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Brown County, WI  
2020CV000812

BY THE COURT:

DATE SIGNED: September 11, 2020

Electronically signed by John P. Zakowski  
Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT  
Branch VI

BROWN COUNTY

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Kanye West, Michelle Tidball, and  
Fred Krumberger,

Plaintiffs,

DECISION

v.

Case No. 2020 CV 812

Wisconsin Elections Commission,

Defendant.

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This matter came before the court on an expedited basis on September 9, 2020. Appearing on behalf of the plaintiffs were Attorney Gregory Erickson and Attorney Erick Kaardal. Appearing on behalf of the Wisconsin Elections Commission were Attorney Steven Kilpatrick and Attorney Karla Keckhaver. Appearing on behalf of proposed intervenor-defendants William Brent, III, Richard C. Hughes, Keith Smith, Lauren Steven and Joseph Santeler were Attorney Jeffrey Mandell and Attorney Rachel Snyder. A great number of documents had already been filed with the court. They included the original complaint in which the plaintiffs requested a declaration that a) Wisconsin Elections Commission acted unconstitutionally in declaring their nomination papers were untimely (and that the proper interpretation of Wis. Stat. 8.20(8)(am) is that nomination papers must be accepted if presented before 5:01 p.m.) and b) to issue an injunction requiring Wisconsin Elections Commission accept nomination papers as timely. There was the subsequent filing of removal by the Attorney General on behalf of Wisconsin Elections Commission. There

were motions to dismiss on behalf of the intervenor-defendants. The court has reviewed the findings and order in Case No. EL 20-31 signed by Administrator Megan Wolfe, and the Memorandum of Ms. Wolfe for the August 20, 2020 Commission meeting. The court has reviewed the affidavits associated with the Hawkins v. Wisconsin Elections Commission, Case Number 20 AP 1488-OA and a subsequent Wisconsin Supreme Court order. It has reviewed the verified complaint of William Brent III, Richard Hughes, Keith Smith and Lauren Steven, and the respondent's consolidated verified response to administrative complaints. The court has reviewed Judge William Griesbach's decision and order of remand to the state court, the Motion for a Temporary Injunction and Memorandum filed by the plaintiffs, the Intervenor-Defendants consolidated brief in opposition to plaintiffs' motion for preliminary relief and in support of their own cross claims. The court has further reviewed a transcript of the August 20 Commission hearing concerning the timeliness of the West nomination paper filings.

During our hearing a number of issues were discussed and the court asked questions of the parties in an attempt to learn more of the legal and factual background surrounding the lawsuit.

### **BACKGROUND**

Wisconsin Statute § 8.20(8)(am) provides, “[n]omination papers for independent candidates for president and vice president, and the presidential electors designated to represent them, may be circulated no sooner than July 1 and may be filed **not later than 5 p.m.** on the first Tuesday in August preceding a presidential election.” The filing deadline here is August 4, 2020. Wis. Administrative Code EL § 2.05(2) states: “In order to be timely filed all nomination papers shall be in the **physical possession** of the filing office by the statutory deadline.”

According to the allegations of the complaint, on August 4, 2020, Lane Ruhland, a representative of the West campaign, was in contact with the Commission staff regarding West's

nomination papers, namely issues related to general compliance. The Commission staff advised Ruhland in a phone conversation that day that the Commission office's building at 212 East Washington Avenue, Madison, Wisconsin would be locked and that the second layer of double doors to the main floor of the building, which is the only access to the building, would also be locked. Staff did not advise Ruhland that the Commission's general compliance telephone number she was using was not the phone number to contact Commission staff to open the building's locked doors. Later, Commission staff instructed Ruhland that when she arrived at the building, she was to call the number found on the outside of the building and a Commission staff member would come down to the main floor to unlock the doors.

Ruhland and two other West nominating petition coordinators arrived at the Commission building before 5:00 p.m. Ruhland searched for the number outside the building to call to have Commission staff unlock the doors and get access to the building. Once she found the phone number, she called the number to gain access to the locked building before 5:00 p.m. A Commission Election Specialist unlocked the inner layer of double doors on the main floor of the building and allowed Ruhland and the two other West campaign representatives access to the building. In her affidavit, Ruhland states she "believed" she was in the Commission's office *before* 5 p.m. The Commission Election Specialist accepted the West nominating papers as "not later than 5 p.m." but later found the acceptance to be late based on an estimated time of delivery of 5:00.<sup>14</sup> (per Cody Davies testimony, WEC Meeting transcript 8/20, p. 101, lines 17-20). Plaintiffs contend that the locked doors impeded access for candidates and their supporters to timely deliver their nominating papers and that the Commission failed to keep accurate track of time when approaching the time deadline for the submission of the nomination papers.

The defendant claims the representatives from the West campaign did not even attempt to enter the building until after 5:00 o'clock, that the Commission did not take physical possession of the signature until minutes later and that by failing to abide by the provisions of 8.20 (8)(am), the plaintiffs' nomination papers were properly rejected.

### COMMISSION FINDINGS

The Wisconsin Elections Commission is a state agency tasked with monitoring and regulation of state elections and providing legal analysis.

The Wisconsin Elections Commission is a regulatory agency established to administer and enforce election laws in this state. It was created in 2016. The Wisconsin Elections Commissioner and Wisconsin Ethics Commission replaced the previous Wisconsin Government Accountability Board. Three Democrats and three Republicans members make up the Commission. The staff are non-partisan. The Wisconsin Elections Commission administrator is Megan Wolfe.

Prior to the August 20, 2020 meeting, the Commission staff recommended that the Commission find the nomination papers were not timely filed.

- 1) The Commission staff's opinion was that the (plaintiffs') arguments for reading Wis. Stat. 8.20 (8)(am) meant a filer of nomination papers had until 5:01 to submit nomination papers were unpersuasive. "The Commission and its predecessor agencies have never interpreted the statute to allow filing beyond 5:00 p.m.... Commission staff have always applied the statute to mean if the clock has struck 5:00 p.m. on the filing day, and nomination papers have not yet been tendered to the Commission by the candidate or their representative, those nomination papers are not timely filed."
- 2) The evidence is clear and convincing that the nomination papers were not filed timely. The "time of filing"...of 5:00:14 is the approximate time that Ms. Ruhland proceeded through the interior glass entry door on the first floor of the building. That time was noted by the Commission staff member assigned to wait by the glass interior door to allow any individuals into the building asking to file nomination papers on the deadline day and escort them to the Commission's office on the 3<sup>rd</sup> floor. The time was noted by the Commission staff member looking at the clock on his phone.

- 3) The nomination paperwork was not present in the Commission's office before 5:00 p.m....
- 4) The nomination papers were not in possession of the filing officer by 5:01 p.m.
- 5) Acceptance of the nomination papers after the filing deadline does not "satisfy the filing as timely." (Document 10, pages 30-31).

The Commission held a lengthy meeting on August 20, 2020 to address the issue of whether the West nomination papers were timely. There was sworn testimony of witnesses and numerous exhibits, including a video of Ms. Ruhland in her vehicle and her actions before entering the office building. The court finds the comments and questions from the Commission interesting and demonstrating that considerable thought and analysis were generated in evaluating the timeliness of filing of West's nomination papers. After all the evidence was presented, the Commission voted to find the nomination papers submitted by West and Tidball were not timely filed in accordance with Wis. Stat. 8.20(8)(am).

On August 27, 2020 Administrator Megan Wolfe filed Findings and Order in Case No. EL 20-31 including the following findings:

3. Candidates West and Tidball filed sworn declarations of candidacy documents with the Commission on August 4, 2020, prior to the "not later than 5 p.m." deadline on that day. (Interestingly, this document must have been filed at a separate, earlier time. The declaration of candidacy is a separate document which should be filed before nomination papers are circulated for signatures.)
6. On August 4, 2020, after the "not later than 5 p.m." statutory deadline to file nomination papers had passed, representatives of Candidates West and Tidball appeared at the Commission's office to submit nomination papers.
19. The sworn testimony of Commission staff members corroborated the finding that the nomination papers were not filed timely, as the representatives of Mr. West and Ms. Tidball had not entered the building housing the Commission's office until after 5:00 p.m.
21. The sworn testimony of Commission staff members corroborated the finding that the nomination papers were not filed timely because the representatives of Mr. West and Ms. Tidball

had to organize and number the pages of the nomination papers in the office prior to filing the papers with the Commission.

22. The sworn testimony of Commission staff members corroborated the finding that the nomination papers were not filed timely because the representatives of Mr. West and Ms. Tidball had not transferred possession of the papers to the Commission to complete the filing until several minutes after 5:01 p.m.

Administrator Wolfe further ordered:

1. The Commission sustains the challenge to all nomination papers submitted by Mr. West and Ms. Tidball because they were not filed timely in accordance with Wis. Stat. § 8.20(8)(am), therefore their names shall not appear on the 2020 November General Election ballot as Independent candidates for President and Vice- President respectively, in Wisconsin. (File Document 10, pages 12-16).

#### SEPTEMBER 9, 2020 HEARING

At our hearing numerous issues were addressed. First the court addressed the intervenor-defendants' motion to intervene. The court considered the four part test to determine if motions to intervene should be granted as enumerated in Helgeland v. Wis. Municipalities, 307 Wis. 2d 1 (2008). The court found that the prerequisites for intervention under Wis. Stat. 803.09 were met. As the court stated in Wolff v. Town of Jamestown, 229 Wis. 2d 738 (Ct. App. 1994) "motions to intervene are evaluated practically, not technically, with an eye towards disposing lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." Wolff, 229 Wis. 2d at 742. The motion to intervene was GRANTED.

The next motion to be determined concerned venue. According to Enpro Assessment Corp. v. Enpro Plus, Inc., 171 Wis. 2d 542 (Ct. App. 1992) venue is to be narrowly construed. The court's query concerned Ronald Krumberger and how does he qualify as a complainant under section 5.06(8). If he is not a complainant per statute then venue was not proper in Brown County and the case must be sent to Dane County. West and Tidball are not Brown County

residents and Dane County is where the Wisconsin Elections Commission “conducts business” including where all of the activity took place surrounding this controversy.

The court is satisfied that as the plaintiffs explain, each candidate has a state of electors which would vote in the Electoral College if the candidate would win the State’s electoral vote. His name had previously been included on other filings with the Wisconsin Elections Commission. It was not a new name to the Commission. The court accepts the argument that pursuant to Section 5.06 (8) the interests of Krumberger would be adversely affected and therefore there is a basis for the matter to be heard in Brown County. The motion to transfer venue was DENIED.

With the matter properly in Brown County, the court questioned how much authority it had in assessing the claims of both the plaintiffs and intervenor-defendants. The court looks to 5.06(9) which states:

“The court may not conduct a de novo proceeding with respect to any findings of fact or factual matters upon which the commission has made a determination, or could have made a determination if the parties had properly presented the disputed matters to the commission for its consideration. The court shall summarily hear and determine all contested issues of law and shall affirm, reverse or modify the determination of the commission, according due weight to the experience, technical competence and specialized knowledge of the commission, pursuant to the applicable standards for review of agency decisions under s. 227.57.”

Initially intervenor-defendants argued the plaintiffs failed to comply with Wis. Stat. 5.06(8) as interpreted by the court in the school board recall election case of Kuechmann v. LaCrosse School District, 170 Wis. 2d 218 (Ct. App. 1992). The court in Kuechmann found the plaintiff’s request for a declaratory judgment to be an original action because the board did not decide the issues Kuechmann asked the circuit court to decide. Therefore, it was not an appeal of the board’s

decision. The court found the plaintiff did not comply with Wis. Stat. 5.06 because it filed its complaint prior to the board issuing its decision and because its complaint was an original action, not a review of the board's decision. Here the plaintiffs complied with Wis. Stat. 5.06(2) because they filed their complaint after the board/commission had made its decision and their complaint explicitly seeks review of the commissioner's interpretation of Wis. Stat. 8.20(8)(am). The court finds that the plaintiffs' have complied with the statutory procedure and thus believes it has the authority under Wis. Stat. 227.57(9) to issue "whatever relief" it feels is appropriate irrespective of the original form of the petition. The court believes it therefore has the authority to issue a temporary restraining order or permanent injunction. However, the plaintiffs must establish that they can succeed on the merits of their claim. That claim depends on the interpretation of "no later than 5 p.m."

The court then turns to Wis. Stat. 227.57(1) which states:

"The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the agency, testimony thereon may be taken in the court and, if leave is granted to take such testimony, depositions and written interrogatories may be taken prior to the date set for hearing as provided in Ch. 804 if proper cause is shown therefor."

The court believes the wording "except that in cases of alleged irregularities in procedure before the agency" pertains to only the courtroom legal deficiencies in procedural rules that a party opponent or the agency itself perpetrated are reviewable. Questions such as whether the agency locked the doors before 5:00 p.m. or what time the nomination papers were physically in the possession of the Commission are factual matters that, per the statute, only the agency (Wisconsin Elections Commission) can determine. They are not procedural irregularities. This reading is also consistent with §227.57(4) which calls for a remand to the agency if there was a "material error in procedure or a failure to follow prescribed procedure."



Wis. Stat. 227.57(6) further limits the circuit court's review of the record:

“If the agency's actions depend on any fact by the agency in a contested case proceeding the court shall **not** substitute its judgment for that of the agency as to the weight of the evidence on any disputed finding of fact.”

The very next line states,

“The court shall, however, set aside agency action or remand the case to the agency if it finds that the agency's action depends on any finding of fact that is not supported by substantial evidence in the record.

Although the court views the language in §227.57(6) as somewhat inconsistent, it cannot find that the agency's actions are not supported by substantial evidence in the record. The aforementioned findings included videotape, and sworn testimony of staff members including specialist Riley Willman who testified the Elections Commission took physical possession of the nomination papers “several minutes after 5:00.” (Transcript WEC meeting 8/20/20, p. 117, line 2).

#### LACHES

Among the arguments in the intervenor-defendants' brief is that the doctrine of laches bars equitable relief sought by the plaintiffs. They cite a number of cases which explain the equitable defense of laches bars relief when the claimant's failure to promptly bring a claim causes prejudice to the party which must defend against that claim. Wis. Small Businesses United, Inc. v. Brennan, 393 Wis. 2d 308 (2020), Dickau v. Dickau, 344 Wis. 2d 308 (Ct. App. 2012). Laches has three elements: 1) a party unreasonably delays in bringing a claim, 2) a second party lacks knowledge that the first party would raise the claim, 3) the second party is prejudiced by the delay. Intervenor-Defendants claim the plaintiffs have not acted “with the requisite diligence and promptness” in filing their claim for relief. The decision by the Wisconsin Elections Commissioner not to place West and Tidball on the ballot was formally made August 20, 2020. The plaintiffs filed their lawsuit eight days later on August 28, 2020. They filed a Temporary Restraining Order motion in

federal court on September 2, 2020 and filed their Temporary Restraining Order motion in state court on September 4, 2020.

The court heard the difficulty that county clerks find themselves as they face time constraints in mailing out presidential ballots. The court heard the greatly increased number of paper ballots which will have to be generated in this 2020 election. While sympathetic to the plight of the clerks under these circumstances, the court does not believe that fact alone should influence the court when assessing the merits of the plaintiffs' claims and the application of the law. Furthermore, as the court explained during our hearing, the intervenor-defendants themselves have contributed to the time crisis by their unilateral action to remove the matter to federal court on September 1, 2020. This court believes the matter clearly belongs in state court because, as Judge Griesbach explained, the plaintiffs' claim does not present a substantial federal question. The reference to Article II "simply states that the election of federal officers is governed by state law" and at issue is the interpretation of a Wisconsin Statute: §8.20(8)(am). This court was prepared to schedule a hearing that week to accommodate the parties, but the bulk of that week was lost. The court did not even receive the remand until September 4, 2020. Plaintiffs' claim the action to remove the case from the state court was a stalling tactic.

Plaintiffs' counsel explained the necessity to "cross the Ts and dot the Is" before filing their claim. The court does not find that the plaintiffs "slept on their rights" as described in State ex rel Wren v. Richardson, 389 Wis. 2d 516 (2019). The court finds the first element for laches has not been met. Given the hoopla surrounding the placement of West and Tidball on the ballot and the perceived implications on a national election (and in view of the eventual filings and cross complaints of the intervenor defendants) the court does not find the second element for laches has

been met that the intervenor defendants were surprised by the plaintiffs' lawsuit. The plaintiffs' request for relief is not barred by the doctrine of laches.

### CROSS-CLAIMS

The Intervenor-Defendants also raised four cross complaints including:

- 1) The response submitted to the Wisconsin Elections Commission on behalf of West and Tidball was legally deficient.
- 2) The Wisconsin Elections Commission improperly rejected the intervenor-defendants' reply brief and supplemental affidavit.
- 3) There were insufficient numbers of signatures because several circulators falsified information and necessary certification. A number of affidavits from individuals claiming they were lied to and would not otherwise have signed to put West's name on the ballot were presented.
- 4) The nomination papers were defective because the address for West listed on each petition was not his residence. This argument included information that the stated address was zoned for commercial and not residential property.

These issues were presented before the Wisconsin Elections Commission which denied the complaints. Once again, in following the procedure outlined in §227.57, the court believes it is to accept the factual findings of Wisconsin Elections Commission. Intervenor-defendants claim that some of these cross complaints involve issues of law which can be determined by this court. This court has reviewed the staff recommendations to the commission and the minutes of the August 20, 2020 meeting. For the record, this court concurs with the actions of the Wisconsin Elections Commission on these cross complaints. The intervenor-defendants' cross claims are DENIED. As a practical matter, these cross complaints are rendered moot by this court's evaluation and decision concerning the interpretation of "not later than 5 p.m." and addressing the timeliness of the filing of the nomination papers.

### TIMELINESS OF FILING

The plaintiffs' claim (whether or not one describes it as constitutional issue) is there were impediments which hampered or prevented West and Tidball from timely filing their paperwork.

The court was concerned about some of the circumstances surrounding the filing of the papers. Its questions included: Why were the doors to the building housing the Wisconsin Elections Commission locked? The court is troubled that the very agency tasked with monitoring elections would have its doors locked the very day that nomination papers were due no later than 5:00 p.m. The fact that it was the owner of the building who locked the doors for COVID-19 reasons does not change the fact the door was locked. Ms. Ruhland in her affidavit noted that because the doors were locked she had to return to her car to make a phone call. Apparently Ms. Ruhland had been in contact and knew the building would be locked. Her affidavit claims she was told she would have to obtain the phone number on the outside doors of the building and call the Commission to have the doors unlocked. She claimed the Commission general compliance helpline number she was using was not the same phone number needed to contact the Commission office to open the doors. If the doors had not been locked, she could have walked right in. It raises the speculation that but for the pandemic the nomination papers might have been timely filed. (This issue was discussed at length by Commissioner Spindell at p. 79 in the transcript.)

The Commission found that a staff member was already downstairs waiting to open the door to any candidate. The court should note that despite the locked doors other candidates had access. Mr. Willman testified another candidate arrived at approximately 4:30 p.m. and had been admitted into the building and was having her papers processed. (WEC transcript, p. 113, lines 19-22).

The court expressed other concerns including the possibility of “slow walking” to open doors or escort the candidate to the office. It noted there was a staff member who was videotaping the candidate’s representative entering the building at 5:00:14. Is this a common practice at the Wisconsin Elections Commission? Ms. Ruhland’s affidavit claims she was confronted by media

representatives and Democratic operatives. This seems plausible to the court as reference was made to the WISN 12 video showing that 27 seconds passed between Ms. Ruhland and her colleague entering the building and the elevator door closing (WEC transcript, p. 30, lines 11-15). The court further asked why the nomination papers were accepted for review if they were received late. Plaintiffs' claim this affirmative action legitimized the timely filing of the papers. This issue was addressed by the Commission, and the court agrees that the person whose job it is to accept the paperwork is not the individual who would be in a position to determine or conclude whether the papers were timely filed.

Despite the court's questions and concerns, it recognizes that under statutes, the court cannot hold a *denovo* review or substitute its opinion for those of the agency Wis. Stat. §227.57(6). Under these circumstances, the circuit court acts in the role of an appellate court reviewing the findings and orders of the administrative agency. The court can only rule on issues of law per Wis. Stat. 5.06(9).

“AFTER 5 P.M.”

The issue of law which is dispositive of the entire case is what is the definition of “not later than 5:00 p.m.” There was discussion of State ex rel. Stearns v. Zimmerman, 257 Wis. 2d 443 (1950) where the court held “if the candidate or someone on his behalf had been present in the office of the secretary of state to tender the nomination papers no later than 5 o'clock p.m. central standard time, the secretary of state would have been obliged to accept them; then if the candidate or his personal representative fails, as here, to reach the office until later than the time specific the tender comes too late. The petitioner's nomination papers were correctly rejected as not being filed within the time designated by the statute.” 257 Wis. at 446. The court recognizes that Wis. Adm

Code EL 2.05(2) now requires that the nomination papers must be in the *possession* of the Commission.

The plaintiffs argue that “not later than 5 p.m.” means up until the clock reaches 5:01 p.m. Their original complaint alleges that the Commission’s including the text “00:00” between the statutory text of “5” and “p.m.” to make the 14 seconds falling within the time period grounds to declare the West nomination papers as untimely was unconstitutional. They claim this adds a requirement to the original statutory language of the legislature. They explain if one looks at a cell phone or watch without a second hand, or digital clock, and if the instrument says 5:00 one would answer the question “what time is it” as “5 o’clock” whether it was 5 seconds, 35 seconds, or 59 seconds past 5 o’clock. The argument is the correct answer would be “5 o’clock” up until when the measurement device reads 5:01.

The court discussed its reasoning on the record. It disagrees with the argument of the plaintiffs and agrees with the analysis of the Commission. The court finds that, basically, 5 o’clock is 5 o’clock. The court believes at the time a grandfather clock rings out 5 times is the moment it is 5 p.m. Any time after that is precisely that: after 5 p.m. The court used the analogy of midnight. There is significant difference between 11:59:59 p.m. and one second after midnight. The passage of a second after midnight confers an entirely new day.

The court listed other examples, but will list one more example: the ability to buy liquor. The law in Wisconsin is that no one can purchase alcohol in Wisconsin after 9 p.m. The court’s own personal experience is that at some stores the hour, minute and second hand appear on the check out screen. When it is one second after nine, the alcohol cannot be scanned thereby preventing its purchase. In other words, any time after 9 o’clock means it is later than 9 o’clock and alcohol cannot be purchased, even at 9:00:59.

## CONCLUSION

The court is attempting, given the time constraints, to follow the dictates of §5.06(9) and “summarily hear and determine all contested issues of law.” The dispositive issue of law is the interpretation of “after 5 p.m.” The court concurs with the finding of the Commission based on its own understanding and experience.

While it may appear to be appropriate for a fact finding hearing, this court, in acting in the pseudo appellate court capacity, cannot relitigate the factual findings of the Wisconsin Elections Commission. Those findings include that the West representatives entered the Wisconsin Elections Commission building after 5 o’clock and were not restricted in anyway.

In having to accept the factual findings of the Commission, and in its own finding of law that any amount of time after 5 p.m. is the equivalent to being later than 5 p.m., the court concludes that the Wisconsin Elections Commission did not violate any constitutional issues. The court must concur with the Commission’s findings that the nomination papers of Mr. West and Ms. Tidball were not timely filed.

Because the court finds the nomination papers were late, West and Tidball cannot be placed on the ballot. This is unfortunate, because the individuals signing the nomination papers have the right to expect their candidate will be placed on the ballot. The election laws are not meant to discourage people from getting on the ballot in any election in any municipality. The process should be to encourage more candidates providing more options for the voters *provided* the candidates properly follow the laws pertaining to elections. The statutes that regulate nomination papers are mandatory, not directory. There is a need for consistency in how election laws are applied, and as Commissioner Knudson stated consistency requires treating all candidates the same

“regardless of their party, regardless of their color, or any other characteristic of the candidate.” (Transcript, p. 127, lines 15-18). The unfortunate fact is this dispute could have been avoided had the West representatives simply arrived earlier. The court is aware the signatures were gathered in roughly two days, but it has also been told Ms. Ruhland knew of the statutory requirement under §8.20(8)(am) and had been in contact with the Commission that day. In effect, plaintiffs “dropped the ball” by not ensuring they would be able to timely file the nomination papers. As the Commission staff explained, “Candidates need to plan ahead and arrive in time to get into the building and file the papers in the office of the Commission prior to the deadline, there are no exceptions under the statute or the relevant case law.”

As to the plaintiffs’ complaint, the request for a declaratory judgment is **DENIED** and their request for an injunction is **DENIED**. The plaintiffs’ request for a temporary restraining order is **DENIED**.