



## Office of the City Attorney

Michael R. Haas, City Attorney

Patricia A. Lauten, Deputy City Attorney

### ASSISTANT CITY ATTORNEYS

Steven C. Brist  
Be'Jan G. Edmonds  
Lara M. Mainella  
Amber R. McReynolds  
Marcia A. Paulsen  
Adriana M. Peguero  
Kevin B. Ramakrishna

Kate M. Smith  
Jaime L. Staffaroni  
John W. Strange  
Doran E. Viste  
Brittany A. Wilson  
Jennifer Zilavy

City-County Building, Room 401  
210 Martin Luther King, Jr. Blvd.  
Madison, Wisconsin 53703-3345

(Telephone) 608-266-4511  
(Fax) 608-267-8715  
attorney@cityofmadison.com

### LITIGATION ASSISTANT Patricia V. Gehler

September 26, 2020

Attorney Misha Tseytlin  
Troutman Pepper Hamilton Sanders LLP  
227 W. Monroe Street, Suite 3900  
Chicago, IL 60606

Dear Misha:

I am responding to your letter to Madison City Clerk Maribeth Witzel-Behl regarding the City's Democracy in the Park event being held this weekend to facilitate voter registration and the legal return and collection of absentee ballots.

Your letter states that this event constitutes an "illegal collection of ballots" and "falls outside lawful categories" but you provide absolutely no legal support for that allegation. You simply cite statutes that outline the process for absentee voting. If you could please identify a statute that you believe is being violated, I could try to respond to your broad unsupported allegations.

You also state that the threat to ballot integrity is manifestly obvious. The procedures that the City Clerk has established to secure ballots are equivalent to the procedures used to secure all absentee ballots, which your clients have helped to establish in Wisconsin Statutes and found to be acceptable. Sworn election officials will retrieve ballots that have already been issued and will ensure that ballots are properly witnessed and are secured in sealed in absentee ballot envelopes and ballot containers with tamper-evident seals, to be tabulated on Election Day. The election officials will maintain a chain of custody log that is open to public inspection. No new ballots will be issued in the parks.

As you know, both major political parties are able to nominate election officials to work at polling places. The City of Madison invited election officials nominated by both the Republican and Democratic Parties to work at Democracy in the Park, and received no complaints or concerns regarding the procedures to be used from those officials.

You also state that there is no justification for this "*ad hoc*, unsecure and unlawful approach." Clearly this event is neither unsecure nor unlawful or you would have cited a relevant prohibition. And the definition of "*ad hoc*" is "for this purpose only." The

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justification to sponsor this event “for this purpose only” is that COVID-19 has placed significant pressure on both voters and election officials to facilitate as much voting as possible prior to Election Day. Governmental leaders from both political parties have acknowledged this reality and encouraged voters to submit ballots early. In addition, the well-publicized challenges of the U.S. Postal Service have diminished the public’s trust in that agency to deliver ballots in a timely and transparent manner.

Your letter states that there is a “grave risk” that all of the ballots collected at Democracy in the Park will be challenged in court and ultimately invalidated. You cite Wis. Stat. § 6.93 in support of this statement. That statute states that absentee ballots may be challenged for cause. The administrative rules implementing that statute establish specific reasons for challenging a voter when the challenger has first-hand knowledge to suspect that the voter is not a qualified elector because 1) the person is not a citizen of the United States; 2) the person is not at least 18 years of age; 3) the person has not resided in the election district for at least 10 days; 4) the person has a felony conviction and has not been restored to civil rights; 5) the person has been adjudicated incompetent; or 6) the person has voted previously in the same election. See *EL §§ 9.01 and 9.02, Wis. Adm. Code*.

The allowable reasons do not include that the challenger does not like the manner in which an absentee ballot is returned. Any elector who abuses the right to challenge may be subject to sanctions under Wis. Stat. § 7.41(3). *EL § 9.02, Wis. Adm. Code*. Given these provisions, I do not understand why you believe Wis. Stat. § 6.93 supports your threat that all ballots collected at Democracy in the Park are subject to challenge. If you have some legal basis for that statement, please share it so that the City can address your concern before the election and resolve any confusion that your allegations have caused. If there is no legal basis, we request that you retract your letter to Clerk Witzel-Behl.

Absent any directive from the Wisconsin Elections Commission or a court, the City will proceed with Democracy in the Park, and it will process the ballots collected with other absentee ballots pursuant to Wisconsin Statutes. All voters are welcome to participate and observe the process which is designed to bring the entire community together to participate in democracy. I trust that is a goal you and your clients can support.

Finally, I invite you and your clients to pick up the phone and contact me or the City Clerk if you have additional questions or concerns about the manner in which the City of Madison conducts elections. I am glad to discuss your questions directly so that we can alleviate any concerns you and your clients may have, rather than having to obtain your letter from the media. This tactic demeans the seriousness of your allegations and signals a desire to simply discourage participation by voters in Madison.

Please feel free to contact me if you have any questions.



Michael Haas  
City Attorney