

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY
BRANCH ____

WISCONSIN ELECTIONS COMMISSION,
201 West Washington Avenue,
Madison, WI 53703,

MEAGAN WOLFE, in her official capacity
as Administrator of the Wisconsin Elections
Commission,
201 West Washington Avenue,
Madison, WI 53703,

Plaintiffs,

v.

Case No. 2023-CV-_____
Declaratory Judgment: 30701
Injunctive Relief: 30704

DEVIN LEMAHIEU, in his official capacity
as the Majority Leader of the Wisconsin Senate,
Wisconsin State Capitol, Room 211 South
Madison, WI 53707,

ROBIN VOS, in his official capacity
as a Co-Chair of the Joint Committee on
Legislative Organization,
Wisconsin State Capitol, Room 217 West
Madison, WI 53708,

CHRIS KAPENGA, in his official capacity
as a Co-Chair of the Joint Committee on
Legislative Organization,
Wisconsin State Capitol, Room 220 South
Madison, WI 53707,

Defendants.

SUMMONS

THE STATE OF WISCONSIN,

To each person named above as a Defendant:

You are hereby notified that the Plaintiffs named above have filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within 45 days of receiving this Summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Court, whose address is Dane County Clerk of Courts, Dane County Courthouse, 215 South Hamilton St., Madison, Wisconsin 53703, and to Assistant Attorney General Charlotte Gibson, Plaintiffs' attorney, whose address is Wisconsin Department of Justice, Special Litigation and Appeals Unit, 17 West Main Street, Post Office Box 7857, Madison, Wisconsin 53707-7857. You may have an attorney help or represent you.

If you do not provide a proper answer within 45 days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any

real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 14th day of September 2023.

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by:

Charlotte Gibson
CHARLOTTE GIBSON
Assistant Attorney General
State Bar #1038845

LYNN K. LODAHL
Assistant Attorney General
State Bar #1087992

FAYE B. HIPSMAN
Assistant Attorney General
State Bar #1123933

Attorneys for Plaintiffs

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 957-5218 (CJG)
(608) 264-6219 (LKL)
(608) 264-9487 (FBH)
(608) 294-2907 (Fax)
jursshs@doj.state.wi.us
lodahllk@doj.state.wi.us
hipsmanfb@doj.state.wi.us

WISCONSIN ELECTIONS COMMISSION,
201 West Washington Avenue,
Madison, WI 53703,

MEAGAN WOLFE, in her official capacity
as Administrator of the Wisconsin Elections
Commission,
201 West Washington Avenue,
Madison, WI 53703,

Plaintiffs,

v.

Case No. 2023-CV-_____
Declaratory Judgment: 30701
Injunctive Relief: 30704

DEVIN LEMAHIEU, in his official capacity
as the Majority Leader of the Wisconsin Senate,
Wisconsin State Capitol, Room 211 South
Madison, WI 53707,

ROBIN VOS, in his official capacity
as a Co-Chair of the Joint Committee on
Legislative Organization,
Wisconsin State Capitol, Room 217 West
Madison, WI 53708,

CHRIS KAPENGA, in his official capacity
as a Co-Chair of the Joint Committee on
Legislative Organization,
Wisconsin State Capitol, Room 220 South
Madison, WI 53707,

Defendants.

**COMPLAINT FOR A DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF**

Plaintiffs Wisconsin Elections Commission and Meagan Wolfe, in her official capacity as Administrator of the Commission, through undersigned counsel, as and for their complaint against defendants LeMahieu, Vos, and Kapenga, allege as follows:

JURISDICTION AND VENUE

1. This court has jurisdiction to hear this matter under Wis. Stat. §§ 801.02(1) and 806.04.
2. Venue is proper in this county under Wis. Stat. § 801.50.

PARTIES

3. Plaintiffs seek a declaration of rights under Wis. Stat. § 806.04.
4. Plaintiff Commission is the state agency charged with the administration of Wisconsin's elections statutes. Wis. Stat. § 5.05(1). Plaintiff Meagan Wolfe is the administrator of the Commission and brings suit in her official capacity.
5. The Attorney General may bring suit on behalf of state agencies and officials in any cause or matter "in which the state or the people of this state may be interested," where requested by the governor. Wis. Stat. § 165.25(1m). Governor Evers has requested Attorney General Kaul to commence this suit on behalf of the Commission and Administrator Wolfe.

6. Defendant Devin LeMahieu is a Wisconsin legislator and the Majority Leader of the Senate. The Senate confirms or rejects an administrator appointment after the Commission has made an appointment under Wis. Stat. § 15.61(1)(b)(1). Defendants Robin Vos and Chris Kapenga are Wisconsin legislators and the Co-Chairs of the Joint Committee on Legislative Organization. The Joint Committee appoints a temporary administrator for the Wisconsin Elections Commission when there is a vacancy in the administrator position and the Commission fails to appoint an interim administrator. Wis. Stat. § 15.61(1)(b)1.

FACTUAL BACKGROUND

7. On May 15, 2019, the Senate confirmed the appointment of Meagan Wolfe to serve as the administrator of the Commission through the end of the then-current term and for the following term. The latter term expired on July 1, 2023, pursuant to Wis. Stat. § 15.61(1)(b)1., and Administrator Wolfe has held over since the expiration of that term, continuing to fulfill her duties.

8. Although “[t]he administrator may be removed by the affirmative vote of a majority of all members of the commission voting at a meeting of the commission called for” the purpose of removing the administrator, Wis. Stat. § 15.61(1)(b)2., no member of the Commission has moved for the removal of Administrator Wolfe.

9. On June 27, 2023, three of the six members of the Commission voted to appoint Wolfe to serve an additional term as administrator. The other three members abstained.

10. Because the administrator “shall be appointed by a majority of the members of the commission,” Wis. Stat. § 15.61(1)(b)1., this vote did not effectuate an appointment of Wolfe to serve an additional term as administrator. The Commission has six members, Wis. Stat. § 15.61(1)(a), so at least four votes are required to make a majority of the members.

11. On June 28, 2023, the Wisconsin Senate passed 2023 Senate Resolution 3, stating in part that the Senate “considers Meagan Wolfe to have been nominated by the Wisconsin Elections Commission” to serve as administrator for the term that expires on July 1, 2027. <https://docs.legis.wisconsin.gov/2023/proposals/SR3>.

12. In a letter sent to Wisconsin Legislative Council Director Anne Sappenfield on August 23, 2023, Attorney General Joshua L. Kaul explained that the Commission had not reappointed Wolfe and that there was no appointment of the administrator of the Commission before the Senate. Exhibit A to the Complaint.

13. In a memorandum to Senator Mark Spreitzer dated August 21 and revised August 28, 2023, two Wisconsin Legislative Council attorneys opined that, “[b]ased on the statutory text and conventions of statutory interpretation

in Wisconsin, the best interpretation of state law is that appointment of a WEC administrator requires four votes of the commission.” Exhibit B to the Complaint, at 1 (also stating that “State law requires a majority of WEC commissioners to appoint an administrator; currently, a majority constitutes at least four votes.”).

14. In a letter from Senate Majority Leader LeMahieu to Attorney General Kaul dated September 11, 2023, Majority Leader LeMahieu asserted that the Commission has a duty to appoint an administrator when the incumbent’s term expires and that not appointing an administrator impairs “the Senate’s legal obligation to give advice and consent on the required appointment.” Exhibit C to the Complaint, at 2. The letter does not attempt to explain how, under state law, the Commission’s June 27, 2023, vote on the proposed appointment of Administrator Wolfe to serve an additional term effectuated an appointment.

15. On September 14, 2023, the Senate voted to (1) deem Administrator Wolfe nominated based on the Senate’s June resolution and (2) reject the “appointment” of Administrator Wolfe.

CAUSE OF ACTION

Count 1 – Declaratory Judgment

16. Plaintiffs reallege and incorporate by reference all the above allegations in this Complaint.

17. Administrator Wolfe is lawfully holding over as the administrator of the Commission. Under *State ex rel. Kaul v. Prehn*, 2022 WI 50, ¶¶ 28, 32, 402 Wis. 2d 539, 976 N.W.2d 821, absent a statute prohibiting holdover, an incumbent may lawfully hold over and continue to fulfill their duties. No statute prohibits the administrator from holding over. *Prehn*'s ruling applies even if the incumbent's term had a statutorily-defined term for appointed office. *Prehn*, 402 Wis. 2d 539, ¶¶ 30, 35.

18. The Commission's vote on June 27, 2023, on the proposed appointment of Administrator Wolfe to serve an additional term did not effectuate an appointment. Even if the Commission has the power to make an appointment where there is no vacancy, four votes are required to appoint an administrator. Wis. Stat. § 15.61(1)(b)1. (requiring a vote of the majority of the members of the Commission); Wis. Stat. § 15.61(1)(a) (Commission has six members). Only three commissioners voted on June 27, 2023, in favor of appointing Administrator Wolfe to serve an additional term as administrator.

19. The Senate has the power to consent to or reject the appointment of an administrator by the Commission. Wis. Stat. § 15.61(1)(b)1. It has no power to act on an appointment where there is no pending appointment.

20. The Commission has a duty to appoint a new administrator only if there is a vacancy in the office of administrator. Wis. Stat. § 15.61(1)(b)1. Under binding Wisconsin Supreme Court precedent, when an incumbent holds

over, there is no vacancy in the position. *Prehn*, 402 Wis. 2d 539, ¶¶ 32, 33, 35. There is no vacancy here because Administrator Wolfe is holding over, and the Commission currently has no duty to appoint an administrator.

21. Senate Majority Leader LeMahieu recognized the holding in *Prehn* in a June 2023 email, writing that “[t]he precedent from this case means that if WEC [the Commission] doesn’t reappoint Wolfe or a replacement, the senate would have no power to get rid of her through the confirmation process.” Alexander Shur, *Senate Leader Doubted Strategy*, WISCONSIN ST. J., June 30, 2023. Exhibit D to the Complaint.

22. Where there is a vacancy in the administrator position, if the Commission does not appoint a new administrator within 45 days of the date of the vacancy, the Joint Committee on Legislative Organization shall appoint an interim administrator. Wis. Stat. § 15.61(1)(b)1. Here, there is currently no vacancy in the administrator position, notwithstanding the Senate’s September 14, 2023, votes deeming Administrator Wolfe nominated based on the Senate’s June resolution and rejecting the “appointment” of Administrator Wolfe to serve an additional term as administrator. The Joint Committee has no power to appoint an interim administrator where there is no vacancy.

23. Plaintiffs seek a declaratory judgment to provide clarity regarding Administrator Wolfe’s status as administrator and the legal effect of the actions taken by the Commission at her direction. *Cf.* Wis. Stat. § 806.04(2).

Plaintiffs' legal rights, status, and legal relations are affected by this ongoing dispute. Those injuries extend to Wisconsin elections clerks and the public at large. Left unanswered by the judiciary, this dispute throws the validity of the Commission's and Administrator Wolfe's acts into question and undermines the legitimacy of the Wisconsin elections system they administer.

24. Plaintiffs seek a declaration that (1) Administrator Wolfe is lawfully holding over; (2) the Commission's vote on June 27, 2023, on the proposed appointment of Administrator Wolfe to serve an additional term did not effectuate an appointment; (3) the Senate's September 14, 2023, votes, deeming Administrator Wolfe nominated based on the Senate's June resolution, and rejecting the "appointment" of Administrator Wolfe to serve an additional term as administrator, have no legal effect; (4) the Commission has no duty to appoint an administrator while Administrator Wolfe is holding over; and (5) the Joint Committee on Legislative Organization has no power to appoint an interim administrator unless there is a vacancy in the administrator position and the Commission fails to appoint a new administrator, a prerequisite that is not met so long as Administrator Wolfe is holding over.

25. Plaintiffs also seek injunctive relief to ensure the effectuation of the Court's declaration.

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully asks this Court to grant the following relief:

1. An order declaring that:
 - a. Administrator Wolfe is lawfully holding over;
 - b. The Commission's June 27, 2023, vote did not appoint Administrator Wolfe to a new term;
 - c. The Wisconsin Senate's September 14, 2023, votes to (1) deem Administrator Wolfe nominated based on the Senate's June resolution and (2) reject Administrator Wolfe's "appointment" have no legal effect;
 - d. The Commission has no duty to make an administrator appointment while Administrator Wolfe is holding over;
 - e. The Joint Committee on Legislative Organization has no power to appoint an interim administrator while Administrator Wolfe is holding over.
2. An injunction preserving Administrator Wolfe's status as the lawful holder of the administrator position, invested with the full authority of that office and entitled to the privileges thereof, and providing that she may continue to serve unless she is removed by the Commission under Wis. Stat. § 15.61(1)(b)2.

3. An injunction prohibiting the Joint Committee on Legislative Organization from appointing an interim administrator until and unless Administrator Wolfe resigns, dies, or is removed by the Commission;
4. Such other additional relief as equity and the nature of the case may require.

Dated this 14th day of September 2023.

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by:

Charlotte Gibson
CHARLOTTE GIBSON
Assistant Attorney General
State Bar #1038845

LYNN K. LODAHL
Assistant Attorney General
State Bar #1087992

FAYE B. HIPSMAN
Assistant Attorney General
State Bar #1123933

Attorneys for Wisconsin Elections
Commission and Meagan Wolfe,
Administrator of the Commission

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 957-5218 (Gibson)
gibsoncj@doj.state.wi.us
lodahllk@doj.state.wi.us
hipsmanfb@doj.state.wi.us

CERTIFICATE OF SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed the *Summons and Complaint* with the clerk of court using the Wisconsin Circuit Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

I further certify that, unless personal service is waived, a copy of the above document will be personally served on:

Devin LeMahieu
Wisconsin State Capitol, Room 211 South
Madison, WI 53702

Robin Vos
Wisconsin State Capitol, Room 217 West
Madison, WI 53702

Chris Kapenga
Wisconsin State Capitol, Room 220 South
Madison, WI 53702

Dated this 14th day of September 2023.

Electronically signed by:

Charlotte Gibson
CHARLOTTE GIBSON
Assistant Attorney General



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

17 W. Main Street
P.O. Box 7857
Madison, WI 53707-7857
www.doj.state.wi.us

August 23, 2023

SENT VIA EMAIL (Anne.Sappenfield@legis.wisconsin.gov)

Anne Sappenfield, Director
Wisconsin Legislative Council

Dear Director Sappenfield:

The Wisconsin Department of Justice is representing the Wisconsin Elections Commission (WEC) in connection with the status of the WEC administrator. Late last week, the Senate Committee on Shared Revenue, Elections, and Consumer Protection scheduled a hearing for August 29, and included in its agenda is an item relating to the WEC administrator. To the extent that there is any unfounded doubt, I am writing to make clear that WEC has not appointed a new administrator, and there is no WEC administrator appointment before the Senate. This is not a close question under state law.

Wisconsin Stat. § 15.61(1)(b)1. provides that the WEC administrator “shall be appointed by a majority of the members of the commission.” And while a vote was taken on a new appointment of the current WEC administrator, Meagan Wolfe, at the WEC’s June 27 special meeting, only three of the commission’s six members voted in favor of the appointment; the remaining three members abstained. The vote therefore fell short of the required majority to reappoint and did not effectuate a new appointment of the WEC administrator.

There is no plausible legal argument to the contrary. The plain language of the pertinent statute requires that an administrator be appointed “by a majority of *the members* of the commission.” Wis. Stat. § 15.61(1)(b)1. (emphasis added). Absent a vacancy on the six-member commission, at least four members must agree for there to be a majority of the members of the commission—no matter how many members of the commission abstain or are not present for a vote.

Tellingly, the state legislature used a different standard for effectuating the *removal* of an administrator. Under Wis. Stat. § 15.61(1)(b)2., the removal of an administrator simply requires “a majority of all members of the commission *voting at a meeting of the commission* called for” the purpose of removal (emphasis added). That statute is not directly relevant here because the commission took no vote on removal

Compl. Ex. A

Anne Sappenfield, Director
August 23, 2023
Page 2

at the June 27 special meeting. However, the difference in the statutory language used to describe the type of majority needed to *appoint* an administrator (“a majority of the members”) and that used to describe the type of majority needed to *remove* an administrator (“a majority of all members . . . voting at a meeting”) shows that where the legislature wanted to allow the commission to act without necessarily requiring four or more members (absent a vacancy) to concur, the statutory text makes that clear.

Further, the Wisconsin Supreme Court has squarely held that a holdover appointee may legally remain in office following the expiration of the appointee’s term, and the expiration of the term does not create a vacancy in office. *State ex rel. Kaul v. Prehn*, 2022 WI 50, ¶¶ 24–25, 402 Wis. 2d 539, 976 N.W.2d 821. Administrator Wolfe is a lawful holdover in her position.

The Senate therefore has no current authority to confirm or reject the appointment of a WEC administrator. Instead of creating unnecessary confusion about whether Meagan Wolfe remains the WEC administrator—there is no question that she does—the Senate should remove consideration of the WEC administrator from the committee hearing scheduled for August 29.

Sincerely,


Joshua L. Kaul
Attorney General

JLK:LAS:alm

Wisconsin Legislative Council



Anne Sappenfield
Director

TO: SENATOR MARK SPREITZER

FROM: Katie Bender-Olson, Principal Attorney, and Peggy Hurley, Senior Staff Attorney

RE: Appointment of WEC Administrator

DATE: August 21, 2023 (Revised August 28, 2023)

You asked about the statutory process for the Wisconsin Elections Commission (WEC) to appoint an administrator and the number of affirmative votes required to advance the appointment to the Senate for confirmation. State law requires a majority of WEC commissioners to appoint an administrator; currently, a majority constitutes at least four votes.

VOTES REQUIRED FOR WEC ACTIONS GENERALLY

Currently, six commissioners serve on WEC: one member appointed by the Senate Majority Leader, one member appointed by the Senate Minority Leader, one member appointed by the Speaker of the Assembly, one member appointed by the Assembly Minority Leader, and two members who formerly served as county or municipal clerks and who are chosen from a list provided by each major political party, are nominated by the Governor, and confirmed by the Senate. [s. 15.61 (1) (a) 1. to 5., Stats.]

State law specifies that most actions by WEC require four votes of the commission. Specifically, s. 5.05 (1e), Stats., states the following: “Any action by the commission, except an action relating to the procedure of the commission, requires the affirmative vote of at least two-thirds of the members.” WEC has six members, which means that a two-thirds vote of the commission constitutes four votes.

VOTES REQUIRED FOR ADMINISTRATOR APPOINTMENT

State law provides that the WEC administrator is appointed by a “majority of the members of the commission,” subject to confirmation by the Senate. [s. 15.61 (1) (b) 1., Stats.] In contrast, state law provides that removal of the administrator requires an affirmative vote of “a majority of all the members voting at a meeting” that was called for the purpose of removal. [s. 15.61 (1) (b) 2., Stats.]

Based on the statutory text and conventions of statutory interpretation in Wisconsin, the best interpretation of state law is that appointment of a WEC administrator requires four votes of the commission. This is because the provision relating directly to the appointment of an administrator refers to a “majority of the members of the commission,” and not to a majority of those voting, and because actions of the commission generally require a two-thirds vote.

State law refers to members “present and voting” in other statutory provisions, but refers to a majority “of the members” for appointing a WEC administrator.¹ If a majority of a commission meant a majority of those members voting, then the appearance of this language in other statutes would be superfluous.² Additionally, the statutory language for removing the WEC administrator refers to a majority of “all members voting at a meeting,” rather than a majority of “the members of the commission.” The Legislature chose not to use similar language for the appointment of an administrator, supporting the conclusion that appointment requires an affirmative vote by a majority of WEC members rather than a majority of members voting.

The language of s. 5.05 (1e), Stats., further supports the conclusion that appointment of a WEC administrator necessitates four votes. The provision requires an affirmative vote of at least two-thirds of commission members for any action not relating to commission procedure.³ This general requirement for WEC action is buttressed by the more specific requirement for a vote by a majority of members to appoint an administrator.

Please let us know if we can provide any further assistance.

KBO:PJH:jal

¹ See e.g., ss. 33.44 (8) (L), 33.55 (5), 59.60 (8) (b), 59.69 (5) (e) 5m., 66.0307 (4) (d) 2., 116.07 (3), and 119.13 (1), Stats.

² See e.g., *Hutson v. State pers. Comm'n*, [2003 WI 97, ¶ 49, 263 Wis.2d 612, 665 N.W.2d 212](#).

³ Some may argue that s. 5.05 (1e), Stats., and its requirement for a two-thirds affirmative vote does not apply to the appointment of a WEC administrator based on s. 5.05 (3d), Stats. That provision states that the commission “shall appoint an administrator in the manner provided under s. 15.61 (1) (b)....” However, the subsection does not create an explicit exemption from the two-thirds vote requirement because it lacks language such as “Notwithstanding (1e), the commission shall appoint an administrator....” Further, as discussed above, the language of s. 15.61 (1) (b) itself requires a majority vote of the commissioners, and not a majority of those voting. Thus, the statutory language independently requires four votes for appointment of an administrator.



DEVIN LEMAHIEU

SENATE MAJORITY LEADER

September 11, 2023

Via Email

Hon. Joshua L. Kaul
Attorney General of the State of Wisconsin
Via Administrator Sutherlin
17 W. Main Street
P.O. Box 7857
Madison, Wisconsin 53707

Re: *Appointment of Administrator to the Wisconsin Election Commission*

Dear Attorney General Kaul:

I write in regard to the appointment of an administrator to the Wisconsin Elections Commission (“WEC” or “Commission”) and to respond to your August 23, 2023, letter to the Wisconsin Legislative Council.

In March 2018, although no vacancy existed, the Commission unanimously agreed to “[a]ppoint Meagan Wolfe as Interim Administrator.”¹ The Senate then confirmed her appointment as administrator for a “four-year term from July 1, 2019, through June 30, 2023.”² On June 27, 2023, right before the expiration of her term, the Commission again met to appoint an administrator.³ In keeping with the executive branch’s longstanding policy of appointing officers on or around the expiration of the incumbent’s term,⁴ the Commission considered a motion to “[c]onfirm Meagan Wolfe as the Administrator for the next four years.” Although not one commissioner

¹ Wis. Elec’s Comm’n, *Open Session Minutes*, at 2 (Mar. 2, 2018), available at <https://perma.cc/J3J9-3QRU> (identifying Interim Administrator Haas administering meeting when WEC appointed then-Interim Administrator Wolfe); see also State of Wisconsin, *Senate Calendar*, at 1 (May 15, 2019), available at <https://perma.cc/5VG7-SNNB>.

² Meagan Wolfe, *WEC Administrator Confirmation* (May 15, 2019), available at <https://perma.cc/C6EY-FQZR>.

³ See Wis. Elec’s Comm’n, *Open Session Minutes* (June 27, 2023), available at <https://perma.cc/8ELG-D4S2>.

⁴ Compare Office of the Governor, *Nomination of William Schrum to the Board of Veterans Affairs* (June 16, 2023), available at https://docs.legis.wisconsin.gov/2023/related/journals/senate/20230616/_457, with Board of Veterans Affairs Meeting Minutes (Dec. 15, 2022), available at <https://perma.cc/FGP7-U45T> (noting Chair William Schrum).

opposed the appointment, WEC assumed that the motion failed because three commissioners abstained.⁵ The abstaining commissioners reasoned that, “without a vacancy, [the Commission has] an administrator, and that administrator continues.”⁶ These three commissioners thus concluded that they lacked even “the ability under the current law to reappoint because there is no vacancy.”⁷ Commissioner Thomsen further stated that the Commission should not make an appointment unless the Senate “promise[s] to confirm” that nominee, and that absent such a “promise,” the Commission “should not even play this game” of making an appointment.⁸

Following WEC’s 3-0 vote, the Senate held a hearing regarding this situation on August 29, 2023, and invited Administrator Wolfe to appear.⁹ But Administrator Wolfe did not appear. In the meantime, the Senate received your letter, telling it to “remove consideration of the WEC administrator from the committee hearing.” 8/23 Ltr at 2. Your letter suggests that the result of the June 27, 2023, vote is that the Commission failed to appoint an administrator.

Yet, even if one assumes for the sake of argument (as I do throughout this letter) that the Commission failed to reappoint Administrator Wolfe, the Commission has nevertheless violated the law. Specifically, its failure to appoint violates a plain statutory duty and has impaired the Senate’s legal obligation to give advice and consent on the required appointment. (Hence continued Senate oversight of this matter is entirely appropriate.)

First, although the Commission asserts that it “has not appointed a new administrator,” 8/23 Ltr. at 1, section 15.61(1)(b)1 requires the Commission to make an appointment: “The elections commission shall be under the direction and supervision of an administrator, who *shall be appointed* by a majority of the members of the commission, with the advice and consent of the senate, to serve a 4-year term expiring on July 1 of the odd-numbered year.” Wis. Stat. § 15.61(1)(b)1 (emphases added). The phrase “shall be appointed” in Section 15.61(1)(b)1 “indicates mandatory action.” *Kuhnert v. Advanced Laser Machining, Inc.*, 2011 WI App. 23, ¶ 21, 331 Wis. 2d 625, 794 N.W.2d 805 (Ct. App. 2011); *accord State v. Hoppmann*, 207 Wis. 481, 240 N.W. 884, 885 (Wis. 1932) (noting that the “word ‘shall’ carries the idea that no discretion” is available). This mandatory action is triggered at the “expir[ation]” of the term at which time the appointing authority must exercise its “prerogative to nominate [an]

⁵ *Supra* n.3 at 2.

⁶ Statement of Commissioner Ann S. Jacobs, *Special Meeting 6/27/2023*, Wisconsin Elections Commission, at 22:45–23:35 (June 27, 2023), *available at* <https://elections.wi.gov/event/special-meeting-6272023>.

⁷ *Id.* at 34:37–34:47 (Statement of Commissioner Mark L. Thomsen); *see also id.* at 43:53–44:15 (Statement of Commissioner Joseph J. Czarnecki) (stating that the Commission “[did] not have the authority” to make an appointment).

⁸ *Id.* at 35:00–36:00.

⁹ *See* Senate Comm. on Shared Revenue, Elec’s and Consumer Prot., *Public Hearing* (Aug. 29, 2023), *available at* <https://perma.cc/54ZH-Q5AM>.

individual to serve a [four]-year term” to “replace [the incumbent].” *State ex rel. Kaul v. Prehn*, 2022 WI 50, ¶ 23, 402 Wis. 2d 539, 976 N.W.2d 821.

The abstaining commissioners’ position that no appointment can be made until there is a vacancy finds no support in Section 15.61(1)(b)(1). Section 15.61(1)(b)1 describes four ways in which an administrator could be appointed. First, “a majority of the members of the commission” appoint an administrator every four years. Wis. Stat. § 15.61(1)(b)1. Second, “[u]ntil the senate has confirmed [that] appointment,” a “majority of the members of the commission” “select[]” an “interim administrator.” *Id.* Third, “[i]f a vacancy occurs in the administration position, the commission shall appoint a new administrator.” *Id.* Finally, if the Commission “has not appointed a new administrator” in the event of a vacancy, “the joint committee on legislative organization shall appoint an interim administrator to serve until a new administrator has been confirmed by the senate” *Id.* Only the last two types of actions require a vacancy. The statute does not require the Commission to wait for a vacancy to make a regular appointment at the end of the incumbent Administrator’s four-year term. Here, because the current term expired, the Commission must follow the first statutory mandate to appoint an administrator “who, if confirmed, may replace” the current administrator. *Prehn*, 2022 WI 50 ¶ 29. The Commission proceeded with this statutory mandate in March 2018 when it appointed Meagan Wolfe. *See supra* n.1.

The Supreme Court’s decision in *Prehn* confirms this conclusion. In *Prehn*, the court held that the expiration of a term does not create a vacancy under Wisconsin Statutes § 17.03. 2022 WI 50, ¶ 35. But the Court never said that a vacancy is a prerequisite for *making an appointment* at the expiration of a fixed term. On the contrary, *Prehn* recognized that, when an incumbent’s term expires, the governor “must nominate” a successor as part of his “prerogative.” *Id.* ¶¶ 18, 29 (citing appointment statute to the board of natural resources). The expiration of the term, in other words, triggers the duty to appoint regardless of whether the incumbent has vacated the post. *Id.* ¶ 23; *accord State ex rel. Thompson v. Gibson*, 22 Wis. 2d 275, 293, 125 N.W.2d 636 (Wis. 1964) (acknowledging appointments *made* as distinguished from appointments *confirmed*). In the 14 months since *Prehn* was decided, the governor has continued to appoint officials while the incumbent occupied the office. In fact, a majority of the more-than-150 post-*Prehn* appointments were made before the incumbent had vacated the office.¹⁰

Consistent with this longstanding principle, courts around the country have granted mandamus petitions and ordered government officials to make appointments in similar situations. In *Hanabusa v. Lingle*, for example, Hawaiian state senators sought an order directing the governor to forthwith appoint candidates to the university board of regents. 119 Hawai’i 341, 346, 198 P.3d 604 (2008). Granting the petition, the court rejected the respondents’ arguments that the incumbents’ holdover

¹⁰ *See, e.g.*, https://docs.legis.wisconsin.gov/2023/appointments/executive_appointment; *see also supra* n.4.

positions prevented new appointments. *Id.* at 350–52. The court instead reasoned that the incumbents’ terms had expired under the law, and, accordingly, the executive had to make new appointments. *Id.* at 349–50 (citing Haw. Const., art. X, § 6; 2007 Haw. Sess. Laws Act 56, §§ 1, 5). “The nomination and appointment,” the court held, “is a nondiscretionary duty” because the relevant legal text—“shall be nominated and, by and with the advice and consent of the senate, appointed”—required new appointments at the expiration of the incumbents’ terms. *Id.* at 350 (citations omitted). The court therefore ordered the executive to “perform [its] constitutional and statutory duty of nominating and appointing” the public officials within a “reasonable time” to replace the incumbents whose terms had expired. *Id.* at 351–52; *see also id.* at 350–51 (“agree[ing] with jurisprudence from other jurisdictions that [an executive’s] nondiscretionary duty can be compelled by mandamus notwithstanding the absence of a stated time limit” to make appointments) (collecting cases); *accord State ex rel. Hartman v. Thompson*, 627 So. 2d 966, 970 (Ala. Civ. App. 1993) (reasoning that a statute imposed a “non-discretionary duty” to make an appointment because “the word ‘shall’ is to be afforded a mandatory connotation when it appears in a statute”). The same logic applies here.

Courts are especially sensitive to the prompt and proper appointment of election administrators. “Otherwise the integrity of the elective process would be emasculated by the indifference or the negligence of the parties responsible under the statute for complying with the mandatory requirements of holding the election and officially reporting the results thereof.” *Stasch v. Weber*, 188 Neb. 710, 711, 715, 199 N.W.2d 391, 395 (1972) (addressing statute in which the “committee shall,” “by a majority vote of those present,” “elect [the public official] for a term of four years”); *see also In re Contest of Election of Vetsch*, 245 Minn. 229, 239–40, 71 N.W.2d 652 (1955) (reasoning that the “improper appointment of the election board” was, among other failings, reason to find that “a cloud of suspicion ha[d] been cast upon the integrity of the” election process).

The importance of election integrity is particularly critical in Wisconsin. *See Teigen v. Wis. Elec’s Comm’n*, 2022 WI 64, ¶ 22, 403 Wis. 2d 607, 976 N.W.2d 519 (“If the right to vote is to have any meaning at all, elections must be conducted according to law.”). For this reason, the Wisconsin Legislature established the Commission to protect “the integrity of individual ballots as well as election results in Wisconsin.”¹¹ But by maintaining that it failed to appoint an administrator at the June 27, 2023, meeting—despite its clear statutory mandate to do so—the Commission is unnecessarily calling into question the proper authority of the current administrator to administer our elections. This is especially concerning given the preparations already underway for the 2024 presidential election.

Finally, if the Commission failed to make an appointment on June 27, 2023, then

¹¹ Wis. Elec’s Comm’n, *Wisconsin’s Commitment to Election Integrity*, ¶ 3 (last accessed Aug. 27, 2023), available at <https://perma.cc/7FAW-R697>.

it has deprived the Senate of its ability to fulfill its advice and consent role. As the Wisconsin Supreme Court has explained, “the advice and consent of the senate” is “an important and material part of the appointive process which is not to be by-passed or thwarted.” *State ex rel. Reynolds v. Smith*, 22 Wis. 2d 516, 519, 126 N.W.2d 215 (1964). Thus, if the Commission failed to appoint an administrator, then it has authorized an incumbent Administrator to continue overseeing statewide elections without affording the Senate an opportunity to perform its vital role. This would undermine the core separation of powers that “inform[] our understanding of how the constitution allocates governmental power amongst its constituent branches.” *Tetra Tech EC, Inc. v. Wis. Dep’t of Revenue*, 2018 WI 75, ¶ 44, 382 Wis. 2d 496, 914 N.W.2d 21. Indeed, certain statements by abstaining commissioners that they would vote on the appointment only if the Senate “promise[s] to confirm” the nominee indicate an affirmative desire to usurp the Senate’s advice-and-consent role.¹²

Critical statewide elections are right around the corner, including the 2024 presidential race, and there is no reason to invite unnecessary confusion about the legitimacy of the administrator of our statewide elections. If the Commission continues to flout state law, the Senate may seek a judicial remedy to compel “public officers to perform [their] duties arising out of their office and presently due to be performed.” *State ex rel. Zignego v. Wisconsin Elections Commission*, 2020 WI App 17, ¶ 29, 391 Wis. 2d 441, 941 N.W.2d 284 (citation omitted).

The Senate respectfully requests that you respond to this letter in writing no later than by the end of the day on September 19, 2023.

Sincerely,



Devin LeMahieu
Senate Majority Leader

¹² See, e.g., *supra* n.8.

GET 1 MONTH FOR ONLY \$1 when you sign up for 5 months of mosquito control services

WE ALSO OFFER SERVICES FOR:

- ANTS
- GNATS
- STINGING INSECTS
- RODENTS
- BOX ELDER BUGS
- TICKS

608-504-2131 | madison.mosquitojoe.com

*No cash value. Not to be combined with any other offer.

WISCONSIN STATE JOURNAL

31 years later, a confession
A mom of three who graduated from UW-Madison comes forward with a surprise reveal
LOCAL&STATE. A3

DOUBLE TROUBLE

Two bad holes at U.S. Senior Open halt Stricker's record run of shooting par or better
SPORTS. B1



Give them some space

More than people affected by smoke: plus, a guide to air quality warnings
PAGES A4, A6

World of flavors

On the global ice cream front, there are plenty of new developments
BUSINESS. A8

Friday, June 30, 2023

WHERE YOUR STORY LIVES

MADISON.COM

US SUPREME COURT | CONSERVATIVES CARRY RULING



JOSE LUIS MAGANA, ASSOCIATED PRESS

People protest Thursday outside the U.S. Supreme Court in Washington after the justices struck down the use of affirmative action in college admissions. The court declared an applicant's race can no longer be factored.

Justices strike colleges' use of affirmative action

MARK SHERMAN
Associated Press

WASHINGTON — The Supreme Court on Thursday struck down affirmative action in college admissions, declaring race cannot be a factor and forcing institutions of higher education to look for new ways to achieve diverse student bodies.

The court's conservative ma-

jority effectively overturned cases reaching back 45 years in invalidating admissions plans at Harvard and the University of North Carolina, the nation's oldest private and public colleges, respectively.

The decision, like last year's momentous abortion ruling that overturned Roe v. Wade, marked the realization of a long-sought

conservative legal goal, this time finding that race-conscious admissions plans violate the Constitution and a law that applies to colleges that receive federal funding, as almost all do.

Those schools will be forced to reshape their admissions practices — especially top schools that are more likely to consider the race of applicants.

Chief Justice John Roberts said for too long universities "concluded, wrongly, that the touchstone of an individual's identity is not challenges bested, skills built, or lessons learned but the color of their skin. Our constitutional history does not tolerate that choice."

Please see COURT, Page A7

ELECTIONS PANEL MEAGAN WOLFE

Senate leader doubted strategy

Warned attempted firing could backfire

ALEXANDER SHUR
ashur@madison.com

Two weeks before the state Senate took steps to fire Wisconsin Elections Commission administrator Meagan Wolfe, Senate Majority Leader Devin LeMahieu privately expressed doubts about whether the chamber could remove her if she wasn't first reappointed by the commission, according to an email the senator sent to a group of conservatives.

Citing a state Supreme Court case that established that political appointees can remain in their posts past the time their terms expire, LeMahieu, R-Oostburg, told supporters that if Republicans moved to oust Wolfe it could have the opposite effect and lead to the state's top election official staying in her job indefinitely.

But after the elections commission deadlocked on a vote to reappoint Wolfe in a bid by Democrats to block her nomination from reaching the Republican-controlled Senate, LeMahieu and Senate Republicans adopted a resolution Wednesday declaring that the Senate "considers Meagan Wolfe to have been nominated," opening the door for the Senate to ultimately remove her.

In an email sent to a group of local Republican leaders and posted on the Telegram messaging app, LeMahieu referenced the 2022 Supreme Court decision that allowed an appointee of former Republican Gov. Scott Walker to serve on the Department of Natural Resources board



LeMahieu



Wolfe

Please see WOLFE, Page A7

UW admissions won't consider race

KIMBERLY WETHAL
kwethal@madison.com

UW-Madison will remove race as a factor in its admissions process following a U.S. Supreme Court ruling Thursday that deemed race-conscious acceptances to public and private colleges illegal.

The ruling is expected to have an impact on UW-Madison's campus, but the extent won't immediately be known, Chancellor Jennifer Mnookin said in a letter

to campus Thursday. The university uses a holistic admissions process, where academic achievements are considered alongside other personality traits, such as leadership, creativity and talent. While the university focuses first on academics, race has been taken into consideration to ensure students are benefiting from a diverse population, Mnookin said.

Please see UW, Page A7



The U.S. Supreme Court's ruling that universities cannot use race as a factor in admissions will affect UW-Madison, but the extent is to be determined, Chancellor Jennifer Mnookin said.

JOHN HART, STATE JOURNAL

GET THE FULL BENEFITS OF YOUR SUBSCRIPTION!

Subscribers: Activate your digital account for updated stories and hundreds of additional puzzles and comics. Log in at madison.com/activate today.

Weather
Thunderstorm
High 88 • Low 67
FORECAST • A14

Inside

Editor's BID Opinion A13 Take Five BID
Nation's Worst A10 Sports B1 Television B83
Obituaries A4 Stocks A5 WSJ Legal B5



184th year, No. 211 • Copyright 2023

Follow us online: Facebook.com/WisconsinStateJournal, Twitter.com/WISStateJournal, Instagram.com/wisstatejournal

MADISON SYMPHONY ORCHESTRA and Overture present a FREE FARMERS' MARKET ORGAN CONCERT TOMORROW SATURDAY, JULY 1 • 11:00 AM

ISABELLA WU

Step into the cool expanse of Overture Hall during the Dane County Farmers' Market on the Capitol Square to enjoy the gift of beautiful music with the Madison Symphony Orchestra's Overture Concert Organ. Bring your family and friends for a relaxing 45-minute free concert. No tickets or reservations are needed and all ages are welcome! Learn more: madisonsymphony.org/summerorgan

Isabella Wu made her orchestral debut with the Madison Symphony Orchestra at the age of 11. She is currently pursuing her Master's degree in Organ Performance at the Curtis Institute of Music. She'll perform works by Mendelssohn, Rheinberger, J. S. Bach, Dupré, Debussy, and Dubois.

Support for all Overture Concert Organ Programs is provided by the Diane Endres Ballweg Fund, presented in partnership with Madison Media Partners. Program, date, and artist subject to change.



A person protests Thursday outside of the Supreme Court in Washington.

JOSE LUIS MAGANA, ASSOCIATED PRESS

Court

From A1

From the White House, President Joe Biden said he "strongly" disagreed with the court's ruling and urged colleges to seek other routes to diversity rather than let the ruling "be the last word." Besides the conservative-liberal split, the fight over affirmative action showed the gulf between the three justices of color, each of whom wrote separately and vividly about race in America and where the decision might lead.

Conservative Justice Clarence Thomas — the nation's second Black justice, who had long called for an end to affirmative action — wrote that the decision "sees the universities' admissions policies for what they are: rudderless, race-based preferences designed to ensure a particular racial mix in their entering classes."

Justice Sonia Sotomayor, the court's first Latina, wrote in dissent that the decision "rolls back decades of precedent and momentous progress."

Both Thomas and Sotomayor, the two justices who have acknowledged affirmative action played a role in their admissions to college and law school, took the unusual step of reading summaries of their opinions aloud in court.

In a separate dissent, Justice Ketanji Brown Jackson — the court's first Black female justice — called the decision "truly a tragedy for us all."

Jackson, who sat out the Harvard case because she was a member of an advisory governing board, wrote, "With let-them-eat-cake obliviousness today, the majority pulls the ripcord and announces 'color-

"They should not abandon their commitment to ensure student bodies of diverse backgrounds and experience that reflect all of America."

President Joe Biden, in a message to the nation's universities

blindness for all' by legal fiat. But deeming race irrelevant in law does not make it so in life."

The vote was 6-3 in the North Carolina case and 6-2 in the Harvard case. Justice Elena Kagan was the other dissenter.

Biden said of the nation's colleges: "They should not abandon their commitment to ensure student bodies of diverse backgrounds and experience that reflect all of America." He said colleges should evaluate "adversity overcome" by candidates.

An applicant for admission still can write about, and colleges can consider, "how race affected his or her life, be it through discrimination, inspiration or otherwise," Roberts wrote.

But the institutions "may not simply establish through application essays or other means the regime we hold unlawful today," he wrote.

Colleges pledge

Presidents of many colleges quickly issued statements affirming their commitment to diversity regardless of the court's decision. Many said they were still assessing the impact but would follow federal law.

"Harvard will continue to be a vibrant community whose members come from all walks of

life, all over the world," school President Lawrence Bacow said in a statement.

President Reginald DesRoches of Rice University in Houston said he was "greatly disappointed" by the decision but "more resolute than ever" to pursue diversity.

"The law may change, but Rice's commitment to diversity will not," he said in a campus message.

The Supreme Court twice upheld race-conscious college admissions programs in the past 20 years, including as recently as 2016.

Trump's arrivals

That was before the three appointees of former President Donald Trump joined the court. At arguments in late October, six conservative justices expressed doubts about the practice, which was upheld under Supreme Court decisions reaching back to 1978.

Lower courts also upheld the programs at both UNC and Harvard, rejecting claims that the schools discriminated against white and Asian American applicants.

The college admissions disputes were among several high-profile cases focused on race in America.

The justices decided a voting rights case in June in favor of Black voters in Alabama and rejected a race-based challenge to a Native American child protection law.

The affirmative action cases were brought by conservative activist Edward Blum, who also was behind an earlier challenge against the University of Texas as well as the case that led the court in 2013 to end use of a key provision of the landmark Voting Rights Act.

Wolfe

From A1

long after his term had expired until the Senate confirmed his Democratic successor.

"The precedent from this case means that if WEC doesn't reappoint Wolfe or a replacement, the senate would have no power to get rid of her through the confirmation process," LeMahieu wrote in the June 15 email.

"If I put out a press release tomorrow as the Senate's majority leader stating that the Senate will vote down Wolfe's reappointment, the dem appointments to WEC might fight her reappointment so that she can remain at WEC indefinitely," the email continues. "So if you would like Wolfe to be voted down, it is probably in your best interest that I remain silent."

LeMahieu walked away from a reporter inquiring about the email without answering questions Thursday. He also didn't return a text message, phone call or email seeking comment. One of the email recipients, Republican Party of Sheboygan County chair Russ Otten, told the State Journal it was authentic. LeMahieu's staff said they couldn't substantiate the email Wednesday morning.

Wolfe has been subject to scrutiny ever since the commission made changes to certain election procedures in the 2020 general election in response to the COVID-19 pandemic that some conservatives objected to. In a letter to legislators Saturday, Wolfe said allegations regarding the conduct of the 2020 election had been "repeatedly mischaracterized" and noted that the six commissioners, not Wolfe, make election decisions.

Jeff Mandel, an attorney who co-founded the liberal group Law Forward, said Thursday that

LeMahieu's email "shows that last night's desperate maneuver is nothing more than a cheat in an effort to evade the rules."

The Wisconsin Elections Commission deadlocked Tuesday on reappointing Wolfe, whose term expires July 1. The election body's three Republican commissioners voted to reappoint her, but all three Democratic commissioners abstained, citing the Wisconsin Supreme Court case allowing appointees to stay in their roles after their terms end.

"I don't think we have the ability under the current law to reappoint because there is no vacancy," Democratic commissioner Mark Thomssen said.

Because of the deadlock, Democratic commissioners said Wolfe wasn't reappointed, meaning the Senate couldn't vote on whether to confirm — and likely fire — her. But the next day, Senate Republicans introduced and passed a resolution, Senate Resolution 3, stating their assumption that the commission had nominated Wolfe and their intent to vote on her confirmation.

The resolution cites a similar dispute the Senate had with the commission's previous administrator — the commission's only leader before Wolfe. The Senate had wanted to fire Michael Haas for nearly two years, citing his work for the state's previous Election Board. In 2018 the Senate voted to fire Haas, but the commission then voted 4-2 to retain him. Haas resigned from his post a few weeks later.

Democratic commissioners immediately criticized the Senate's actions, saying they were based in legal fiction.

"With no appointment, there's no appointee before the Senate," Democratic commissioner Ann Jacobs said. "With no appointee, this

is a nonsense attempt to avoid the applicable statutes."

State law requires two-thirds of the six-member commission to nominate an administrator. The commission voted 3-0 on reappointing Wolfe on Tuesday.

'Playing a game'

Some legal experts doubted the viability of future Senate action. "The Senate's attempt to initiate a confirmation hearing for Wolfe does seem to rest on very shaky legal ground," UW-Madison Law School associate professor Robert Yablon said.

"When the commission met earlier this week, only three of members voted to re-appoint Wolfe," Yablon said. "Notably, after this vote, the commission didn't take the position that it had succeeded in reappointing her. It's odd for the Senate to claim there's been an appointment that the commission itself didn't purport to make."

"Both sides are now playing hardball, and unless they can reach a compromise, this dispute will likely end up in court," Yablon said. Rick Eisenberg, president of the conservative Wisconsin Institute for Law and Liberty, said it isn't certain that the precedent set in the Wisconsin Supreme Court case regarding appointees staying past their term would apply here.

"There's a larger issue here in that this just looks bad," he said. "It looks like everybody is playing a game, and I think the decision to abstain may backfire against (Democratic commissioners) because of what it implies. People should understand they have an institutional role to play."

If the Senate does try to remove Wolfe and is challenged in court, any lawsuit would likely end up before the Wisconsin Supreme Court, which will have a liberal majority come August.

UW

From A1

"Though we have seen a roughly 50 percent increase in our underrepresented undergraduate student population in the past five years, our current enrollment percentages of underrepresented students still lag behind many of our peers," she said. "The ruling will require some modifications to aspects of our current admissions practices; we will, of course, adapt our practices to comply with the law."

"At the same time, I want to reiterate that our commitment to the value of diversity within our community, including racial diversity, remains a bedrock value of the institution." But the argument of ensuring a diverse population of students is precisely what the court rejected in its opinion Thursday. Chief Justice John Roberts wrote in the ruling that using race as a consideration violates the Fourteenth Amendment by elevating some races over others in a zero-sum game of admissions and selecting a diverse student body is a form of racial quotas, which are already illegal.

UW-Madison's student population is white. The next largest ethnic group, Hispanic students, make up 7.2% of the population; Black students are just 2.4% of the population despite Black residents being 6.6% of the state's population. International students, who are not broken down by race in university statistics, are 14% of UW-Madison's enrollment.

Not all University of Wisconsin System schools use race as a part of their admissions process. UW-Milwaukee Chancellor Mark Mone said in a policy statement Thursday the school's ruling will not significantly affect the school's admissions practices.

The System is in the process of reviewing the ruling to see what, if any, impact it will have on its universities, spokesperson Mark Pitsch said.

Local pressure

Earlier this week, Republican lawmakers circulated a bill that would force the System, namely UW-Madison, to change its admissions policies to grant direct admission to any students in the top 5% of their class.

The bill, if passed into law, could force the System to place a heavier emphasis on academic achievement rather than its current holistic process and potentially reducing access for any applicant not considered to be in the top 5% of their class.

While UW-Madison is required to admit no fewer than 3,600 in-state students as part of its freshman class each fall, just fewer than 70,000 students are expected to graduate from Wisconsin public and private high schools next spring, meaning UW-Madison could be obligated to offer direct admission to about 3,500 students if they all applied.

Republicans justified the legislation by recounting examples of constituents who came to them after either being waitlisted or rejected from UW-Madison, despite feeling their grades or test scores should have been enough to grant them admission.

At the same time, Republicans are seeking to pressure the System to eliminate all of its diversity, equity and inclusion (DEI) staff and programming by trimming \$32 million from its budget, about what Assembly Speaker Robin Vos, R-Rochester, estimates the System spends on such efforts over a two-year period. If that proposal becomes law, Republicans would move the \$32 million into a discretionary account, and the System could petition the Joint Finance Committee for access to it to bolster workforce development.

The System employs 188 employees whose role in some way focuses on DEI. In addition to traditional DEI staff, those roles include staff in departments such as disability accommodations, Title IX compliance and veterans and non-traditional student support, according to a list provided by the System.

Elsewhere

Other area colleges' admissions practices are unlikely to be changed by the ruling. Neither Edgewood College nor Madison Area Technical College (MATC) use race as a consideration in their admissions process, though they do collect information on race for data purposes.

Edgewood College bases its admissions off high school grade point averages or GED completion; if applicants don't meet the requirements, admissions staff then turn to a more holistic approach involving a personal letter and an interview, said Tess Perzoco, vice president for enrollment management.

"From our very first days in 1927, the Dominican Sisters of Sinsinawa committed to providing educational opportunities for young women. That was considered 'radical' by some at that time," Edgewood College President Andrew Manion said in a statement. "Today, we embrace that mission that we inherit, to build a more just and compassionate world where the educational experience we deliver to our students."

All Wisconsin Technical College System schools, including MATC, are considered "open access" schools, spokesperson Katy Petterson said. While the technical colleges consider race and gender as an important part of equity, so are other demographics, such as being a single parent, having been incarcerated or learning English as a second language.

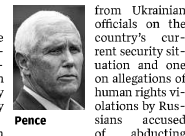
That data guides decisions on how the technical colleges can best support those populations to make sure they finish their programs, Petterson said.

"We don't consider much of anything (in admissions)," she said. "We allow everyone in who wants to come and get more education."

Pence makes surprise visit, tour of Ukraine

JILL COLVIN Associated Press

NEW YORK — Former Vice President Mike Pence made a surprise visit to Ukraine on Thursday, meeting with Ukrainian President Volodymyr Zelenskyy and touring the war-torn country as it fights Russian aggression. Pence, who this month launched his campaign for the Republican nomination for president, has been deeply critical of Russian President Vladimir Putin's invasion of Ukraine.



Pence from Ukrainian officials on the country's current security situation and one on allegations of human rights violations by Russians accused of abducting Ukrainian children in a bid to weaken Ukrainian resolve, the adviser said.

Pence also participated in a commemoration ceremony to honor Ukrainians killed during the defense of Moshchun during Russia's offensive and visited the destroyed Romanov Bridge, where he was briefed on the civilian evacuation efforts.

Pence visited St. Andrew's Church and Pervogvarnoho All Saints in Bucha, the site of a civilian mass burial site, and laid flowers at the Wall of Remembrance of the Fallen for Ukraine at St. Michael's Cathedral in Kyiv.

The trip was the second by Pence to the region. In March 2022, he made an unannounced visit to the Ukrainian border with Poland, where he crossed into Ukraine and helped deliver aid to the flood of refugees who escaping the war's initial invasion.

Both trips were arranged by Samaritan's Purse, an international Christian humanitarian aid organization. Pence's GOP rivals have been far less eager to push for more U.S. involvement in Ukraine, reflecting broader skepticism within the party.