



# ROBERT WITTKE

STATE REPRESENTATIVE • 63<sup>RD</sup> ASSEMBLY DISTRICT

(608) 237-9163  
Toll-Free: (888) 534-0063  
Rep.Wittke@legis.wi.gov

P.O. Box 8953  
Madison, WI 53708-8953

Public Hearing  
Assembly Committee on Campaigns and Elections  
June 3, 2025

---

Thank you, Chair Maxey, and committee members for holding a public hearing on Assembly Bill 268 (AB 269). AB 268 is a narrowly drafted bill to ensure that a party who does not receive the relief he or she seeks from the Wisconsin Elections Commission (WEC) may appeal the decision to the circuit court under Wis. Stat. §5.06(8), as was intended when the law was drafted.

AB 268 was drafted because in February, the Wisconsin Supreme Court issued its ruling in **Brown v. Wisconsin Elections Commission** making it virtually impossible for a citizen to appeal a decision of the Wisconsin Elections Commission. The court ruled that Brown – who filed a complaint with WEC that the City of Racine’s “Mobile Election Unit” or “voting van” violated the requirements of Wisconsin’s alternate absentee ballot site law, did not have standing to bring an appeal of the WEC decision because he was not directly “injured” or “aggrieved” by the WEC decision.

As a result, the courts decision means only a person who is directly impacted by a WEC decision may appeal that decision. No longer is an appeal available to a complainant who seeks WEC guidance to have the law enforced, or to seek clarification of election law.

Mr. Chair and members, AB 268 is a necessary bill to ensure complainant has the right to appeal under Wis. Stat. §5.06(8), as was intended when the law was drafted.

Thank you once again for holding a public hearing on AB 268. I am happy to answer your questions.



# Van H. Wanggaard

## Wisconsin State Senator

### TESTIMONY ON ASSEMBLY BILL 268

Thank you, Chairman Maxey and committee members for today's hearing on Assembly Bill 268. This is a largely technical bill, which corrects a problem the Wisconsin Supreme Court created in a recently-decided case, *Brown v. Wisconsin Elections Commission*. As a result of the decision in *Brown*, it is virtually impossible for a citizen to appeal a decision of the Wisconsin Elections Commission (WEC).

It's important to know the background of this case to understand the problem created by the Supreme Court. In 2022, the city of Racine bought a "mobile voting unit" or "early voting van," with funds provided from a private group created by Mark Zuckerberg. The voting van was placed in various areas around the city of Racine allowing people to register to vote, and/or vote in an election.

Believing that the voting van was not authorized by state law, and was used for partisan advantage given its placement around the City of Racine, Brown filed a complaint with (WEC) seeking to stop its use. The Elections Commission ultimately dismissed the case for lack of probable cause.

Brown then filed suit in Racine County Circuit Court, appealing WEC's decision. The Circuit Court held that the voting van was not authorized by Wisconsin law, and that the voting van was used to give an advantage to a political party. As a result, the judge prohibited the use of the voting van. WEC then appealed to the Wisconsin Supreme Court.

In February, the Wisconsin Supreme Court issued its ruling. In a 4-3 ruling, the Court did not rule on the merits of the case. Instead of ruling on the legality of the voting van, the Court ruled that Brown didn't have standing to bring the case at all. That is why we are here today.

Under the controlling statute, a decision of WEC may be appealed to the circuit court if a person is "aggrieved" by a WEC ruling. However, rather than using the common definition of "aggrieved", or how the word "aggrieved" is used elsewhere in statutes, the majority stated that for a complainant to be "aggrieved", the complainant "must have suffered an injury to a legally recognized interest as a result of the decision."

---

Serving Racine and Kenosha Counties - Senate District 21

State Capitol, P.O. Box 7882, Madison, WI 53707-7882 • (608) 266-1832 • Toll-free (866) 615-7510  
E-Mail: Sen.Wanggaard@legis.wi.gov • SenatorWanggaard.com

Putting it in plain language, unless a person is personally, legally, harmed by a WEC decision the decision is unappealable. Essentially, the decision makes most decisions by WEC unappealable.

A couple of examples help illuminate the problem created by the Supreme Court. A candidate from office who doesn't like a WEC decision during the campaign can't appeal the decision unless he or she loses the election. That's because until the election is lost, the candidate has not suffered a harm. And after the election, an appeal would be moot, because the election has been held.

Or let's say the League of Women Voters believes that a polling place is not accessible to disabled people. If WEC declines to hear the complaint, or if they decide against the complaint, the League is unable to appeal. In fact, until a specific individual files that same complaint, and until that specific person is unable to vote at the polling place on election day, the decision is unappealable. Unless a court rules on election day that the person is right, the appeal is moot.

This bill is narrowly drafted and should not be considered controversial. It doesn't rule on the legality of the voting van, or any other decision of WEC. The bill is narrowly drafted to ensure the common sense, and, until February, legal right of groups and individuals to appeal decisions of the Wisconsin Elections Commission is restored.



**Testimony in Support of Assembly 268**  
Assembly Committee on Campaigns and Elections  
June 3, 2025

Chairman Maxey, Vice Chair Krug, and Members of the Assembly Committee on Campaigns and Elections:

My name is Kyle Koenen and I am the Policy Director at the Wisconsin Institute for Law & Liberty, a non-profit law and policy center based out of Milwaukee. I appreciate the opportunity to submit testimony in support of Assembly 268, which provides an important clarification to Wis. Stat. § 5.06 and ensures that Wisconsin voters have a statutory right to seek judicial review of certain determinations made by the Wisconsin Elections Commission (WEC).

Under current law, Wis. Stat. § 5.06 allows Wisconsin electors to file complaints with WEC when they believe a local election official has acted contrary to state law. WEC is required to review these complaints and issue a decision on the merits, which may include ordering the official to conform their conduct to the law.

Until recently, it was widely understood that the party who lost a WEC decision under Wis. Stat. § 5.06(6)—whether the complainant or the election official—had the right to seek judicial review of that decision in circuit court under § 5.06(8).

However, the Wisconsin Supreme Court’s decision in *Brown v. Wisconsin Elections Commission* created significant uncertainty. The Court held that complainants are not be automatically entitled to judicial review, raising serious questions about whether ordinary citizens who file election complaints have the ability to challenge adverse decisions by WEC in court.

This bill resolves that uncertainty by amending Wis. Stat. § 5.06(8) to make it clear that a complainant is considered “aggrieved” for purposes of judicial review, even if they have not suffered an injury to a legally recognized interest. It further clarifies that a complainant may appeal any decision by WEC that dismisses the complaint or denies the requested relief.

The amended language would read:

“A complainant shall be considered aggrieved under this subsection regardless of whether the complainant has suffered an injury to a legally recognized interest and may appeal any order issued under sub. (6) that dismisses the complaint or otherwise does not grant the relief requested in the complaint.”

WILL strongly supports this clarification. Ensuring access to judicial review promotes transparency and accountability in election administration and reinforces public trust in

the integrity of the process. When voters believe the law has been violated and WEC declines to act, they must be allowed to seek recourse through the courts.

We respectfully urge the committee to advance this legislation.

Sincerely,

**Kyle Koenen**

Policy Director

Wisconsin Institute for Law & Liberty