

**FILED**  
**10-22-2024**  
**Anna Maria Hodges**  
**Clerk of Circuit Court**  
**2024CV007822**

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

DENNIS EUCKE, JUSTIN GAVERY, and  
JOE NOLAN,

Plaintiffs,

v.

Case No.: 2024-CV-7822

WISCONSIN ELECTIONS COMMISSION, and  
THE CITY OF MILWAUKEE ELECTION  
COMMISSION,

Defendants.

**THE CITY OF MILWAUKEE ELECTION COMMISSION’S BRIEF  
IN SUPPORT OF  
THE CITY OF MILWAUKEE ELECTION COMMISSION’S MOTION TO DISMISS**

NOW COMES Defendant, the City of Milwaukee Election Commission (“MEC”), through its attorney, City Attorney Evan Goyke, by Assistant City Attorneys Kathryn Block and Patrick McClain, to provide this brief in support of the MEC’s Motion to Dismiss brought under Wis. Stat. § 802.06(2)(a)(2) and (6). For the reasons stated herein, the MEC asks this Court to dismiss this action based on the Court’s lack of competency to exercise subject matter jurisdiction over Plaintiffs’ claims and Plaintiffs failure to state any claim upon which relief can be granted.

**INTRODUCTION**

On October 2—just 34 days before the 2024 Presidential Election—Plaintiffs Dennis Eucke, Justin Gavery, and Joe Nolan (collectively “Plaintiffs”) filed this action seeking an order that would require Defendants, the MEC and the Wisconsin Elections Commission (“WEC”), to contact and potentially de-register nearly 150,000 Wisconsin voters. While there

are numerous substantive reasons why Plaintiffs are not entitled to such an order, this case fails at the outset on basic procedural grounds.

According to their own complaint, Plaintiffs deliberately made no effort to comply with the mandatory statutory procedure for challenging actions by Wisconsin election officials. (ECF 3 at ¶¶ 37-38). That procedure—found at Wis. Stat. § 5.06—permits “any elector of a jurisdiction or district served by an election official” to challenge acts or omissions of the official by filing a complaint with the WEC. As the statute makes clear, filing a complaint under § 5.06(1) is not just *an* available option for challenging the actions of election officials—it is the *only* available option. Under Wis. Stat. § 5.06(2), no person “may commence an action or proceeding to test the validity of any decision, action or failure to act on the part of any election official” unless the person first files a complaint with the WEC under § 5.06(1). Put simply, a plaintiff’s failure to file a complaint with the WEC serves to divest circuit courts of competency to exercise subject matter jurisdiction over a related claim. *Kuechmann v. Sch. Dist. of La Crosse*, 170 Wis. 2d 218, 224, 487 N.W.2d 639, 641 (Ct. App. 1992).

Because Plaintiffs have admitted to noncompliance with Wis. Stat. § 5.06(1), this Court lacks competency to adjudicate Plaintiffs’ claims. For this reason, and the others outlined below, Defendant MEC asks this Court to dismiss this case.

## BACKGROUND

Unless otherwise noted, the following facts are taken directly from Plaintiffs’ complaint, exhibits attached to the complaint, and the public records of the WEC.<sup>1</sup>

In May, 2024, the WEC released a new list of active voter registrations in the City of Milwaukee. (ECF 3 at ¶ 22). Plaintiffs purportedly ran this list through an “automated

---

<sup>1</sup> Courts may take judicial notice of, and rely on “facts from the public records of government agencies” when considering a motion to dismiss. *Meyers v. Bayer AG, Bayer Corp.*, 2007 WI 99, ¶ 81, 303 Wis. 2d 295, 336, 735 N.W.2d 448, 469.

system” to screen for potential registration issues. (*Id.* at ¶ 23). According to Plaintiffs, voter registration information was cross-referenced with various data, including data from the United States Postal Service (“USPS”). (*Id.* at ¶¶ 24-25). This process reportedly “confirmed that tens of thousands of errors were present on the registration list.” (*Id.* at ¶ 27). On June 7, 2024, Plaintiffs sent an email to the MEC. (*Id.* at 21). The email purported to contain a link to a google drive spreadsheet which listed “detailed information on over fifty thousand active voter registrations in Milwaukee that contain errors...” (*Id.* at ¶ 31). Sometime in August, 2024, Plaintiffs received “updated” information showing that nearly 100,000 additional Wisconsin voter registrations were “invalid.” (*Id.* at ¶ 34). Plaintiffs do not allege that they forwarded this “updated” information to either the MEC or the WEC. (*Id.*).

Wisconsin law allows eligible electors of a municipality to challenge voter registrations.<sup>2</sup> No person may be disqualified as an elector unless a challenger “demonstrates beyond a reasonable doubt that the person does not qualify as an elector or is not properly registered.” Wis. Stat. § 6.325. There are two methods for electors to challenge voter registrations in cities with a population greater than 500,000—which includes the City of Milwaukee. Under the first method, challengers may submit an affidavit to the MEC “stating that [an] elector is not qualified to vote and the reasons therefor.” Wis. Stat. § 6.48(1)(a). The challenger must then appear and answer questions under oath at the MEC’s next pre-election meeting, which is required to occur on the last Wednesday before each election.<sup>3</sup> Wis. Stat. §

---

<sup>2</sup> Wis. Stat. § 6.02 defines an “eligible elector” as any “U.S. citizen age 18 or older who has resided in an election district or ward for 28 consecutive days before any election where the citizen offers to vote...”

<sup>3</sup> Wis. Stat. § 6.48(2)(a) states: “In cities of more than 500,000 population, objections may be made before the board of election commissioners which shall sit on the last Wednesday before each election from 9 a.m. to 12 a.m. and from 2 p.m. to 5 p.m. to hear objections then made or deferred under sub. (1). If all the objections cannot then be determined, the commissioners shall sit during the same hours the next day.”

6.48(1)(c). Failure to appear at the MEC's next pre-election meeting results in cancellation of the challenge. *Id.*

Under the second method, a challenger may offer objections in person by appearing at the MEC's pre-election meeting. Wis. Stat. § 6.48(2)(a). Similar to the first method, the challenger must be placed under oath and offer testimony in support of the objection. *Id.*

Plaintiffs' complaint does not allege that Plaintiffs complied with either of the above-described methods for challenging voter registrations. Instead, according to the complaint, the only action taken by Plaintiffs to challenge the 150,000 voter registrations at issue was to send a single email to the MEC on June 7, 2024. (ECF 3 at 21).

Despite Plaintiffs' failure to present any statutorily-compliant voter registration challenge, the complaint alleges that the MEC "has failed to ensure the correctness of all registrations" as required by various statutes. (ECF 3 at ¶¶ 39, 42). In other words, Plaintiffs allege that the MEC has failed to comply with its statutory obligations concerning voter registrations. (*Id.*). Here again, the Wisconsin Statutes prescribe a mandatory method for seeking relief. Specifically, Wis. Stat. § 5.06(1) requires electors to challenge the actions of election officials by filing a written sworn complaint with the WEC. The complaint must identify the relief requested and "set forth such facts as are within the knowledge of the complainant to show probable cause to believe that a violation of law or abuse of discretion has occurred or will occur." Wis. Stat. § 5.06(1). The WEC may then dispose of the complaint with or without a hearing. *Id.* Any election official or complainant who is aggrieved by the WEC's decision may appeal the decision to circuit court in the county where the official conducts business or the complainant resides. Wis. Stat. § 5.06(8).

The statutes make clear that the administrative complaint procedure set forth in §§ 5.06(1)-(8) is the exclusive remedy for challenging the actions of elections officials. Under Wis. Stat. § 5.06(2), an elector who fails to challenge the actions of an election official via the

WEC complaint process is precluded from challenging those actions in any other “action of proceeding.”

As before, Plaintiffs do not allege that they complied with the administrative complaint procedure laid out in Wis. Stat. § 5.06. In fact, Plaintiffs openly admit that they deliberately ignored that process. (ECF 3 at ¶ 37). Instead, Plaintiffs commenced this lawsuit as an original action on October 2, 2024. Although the email that forms the basis for this lawsuit was sent on June 7, 2024, Plaintiffs waited almost four months—again, until just 34 days before the 2024 Presidential Election—to file their complaint.

### LEGAL STANDARDS

The MEC asks this Court to dismiss this action based on the Court’s lack of competency to exercise subject matter jurisdiction over Plaintiffs’ claims. The existence or lack of subject matter jurisdiction is a question of law that, once raised, must be resolved by a court before reaching the merits of a case. *Milwaukee Teachers’ Educ. Ass’n v. Milwaukee Bd. of Sch. Directors*, 220 Wis. 2d 93, 97, 582 N.W.2d 122, 124 (Ct. App. 1998), *aff’d and remanded*, 227 Wis. 2d 779, 596 N.W.2d 403 (1999).

The MEC also asks this Court to dismiss this action based on Plaintiffs’ failure to state any claim under which relief can be granted, pursuant to Wis. Stat. § 802.06(2)(a)(6). Whether a complaint states a claim upon which relief can be granted is again a question of law. *Data Key Partners v. Permira Advisers LLC*, 2014 WI 86, ¶ 17, 356 Wis. 2d 665, 675, 849 N.W.2d 693, 698. “A motion to dismiss for failure to state a claim tests the legal sufficiency of the complaint.” *Id.* at ¶ 19 (citing *John Doe 1 v. Archdiocese of Milwaukee*, 2007 WI 95, ¶ 12, 303 Wis.2d 34, 734 N.W.2d 827).

The rules governing pleadings in Wisconsin are set forth in Wis. Stat. § 802.02(1), and provide in pertinent part:

A pleading...that sets forth a claim for relief...shall contain all of the following:

(a) A short and plain statement of the claim, identifying the transaction or occurrence or series of transactions or occurrences out of which the claim arises and showing that the pleader is entitled to relief.

Wis. Stat. § 802.02(1). In order to satisfy Wis. Stat. § 802.02(1)(a), a complaint must state sufficient facts to “plausibly show” that all elements of a stated claim are met. *Data Key Partners*, 2014 WI 86, ¶ 2. In reviewing a motion to dismiss, a court “accept[s] as true all well-pleaded facts in the complaint and the reasonable inferences therefrom.” *Id.* at ¶ 19 (citing *Kaloti Enters., Inc. v. Kellogg Sales Co.*, 2005 WI 111, ¶ 11, 283 Wis.2d 555, 699 N.W.2d 205). This requires a plaintiff to present “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action.” *Id.* at ¶ 25. A plaintiff similarly cannot rely on “speculation” or “contend that the requisite facts will be supplied by the discovery process.” *Archdiocese of Milwaukee*, 2005 WI 123, ¶ 36.

When assessing a complaint for sufficiency, a court is not bound to “accept as true a legal conclusion couched as a factual allegation.” *Data Key Partners*, 2014 WI 86, ¶ 25. As such, “legal conclusions are insufficient to withstand a motion to dismiss.” *Id.* at ¶ 18. Similarly, courts will not accept “legally impossible facts” and are not required to accept factual statements that are “not credible.” *Meyers v. Bayer AG, Bayer Corp.*, 2007 WI 99, ¶ 81, 303 Wis. 2d 295, 336, 735 N.W.2d 448, 469.

## ARGUMENT

This case must be dismissed because the complaint suffers from three related but independently fatal deficiencies. First, because Plaintiffs failed to comply with the statutorily-required procedure for challenging the actions of election officials established in Wis. Stat. § 5.06, this Court lacks competency to exercise subject matter jurisdiction over Plaintiffs’ claims. Second, because the § 5.06 complaint procedure provides not just an

adequate, but a legislatively-mandated remedy to address the kinds of claims presented in this lawsuit, Plaintiffs are unable to state any valid claim for declaratory relief, injunctive relief, or mandamus. Third and finally, because the statutes Plaintiffs seek to enforce call for the exercise of administrative discretion, Plaintiffs cannot state a valid claim for mandamus. For these reasons, as set forth in more detail below, the MEC asks this Court to immediately dismiss this action.

**A. This Court Lacks Competency to Exercise Subject Matter Jurisdiction Over Plaintiffs' Claims Because Plaintiffs Failed to Comply with the Mandatory Procedure for Challenging the Actions of Election Officials Established in Wis. Stat. § 5.06**

In this lawsuit, Plaintiffs allege that the MEC has failed to comply with various state laws governing voter registration. (See ECF 3 at ¶¶ 39, 42). As will be discussed below, state law requires Wisconsin electors who wish to challenge the actions of election officials to file a complaint with the WEC. Wis. Stat. § 5.06(1). Because state law prohibits the filing of any action or proceeding on the same subject matter until the WEC has disposed of the complaint, a plaintiff's failure to comply with this procedure serves to divest circuit courts of competency to exercise subject matter jurisdiction over the plaintiff's claims. Because Plaintiffs have admitted to just such a failure, the MEC asks this Court to dismiss this action due to the Court's lack of competency over Plaintiffs' claims.

**1. Circuit Court Competency Framework**

Wisconsin courts “may entertain a civil action only when the court has power to hear the kind of action brought.” Wis. Stat. § 801.04(1). “The power of the court to hear the kind of action brought is called ‘jurisdiction of the subject matter.’” *Id.* Subject matter jurisdiction is conferred by the Wisconsin constitution and statutes, and by the statutes of the United States. *Id.* It cannot be conferred by consent of the parties. *Id.*

Historically, a plaintiff's failure to comply with statutory requirements governing a lawsuit was viewed as divesting circuit courts of subject matter jurisdiction over the case. *See e.g. County of Walworth v. Rohner*, 108 Wis.2d 713, 324 N.W.2d 682 (1982). More recently, however, the Wisconsin Supreme Court has clarified the nature of this deficiency by distinguishing between the concepts of subject matter jurisdiction and competency. *See e.g. City of Eau Claire v. Booth*, 2016 WI 65, ¶ 14, 370 Wis. 2d 595, 607, 882 N.W.2d 738, 744. Subject matter jurisdiction “refers to the power of a court to decide certain types of actions.” *Id.* Competency, on the other hand, refers to a court's ability to *exercise* subject matter jurisdiction *over a particular case.*” *Id.* (emphasis added). Because Wisconsin circuit courts are granted original subject matter jurisdiction over “all matters civil and criminal” by the state constitution, a circuit court's subject matter jurisdiction cannot be curtailed by state statute. *Id.* at ¶ 12. However, a circuit court's ability to *exercise* that jurisdiction in a particular case may be affected by the plaintiff's noncompliance with statutory requirements. *Id.*

While loss of competency can be triggered by a variety of defects in statutory procedure, not all violations of state law will affect competency. *Vill. of Trempealeau v. Mikrut*, 2004 WI 79, ¶ 12, 273 Wis. 2d 76, 88, 681 N.W.2d 190, 196. Instead, competency is lost only when an unheeded mandate is “central to the statutory scheme” of which it is a part. *Id.* (quoting *In re Bollig*, 222 Wis.2d 558, 567–68, 587 N.W.2d 908 (Ct.App.1998)). Although this standard initially appears unworkably amorphous, the Wisconsin Supreme Court has helpfully analogized the competency inquiry to the analysis used to determine whether a defect in personal jurisdiction is fundamental or technical. *Id.* at ¶ 11. This comparison effectively treats competency as a “question of legislative purpose.” *Id.*



If the legislative purpose of a statutory scheme can still be fulfilled despite an unheeded mandate, the statutory violation is viewed as merely technical and competency is preserved. *Id.* In other words, “minor, non-prejudicial deviations from statutory requirements may be permitted so long as the purpose of the statutory scheme can be fulfilled without strictly following the statutory directive.” *Wisconsin Dep’t of Workforce Dev. v. Wisconsin Lab. & Indus. Rev. Comm’n*, 2016 WI App 21, ¶ 12, 367 Wis. 2d 609, 620, 877 N.W.2d 620, 626. On the contrary, if the unheeded mandate is fundamental to the statutory scheme such that noncompliance will subvert the law’s legislative purpose, competency is lost. *Mikrut*, 2004 WI 79, ¶ 10. As such, when competency is challenged, “the legislative purpose of the statutory scheme must be determined and a decision made about whether it could be fulfilled, without strictly following the statutory directive.” *Id.* at ¶ 11.

**2. Plaintiffs Failure to File a WEC Complaint Divests This Court of Competency Because the WEC Complaint Procedure is Central to Wis. Stat. § 5.06’s Statutory Scheme**

Here, the statutory directive that Plaintiffs’ failed to follow is the WEC complaint procedure outlined in Wis. Stat. § 5.06. This statute establishes an exclusive remedy for electors wishing to challenge the actions of an election official “with respect to any matter concerning ... voting qualifications, including residence, ... election administration or conduct of elections...” Wis. Stat. § 5.06(1). Challenges are initiated by filing a written sworn complaint with the WEC. *Id.* Under § 5.06’s statutory scheme, no person may “commence an action or proceeding” regarding a subject covered by § 5.06(1) unless the person first files a complaint with the WEC and the WEC disposes of the complaint. Wis. Stat. § 5.06(2). Even then, any ensuing circuit court action is limited to the appeal procedures set forth in §§ 5.06(8)-(9), which permit only a limited, deferential review of the WEC’s decision.

Wis. Stat. § 5.06(2)’s directive to file a complaint with the WEC before proceeding to judicial review is not just “central” to the law’s statutory scheme, it is essentially the *entire*

statutory scheme. This conclusion is supported by the 1992 Court of Appeals case of *Kuechmann v. Sch. Dist. of La Crosse*. 170 Wis. 2d 218. Although *Kuechmann* spoke in terms of “subject matter jurisdiction” rather than “competency,” its analysis of the legislative purpose of § 5.06 conclusively resolves any doubt about the competency issue before this Court.

In *Kuechmann*, several candidates in a school board election sought to challenge the timeliness and validity of signatures in a recall petition. *Id.* at 221. The candidates also raised several constitutional challenges to the recall statute itself. *Id.* On June 5, 1992, the candidates presented their challenges by filing a complaint under Wis. Stat. § 5.06(1) with the Wisconsin Elections Board (a predecessor agency to the current WEC). A week later, on June 12, 1992, the Elections Board announced that it lacked the authority to resolve the candidates’ constitutional challenges, and indicated that it would not render a decision on those issues. *Id.* at 221-22. On June 19, 1992, the Elections Board issued a final decision denying the candidates’ requested relief. *Id.* at 22. However, two days *before* the Board’s decision, on June 17, 1992, the candidates presented their constitutional challenges in a circuit action which sought declaratory relief, injunctive relief, and a writ of prohibition. *Id.*

The circuit court assumed it possessed subject matter jurisdiction and issued an order granting the candidates’ requested relief. However, the Court of Appeals reversed, holding that the candidates’ failure to strictly comply with the § 5.06 complaint process divested the circuit court of subject matter jurisdiction over the case. As the Court of Appeals explained, the Elections Board—like its eventual successor, the WEC—is an administrative agency. *Id.* at 24. Whenever a statute “relating to an administrative agency provides a direct method of judicial review of agency action, such method of review is generally regarded as exclusive...” *Id.* at 224 (quoting *Underwood v. Karns*, 21 Wis.2d 175, 179–80, 124 N.W.2d 116, 118–19

(1963)). If the statutorily-prescribed procedure for review is not followed, the circuit court is divested of jurisdiction over the case. *Id.* (citing *Jackson County Iron Co. v. Musolf*, 134 Wis.2d 95, 101, 396 N.W.2d 323, 325 (1986)).

In reaching this decision, the Court of Appeals analyzed the legislative purpose of § 5.06. *Id.* The structure and mandatory nature of the WEC complaint procedure was clearly important to the legislature. Throughout §§ 5.06(1)-(9), the legislature evinced a clear intent for the WEC to pass on election-related challenges before a circuit court could review the same subject matter. Wis. Stat. § 5.06(2). The initial investigation and resolution of complaints at the administrative level was a critical component of the statutory scheme, since any subsequent judicial review was designed to be limited and deferential. *Kuechmann*, 170 Wis. 2d at 224-25. As detailed in Wis. Stat. § 5.06(9), courts reviewing an election-related complaint are prohibited from conducting de novo proceedings with respect to factual matters upon which the WEC made (or could have made) a determination. Instead, a reviewing court is limited to making a summary determination of contested legal issues, giving “due weight to the experience, technical competence and specialized knowledge” of the WEC. Wis. Stat. § 5.06(9). In sum, this statutory scheme intentionally delegates significant decision-making authority over election-related matters to the WEC, while allowing circuit courts to provide a speedy but limited form of judicial review.

After reviewing § 5.06, the *Kuechmann* court determined that the legislative purpose of the statute was to establish an exclusive method for “review[ing] alleged deficiencies in election procedure...” *Kuechmann*, 170 Wis. 2d at 224. Because this procedure was designed to be exclusive, noncompliance would serve to divest a court of its ability to exercise jurisdiction over a related claim. As the Court of Appeals succinctly explained, “[t]he legislature having decreed that deficiencies in an election will be judicially reviewed as in

sec. 5.06(8) and (9), Stats., the circuit court cannot employ some other method of review, such as an independent action for declaratory relief, prohibition or injunction.” *Id.* at 225.

The outcome in *Kuechmann* is equally applicable here. Like the plaintiffs in *Kuechmann*, the Plaintiffs here have objectively failed to comply with the § 5.06 process. This failure is not simply a “minor, non-prejudicial deviation[ ] from statutory requirements.” *Wisconsin Dep't of Workforce Dev.*, 2016 WI App 21, ¶ 12. Because § 5.06 was intended to be the exclusive remedy for challenging the actions of election officials, noncompliance (by filing an original circuit court action, for example) directly subverts the central purpose of the statute. As was the case in *Kuechmann*, if this case were allowed to proceed, this Court would have no choice but to conduct a non-deferential, de novo review of both the factual and legal claims raised in Plaintiffs’ complaint—an outcome expressly prohibited by § 5.06’s statutory scheme. *See Wis. Stat. § 5.06(9)*.

For these reasons, the requirement to comply with the WEC complaint procedure is so fundamental to § 5.06’s statutory scheme that noncompliance clearly subverts the law’s legislative purpose. *Kuechmann*, 170 Wis. 2d at 224-25. Because Plaintiffs have admittedly failed to comply with the WEC complaint process, this Court lacks competency to exercise subject matter jurisdiction over Plaintiffs’ claim and this action must be dismissed.

### **3. The Wis. Stat. § 5.06 Complaint Procedure Does Not Apply Only to the Actions of “Human Individuals”**

Having established that Plaintiffs’ noncompliance with Wis. Stat. § 5.06 divests this Court of competency to adjudicate Plaintiffs’ claims, there is just a single issue left to address. While Plaintiffs openly concede their failure to comply with Wis. Stat. § 5.06, they have simultaneously attempted to excuse this failure by suggesting that compliance was not actually necessary. This is so, they argue, because the MEC is an administrative body and § 5.06 only permits complaints against “election officials,” a phrase Plaintiffs insist is

synonymous with “human individuals.” (ECF 3 at ¶ 37). In other words, because the MEC is not “human” it is not subject to complaints under § 5.06.

Fortunately, this outlandish assertion is easily disproved. Under Wisconsin Administrative Code EL 20.02(5), the WEC permits a “person, committee, or a group” to be named as a respondent in a § 5.06 complaint. Wis. Admin. Code EL § 20.02(5).<sup>4</sup> As a result of this rule, the MEC not only can be, but *has been* the subject of § 5.06 complaints. Proof of this can easily be found on the WEC’s website, which publishes historical records of § 5.06 complaints and dispositions.<sup>5</sup> A recent example involving the MEC is EL 22-63, which can be accessed here: <https://elections.wi.gov/resources/complaints/el-22-63-trojan-v-woodall-vogg-and-mec>. Not only is the MEC named as a respondent in this administrative complaint, but this case proceeded to judicial review under § 5.06(8), with the MEC proceeding as the aggrieved party. *See Milwaukee Elections Commission v. Wisconsin Elections Commission*, Milwaukee County Circuit Court case no. 2024-CV-3558.

There is no need to belabor the point. Even a cursory review of the public record would have revealed to Plaintiffs that the actions of the MEC may be challenged by complaints under § 5.06(1). Plaintiffs have therefore failed to offer any valid excuse for their noncompliance with § 5.06’s statutory mandate.<sup>6</sup> For this reason, and those discussed above,

---

<sup>4</sup> Available at: [https://docs.legis.wisconsin.gov/code/admin\\_code/el/20#:~:text=\(5\)%20%E2%80%9CRespondent%22%20means,EL%2020.02%20History%20History%3A%20Cr.](https://docs.legis.wisconsin.gov/code/admin_code/el/20#:~:text=(5)%20%E2%80%9CRespondent%22%20means,EL%2020.02%20History%20History%3A%20Cr.)

<sup>5</sup> Courts may take judicial notice of, and rely on “facts from the public records of government agencies” when considering a motion to dismiss. *Meyers*, 2007 WI 99, ¶ 81.

<sup>6</sup> Additionally, even if Plaintiffs’ suggested reading of the phrase “election officials” was accurate, Plaintiffs do not explain why they could not simply have named the three individual MEC commissioners as respondents to a § 5.06 complaint. As Plaintiffs correctly point out, the phrase “election official” is defined as any “individual who is charged with any duties relating to the conduct of an election.” Wis. Stat. § 5.02(4e). The MEC is a board of election commissioners created under Wis. Stat. § 7.20, and is composed of three individual members appointed by the Milwaukee mayor pursuant to Wis. Stat. § 7.20(2). As such, even if the phrase “election official” could be defined as narrowly as Plaintiffs suggest, Plaintiffs have not explained why they could not have brought a § 5.06 complaint against the MEC’s three individual members in their official capacity.

this case should be dismissed based on this Court's lack of competency to adjudicate Plaintiffs' claims.

**B. Plaintiffs Have Failed to State a Claim Upon Which Relief Can be Granted Because Alternative Adequate Remedies Exist to Resolve Their Claims**

Plaintiffs' failure to comply with the Wis. Stat. § 5.06 complaint procedure not only divests this Court of competency to adjudicate Plaintiffs' claims, but also creates an independently fatal pleading deficiency. For the following reasons, Plaintiffs have failed to state any claim upon which relief can be granted because the § 5.06 complaint procedure provides an adequate alternative remedy to address Plaintiffs' claims.

Plaintiffs' complaint states three claims: (1) declaratory judgment; (2) injunctive relief; and (3) mandamus. (ECF 3 at 12-15). In order for a party to sustain a claim for a writ of mandamus or an injunction, they must show that there is "no other adequate remedy at law." *L. Enf't Standards Bd. v. Vill. of Lyndon Station*, 101 Wis. 2d 472, 494, 305 N.W.2d 89, 99 (1981); *Milwaukee Deputy Sheriffs' Ass'n v. Milwaukee Cnty.*, 370 Wis. 2d 644, 659, 883 N.W.2d 154, 161 (Ct. App. 2016). Similarly, declaratory relief is "disfavored if there is a speedy, effective and adequate alternative remedy." *Voters with Facts v. City of Eau Claire*, 2017 WI App 35, ¶ 35, 376 Wis. 2d 479, 508, 899 N.W.2d 706, 720, *aff'd on other grounds*, 2018 WI 63, ¶ 35, 382 Wis. 2d 1, 913 N.W.2d 131 (internal quotation marks omitted).

As discussed extensively above, the Wis. Stat. § 5.06 complaint procedure allows electors to challenge the actions of election officials and to request that an offending official be "required to conform his or her conduct to the law." Wis. Stat. § 5.06(1). Through this process, the WEC is empowered to investigate and determine whether an election official has complied with the law and, if necessary, "require any election official to conform his or her conduct to the law..." Wis. Stat. § 5.06(6).

The Wisconsin Court of Appeals has left no doubt as to whether the § 5.06 complaint procedure is an adequate remedy for challenging the actions of election officials. As the *Kuechmann* court explained in no uncertain terms, there is “no room” for argument that the § 5.06 review process is in any way inadequate. 170 Wis. 2d at 224–25. “When the legislature prescribes the method to review alleged deficiencies in election procedure, the legislature must deem that procedure to provide an adequate review.” *Id.* “For a court to suggest that the statutorily mandated review in sec. 5.06(9), Stats., is somehow inadequate would defy the legislature's decision to the contrary.” *Id.*

Because the Court of Appeals has expressly declared § 5.06 to provide an adequate remedy for electors seeking to challenge the actions of election officials, little further discussion is necessary. Because Plaintiffs have access to an adequate remedy in § 5.06, they cannot satisfy an essential element of their claims for injunctive relief and mandamus. *See L. Enft Standards Bd.*, 101 Wis. 2d 472; *Milwaukee Deputy Sheriffs' Ass'n*, 370 Wis. 2d 644. For the same reason, declaratory relief is strongly disfavored. *See Voters with Facts*, 2017 WI App 35, ¶ 35. For these reasons, Plaintiffs have failed to state any claim upon which relief can be granted, and this action should be dismissed.

**C. Plaintiffs Have Failed to State a Valid Mandamus Claim Upon Which Relief Can be Granted Because Wis. Stat. § 6.50(3) Requires the Exercise of Administrative Discretion**

Finally, aside from the availability of an adequate remedy, there is a second—and again independently fatal—deficiency affecting Plaintiffs’ mandamus claim. For the following reasons, Plaintiffs have failed to state a valid claim for mandamus because Wis. Stat. § 6.50(3) requires the exercise of administrative discretion.

A writ of mandamus is a “drastic and extraordinary” remedy. *Menzl v. City of Milwaukee*, 32 Wis. 2d 266, 275, 145 N.W.2d 198, 203 (1966). It is used to “compel public

officers to perform duties arising out of their office and presently due to be performed.” *L. Enf't Standards Bd.*, 101 Wis. 2d at 494. A writ of mandamus cannot be issued unless the subject official has a “clear and unequivocal” duty to act. *Id.* Mandamus is inappropriate where the “duty is not clear and unequivocal and requires the exercise of discretion.” *Id.*

According to the complaint, the duties Plaintiffs purportedly seek to enforce by mandamus emanate from Wis. Stat. § 6.50(3). (See ECF 3 at ¶ 68). That statute requires the MEC, “upon receipt of reliable information that a registered elector has changed his or her residence to a location outside of the municipality,” to mail a notice to the elector. Wis. Stat. § 6.50(3). Depending on the response received from the elector, if any, the MEC may be required to deregister the elector. According to the complaint, the MEC has a positive and plain duty to mail such notices based on the USPS information Plaintiffs provided in their June 7, 2024 email. (ECF 3 at ¶¶ 64-68).

The problem with Plaintiffs’ mandamus claim is that, while Wis. Stat. § 6.50(3) does impose a positive and plain duty to send notices by mail, this duty is not actually triggered until the MEC makes an initial determination that the residence information it possesses is “reliable.” Wis. Stat. Ch. 6 does not define the phrase “reliable information,” nor does it specify how the reliability of voter registration information should be determined. Similarly, the statutes do not list particular kinds of information which the MEC must deem “reliable.” As a result, the determination of whether residence information related to a particular voter is sufficiently “reliable” to trigger the notice requirement under § 6.50(3) requires the MEC to exercise judgment and discretion. Consequently, Wis. Stat. § 6.50(3) is not a proper subject of mandamus. *See L. Enf't Standards Bd.*, 101 Wis. 2d at 494. For this additional reason, Plaintiffs’ mandamus claim should be dismissed.



## CONCLUSION

For the reasons set forth above, Defendant MEC ask this Court to dismiss this action based on the Court's lack of competency to exercise subject matter jurisdiction over Plaintiffs claims, as well as Plaintiff's failure to state any claim upon which relief can be granted.

Signed at the City of Milwaukee, this 22nd day of October, 2024.

EVAN GOYKE  
City Attorney

*Electronically Signed by*

/s/ Kathryn Block  
KATHRYN BLOCK  
Assistant City Attorney  
State Bar No. 1029749  
kblock@milwaukee.gov

*Electronically Signed by*

/s/ Patrick J. McClain  
PATRICK J. MCCLAIN  
Assistant City Attorney  
State Bar No. 1100896  
pmccla@milwaukee.gov  
Attorneys for Defendant MEC

ADDRESS:

800 City Hall  
200 East Wells Street  
Milwaukee, WI 53202  
Telephone: 414/286-2601

1086-2024-1717:1294395