

Complaint of

Dean Romano
1849 15th Avenue
Kenosha WI 53140

Plaintiff,

Case Code: 30701
Case Type: Declaratory Judgment

against

Case No. _____

City of Kenosha
625 52nd Street
Kenosha, WI 53140

Debra Gimler or her successor
City Clerk--Interim
625 52nd Street, Room 105
Kenosha, WI 53140

Defendants.

COMPLAINT

The Plaintiff, by his undersigned counsel, alleges the following.

1. This is an action against the City of Kenosha and the above-named defendants seeking a declaratory judgment that the proper construction of the state statutes that set forth the legal methods for Wisconsin voters to cast absentee ballots, including Wisconsin Statutes § 6.84, 6.855 and 6.87(4)(b)(1), preclude the use of unmanned absentee ballot drop boxes.

Parties

2. Plaintiff Dean Romano is an elector and taxpayer residing at 1849 15th Avenue Kenosha WI 53140.

3. Defendant City of Kenosha is in the State of Wisconsin.

4. Defendant Debra Gimler is City Clerk Interim of Kenosha.

Jurisdiction and Venue

5. The Court has jurisdiction under Wisconsin law. Wis. Stat. § 5.06(2) (direct action against election officials) and § 806.04 (declaratory judgment act).

6. Wisconsin Statutes § 806.04 provides that any person “whose rights, status or other legal relations are affected by a statute...may have determined any question of construction or validity arising under the...statute...and obtain a declaration of rights, status or other legal relations thereunder.”

7. The Plaintiff's method of absentee voting is affected by the Defendants' decision to use unmanned absentee ballot drop boxes.

8. The Plaintiff disagrees with Defendants that use of unmanned absentee ballot drop boxes is legally authorized under Wisconsin Statutes § 6.84, 6.855 and 6.87(4)(b)(1).

9. Therefore, the Plaintiff seeks a declaratory judgment that the Defendants' use of unmanned absentee ballot drop boxes is legally unauthorized under Wisconsin Statutes § 6.84, 6.855 and 6.87(4)(b)(1).

10. The Plaintiff has exhausted any administrative remedies for three reasons. First, the Plaintiff filed a complaint with Wisconsin Elections Commission which was closed

without investigation. Second, in other proceedings, involving other complaints, the Wisconsin Elections Commission has refused to investigate the subject matter presented. Third, the Wisconsin Elections Commission has decided it will not take any more complaints on the subject matter presented.

11. Venue is proper under Wisconsin Statutes § 801.50 because the City of Kenosha is in Kenosha County and the acts complained of occurred in Kenosha County.

COUNT

12. The City of Kenosha and its Clerk (collectively, “City of Kenosha”) administer elections within the City of Kenosha.

13. The City of Kenosha uses taxpayer funds to administer elections, including unmanned absentee ballot drop boxes.

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

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

15. The City of Kenosha has no published policy discontinuing the City’s use of unmanned absentee ballot drop boxes.

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

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

17. The proper construction of the state statutes that set forth the legal methods for Wisconsin voters to cast absentee ballots, including Wisconsin Statutes § 6.84, 6.855 and

6.87(4)(b)(1), preclude the use of unmanned absentee ballot drop boxes by the City of Kenosha.

18. The use of absentee ballot drop boxes, outside of narrow exceptions, has been successfully challenged as being inconsistent with Wisconsin law. In a case in the Wisconsin Circuit Court for Waukesha County, the plaintiffs sued the WEC to challenge 2020 guidance memos that the WEC issued to municipal clerks. Complaint, *Teigen v. Wisconsin Elections Commission*, No. 21-CV-958 (Wis. Cir. Ct. for Waukesha Cnty. June 28, 2021) (under review by Wisconsin Supreme Court). In particular, the plaintiffs challenged a memo that purported to authorize unstaffed ballot drop boxes:

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

Id. ¶ 10.

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

For the reasons set forth by the Court on the record at the January 13, 2022 hearing, the Court hereby declares that WEC’s interpretation of state statutes in the Memos is inconsistent with state law, to the extent they conflict with the following: (1) an elector must personally mail or deliver his or her own absentee ballot, except where the law explicitly authorizes an agent to act on an elector’s behalf, (2) the only lawful methods for casting an absentee ballot pursuant to Wis. Stat. § 6.87(4)(b)(1). are for the elector to place the envelope containing the ballot in the mail or for the elector to deliver the ballot in person to the municipal clerk, (3) the use of drop boxes, as described in the Memos, is

not permitted under Wisconsin law unless the drop box is staffed by the clerk and located at the office of the clerk or a properly designated alternate site under Wis. Stat. § 6.855.

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

The City of Kenosha's use of unmanned absentee ballot drop boxes is legally unauthorized.

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

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

22. Consequently, the City of Kenosha's continued use of unmanned absentee drop boxes is legally unauthorized under Wisconsin Statutes § 6.87(4)(b)(1) and § 6.855.

23. The City of Kenosha's continued use of taxpayer funds for unmanned absentee ballot drop boxes is legally unauthorized.

Prayer for Relief

WHEREFORE, the Plaintiff respectfully requests:

- (a) a court order declaring that the Defendants' use of unmanned absentee ballot drop boxes is legally unauthorized under Wisconsin Statutes;
- (b) a permanent injunction requiring the Defendants to cease and desist from the use of unmanned absentee ballot drop boxes;
- (c) and, any other relief it deems proper, necessary, or just, consistent with the law and under the circumstances of this case.

Dated: May 24, 2022.



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