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Clerk of Circuit Court
Brown County, WI
2020CV000812

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 6

BROWN COUNTY

KANYE WEST, MICHELLE TIDBALL,
and FRED KRUMBERGER,

Plaintiffs,

v.

Case No. 2020CV000812

WISCONSIN ELECTIONS COMMISSION,

Defendant.

**ANSWER AND CROSSCLAIMS BY PROPOSED INTERVENOR-DEFENDANTS
WILLIAM BRENT, III, RICHARD C. HUGHES, KEITH SMITH,
LAUREN STEVEN, AND JOSEPH SANTELER**

Proposed Intervenor-Defendants William Brent, III, Richard C. Hughes, Keith Smith, Lauren Steven, and Joseph Santeler (“Complainants”), by their attorneys, Stafford Rosenbaum LLP, in conjunction with their Motion To Intervene, respond to Plaintiffs’ Complaint and assert crossclaims against Defendant Wisconsin Elections Commission (“WEC”) as follows:

INTRODUCTION

Answering the assertions in the four non-numbered paragraphs in what Plaintiffs denominate an “Introduction,” Complainants deny that the WEC has exceeded its constitutional or statutory authority, altered the deadline in Wis. Stat. 8.20(8)(am), or impeded the election nomination process. Complainants also deny that nominating petitions submitted on behalf of Plaintiffs Kanye West and Michelle Tidball “were accepted by a Commission Elections Specialist at 5:00:14 p.m.” Complainants deny all remaining allegations and implications contained in these paragraphs.

JURISDICTION AND VENUE

1. Answering paragraph 1, Complainants assert that the allegations therein are legal conclusions to which no response is necessary and that are no longer relevant since the WEC's removal of this action to this Court. *See* Dkt. No. 1. To the extent an answer is necessary, Complainants deny all of the allegations in this paragraph.

2. Answering paragraph 2, Complainants assert that the allegations therein are legal conclusions to which no response is necessary and that are no longer relevant since the WEC's removal of this action to this Court. To the extent an answer is necessary, Complainants deny all of the allegations in this paragraph.

3. Answering paragraph 3, Complainants assert that the allegations therein are legal conclusions to which no response is necessary and that are no longer relevant since the WEC's removal of this action to this Court. To the extent an answer is necessary, Complainants deny all of the allegations in this paragraph.

PARTIES

4. Answering paragraph 4, Complainants lack knowledge or information sufficient to form a belief as to the truth of the allegations with regard to Plaintiff Fred Krumberger's political ambitions, voter-registration status, taxpayer status, and place of residence, and on that basis deny all of the allegations in this paragraph.

5. Answering paragraph 5, Complainants lack knowledge or information sufficient to form a belief as to the truth of the allegations with regard to Plaintiff Kanye West's political ambitions, voter-registration status, taxpayer status, and place of residence, and on that basis deny all of the allegations in this paragraph.

6. Answering paragraph 6, Complainants lack knowledge or information sufficient to form a belief as to the truth of the allegations with regard to Plaintiff Michelle Tidball's political ambitions, voter-registration status, taxpayer status, and place of residence, and on that basis deny all of the allegations in this paragraph.

7. Answering paragraph 7, Complainants admit that Defendant the WEC is an agency of the executive branch of Wisconsin's state government and is located in Madison, Wisconsin.

STANDING

8. Answering paragraph 8, Complainants assert that the allegations therein are legal conclusions to which no response is necessary. To the extent an answer is necessary, Complainants deny all of the allegations in this paragraph.

9. Answering paragraph 9, Complainants admit that the WEC has decided that Plaintiffs Mr. West and Ms. Tidball did not qualify for inclusion Wisconsin's November 2020 general election ballot as candidates for President and Vice President of the United States, respectively. Complainants deny all remaining allegations and implications in this paragraph.

10. Answering paragraph 10, Complainants deny the allegations contained in this paragraph.

11. Answering paragraph 11, Complainants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and on that basis deny them.

12. Answering paragraph 12, Complainants assert that the allegations therein are legal conclusions to which no response is necessary. To the extent an answer is necessary, Complainants deny all of the allegations in this paragraph.

STATEMENT OF FACTS

13. Answering paragraph 13, Complainants deny the allegations contained therein.

14. Answering paragraph 14, Complainants admit, upon information and belief, that Mr. West and Ms. Tidball are independent candidates for President and Vice President of the United States, respectively.

15. Answering paragraph 15, Complainants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and on that basis deny them.

16. Answering paragraph 16, Complainants admit that Plaintiffs accurately quote Wis. Admin. Code § EL 2.05(1)-(2). Complainants deny all other allegations contained in this paragraph.

17. Answering paragraph 17, Complainants deny the allegations contained in this paragraph.

18. Answering paragraph 18, Complainants admit that Plaintiffs accurately quote Wis. Stat. § 8.20(8)(am). Complainants deny all other allegations contained in this paragraph.

19. Answering paragraph 19, Complainants deny the allegations contained in this paragraph.

20. Answering paragraph 20, Complainants admit, upon information and belief, that Ms. Ruhland of the Husch Blackwell law firm was among the individuals who filed the nominating papers on behalf of Mr. West and Ms. Tidball.

21. Answering paragraph 21, Complainants admit, upon information and belief, that Ms. Ruhland had contact with members of the WEC staff on August 4, 2020. Complainants lack

knowledge or information sufficient to form a belief as to the truth of the additional allegations contained there and on that basis deny them.

22. Answering paragraph 22, Complainants admit, upon information and belief, that the WEC staff advised Ms. Ruhland on August 4, 2020 that the doors of the building at 212 East Washington Avenue, where the WEC's offices are located, would be locked.

23. Answering paragraph 23, Complainants lack knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis deny them.

24. Answering paragraph 24, Complainants lack knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis deny them.

25. Answering paragraph 25, Complainants lack knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis deny them.

26. Answering paragraph 26, Complainants lack knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis deny them.

27. Answering paragraph 27, Complainants lack knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis deny them.

28. Answering paragraph 28, Complainants lack knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis deny them.

29. Answering paragraph 29, Complainants lack knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis deny them.

30. Answering paragraph 30, Complainants lack knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis deny them.

31. Answering paragraph 31, Complainants lack knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis deny them.

32. Answering paragraph 32, Complainants lack knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis deny them.

33. Answering paragraph 33, Complainants lack knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis deny them.

34. Answering paragraph 34, Complainants lack knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis deny them.

35. Answering paragraph 35, Complainants lack knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis deny them.

36. Answering paragraph 36, Complainants lack knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis deny them.

37. Answering paragraph 37, Complainants lack knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis deny them.

38. Answering paragraph 38, Complainants deny the allegations contained in this paragraph.

39. Answering paragraph 39, Complainants lack knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis deny them.

40. Answering paragraph 40, Complainants lack knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis deny them.

41. Answering paragraph 41, Complainants lack knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis deny them.

42. Answering paragraph 42, Complainants lack knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis deny them.

43. Answering paragraph 43, Complainants deny the allegations contained in this paragraph.

44. Answering paragraph 44, Complainants deny the allegations contained in this paragraph.

45. Answering paragraph 45, Complainants deny the allegations contained in this paragraph.

46. Answering paragraph 46, Complainants lack knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis deny them.

47. Answering paragraph 47, Complainants lack knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis deny them.

48. Answering paragraph 48, Complainants deny the allegations contained in this paragraph.

49. Answering paragraph 49, Complainants lack knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis deny them.

CLAIM

50. Complainants reallege and incorporate by reference paragraphs 1 through 49 of this Answer as if fully set forth herein.

51. Answering paragraph 51, Complainants assert that the allegations therein are legal conclusions to which no response is necessary. To the extent an answer is necessary, Complainants deny all of the allegations in this paragraph.

52. Answering paragraph 52, Complainants assert that the allegations therein are legal conclusions to which no response is necessary. To the extent an answer is necessary, Complainants deny all of the allegations in this paragraph.

53. Answering paragraph 53, Complainants assert that the allegations therein are legal conclusions to which no response is necessary. To the extent an answer is necessary, Complainants deny all of the allegations in this paragraph.

54. Answering paragraph 54, Complainants admit that Plaintiffs partially quote Article II, Section I, Clause 2 of the United States Constitution.

55. Answering paragraph 55, Complainants assert that the allegations therein are legal conclusions to which no response is necessary. To the extent an answer is necessary, Complainants deny all of the allegations in this paragraph.

56. Answering paragraph 56, Complainants assert that the allegations therein are legal conclusions to which no response is necessary. To the extent an answer is necessary, Complainants deny all of the allegations in this paragraph.

57. Answering paragraph 57, Complainants admit that Plaintiffs quote Wis. Stat. § 8.20(8)(am) in part.

58. Answering paragraph 58, Complainants assert that the allegations therein are legal conclusions to which no response is necessary. To the extent an answer is necessary, Complainants deny all of the allegations in this paragraph.

59. Answering paragraph 59, Complainants assert that the allegations therein are legal conclusions to which no response is necessary. To the extent an answer is necessary, Complainants deny all of the allegations in this paragraph.

60. Answering paragraph 60, Complainants deny the allegations contained in this paragraph.

61. Answering paragraph 61, Complainants assert that the allegations therein are legal conclusions to which no response is necessary. To the extent an answer is necessary, Complainants deny all of the allegations in this paragraph.

62. Answering paragraph 62, Complainants assert that the allegations therein are legal conclusions to which no response is necessary. To the extent an answer is necessary, Complainants deny all of the allegations in this paragraph.

63. Answering paragraph 63, Complainants assert that the allegations therein are legal conclusions to which no response is necessary. To the extent an answer is necessary, Complainants deny all of the allegations in this paragraph.

64. Answering paragraph 64, Complainants deny the allegations contained in this paragraph.

65. Answering paragraph 65, Complainants deny the allegations contained in this paragraph.

Prayer for Relief

Therefore, Complainants assert that Plaintiffs are not entitled to any of the relief they request and respectfully ask this Court to deny all requested relief.

AFFIRMATIVE DEFENSES

As and for separate and affirmative defenses to Plaintiffs' Complaint, Complainants allege as follows:

A. That, upon information and belief, Plaintiffs' Complaint fails because Plaintiffs have not properly exhausted statutory processes to obtain judicial review of a decision by the WEC.

B. That, upon information and belief, Plaintiffs did not file their Complaint in a proper venue.

C. That, upon information and belief, relief sought by Plaintiffs is barred by the doctrine of laches.

D. That, upon information and belief, relief sought by Plaintiffs is barred by the doctrine of unclean hands.

E. That, upon information and belief, relief sought by Plaintiffs is barred by the doctrine of waiver or forfeiture.

F. Complainants reserve the right to allege additional and separate affirmative defenses as they may become known during pretrial discovery.

WHEREFORE, Intervenor-Defendants William Brent, III, Richard C. Hughes, Keith Smith, Lauren Steven, and Joseph Santeler demand Dismissal of Plaintiffs' Complaint in its entirety, with prejudice, as well as such other and further relief as this Court deems just and equitable.

CROSSCLAIMS AGAINST DEFENDANT WISCONSIN ELECTIONS COMMISSION

NOW COME Intervenor-Defendants William Brent, III, Richard C. Hughes, Keith Smith, Lauren Steven, and Joseph Santeler, by and through their attorneys, Stafford Rosenbaum LLP, and for their crossclaims, pursuant to Wis. Stat. § 802.07(3), against Defendant WEC allege as follows:

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66. Intervenor-Defendant William Brent III is a Wisconsin elector residing at 4270 N. 40th Street, Milwaukee, WI 53216. Mr. Brent was a complainant to the Wisconsin Elections

Commission in Case No. EL 20-31.

67. Intervenor-Defendant Richard C. Hughes is a Wisconsin elector residing at 1130 N. Westfield Street, Oshkosh, WI 54902. Mr. Hughes was a complainant to the Wisconsin Elections Commission in Case No. EL 20-31.

68. Intervenor-Defendant Keith Smith is a Wisconsin elector residing at 2121 N. 2nd Street, Apt. 320, Milwaukee, WI 53212. Mr. Smith was a complainant to the Wisconsin Elections Commission in Case No. EL 20-31.

69. Intervenor-Defendant Lauren Steven is a Wisconsin elector residing at 4373 N. 16th Street, Milwaukee, WI 53209. Ms. Steven was a complainant to the Wisconsin Elections Commission in Case No. EL 20-31.

70. Intervenor-Defendant Joseph Santeler is a Wisconsin elector residing at 1324 E. Idaho St., Milwaukee, WI 53207. Mr. Santeler was the complainant to the Wisconsin Elections Commission in Case No. EL 20-30.

71. Defendant WEC is an executive agency of the State of Wisconsin, that conducts business at 212 East Washington Avenue, Madison, WI 53707, and is charged with overseeing and enforcing state election laws pursuant to Wis. Stat. § 5.05(1).

JURISDICTION AND VENUE

72. This Court has subject-matter jurisdiction over this action under Wis. Stat. § 5.06(8) and Article VII, Section 8 of the Wisconsin Constitution.

73. This Court has personal jurisdiction over the WEC under Wis. Stat. §§ 5.06(8) and 801.05.

74. To the extent that Plaintiffs' Complaint is correctly venued in this Court, venue is equally proper for Complainants' crossclaims.

GENERAL ALLEGATIONS

75. Complainants timely filed two verified complaints (Case No. EL 20-30 and Case No. EL 20-31) with the WEC on August 7, 2020, challenging the sufficiency of nomination papers filed on behalf of Plaintiffs Kanye West and Michelle Tidball as candidates for President and Vice President of the United States, respectively. The verified complaints, both attached in Exhibit A, were bolstered by sworn affidavits and exhibits, many of which are, as relevant here, also attached as exhibits to this pleading.

76. The verified complaints raised several legal shortcomings of the nomination papers submitted to the WEC on behalf of Mr. West and Ms. Tidball. These include: that the nominating petitions were filed after the statutory deadline; that Mr. West provided an incorrect address on his declaration of candidacy and the header of each nominating petition; that approximately one dozen paid circulators provided false certifications under Wisconsin law, necessitating the disqualification of approximately 1,500 signatures submitted on behalf of Mr. West and Ms. Tidball; and that hundreds of signatures on the nominating petitions are insufficient to be counted under Wisconsin law, because they do not include the elector's voting residence, failed to legibly provide the elector's printed name, failed to indicate the elector's municipality of residence, failed to provide a proper date indicating when the elector signed the nominating petition, show that the same elector signed the nominating petitions more than once, or show that electors signed the nominating papers under fictitious names. *See* Exh. A.

77. Under Wisconsin law, Mr. West had an obligation to file a verified response to the EL 20-30 verified complaint by August 10, 2020, and Mr. West and Ms. Tidball had an obligation to file a verified response to the EL 20-31 verified complaint by August 10, 2020. *See* Wis. Admin. Code § 2.07(2)(b). A consolidated response to the two verified complaints was

filed on behalf of Mr. West and Ms. Tidball. However, that response was verified only by Ms. Tidball and not by Mr. West. This partial verification renders the response deficient under Wisconsin law, such that the WEC should not have accepted the response for filing and should not have considered any arguments presented in the response or affidavits submitted in support of the response.

78. The WEC noticed a special meeting at 3:00 pm on Thursday, August 20, 2020 to address ballot access complaints, including the EL 20-30 and EL 20-31 verified complaints.

79. On Tuesday, August 18, 2020, the WEC staff publicly released a memorandum addressed to the Commissioners. That memorandum, attached as Exhibit U, included staff analyses of and recommendations with respect to various ballot-access complaints on the WEC's special meeting agenda.

80. The WEC staff memorandum recommended that the WEC grant in part and dismiss in part the EL 20-31 verified complaint, and recommended that Mr. West and Ms. Tidball not be included as candidates for President and Vice President of the United States, respectively, on the November 3, 2020 ballot in Wisconsin. *See* Exh. U at pp. 28-29.

81. At the WEC's special meeting, which ran for nearly six hours, counsel for the Complainants and counsel for Mr. West and Ms. Tidball had opportunities to address the WEC. Commissioners then had the opportunity to ask questions of counsel and to discuss the allegations contained in and the legal contentions advanced in the EL 20-30 and EL 20-31 verified complaint.¹

82. At the WEC's special meeting, counsel for Complainants raised a point of order about the improper verification of the consolidated response submitted on behalf of Mr. West

¹ The meeting was streamed by WisconsinEye and a recording is available at: <https://wiseye.org/player/?clientID=2789595964&eventID=2020081023>.

and Ms. Tidball. Citing Wisconsin law, counsel for Complainants asked the WEC to disregard the response and all attached materials. The WEC overruled the point of order.

83. At the WEC's special meeting, counsel for Complainants raised a further point of order noting that Complainants had filed a reply brief and a supplemental affidavit on August 13, 2020, which the WEC staff had rejected as out of order. Citing Wisconsin law, counsel for Complainants asked the WEC to accept Complainants' reply brief and the supplemental affidavit filed with it. The WEC overruled the point of order.

84. By a vote of 5-1, the WEC found that the nomination papers submitted by Mr. West and Ms. Tidball were not timely filed. On that basis, the WEC determined that the papers were not filed in accordance with the statutory deadline in Wis. Stat. § 8.20(8)(am) requiring they "be filed not later than 5 p.m. on the first Tuesday in August preceding a presidential election."

85. The WEC also voted, without any discussion or examination of evidence, to dismiss most of the additional issues raised in the EL 20-30 and EL 20-31 verified complaints.

86. The WEC made errors of law in overruling Complainants' points of order and in dismissing several of Complainants' arguments against the sufficiency of the nomination papers.

87. Complainants are entitled to a declaratory judgment reversing the WEC's errors of law. Such a judgment would, independent of the WEC's existing order, preclude Mr. West and Ms. Tidball from appearing on the Wisconsin ballot this year as candidates for President and Vice President of the United States, respectively.

First Crossclaim:
**WEC Violated Wisconsin Law and Complainants' Due Process Rights
by Overruling Complainants' Objection to the Improperly Verified
Consolidated Response Filed on Behalf of Mr. West and Ms. Tidball**

88. Complainants restate and reallege paragraphs 66 through 87 above as though fully set forth herein.

89. Under Wisconsin law, “[t]he response to a challenge to nomination papers *shall be filed, by the candidate challenged*, within 3 calendar days of the filing of the challenge *and shall be verified*.” Wis. Admin Code § EL 2.07(2)(b) (emphases added). It is, therefore, mandatory that the challenged candidate—or, in this case, candidates—verify their response to a complaint challenging the sufficiency of their nomination papers.

90. When construing statutes, the Wisconsin Supreme Court has held that the Legislature’s use of the word “shall” indicates a mandatory requirement; the same principle generally applies to administrative rules. *State v. Busch*, 217 Wis. 2d 429, 441, 576 N.W.2d 904 (1998); *Karow v. Milwaukee Cty. Civ. Serv. Comm’n*, 82 Wis. 2d 565, 570, 263 N.W.2d 214 (1978).

91. Current law requires verified pleadings only where mandated by statute or rule.

92. Here, Ms. Tidball signed and verified the consolidated response filed with the WEC on August 10, 2020, but Mr. West did not.

93. Mr. West, the sole respondent in the EL 20-30 verified complaint, the first named respondent in the EL 20-31 verified complaint, and the lead candidate that the nomination papers at issue seek to place on the ballot, did not verify the response as section EL 2.07(2)(b) expressly requires. Without his sworn signature, the verification of the response is defective.

94. Mr. West’s failure to verify the response renders it out of compliance with Wisconsin law.

95. Decades ago, Wisconsin law contained an exception that allowed, under certain circumstances, one of several parties filing a joint pleading to verify that pleading on behalf of all parties. That exception no longer exists under Wisconsin law. Even if it did, Ms. Tidball's verification of the response would not meet the required circumstances to satisfy the exception.

96. Decades ago, Wisconsin law contained an exception that allowed, under certain circumstances, an attorney to verify a pleading on behalf of a party. That exception no longer exists under Wisconsin law. And, even if it did, the attorney representing Mr. West and Ms. Tidball before the WEC made no effort to verify the response, so whether the required circumstances to satisfy the exception could have been met is not relevant.

97. "The appropriate remedy for a defective verification," the Wisconsin Supreme Court has held, is "to strike the pleading." *Hansher v. Kaishian*, 79 Wis. 2d 374, 384, 255 N.W.2d 564 (1977).

98. It follows that the WEC should have rejected the response and all materials filed as exhibits thereto.

99. The WEC's decision to overrule Complainants' points of order on this issue and to accept the response and all materials filed as exhibits to it violated Wisconsin law as well as Complainants' constitutional guarantee of due process and improperly affected the WEC's analysis of issues raised by the EL 20-30 and EL 20-31 verified complaints.

Second Crossclaim:

**WEC Violated Wisconsin Law and Complainants' Due Process Rights
by Overruling Complainants' Objection to the WEC Staff's Refusal To Accept
Complainants' Properly Filed Reply Briefs and Supporting Supplemental Affidavit**

100. Complainants restate and reallege paragraphs 66 through 99 above as though fully set forth herein.

101. On August 13, 2020, Complainants filed with the WEC reply briefs in support of the EL 20-30 and EL 20-31 verified complaints. The reply briefs engaged with arguments offered on behalf of Mr. West and Ms. Tidball, and the reply brief related to the EL 20-31 verified complaint was supported by a short supplemental affidavit from Devin Remiker. Both reply briefs and the supplemental affidavit of Devin Remiker are attached in Exhibit T.

102. On August 14, 2020, the WEC's staff counsel sent an email to undersigned counsel rejecting the reply brief related to the EL 20-31 verified complaint and the supplemental affidavit as out of order.

103. At the August 20, 2020 special meeting, counsel for Complainants raised a point of order challenging the WEC staff's rejection of the reply brief and supplemental affidavit.

104. The WEC overruled the point of order and sustained the staff's decision to reject the reply brief and supplemental affidavit.

105. This was an error of law.

106. Governing regulations provide that the WEC "shall examine any evidence offered by the parties when reviewing a complaint challenging the sufficiency of the nomination papers of a candidate." Wis. Admin. Code § EL 2.07(4).

107. While nothing in Wis. Admin. Code § EL 2.07 expressly requires a reply brief, neither does anything prohibit one, and the regulation itself underscores that the WEC will review all of the relevant evidence.

108. Subdivision (4) of section EL 2.07 makes clear that the evidence and argument offered in Complainants' reply briefs and the supplemental affidavit of Devin Remiker were appropriately before the WEC.

109. Moreover, background principles of Wisconsin law (and Anglo-American law more broadly) hold that advocates for the party bearing the burden of proof get the first and last word.

110. This general framework aligns with fundamental principles of due process, which Wisconsin courts have held applicable to administrative hearings.

111. Before the WEC, Complainants bore the initial burden of proof on all issues in their verified complaints.

112. It follows that, under background principles of law, Complainants should have had the opportunity to reply to the arguments offered on behalf of Mr. West and Ms. Tidball.

113. By rejecting Complainants' reply briefs and the supplemental affidavit, the WEC proceeded to rule upon the verified complaints with an incomplete record.

114. This violated Wisconsin law and Complainants' constitutional guarantee of due process and improperly affected the WEC's analysis of issues raised by the EL 20-30 and EL 20-31 verified complaints.

Third Cross-claim:
WEC Violated Wisconsin Law and Complainants' Due Process Rights
by Dismissing the EL 20-31 Verified Complaint's Allegations
Regarding Improper Circulator Certifications²

115. Complainants restate and reallege paragraphs 66 through 114 above as though fully set forth herein.

116. The EL 20-31 verified complaint provided evidence to the WEC that several circulators improperly signed the certifications at the bottom of each nomination paper.

² Should the Court conclude that Complainants prevail under Crossclaim 1, then Complainants automatically prevail under Crossclaim 3 because none of the evidence upon which the WEC based its decision to dismiss Complainants' allegations was properly before the WEC for consideration, such that Complainants' evidence remains unrebutted.

117. The EL 20-31 verified complaint identified scores of signatories who signed the nominating papers submitted on behalf of Mr. West and Ms. Tidball only because a circulator affirmatively misrepresented the purpose and meaning of those papers.

118. Among those, several were able to submit sworn affidavits in the very short time Complainants had to examine and research the nomination papers before the filing deadline for the verified complaint:

- Both Ora and Sharon Brown signed in support of opening more polling places in their part of Milwaukee; neither would have signed to put Mr. West on the ballot. *See* Exh. D, Ora Brown Aff. ¶¶4; Exh. E, Sharon Brown Aff. ¶4.
- Trais Haire signed to increase minority representation and would not have signed to put Mr. West on the ballot. *See* Exh. F, Haire Aff. ¶¶5-7.
- Sharita Kostuck signed to put an independent candidate on the ballot but was not told it was Mr. West and “never would have signed” to put Mr. West on the ballot. *See* Exh. G, Kostuck Aff. ¶¶5-7. Darlene Lewis had a similar experience and was “unable to see the top of the page” she was signing; she would not have signed to put Mr. West on the ballot. *See* Exh. H, Lewis Aff. ¶¶6-10.
- Tobisha Lyones, Cherrel Pernell, and Jeffrey Whittley each signed to confirm their voter registration; none would not have signed to put Mr. West on the ballot. *See* Exh. I, Lyones Aff. ¶¶6-8; Exh. J, Pernell Aff. ¶¶5-9; Exh. K, Whittley Aff. ¶¶4-8.
- Hazel Lindsey signed to help increase funding for the local community; she would not have signed to put Mr. West on the ballot. *See* Exh. L, Lindsey Aff. ¶¶4-10.
- Kezgnar Mayes signed specifically to keep Mr. West off of the ballot; he would not have signed to put Mr. West on the ballot. *See* Exh. M, Mayes Aff. ¶¶5-7.
- Virginia McCotry signed to show local support for rescheduling the Democratic National Convention so it could safely proceed in Milwaukee notwithstanding the COVID-19 pandemic; she would not have signed to put Mr. West on the ballot. *See* Exh. N, McCotry Aff. ¶¶7-11.
- Ian McAllister, Robert Schmidt, and Ernestine Tye all signed to help a number of people get onto the ballot, but Mr. West’s name was not among those listed; none would have signed to put Mr. West on the ballot. *See* Exh. O, McAllister Aff. ¶¶8-10; Exh. P, Schmidt Aff. ¶¶4-7; Exh. Q, Tye Aff. ¶¶6-8.

- Lynette Smith signed to get Trump out of office. She asked who the petition was for and was not told; she looked at the petition and “there was no name on it.” She would not have signed to put Mr. West on the ballot. *See* Exh. R, Smith Aff. ¶¶5-10. Derek Jeter had a similar experience. *See* Exh. S, Jeter Aff. ¶¶5-8.

119. These are just a small sampling of signatories who have said they were lied to, misled, or otherwise misrepresented. *See* Exh. B, Remiker Aff. ¶22.

120. At the August 20, 2020 special meeting, the WEC did not mention, much less examine, any of this evidence.

121. Instead, the WEC adopted, without any discussion, a staff recommendation to deny these allegations in the EL 20-31 verified complaint for insufficient proof.

122. This is an error, an abdication of the WEC’s responsibilities, and a violation of both Wisconsin law and Complainants’ constitutional guarantee of due process.

123. The WEC staff apparently considered the evidence to be in equipoise, because, after Complainants submitted affidavits from 20 electors who said circulators lied to or misled them, the response filed on behalf of Mr. West and Ms. Tidball included affidavits from several—but not all—of the implicated circulators stating that they had not misled anyone.

124. Given that the circulators are paid on a per-signature basis and travel the country conducting this work, the circulator affidavits should be discounted as self-serving.

125. Moreover, the circulator affidavits are substantially similar (including all containing the two identical grammatical errors), boilerplate, and devoid of elaboration or supporting detail. Compared to the detailed, individualized affidavits submitted by unwitting signatories, the circulator affidavits are simply not credible. As the factfinder, the WEC is charged with making such credibility determinations, and it did not make any effort to discharge that duty in reviewing these allegations contained in the EL 20-31 verified complaint.

126. The signatory affidavits submitted with the EL 20-31 verified complaint are probative evidence that a dozen of the out-of-state, paid circulators collecting signatures for Mr. West and Ms. Tidball—collectively responsible for more than 100 pages of signatures—misled signatories and necessarily falsified their certifications that they personally know each signatory “signed the paper with full knowledge of its content.” Wis. Stat. § 8.15(4)(a) (made relevant here by cross-reference in Wis. Stat. § 8.20(3)).

127. Such false circulator certifications violate Wisconsin law, and they require striking all of the signatures certified by a circulator who made a false certification. *See, e.g.*, Wisconsin Elections Commission, “Nomination Paper Challenges,” at *4 (§ 2.b.) (Jan. 2018) (noting that, where an incorrect circulator certification is identified and not timely corrected, “the challenge must be approved and the signatures on those pages struck”).

128. These false circulator certifications are more than a mere technicality. They eviscerate a safeguard necessary to ensure the legitimacy of nomination papers. The validity of the nomination process depends upon the trustworthiness of the circulators; without honest circulators, the entire system of using nominating petitions collapses.

129. Additionally, some circulators appear to have falsified their certifications by providing incorrect addresses. *See* Exh. A, EL 20-31 Verified Compl., ¶¶43-52.

130. Those circulators—Joseph Durrell, Benjamin Rush, Jr., and Kenneth Linares—submitted affidavits that fail to conclusively rebut Complainants’ arguments.

131. Mr. Durrell points to a driver’s license and a utility bill bearing his ostensible address in California, but neither proves that is still his residence. This is insufficient to rebut his repeated assertions that he left his residence in California and did not intend to return to living in that state. *See* Exh. C., Myers Aff. ¶¶19-28 & Myers Exhibit J.

132. Mr. Rush provides only an undated utility bill; this is not evidence of current residence.

133. For his part, Mr. Linares asserts that he lives in a mobile vehicle parked in an area that is zoned for industrial use and shows only a driver's license bearing his claimed address; here, too, this is not sufficient evidence of a current, permanent residential address.

134. All told, the defects in the circulator certifications—a serious violation of Wisconsin law—require invalidating approximately 1,500 of the signatures submitted on behalf of Mr. West and Ms. Tidball.

135. That leaves the nominating papers short of having even half of the 2,000 signatures required by statute to place Mr. West and Ms. Tidball on the ballot for the November 3, 2020 election.

136. Placing Mr. West and Ms. Tidball on the ballot notwithstanding the EL 20-31 verified complaint's meritorious allegations that reduce the number of valid signatures submitted on behalf of Mr. West and Ms. Tidball would violate Wisconsin law and Complainants' constitutional guarantee of due process.

Fourth Cross-claim:

WEC Violated Wisconsin Law and Complainants' Due Process Rights by Dismissing the EL 20-30 Verified Complaint's Allegations Regarding Mr. West's Address

137. Complainants restate and reallege paragraphs 66 through 136 above as though fully set forth herein.

138. The EL 20-30 verified complaint provided evidence to the WEC that Mr. West provided an inaccurate residential address on his declaration of candidacy form and the header of each nominating petition.

139. The address listed for Mr. West on those documents is zoned exclusively for commercial, not residential, use.

140. The address is also the same one identified by Mr. West and Ms. Tidball on the docket of this case (after they changed their initial filing, which listed their address as the business office of a law firm in Virginia).

141. The consolidated response submitted to the WEC on behalf of Mr. West and Ms. Tidball acknowledged that this address is not Mr. West's residence. *See* Exh. U at 4.

142. As required by Wisconsin law, each nominating petition circulated on behalf of Mr. West and Ms. Tidball contained substantially the following words printed at the top:

I, the undersigned, request that the name of (insert candidate's last name plus first name, nickname or initial, and middle name, former legal surname, nickname or middle initial or initials if desired, but no other abbreviations or titles), ***residing at (insert candidate's street address)*** be placed on the ballot at the (general or special) election to be held on (date of election) as a candidate [(representing the (name of party)) or (representing the principle(s) of (statement of principles))] so that voters will have the opportunity to vote for (him or her) for the office of (name of office). I am eligible to vote in the (name of jurisdiction or district in which candidate seeks office). I have not signed the nomination paper of any other candidate for the same office at this election.

Wis. Stat. § 8.20(a) (emphasis added).

143. The plain text of the statute requires each candidate's residential address to appear at the top of each nominating petition.

144. Notwithstanding the admission on Mr. West's behalf that the address he provided was not his residence, the WEC failed to engage this issue in any meaningful way.

145. The WEC staff recommended dismissing this allegation on the basis that Mr. Santeler had "not established by clear and convincing evidence" that the address Mr. West used was not his residence. Exh. U at 5.

146. The WEC voted, without discussing or addressing this issue at all, to adopt the staff recommendation and dismiss this allegation.

147. Placing Mr. West and Ms. Tidball on the ballot notwithstanding the EL 20-30 verified complaint's meritorious allegations regarding Mr. West's address would violate Wisconsin law and Complainants' constitutional guarantee of due process.

WHEREFORE, Intervenor-Defendants William Brent III, Richard C. Hughes, Keith Smith, Loren Steven, and Joseph Santeler respectfully request judgment against Defendant the Wisconsin Elections Commission as follows:

- A. A declaration of law holding that the WEC's decision to overrule Complainants' point of order regarding the improper verification of the response filed on behalf of Mr. West and Ms. Tidball and ordering that response and all materials supporting materials attached to it stricken from the record violates Complainants' rights to due process of law under the United States Constitution;
- B. A declaration of law holding that the WEC's decision to overrule Complainants' point of order regarding the rejection of Complainants' reply brief and the supplemental affidavit submitted with it and ordering those filings added to the record violates Complainants' rights to due process of law under the United States Constitution;
- C. A declaration of law holding that the WEC's decision to reject the challenge to all signatures on the nomination papers submitted on behalf of Mr. West and Ms. Tidball that were obtained on pages where the evidence shows the paid circulator misrepresented the purpose of the petition to signatories violates Complainants' rights to due process of law under the United States Constitution;
- D. A declaration of law holding that the WEC's decision to reject the challenge to all signatures on the nomination papers submitted on behalf of Mr. West and Ms. Tidball that were obtained on pages where the evidence shows the paid circulator provided an incorrect address as part of their certification violates Complainants' rights to due process of law under the United States Constitution;
- E. An injunction prohibiting the inclusion of Mr. West and Ms. Tidball on the ballot as candidates for President and Vice President of the United States, respectively, when the nominating papers submitted on their behalf do not contain at least 2,000 valid signatures as required by Wisconsin law for independent candidates for President and Vice President of the United States; and
- F. Such other relief as the Court may find equitable and just.

Dated: September 4, 2020.

STAFFORD ROSENBAUM LLP

By: Electronically signed by Jeffrey A. Mandell

Jeffrey A. Mandell (SBN 1100406)

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