

Election Law Challenges to Decisions of Wisconsin Elections Commission – Standing

Brown v. Wisconsin Elections Comm’n,
2025 WI 5 (Feb. 18, 2025)

HOLDING: The plaintiff lacked standing to appeal an adverse decision of the Wisconsin Elections Commission (WEC).

SUMMARY: Brown filed a complaint with the WEC under Wis Stat. section 5.06(1), which allows “any elector” served by a local election official to bring a complaint to the WEC about the election official’s conduct if the elector believes the conduct violates the law. Brown claimed that in-person absentee voting he observed in the city of Racine violated the law. The WEC found that he failed to establish probable cause of a violation.

Brown then appealed to the circuit court, which concluded that Brown had standing to appeal and partially ruled in his favor. The WEC appealed this decision, and the case was before the Wisconsin Supreme Court on bypass

from the Wisconsin Court of Appeals. In a majority decision authored by Justice Karofsky, the supreme court reversed.

As stated above, Wis. Stat. section 5.06(1) provides that any elector who believes the elector’s local election official violated the law may complain to the WEC. However, a person must be “aggrieved by an order” issued by the WEC to have standing to appeal the WEC’s order to the circuit court. See Wis. Stat. § 5.06(8) (¶ 26). “Aggrieved” is a term of art that, when used in a statute governing appeals, requires an injury to a legally recognized interest (see ¶ 25).

The majority concluded that Brown did not show that the WEC’s decision caused him any actual or threatened injury. “For instance, he does not allege that the challenged election activity (and, consequently, WEC’s decision declining to take action to stop the activity) made it more difficult for him to vote or affected him personally in any manner” (¶ 16). The court rejected Brown’s proposition that a complainant is *always* aggrieved under Wis. Stat. section 5.06(8) when the complainant

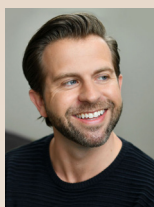
believes that a local election official engaged in unlawful activity (see ¶ 18).

The court also rejected Brown’s argument that an elector always suffers an injury when the WEC rules against the elector (see ¶ 20). The court overruled *Hess v. WEC*, 2024 WI App 46, 413 Wis. 2d 285, 11 N.W.3d 201, to the extent that it holds any complainant whose complaint is dismissed by the WEC is aggrieved under Wis. Stat. section 5.06(8) (see ¶ 24).

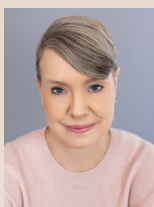
The court did not reach the merits of Brown’s complaint because it decided the case on the basis of standing (see ¶ 25 n.9). Further, it observed that Brown did not argue a “vote pollution” or “vote dilution” theory, that is, he did not allege an injury to his right to vote on the ground that his vote would be diluted by unlawful voting; accordingly, the court declined to express an opinion about whether such claims would be sufficient to confer standing (¶ 16 n.5).

Chief Justice Ziegler filed a dissenting opinion. Justice R.G. Bradley also filed a dissent, which Chief Justice Ziegler and Justice Hagedorn joined in part. **WL**

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