

**STATE OF WISCONSIN  
BEFORE THE ELECTIONS COMMISSION**

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MATT ROESER,

Complainant,

v.

CELESTINE JEFFREYS, in her capacity  
as City Clerk of the City of Green Bay,

Respondent.

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**RESPONSE OF RESPONDENT CELESTINE JEFFREYS**

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Respondent Celestine Jeffreys, in her capacity as City Clerk of the City of Green Bay, by and through her attorneys Lindsay Mather and Joanne Bungert, hereby submits the following response to the Complaint filed by Matt Roeser with the Wisconsin Elections Commission.

**INTRODUCTION**

As the Commission is aware, the City of Green Bay has been the target of repeated attacks on the integrity of its elections—most of which have been instigated by the same attorney and all of which have been found to lack a legitimate basis in fact or law. This matter is no different. The Complainant is represented in this complaint by the same counsel that has been unsuccessful in challenging City election practices at both the state and federal levels.<sup>1</sup> This most recent filing is

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<sup>1</sup> *E.g.*, *Carlstedt, et al. v. Wolfe*, EL 21-24 (Wis. Elections Comm’n Dec. 08, 2021) (final decision) (attached hereto as Exhibit A); *Sipes v. Genrich*, EL 22-10 (Wis. Elections Comm’n April 28, 2022) (closure letter) (attached hereto as Exhibit B); *Wisconsin Voters Alliance v. City of Racine*, No. 20-CV-1487, 2020 WL 6129510 (E.D. Wis. Oct. 14, 2020), *appeal dismissed sub nom. Wisconsin Voters Alliance v. City of Racine*, No. 20-3002, 2020 WL 9254456 (7th Cir. Nov. 6., 2020) (Order Denying Motion for Temporary Injunction) (attached hereto as Exhibit C); *Wisconsin Voters Alliance v. City of Racine*, No. 20-CV-1487, 2021 WL 179166 (E.D. Wis. Jan. 19, 2021) (Order Granting Motion to Dismiss) (attached hereto as Exhibit D).

It is also worth noting that Attorney Kaardal has been referred to at least one ethics committee in connection with his representation of the Wisconsin Voters Alliance in an attempt to overturn the results of the November 2020 presidential election. Josh Gerstein, *Lawyer who brought election suit referred for possible discipline*, POLITICO.COM, Feb. 19, 2021, <https://www.politico.com/news/2021/02/19/lawyer-election-suit-discipline-470369>; Mike Scarcella, *Lawyer loses challenge to judge’s ethics referral after failed election lawsuit*, REUTERS, March 22, 2022, available at <https://www.reuters.com/legal/government/lawyer-loses-challenge-judges-ethics-referral-after-failed-election-lawsuit-2022-03-22/>.

merely another attempt by Attorney Kaardal to court scandal where there is none—intentionally undermining public confidence in legitimately-run elections in the process.

Such grandstanding does not make a complaint legitimate, however. As it has consistently done, the City of Green Bay ran a fair, free, and accessible election on April 5, 2022, in compliance with state and federal law. In particular, and notwithstanding any decision made by a judge in a different county in a case to which neither the City nor Clerk Jeffreys was a party, the City fulfilled its equal protection obligation to accept ballots on behalf of voters who were unable to personally deliver their own as a result of a disability or impairment. Clerk Jeffreys is not permitted to violate federal law or the constitutional right to vote of qualified electors who are incapable of personally delivering their ballots. Likewise, she may not violate the privacy rights of those electors by requiring details as to the reasons they cannot bring in their own ballots.

Moreover, the legal interpretation offered by the Complainant is far from established law. The Wisconsin Supreme Court continues to deliberate the questions of the meaning of state statutes with respect to delivery of absentee ballots and whether the narrow reading adopted by one circuit court judge is correct. Until such time as the court issues its decision, Clerk Jeffreys has not only a right, but an obligation, to continue accepting ballots on behalf of voters with differing abilities. Clerk Jeffreys therefore asks that the Commission dismiss this Complaint based on a lack of probable cause. At a minimum, she asks that any decision by the Commission be held in abeyance until after the Wisconsin Supreme Court has an opportunity to issue its ruling.

## **BACKGROUND**

### *Teigen Case*

In January of this year, a judge in Waukesha County granted summary judgment in favor of the plaintiffs in *Teigen v. Wisconsin Elections Commission*, No. 2022AP91 (Wis. Cir. Ct.

Waukesha Cty. January 20, 2022), finding that “the only lawful methods for casting an absentee ballot pursuant to Wis. Stat. § 6.87(4)(b)1. are for the elector to place the envelope in containing the ballot in the mail or for the elector to deliver the ballot in person to the municipal clerk.” Neither the written decision nor the judge’s oral pronouncement addresses the options for the return of absentee ballots by qualified electors who are physically unable to place their ballot in a mailbox or personally deliver it to the clerk because of a disability. That is one of several reasons the Waukesha County judge’s order was appealed, and the appeal is currently pending before the Wisconsin Supreme Court. Although the Court of Appeals stayed the application of the holding through the February primary election, the stay expired on February 15, 2022, and the order was allowed to go into effect for the April election. Clerk Jeffreys and the City were not parties to or otherwise involved in the Waukesha County action.

#### *April 2022 Election*

The City was aware of the stay of the *Teigen* decision in the run-up to the February primary, as well as the fact the stay would not remain in place for the April election. Even though the City was not a party to the *Teigen* case, in an abundance of caution, City staff made the decision to comply with the judge’s ruling. Clerk Jeffreys therefore decided not to utilize any drop boxes for that election; she also developed a policy pursuant to which her staff would inform voters that the Clerk’s office could only accept the ballot of the individual elector personally delivering their ballot. In situations in which an elector brought more than one ballot to the counter, the following type of exchange would occur:

Staff member: “Which ballot is yours?”

Voter: *Indicates which ballot is their own; asks to be able to submit someone else’s ballot for them.*

Staff member: “I’m sorry, I can only take your ballot.”

The interaction ceased there, and the Clerk's office only accepted the elector's own ballot. Staff did not ask any additional questions or offer any prompts or suggestions. However, if the individual volunteered, on their own and without provocation, that they were submitting a ballot on behalf of a voter who was sick or otherwise disabled, staff would accept that person's ballot as well.

On many occasions, the person bringing the ballot in would indicate that they were delivering it for a spouse, adult child, neighbor, etc., and doing so for the sake of convenience, to save the other voter a trip, or for a similar reason. In such circumstances, without exception, the Clerk's office staff would not accept any ballot from that person other than their own. Additionally, Clerk Jeffreys, in consultation with the City Attorney, decided that staff would not ask any follow-up questions in an effort to determine the extent of the non-present voter's inability to bring in their own ballot in order to protect the privacy rights of voters with disabilities. Similarly, she also determined that ballots brought in on behalf of disabled voters would not be marked, set aside, or otherwise treated differently from all other absentee ballots received in person in the Clerk's office so as to avoid singling out differently abled voters and potentially raising equal protection issues.

On Election Day, April 5, 2022, as is often the case, many voters personally delivered their absentee ballots to the Clerk's office. On more than one occasion, individuals attempted to also deliver the ballot of a non-present voter for the sake of convenience. Clerk's office staff rejected those ballots and informed the individuals that the elector themselves would have to bring in their own ballot. The Complainant himself was present in the Clerk's office for several such interactions, and appeared to be recording video of them on his phone.

There were also a few situations on Election Day in which Voter 1 brought in Voter 2's absentee ballot. In those instances, Clerk Jeffreys or another clerk's office staff member informed Voter 1 that they could not accept Voter 2's ballot, and Voter 1 indicated, unprompted, that they

were bringing in Voter 2's ballot because Voter 2 was physically unable to personally deliver their own ballot to the Clerk's office. In keeping with the policies and procedures she had utilized throughout the April 2022 election season, Clerk Jeffreys accepted Voter 2's ballot without asking follow up questions about the person's disability. Complainant's allegations ostensibly relate to these types of interactions.<sup>2</sup>

On more than one occasion, Complainant and his witnesses, who were loitering in the Clerk's office without a legitimate reason for being there,<sup>3</sup> improperly interacted with individuals returning their absentee ballots to the Clerk's office. At one point, Complainant and the two witnesses created such a disturbance that they were interfering with the ability of Clerk Jeffreys and her staff to perform the functions of the clerk's office. The disturbance in question appears to be the one described in paragraphs 16 through 22 of the Complaint.

The disturbance arose when a voter came in to deliver her own ballot as well as her husband's. Clerk Jeffreys informed the voter that she could not accept the husband's ballot. The voter then volunteered the information that her husband was physically unable to personally deliver his ballot to the Clerk's office. Clerk Jeffreys informed the voter that she would accept both ballots. Although this was a private conversation between Clerk Jeffreys and the voter, Ms. Angus yelled loudly at both women that, in her opinion, the voter could not bring in her husband's ballot and Clerk Jeffreys could not accept it. Despite multiple requests from Clerk Jeffreys that Ms. Angus stop interfering with a private conversation with a voter, Ms. Angus continued loudly

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<sup>2</sup> The allegations in the Complaint are so unsubstantial and lacking in detail that Clerk Jeffreys is unable to respond to them with any kind of specificity. They do not, for example, detail any of the interactions or conversations Clerk Jeffreys is alleged to have had with individual voters. Accordingly, this response attempts to respond as thoroughly as possible to the allegations in the Complaint given the limited information offered.

<sup>3</sup> Election observers have a right to observe in person absentee voting, which takes place prior to elections but does not occur on Election Day itself. Observers do not have an unfettered right to observe the return of absentee ballots that are merely being delivered to the Clerk's office to be counted. (*See* Letter from Joanne Bungert to Janet Angus (April 5, 2022), attached hereto as Exhibit E).

expressing her opinion about the legality of the decision to accept both ballots. The voter ultimately left the Clerk's office in tears as a result of this interaction.

Based on the pattern of disruptive activity generally, and that entirely inappropriate interaction with a voter specifically, Ms. Angus and the others were informed that they were not allowed to remain in the Clerk's office. They had a right to be present at Central Count, which was taking place on an entirely different floor in City Hall, but they would not be permitted to continue to disrupt the business of the Clerk's office. City Attorney Joanne Bungert and Chief of Operations Joseph Faulds interacted with Ms. Angus and the Complainant about this decision. Neither Attorney Bungert nor C.O.O. Faulds indicated to the Complainant or either of the witnesses that there was a "gray area" concerning the acceptance of multiple absentee ballots from one voter. Rather, the conversation centered around the fact that the three of them could be present at Central Count, but not in the Clerk's office and certainly not harassing individual voters.

### **ARGUMENT**

The Commission should dismiss the instant Complaint for several reasons. First, the law on which the Complaint is based is far from clear, as is the applicability of the Waukesha County ruling to Clerk Jeffreys and/or the City. Additionally, even if the *Teigen* ruling were binding on the City, nothing therein absolves Clerk Jeffreys of her obligations under federal law to ensure access to voting for disabled electors. Finally, the Wisconsin Supreme Court is considering the *Teigen* ruling on appeal right now, and could issue its decision at any time. At the very least, this matter should be held in abeyance until the court has the opportunity to issue that decision and clarify not only the law in this area, but a clerk's obligations in complying with it.

## I. Applicability of Circuit Court Order in *Teigen*

The following facts are undisputed: the *Teigen* action was initiated and decided in Waukesha, not Brown, County; the City of Green Bay was not a party to the decision—in fact, the plaintiffs only sued the Wisconsin Elections Commission; the *Teigen* plaintiffs did not attempt to bring their action as a class action on behalf of all voters in the State of Wisconsin and/or against all municipal clerks in the state; the *Teigen* plaintiffs did not directly seek to enjoin the City of Green Bay or Clerk Jeffreys from engaging in any activities; and the judge’s order in *Teigen* did not direct any *specific* holding to the City. Similarly, none of the appellate-level activity has involved or been specifically directed at the City or Clerk Jeffreys. The decision of a circuit court in one county is not binding on the entire state; rather, it is binding on the parties to the specific action. Indeed, if an identical action had been brought within the jurisdiction of the Brown County Circuit Court, the judge could not merely defer to the *Teigen* decision, or cite to it as precedent. *Kuhn v. Allstate Ins. Co.*, 181 Wis.2d 453, 468, 510 N.W.2d 826 (Ct. App. 1993), *aff’d*, 193 Wis.2d 50, 532 N.W.2d 124 (1995). At best, the *Teigen* decision could be offered as persuasive authority, but the Brown County judge would not be bound by its holding. WIS. STAT. § 809.23(3) (2021-2022<sup>4</sup>); *Brandt v. LIRC*, 160 Wis. 2d 353, 359, 466 N.W.2d 673 (Ct. App. 1991).

The Wisconsin Supreme Court, in contrast, is clearly endowed by both the Wisconsin constitution and state statutes with authority to issue decisions of statewide application. *In re Bolens*, 148 Wis. 456, 135 N.W. 164, 165-66 (1912); Wis. Const. art. VII, § 8; WIS. STAT. § 753.03. As discussed in this response, there are many legitimate reasons to believe that the *Teigen* decision may not stand on appeal, and the law in this area is indisputably unsettled. The City and Clerk Jeffreys took many reasonable steps to comply with the Waukesha County judge’s order, just in

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<sup>4</sup> All citations to the Wisconsin Statutes are to the 2021-2022 version unless otherwise indicated.

case the Wisconsin Supreme Court allows it to stand without amendment. At the same time, however, the order left many questions unanswered, and Clerk Jeffreys still has obligations under state and federal law with which she is required to comply until directed otherwise. Clerk Jeffreys's policies for her office during the April election reflect her good faith efforts to address all of these competing considerations. Until such time as the Wisconsin Supreme Court interprets this area of the law, rules on the *Teigen* appeal, and clarifies all of a clerk's obligations under the law, it cannot be said that Clerk Jeffreys violated election law.

## **II. Protections for Voters with Disabilities**

Although attempting to portray the narrow construction of the Waukesha County judge's order as setting out the only two methods for returning an absentee ballot (i.e., via the mail or personal delivery by the voter themselves), the Complaint itself acknowledges that the proffered statutory restriction on delivery by one of those two methods is not absolute. The Complaint repeatedly and accurately points out that an absentee ballot should be returned by mail or in person "unless there is a statutory exception." (Compl. ¶¶ 5-6, 8-9.) This is an important caveat, however. The Complainant himself explicitly acknowledges that exceptions have to be made to the "mail or in person delivery *by the elector*" rule he seeks to enforce because certain statutory exceptions permit or even mandate different procedures. Even if one were to accept the Complainant's extreme—and incorrect—view that no one other than the elector may return their absentee ballot to the municipal clerk, various exceptions must still apply. *See, e.g.*, Wis. Stat. §§ 6.875 (Special Voting Deputy procedure); 6.86(3)(a)1 (hospitalized elector). It is for a similar statutory reason that Clerk Jeffreys was not only permitted, but was in fact *obligated*, to accept absentee ballots brought in by someone other than the elector themselves. Regardless of whether the Waukesha

County order provided for making such an exception, Clerk Jeffreys was nonetheless legally and constitutionally obligated to do so.

The federal Voting Rights Act (“VRA”) and Americans with Disabilities Act (“ADA”) require Clerk Jeffreys to accept absentee ballots returned on behalf of voters with disabilities. Specifically, the VRA states, “[a]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter’s choice, other than the voter’s employer or an agent of that employer or officer or agent of the voter’s union.” 52 U.S.C. § 10508. This provision applies at all stages of the voting process, not just in completing the ballot. *See* S. Rep. No. 417, 97th Cong., 2d Sess. at 62-63 (state law may not “deny assistance at some stages of the voting process during which assistance was needed.”). Congress reinforced this rule when it passed the Help American Vote Act, which provides that “voting system[s] shall . . . be accessible to individuals with disabilities.” 52 U.S.C. § 21081.

The ADA and its associated regulations place affirmative obligations upon states and municipalities to ensure that voters with disabilities enjoy the franchise. 42 U.S.C. §§ 12131-12134; 28 C.F.R. §§ 35.101-35.190. As such, the ADA contains a broader protection: “[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subject to discrimination by any such entity.” 42 U.S.C. § 12132. The ADA’s protections extend to all aspects of voting, including in-person voting on Election Day, advance voting, and absentee voting. A public entity must “make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability.” 28 C.F.R. § 35.130(b)(7). The ADA’s implementing regulations prohibit “methods of

administration that . . . defeat or substantially impair accomplishment” of the program’s objectives. 28 C.F.R. § 35.130(b)(3).

Individually, and in combination, these federal laws require that Wisconsin’s voting systems remain open to individuals with disabilities at all stages of the process, and that municipal clerks make certain accommodations to ensure that such individuals can cast their ballots. This means, in part, accepting absentee ballots from individuals on behalf of voters with disabilities. This is no hypothetical—in many circumstances, this may be the only way for a voter to return their absentee ballot to the municipal clerk. In *Teigen*, the Waukesha County Circuit Court case on which the Complainants rely, the court received approximately 30 affidavits regarding voters who would not be able to vote if the circuit court’s order was strictly applied. *Teigen v. Wisconsin Elections Commission*, No. 2022AP91 (Wis. Cir. Ct. Waukesha Cty. January 18, 2022) (Dkt No. 138). A recent Milwaukee Journal Sentinel Story confirmed that a complete prohibition on ballot return assistance would have denied individuals with disabilities their right to vote.<sup>5</sup>

To comply with these federal statutes and prevent the disenfranchisement of individuals with disabilities as a result of a strict application of the *Teigen* holding, Clerk Jeffreys was required to accept absentee ballots delivered on behalf of voters with disabilities.<sup>6</sup> Those voters, pursuant to the VRA, had selected assistance of their choice, and Clerk Jeffreys was prohibited from denying the use of such assistance. 52 U.S.C. § 10508. It would also deny to those voters who

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<sup>5</sup> Patrick Marley, *‘They’re infringing on my right to vote’: Wisconsin Supreme Court order makes it harder for those with disabilities to vote*, MILWAUKEE JOURNAL SENTINEL, Mar. 22, 2022, <https://www.jsonline.com/story/news/politics/2022/03/21/wisconsin-supreme-court-order-limits-voting-those-disabilities/7037560001/>.

<sup>6</sup> Clerk Jeffreys was also prohibited from imposing any sort of screening criteria, as she may not “impose or apply eligibility criteria that screen out or tend to screen out” people with disabilities from “fully and equally enjoying” the programs, services, or activities of state and local governments. 28 C.F.R. § 35.130(b)(8). For this reason, if someone indicated they were delivering a ballot on behalf of someone with a disability, Clerk Jeffreys and her staff accepted the ballot without asking any follow-up questions.

were unable to travel to the clerk’s office due to a disability the same access to the voting procedures as other voters, in violation of the ADA. 42 U.S.C. § 12132. Those voters would be deprived of the benefit of, among other things: (1) knowing that their ballot would be delivered timely pursuant to Wis. Stat. § 6.87(6); (2) the opportunity for the municipal clerk or her staff to review the absentee ballot certificate for completeness; and (3) the opportunity to vote closer to election day and, therefore, based on more complete information about the issues and candidates. “Title II of the ADA requires state and local governments . . . to ensure that people with disabilities have a full and equal opportunity to vote.” U.S. Dep’t of Justice, “The Americans with Disabilities Act and Other Federal Laws Protecting the Rights of Voters with Disabilities.”<sup>7</sup> Denying voters with disabilities these opportunities would put Clerk Jeffreys on the wrong side of federal law.

Even if the VRA and ADA were not “statutory exceptions” within the meaning of the Waukesha County order, and even if that order were binding on the City of Green Bay, Clerk Jeffreys would nonetheless be required to conform her conduct to federal law, which would preempt any conflicting state statute. U.S. Const. art. VI, ¶2. Thus, Clerk Jeffreys acted lawfully while engaged in the activities described in the Complaint, and the Commission should therefore dismiss it with prejudice.

### **III. This Matter should be Held in Abeyance**

It is Clerk Jeffreys’s position that, for the reasons stated in this Response, this complaint should be dismissed based on a failure to demonstrate probable cause to believe that a violation of law or abuse of discretion has occurred. WIS. STAT. § 5.06. However, as discussed herein, the exact question of whether and to what extent Wisconsin law prohibits absentee ballot return assistance is currently pending before the Wisconsin Supreme Court in *Teigen*. The defendants and

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<sup>7</sup> Available at [https://www.ada.gov/ada\\_voting/ada\\_voting\\_ta.htm](https://www.ada.gov/ada_voting/ada_voting_ta.htm) (last visited Apr. 28, 2022).

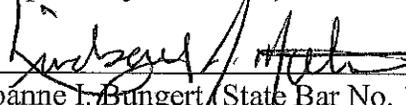
intervening defendants in that case, including the Commission, presented extensive arguments concerning the legitimacy of such assistance, including that assistance is authorized by the plain meaning of the statute, canons of statutory interpretation, and binding Supreme Court precedent. To the extent such arguments are relevant here, they are incorporated herein by reference. (*See generally* Br. & J.A. Def.-Co-Appellant Wis. Elections Comm., 17-28 (Exhibit F); Br. Intervenor-Def.-Appellants Disability Rights Wisconsin, et al., 33-52 (Exhibit G).) The court has not yet issued its decision in *Teigen*, and until it does, too much uncertainty exists in this area of the law. Accordingly, if the Commission does not dismiss this Complaint, it should hold this matter in abeyance pending the outcome of that case.

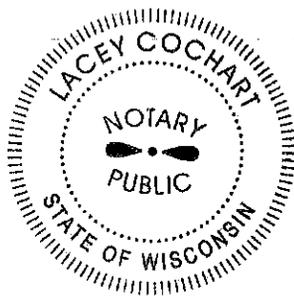
### CONCLUSION

For the foregoing reasons, Respondent Celestine Jeffreys respectfully requests that the Commission dismiss the Complaint on its merits, with prejudice.

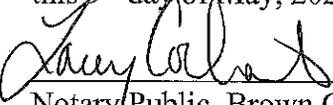
Dated this 9<sup>th</sup> day of May, 2022.

Respectfully submitted,

  
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Subscribed and sworn to before me  
this 9<sup>th</sup> day of May, 2022.

  
\_\_\_\_\_  
Notary Public, Brown County  
State of Wisconsin  
My commission is permanent.

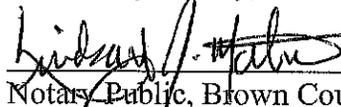
VERIFICATION

I, Celestine Jeffreys, being first duly sworn on oath, state that I personally read the above verified Response, and that the above Response is true and correct based upon my personal knowledge.

Dated this 9<sup>th</sup> day of May, 2022.

  
\_\_\_\_\_  
Celestine Jeffreys  
City Clerk, City of Green Bay

Subscribed and sworn to before me  
this 9<sup>th</sup> day of May, 2022.

  
\_\_\_\_\_  
Notary Public, Brown County  
State of Wisconsin  
My commission expires is permanent

