin 5 cities’ conduct promoting voting for certain voter groups affected election outcomes—as concluded by WILL’s 2021 analytical report. The Wisconsin 5 cities in the WSVP crossed the line between election administration and campaigning the Wisconsin 5 cities should have never crossed. The *Anderson–Burdick* standard, therefore, applies.

Additionally, when a state's classification “severely” burdens the fundamental right to vote, strict scrutiny is the appropriate standard. *Burdick*, 504 U.S. at 434 (1992). The federal courts “have long been mindful that where fundamental rights and liberties are asserted

under the Equal Protection Clause, classifications which might invade or restrain them must be closely scrutinized and carefully confined.” *Harper v. Va. Bd. of Education*, 383 U.S. 663, 670 (1966). Here, it is the CTCLs private funding of the WSVP’s governmental classifications which treat voters differently in the same elections which triggers strict scrutiny. Nothing could be more repugnant to democracy than private corporations paying election officials to increase voting access for targeted demographic groups which affect election outcomes—which occurs over-and-over-again in the WSVP provisions. Private corporations were paying money to election officials to affect the election outcome. So, strict scrutiny must apply when private funding of election administration targeting voter groups is involved—because the credibility of our federal elections is at stake

Additionally, in *Bush v. Gore*, the U.S. Supreme Court emphasized that equal protection restrictions apply not only to the “initial allocation of the franchise,” but “to the manner of its exercise” as well. *Bush*, 531 U.S. at 104. The state may not subject voters to “arbitrary and disparate treatment” that “value[s] one person’s vote over that of another.” *Id.* This equal protection prohibition on “arbitrary and disparate treatment” of different voters participating in the same election is what at least one commentator calls *Bush*’s “Uniformity Principle.” Michael T. Morley, *Bush v. Gore’s Uniformity Principle and the Equal Protection Right to Vote*, 28 Geo. Mason L. Rev. 229 (Fall 2020).

Courts have applied the Uniformity Principle to intentional discrimination concerning in-person voting opportunities. For example, in *Obama for America v. Husted*, 697 F.3d 423 (6th Cir. 2012), the Sixth Circuit held that it was unconstitutional for the state of Ohio to allow only domestic military voters to cast ballots in person over the weekend before

Election Day. *Id.* at 437. The court noted that, although military voters can face unexpected emergencies that prevent them from voting in person on Election Day, other voters may face similar contingencies:

At any time, personal contingencies like medical emergencies or sudden business trips could arise, and police officers, firefighters and other first responders could be suddenly called to serve at a moment's notice. There is no reason to provide these voters with fewer opportunities to vote than military voters”

Id. at 435. The court concluded that the Equal Protection Clause therefore prohibited the state from making special accommodations only for military voters. *Id.* at 436. The court added that it would be “worrisome ... if states were permitted to pick and choose among groups of similarly situated voters to dole out special voting privileges.” *Id.* at 435.

Similarly, the Wisconsin 5 cities’ WSVP was their collective effort “to pick and choose among groups of similarly situated voters to dole out special voting privileges”—which is a violation of the Equal Protection Clause. *Id.* at 435.

C. For in-person voting, WSVP is illegal because its privately-funded, in-person voting contractual provisions contain geographic and demographic classifications amongst voters in the same election which are not narrowly tailored to meet a compelling state interest.³⁷

For in-person voting, the WSVP’s privately-funded geographic and demographic classifications are not narrowly tailored to meet a compelling state interest.

³⁷ Since the legal arguments for strict scrutiny and *Anderson-Burdick* standards of review are parallel, for the readers’ ease, the language of strict scrutiny is used, but the *Anderson-Burdick* standard and its application is incorporated herein by reference—and not waived.

1. The WSVP is not a public health care measure for in-person voting.

WSVP is not a public health measure for in-person voting. The pre-contract history shows no public health officials involved and no discussion of public health measures and alternatives. CTCL is not a public health agency or organization. And, WSVP is not a health care statute or administrative rule or policy. Instead, it is a grant agreement between CTCL and the Wisconsin 5 cities relating to election administration. After the approval of the WSVP, the CTCL introduced private corporations to each of the cities to run every aspect of Wisconsin 5 cities' election administration. CTCL was sending election experts, not doctors, nurses, public officials and the like.

2. WSVP's provision "reaching our historically disenfranchised residents and communities" is a geographic and demographic classification which is not narrowly tailored to meet a compelling state interest.

On page 1, the WSVP states the Wisconsin 5 cities to "be intentional and strategic in reaching our historically disenfranchised residents and communities; and, above all, ensure the right to vote in our dense and diverse communities" within the Wisconsin 5 cities. This election administration provision, promoting in-person voting, is privately-funded, discriminates against Wisconsinites outside the Wisconsin 5 cities and discriminates in favor of "historically disenfranchised residents and communities" as opposed to the rest of the residents and communities within the Wisconsin 5 cities. There is no compelling state interest to support this classification treating differently Wisconsin voters in the same election.

3. WSVP’s provision “plan for the highest possible voter turnouts” is a geographic classification which is not narrowly tailored to meet a compelling state interest.

On page 2, the WSVP states, “The time that remains now and the November election provides an opportunity to plan for the highest possible voter turnouts...” in the Wisconsin 5 cities. This election administration provision, promoting in-person voting, is privately-funded and discriminates against Wisconsinites outside the Wisconsin 5 cities. There is no compelling state interest to support this classification treating differently Wisconsin voters in the same election.

4. WSVP’s provisions—to “encourage and increase ... in-person” voting and to “dramatically expand strategic voter education & outreach efforts”—“particularly to historically disenfranchised residents”—are not narrowly tailored to meet a compelling state interest.

On pages 5 and 6, the WSVP states that about one-half of the grant money will be used by the Wisconsin 5 cities to “encourage and increase ... in-person” voting and “dramatically expand strategic voter education & outreach efforts”—“particularly to historically disenfranchised residents” --within the Wisconsin 5 cities. These election administration provisions, promoting in-person voting, is privately-funded, discriminates against Wisconsinites outside the Wisconsin 5 cities and discriminates in favor of “historically disenfranchised residents as opposed to the rest of the residents and communities within the Wisconsin 5 cities. There is no compelling state interest to support this classification treating differently Wisconsin voters in the same election.

5. WSVP’s provisions to “Dramatically Expand Voter & Community Education & Out, Particularly to Historically Disenfranchised Residents” are not narrowly tailored to meet a compelling state interest.

On page 15, the WSVP states, “Dramatically Expand Voter & Community Education & Out, Particularly to Historically Disenfranchised Residents” within the Wisconsin 5 cities:

All five municipalities expressed strong and clear needs for resources to conduct voter outreach and education to their communities, with a particular emphasis on reaching voters of color, low-income voters without reliable access to internet, voters with disabilities, and voters whose primary language is not English.

Each of the Wisconsin 5 cities had their own plans to “target” certain residents and communities for higher voter turnout.

In Green Bay, private grant funds “would be distributed in partnership with key community organizations including churches, educational institutions, and organizations serving African immigrants, LatinX residents, and African Americans. Green Bay’s privately-funded classification leaves out electors who don’t live in Green Bay and leaves out electors in Green Bay who are not African immigrants, LatinX residents and African Americans.

In Kenosha, grant funds would be used “for social media advertising, including on online media like Hulu, Spotify, and Pandora (\$10,000) and for targeted radio and print advertising (\$6,000) and large graphic posters (\$3,000) to display in low-income neighborhoods, on City buses, and at bus stations, and at libraries (\$5,000).” Kenosha’s privately-funded classification leaves out electors who don’t live in Kenosha and leaves out electors in Kenosha who don’t live in low-income neighborhoods.

In Madison, private funds would support partnering “with community organizations and run ads on local Spanish-language radio, in the Spanish-language newspapers, on local hip hop radio stations, in African American-focused printed publications, and in online publications run by and for our communities of color (advertising total \$100,000).”

Madison’s privately-funded classification leaves out electors who don’t live in Madison and leaves out electors in Madison who are not Spanish-speaking, who do not listen to hip hop radio stations, who do not read African American-focused printed publications, and who do not read online publications run by and for Madison’s communities of color.

In Milwaukee, the private funds would support a “communications effort would focus on appealing to a variety of communities within Milwaukee, including historically underrepresented communities such as LatinX and African Americans, and would include a specific focus on the re-enfranchisement of voters who are no longer on probation or parole for a felony. Milwaukee’s privately-funded classification leaves out electors who don’t live in Milwaukee and leaves out electors in Madison who are not members of Milwaukee’s historically underrepresented communities usch as LatinX and African American.

In Racine, the private funds would support renting “billboards in key parts of the City (\$5,000) to place messages in Spanish to reach Spanish-speaking voters” and “targeted outreach aimed at City residents with criminal records to encourage them to see if they are not eligible to vote.” Racine’s privately-funded classification leaves out electors who don’t live in Racine and leaves out electors in Racine who are not Spanish-speaking.

Additionally, in Racine, private funds would be used “to purchase a Mobile Voting Precinct so the City can travel around the City to community centers and strategically chosen

partner locations and enable people to vote in this accessible (ADA-compliant), secure, and completely portable polling booth on wheels, an investment that the City will be able to use for years to come.” Racine’s privately-funded classification leaves out electors who don’t live in Racine and leaves out electors in Racine who do not live near “strategically chosen partner locations.”

Individually and collectively, these election administration provisions, promoting in-person voting classifications, are privately-funded, discriminate against Wisconsinites outside the Wisconsin 5 cities and discriminate in favor of “historically disenfranchised residents and communities” as opposed to the rest of the residents and communities within the Wisconsin 5 cities. There is no compelling state interest to support these classifications treating differently Wisconsin voters in the same election.

D. The WSVP is illegal and against public policy because the privately-funded absentee voting provisions contain geographic and demographic classifications treating voters differently in the same election which are not legally authorized by state law.

1. A strict construction of state law is required to analyze the WSVP absentee balloting provisions.

A “strict construction” of Wisconsin’s absentee balloting procedures is the standard of review for two reasons. *Sisters of St. Mary v. City of Madison*, 278 N.W.2d 814, 817, 89 Wis.2d 372, 379 (Wis., 1979) (discussing “strict” construction to tax statutes versus the modern rule that the statute must be given a “strict but reasonable” construction). First, the federal Elections Clause and the Electors Clause require election officials to follow the state-legislatively-enacted absentee balloting law, Wisconsin Statutes § 6.84 through § 6.89. U.S. Const., Art. I, § 4, cl. 1 and Art. II, § 1, cl. 2. *See Trump*, 983 F.3d at 927; *Carson*, 978 F.3d at

1059–60. Second, under Wisconsin Statutes § 6.84, a “strict construction” is called for because the Commission, municipal clerks, and municipalities are prohibited from adding to or subtracting from the state legislature’s complete and comprehensive law for absentee ballots, Wisconsin Statutes § 6.84 through § 6.89. Thus, a strict construction of state law is required to analyze the WSVP absentee balloting provisions.

The Elections Clause of the U.S. Constitution states that the state legislatures shall “prescribe” the conditions for Congressional elections:

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

U.S. Const., Art. I, § 4, cl. 1. The Electors Clause of the U.S. Constitution states that the state legislatures exclusively set the conditions for choosing Presidential Electors:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress.

U.S. Const., Art. II, § 1, cl. 2. The Electors Clause vests the power to determine the manner of selecting electors exclusively in the “Legislature” of each state. U.S. Const. art. II, § 1, cl. 2; *McPherson v. Blacker*, 146 U.S. 1, 27 (1892) (“The constitution leaves it to the legislature exclusively[.]”). The state legislature’s “vested authority is not just the typical legislative power exercised pursuant to a state constitution.” *Carson v. Simon*, 978 F.3d 1051, 1059–60 (8th Cir. 2020). Instead, when a state legislature enacts laws governing presidential elections, it operates “by virtue of a direct grant of authority” under the United States Constitution. *Bush v. Palm Beach Cnty. Canvassing Bd.*, 531 U.S. 70, 76 (2000). Consequently,

only the Wisconsin Legislature, and not the Wisconsin 5 cities, has plenary authority to establish the manner of conducting the presidential elections in Wisconsin.

The Elections Clause and the Electors Clause provide no power to municipal governments to adopt private corporate conditions on federal elections or to introduce private corporations and their employees into federal election administration. U.S. Const., Art. I, § 4, cl. 1 and Art. II, § 1, cl. 2. Wisconsin cities are created by state statute and cannot exercise any power unless specifically provided for by statute:

The legislative power in this state is lodged in the legislature. When it exerts that power, it exerts it on behalf of and in the name of the people of the State of Wisconsin.” *Van Gilder v. City of Madison*, 222 Wis. 58, 67, 267 N.W. 25 (1936). Conversely, “cities are creatures of the state legislature [that] have no inherent right of self-government beyond the powers expressly granted to them.”

Black v. City of Milwaukee, 882 N.W.2d 333, 342–43 (Wis. 2016).

Wisconsin state statutes regarding absentee voting are “carefully regulated” prescribing the roles of the clerks and electors with respect to absentee balloting. Wisconsin Statutes § 6.84 indicates a prescribed statewide method for absentee balloting, in part, “to prevent overzealous solicitation of absent voter who may prefer not to participate in an election.”

VOTING ABSENTEE

6.84 Construction.

(1) Legislative policy. The legislature finds that voting is a constitutional right, the vigorous exercise of which should be strongly encouraged. In contrast, voting by absentee ballot is a privilege exercised wholly outside the traditional safeguards of the polling place. The legislature finds that the privilege of voting by absentee ballot must be carefully regulated ... to prevent overzealous solicitation of absent electors who may prefer not to participate in an election...

(2) Interpretation. Notwithstanding s. 5.01 (1), with respect to matters relating to the absentee ballot process, ss. 6.86, 6.87 (3) to (7) and 9.01 (1) (b) 2. And 4. shall be construed as mandatory. Ballots cast in contravention of the procedures specified in those provisions may not be counted. Ballots counted in contravention of the procedures specified in those provisions may not be included in the certified result of any election.

Wisconsin Statutes § 6.84 through § 6.89 constitute the state legislature's comprehensive and complete law for absentee ballots. Wisconsin Statutes § 6.84 requires a strict construction of the absentee ballot laws. Wisconsin Statutes § 6.85 addresses the absentee elector and definition. Wisconsin Statutes § 6.855 covers alternate absentee ballot sites. Wisconsin Statutes § 6.86 details the method for obtaining an absentee ballot. Wisconsin Statutes § 6.865 addresses federal absentee ballots. Wisconsin Statutes § 6.869 details uniform instructions for absentee ballots and absentee ballot applications. Wisconsin Statutes § 6.87 details the absentee voting procedure. Wisconsin Statutes § 6.87 details the absentee voting procedure in certain residential care facilities and retirement homes. Wisconsin Statutes § 6.88 covers voting and recording the absentee ballot. Wisconsin Statutes § 6.89 makes the absent electors list public.

Further, the Wisconsin Legislature expressly assigned to the Commission “the responsibility for the administration of ... laws relating to elections,” Wisconsin Statutes § 5.05(1). *Trump v. Wisconsin Elections Commission*, 983 F.3d 919, 927 (7th Cir. 2020). Under Wisconsin Statutes § 7.15(1), the municipal clerk has “charge and supervision” of federal elections within a municipality:

(2) SUPERVISE REGISTRATION AND ELECTIONS. Each municipal clerk has charge and supervision of elections and registration in the municipality...

Therefore, the Commission and its municipal clerks, in administering elections in Wisconsin's municipalities, are constitutionally obligated to follow the legal conditions set by the state legislature for absentee balloting. Wis. Stat. §§ 5.05(1), 7.15(1). In turn, the Wisconsin 5 cities are constitutionally obligated to follow the state laws for absentee balloting too.

2. WSVP is not a public health care measure for absentee voting.

WSVP is not a public health measure for absentee voting. The pre-contract history shows no public health officials involved and no discussion of public health measures and alternatives. CTCL is not a public health agency or organization. And, WSVP is not a health care statute or administrative rule or policy. Instead, it is a grant agreement between CTCL and the Wisconsin 5 cities relating to election administration. After the approval of the WSVP, the CTCL introduced private corporations to each of the cities to run every aspect of the elections. CTCL was sending election experts, not doctors, nurses, public officials and the like.

3. WSVP's provision "reaching our historically disenfranchised residents and communities" are privately-funded geographic and demographic classifications violating state law and public policy.

On page 1, the WSVP requires the Wisconsin 5 cities to "be intentional and strategic in reaching our historically disenfranchised residents and communities; and, above all, ensure the right to vote in our dense and diverse communities" within the Wisconsin 5 cities. This election administration provision, promoting absentee voting, is privately-funded, discriminates against Wisconsinites outside the Wisconsin 5 cities and discriminates in favor of "historically disenfranchised residents and communities" as opposed to the rest of the

residents and communities within the Wisconsin 5 cities. Wisconsin electors residing outside the Wisconsin 5 cities will not benefit from these provisions at all.

No Wisconsin law legally authorizes the Wisconsin 5 cities to accept private funding to treat Wisconsin absentee voters differently in this way—targeting certain residents and communities for increased absentee voting. Therefore, the WSVP violates a strict construction of Wisconsin’s absentee balloting laws, Wisconsin Statutes § 6.84 through § 6.89, and public policy.

4. WSVP’s provision “plan for the highest possible voter turnouts” is a privately-funded geographic classification violating state law and public policy.

On page 2, the WSVP requires from the Wisconsin 5 cities, “The time that remains now and the November election provides an opportunity to plan for the highest possible voter turnouts...” in the Wisconsin 5 cities. This election administration provision, promoting absentee voting, is privately-funded and disfavors Wisconsinites outside the Wisconsin 5 cities. Wisconsin electors residing outside the Wisconsin 5 cities will not benefit from these provisions at all.

No Wisconsin law legally authorizes the Wisconsin 5 cities to accept private funding to treat Wisconsin absentee voters differently in this way—planning for the highest absentee voter turnout in the Wisconsin 5 cities. Therefore, the WSVP violates a strict construction of Wisconsin’s absentee balloting laws, Wisconsin Statutes § 6.84 through § 6.89, and public policy.

5. WSVP’s provisions for “Absentee Voting” are privately-funded geographic and demographic classifications violating state law and public policy.

On page 4, the WSVP requires from the Wisconsin 5 cities:

Absentee Voting (By Mail and Early, In-Person)

1. Provide assistance to help voters comply with absentee ballot requests & certification requirements
2. Utilize secure drop-boxes to facilitate return of absentee ballots
3. Deploy additional staff and/or technology improvements to expedite & improve accuracy of absentee ballot processing
4. Expand In-Person Early Voting (Including Curbside Voting)

This election administration provision, promoting absentee voting, is privately-funded and discriminates against Wisconsinites outside the Wisconsin 5 cities. Only electors in the Wisconsin 5 cities benefit from the “assistance,” “drop-boxes,” “improvement” and increased “early voting.” Wisconsin electors residing outside the Wisconsin 5 cities will not benefit from these provisions at all.

No Wisconsin law legally authorizes the Wisconsin 5 cities to accept private funding to treat Wisconsin absentee voters differently in this way—targeting Wisconsin 5 voters with privately-funded “assistance,” “drop-boxes,” “improvement” and increased “early voting.” Therefore, the WSVP violates a strict construction of Wisconsin’s absentee balloting laws, Wisconsin Statutes § 6.84 through § 6.89, and public policy.

- 6. WSVP’s provisions—to “encourage and increase absentee voting by mail and early” and to “dramatically expand strategic voter education & outreach efforts”—“particularly to historically disenfranchised residents”— are privately-funded geographic and demographic classifications violating state law and public policy.**

On pages 5 and 6, the WSVP requires that about one-half of the grant money will be used by the Wisconsin 5 cities to “encourage and increase absentee voting by mail and early”

and “dramatically expand strategic voter education & outreach efforts”—“particularly to historically disenfranchised residents” --within the Wisconsin 5 cities. These election administration provisions, promoting absentee voting, are privately-funded and discriminate against Wisconsinites outside the Wisconsin 5 cities and discriminate in favor of “historically disenfranchised residents” as opposed to the rest of the residents and communities within the Wisconsin 5 cities. Wisconsin electors residing outside the Wisconsin 5 cities will not benefit from these provisions at all.

No Wisconsin law legally authorizes the Wisconsin 5 cities to accept private funding to treat Wisconsin absentee voters differently in this way—promoting absentee voting within the Wisconsin 5 cities, and particularly to “historically disenfranchised residents.” Therefore, the WSVP violates a strict construction of Wisconsin’s absentee balloting laws, Wisconsin Statutes § 6.84 through § 6.89, and public policy.

7. WSVP’s provisions—to “provide assistance to help voters comply with absentee ballot request & certification requirements” are privately-funded geographic and demographic classifications violating state law and public policy.

On pages 9 and 10, the WSVP requires the Wisconsin 5 cities to “Provide assistance to help voters comply with absentee ballot request & certification requirements” within the Wisconsin 5 cities. These election administration provisions, promoting absentee voting, are privately-funded and disfavor Wisconsinites outside the Wisconsin 5 cities. Wisconsin electors residing outside the Wisconsin 5 cities will not benefit from these provisions at all.

No Wisconsin law legally authorizes the Wisconsin 5 cities to accept private funding to treat Wisconsin absentee voters differently in this way—assisting Wisconsin 5 city residents to absentee vote regarding request and certification requirements. The WSVP

violates a strict construction of Wisconsin’s absentee balloting laws, Wisconsin Statutes § 6.84 through § 6.89, and public policy.

8. WSVP’s provisions—to “utilize secure drop-boxes to facilitate return of absentee ballots” are privately-funded geographic and demographic classifications violating state law and public policy.

On pages 10 and 11, the WSVP requires the Wisconsin 5 cities to “Utilize Secure Drop-Boxes to Facilitate Return of Absentee Ballots” within the Wisconsin 5 cities. These election administration provisions, promoting absentee voting, are privately-funded and disfavor Wisconsinites outside the Wisconsin 5 cities. Wisconsin electors residing outside the Wisconsin 5 cities will not benefit from these provisions at all.

No Wisconsin law legally authorizes the Wisconsin 5 cities to accept private funding to treat Wisconsin absentee voters differently in this way—utilize secure drop-boxes in the Wisconsin 5 cities to facilitate return of absentee ballots.” Therefore, the WSVP violates a strict construction of Wisconsin’s absentee balloting laws, Wisconsin Statutes § 6.84 through § 6.89, and public policy.

9. WSVP’s provisions—to “Expand In-Person Early Voting (Including Curbside Voting)” are privately-funded geographic and demographic classifications violating state law and public policy.

On pages 13-15, the WSVP requires the Wisconsin 5 cities to “Expand In-Person Early Voting (Including Curbside Voting)” within the Wisconsin 5 cities. These election administration provisions, promoting early voting, are privately-funded and discriminate against Wisconsinites outside the Wisconsin 5 cities. Wisconsin electors residing outside the Wisconsin 5 cities will not benefit from these provisions at all.

No Wisconsin law legally authorizes the Wisconsin 5 cities to accept private funding to treat Wisconsin absentee voters differently in this way—expanding early voting, including curbside voting, in the Wisconsin 5 cities. Therefore, the WSVP violates a strict construction of Wisconsin’s absentee balloting laws, Wisconsin Statutes § 6.84 through § 6.89, and public policy.

E. The Wisconsin 5 cities’ agreements with CTCL’s related private corporations to increase voting are privately-funded geographic and demographic classifications violating state law and public policy.

CTCL brought the related private corporations into the Wisconsin 5 cities’ election administration to increase voting under the WSVP. The private corporations include National Vote at Home Institute, Center for Civic Design, Elections Group, etc. The Wisconsin 5 cities had agreements with these private corporations to accept their help to get-out-the-vote, increasing in-person and absentee voting in the Wisconsin 5 cities and their respective “communities of color” under the WSVP. Those agreements, similar to the WSVP, are void because they violate federal and Wisconsin law and are contrary to public policy.

V. WEC Administrator Wolfe usurped the authority of the Commission when providing an advisory opinion to the Wisconsin 5 cities, while Green Bay City Clerk Teske participated in setting precedent that was outside the legislative scheme in the conduct of statewide and federal congressional elections.

The actions of Wolfe and Teske require that they remain as respondents in the underlying WEC Complaints. Commission Administrator Meagan Wolfe and former Green Bay City Clerk, Kris Teske seek to dismiss the WEC Complaints against each

respectively. Teske asserts that there is no legal claim against her,³⁸ and Wolfe asserts that her actions also do not rise to a legal claim.³⁹

There is no dispute that Kris Teske, when acting as the municipal clerk for Green Bay, her actions or inactions, were as an election official⁴⁰ representing, in her capacity, the city. Under Wisconsin Statutes § 5.06 (1), the Commission has, among other powers, the legal powers to “to correct any action or decision inconsistent with the law” which covers past events and covers former election officials like Teske. Additionally, Teske holds significant information relating to the allegations and claims asserted in her capacity of being in charge in the conduct of the elections in Green Bay. Teske’s past actions or inactions in the conduct of the elections still reflect on the Wisconsin 5 cities’ conduct as setting a precedent regarding private corporate entities role in statewide and federal congressional elections. Teske had a role in setting that precedent regardless of her stated reservations up to her eventual resignation from her position. To dismiss Teske would undermine the requested Commission investigation and relief requested. Therefore, Teske should remain as a Respondent.

Administrator Meagan Wolfe has played a similar role in the underlying controversy. First, Wolfe is an election official. Wis. Stat. § 5.02(4e). Her statutory role as the Commission administrator is defined under Wisconsin Statutes § 5.05(3g): “The commission administrator shall serve as the chief election officer of this state.” She is not the

³⁸ Teske Mot. to Dismiss Argument at 1–2.

³⁹ Wolfe Memo. at 4.

⁴⁰ Wisconsin Statutes § 5.02 (4e) defines “election official” as “an individual who is charged with any duties relating to the conduct of an election.

“commission:” “‘Commission’ means the elections commission.” Wisc. Stat. § 5.025. The Commission’s general authority includes having the general responsibility for the administration of chs. 5 to 10 and 12 “and other laws relating to elections....” Wisc. Stat. § 5.05(1). And, it is the Commission who provides advisory opinions, not the Administrator. Wisc. Stat. § 5.05(6a).

Under § 5.05(6a), “any individual, either personally or on behalf of an organization or governmental body, may make a request of the *commission* in writing, electronically, or by *telephone* for a *formal or informal* advisory opinion regarding the priority under chs. 5 to 10 or 12 of *any matter* to which the person is or may become a party.”⁴¹ There is no question, based upon Wolfe’s own publicly announced admissions—even if before the state legislature—that she provided an advisory opinion regarding the acceptance of CTCL conditional grants and the engagement of private corporate entities in the statewide and federal congressional election process. The complainants, contrary to Wolfe’s argument, do not assert that her “mere act of testifying before a legislative committee” is unlawful.⁴² That is not at issue. However, as stated, her testimony confirms an admission of issuing an unwarranted advisory opinion on a disputed claims when the Commission itself has that sole authority. Even if Wolfe believed she had that authority, she did not go back to the Commission to retroactively have the Commission affirm the advisory opinion, whether formally or informally. *Id.* In short, Wolfe had no authority to issue an advisory opinion on the legalities of the issues brought before her. *Id.* She usurped the statutory authority of the Commission.

⁴¹ Emphasis added.

⁴² Wolfe Memo. at 9.

It is Wolfe's own testimony that provide the facts necessary to assert claims against her to meet the standard for "probable cause."

Wolfe also relies upon a standard of review regarding the sufficiency of a WEC complaint filed under EL 20.02. Wolfe's reliance on Wisconsin Statutes § 802.02(1) and common law is misplaced. Section 802.02(1) is the civil procedure in the context of a case filed in district court. For election law complaints, EL 20.02, not only establishes the form, but also the standard of review. Under EL 20.02(3), the complaint is to specify the "statutory basis and shall set forth facts which are alleged to establish probable cause." The same provision guides the complainant as to what may establish probable cause: "[i]nformation which may establish probable cause includes *allegations* that set forth which persons are involved; what those persons are alleged to have done; where the activity is believed to have occurred and who are the witnesses to the events."

Election Law 20.02(4) defines probable cause. Reliance upon civil procedures for district court complaints and law is not a standard to which the Commission must comply or even consider persuasive authority. The Commission's codified procedures provide sufficient guidance for the Commission to determine whether the allegations meet probable cause to perform its statutory duties once met.

For these reasons, Wolfe should remain as a respondent.

Conclusion

We should all agree that the conduct of elections are a core governmental function. And, no one should dispute the Commission plays a key role in the conduct of elections as a core governmental function. Complainants believe a Commission investigation and

adjudication are warranted as probable cause has been shown. Past events and actions of the Wisconsin 5 cities have established a dangerous precedent that in 2020 allowed private corporations with \$8.8 million in grant money to influence election administrative conduct. The same thing could happen in 2022, 2024 and beyond. Two non-profit corporations were concerned enough about the private funding of Wisconsin 5 cities' election administrations that they each published a 2021 report criticizing this phenomenon.

The Commission, for the common good of Wisconsin, should investigate and adjudicate the complaints, win or lose, to preserve the sanctity of the election process meant to protect the fundamental right to vote.

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