



Wisconsin Elections Commission

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May 18, 2021

Virginia Pease
466 Lac La Belle Drive
Oconomowoc, WI 53066

Lori Schiek (Boyer)/Tim Clark
Village of Lac La Belle
P.O. Box 443
Oconomowoc, WI 53066

Sent via email to:

ginnypease1@gmail.com; ljbvllb@yahoo.com; hdelamora@vonbriesen.com;

Re: In the Matter of: Virginia Pease v. Lori Boyer et al. (Case No.: EL 21-06)

Dear Ms. Pease, Mr. Clark, and Ms. Schiek:

This letter is in response to the verified complaint submitted by Ginny Pease (“Complainant”) to the Wisconsin Elections Commission (“Commission”), which was filed in reply to actions taken by election officials during and leading up to the January of 2021 Village of Lac La Belle Caucus and 2021 Spring Election. The complaint alleges that the election officials violated Pease and others’ rights under Wis. Stat. §§ 6.02(1), 8.05(1)(a), and 10.01(2)(a) pertaining to voter residency, caucus planning, and notice processes for electoral activity in the village.

Complaints “...shall set forth such facts as are within the knowledge of the complainant to show probable cause to believe that a violation of law or abuse of discretion has occurred or will occur.” Wis. Stat. § 5.06(1). Probable cause is defined in Wis. Admin. Code § EL 20.02(4) to mean “the facts and reasonable inferences that together are sufficient to justify a reasonable, prudent person, acting with caution, to believe that the matter asserted is probably true.”

The Commission has reviewed the complaint/reply, the Village of Lac La Belle’s (“Respondents”) response, and all supporting documentation. The Commission provides the following analysis and decision. In short, the Commission finds that the Complainants did show probable cause to believe that a violation of law or abuse of discretion occurred with relation to two of the three complaints. Specifically, the Commission has determined that the Respondents improperly set the date for the January of 2021 Caucus and did not timely post a type A notice for the Spring of 2021 Election. The residency complaint is dismissed due to insufficient evidence in the record to prove a violation of law or abuse of discretion.

Commissioners

Ann S. Jacobs, chair | Marge Bostelmann | Julie M. Glancey | Dean Knudson | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

Complaint Allegations and Response

Ms. Pease filed a complaint with the Commission pursuant to Wis. Stat. § 5.06 alleging that Village of Lac La Belle officials violated applicable sections of Wisconsin Statutes, Chapters 6, 8, and 10.

Specifically, the complaint first alleges a Wis. Stat. § 6.02(1) residency violation, arguing that village officials improperly rendered a decision that two specific electors had properly voted in Lac La Belle. The two electors had recently purchased a home within the voting district and razed it for the purposes of building a new residence. These electors had not been issued a certificate of occupancy at that time, but they did receive permission from the village to move personal belongings into a detached garage. The electors self-registered at the new address in MyVote during August of 2020, and the Respondents were not engaged as part of the registration process.

The second complaint alleges that the Respondents acted contrary to applicable election laws or abused their discretion in administering applicable election laws by allowing the governing body to convene in November of 2020 to set the date for the upcoming caucus in January of 2021. The Respondents argue that Wis. Stat. § 8.05(1)(a) mandates that governing body shall set the caucus date between December 1st and January 1st. The Respondents counter that the date was set at a properly noticed public meeting of the governing body, and the consideration of a caucus date was on the publicly posted agenda. This process was conducted early (November, 2020) in accordance with the village's past practices, and the decision was also meant to show deference to ongoing COVID concerns and recent executive orders promoting the expansion of COVID-related accommodations.

The final complaint raises alleged deficiencies under the requirements of Wis. Stat. § 10.01(2)(a). Specifically, the Complainant provides that the village clerk "...did not publish [the] Type A notice of the Spring Primary and the Spring Election on the 4th Tuesday in November" and "...a Type A notice was posted to the Village sign board; that notice is dated December 13, 2020." The Respondents largely concede this violation and offer mitigating circumstances with relation to the error.

Commission Authority and Role in Resolving Complaints Filed Under Wis. Stat. § 5.06

Under Wis. Stat. §§ 5.05(1)(e) and 5.06(6), the Commission is provided with the inherent, general, and specific authority to consider the submissions of the parties to a complaint and to issue findings. In instances where no material facts appear to be in dispute, the Commission may summarily issue a decision and provide that decision to the affected parties. This letter serves as the Commission's final decision regarding the issues raised by Ms. Pease's complaint.

The Commission's role in resolving verified complaints filed under Wis. Stat. § 5.06, which challenge the decisions or actions of local election officials, is to determine whether a local official acted contrary to applicable election laws or abused their discretion in administering applicable election laws.

Commission Findings

Pre-Analysis of Respondents' Motion to Dismiss

Counsel for the village first raises procedural questions as to whether the Complainant demonstrated that Lac La Belle officials were non-compliant with any discretionary or ministerial duty, and whether the complaint was timely filed under Wis. Stat. § 5.06(3). The courts have been slowly diminishing the protections of discretionary immunity for government officials for years, typically as that immunity relates to civil liability, and there are questions presented here as to whether the obligations were truly ministerial in nature (*i.e.* did the processes involve a specific mandate that is sufficiently detailed, leaving no room for discretion). An analysis of discretionary and ministerial duties is inconsequential to the instant matter.

The Complainant brought an administrative action against the Respondents under the provisions of Wis. Stat. § 5.06 alleging specific violations of applicable elections statutes. Wisconsin Statute § 5.06(1) authorizes the filing of a complaint where the complainant has reason to believe that the conduct of election officials is contrary to law, or the official has abused the discretion vested in him or her by law with respect to any such matter. The complaint process is non-judicial and administrative in nature. It allows for the consideration of both discretionary and/or ministerial violations that fall within Chapters 5-10 and 12 of the Wisconsin Statutes. The Complainant's allegations are reasonable and raise sufficient evidentiary support to warrant further analysis without immediate dismissal.

As to the timeliness challenge raised by the Respondents, Wis. Stat. § 5.06(3) provides:

A complaint under this section shall be filed promptly so as not to prejudice the rights of any other party. In no case may a complaint relating to nominations, qualifications of candidates or ballot preparation be filed later than 10 days after the complainant knew or should have known that a violation of law or abuse of discretion occurred or was proposed to occur.

This provision of statute is designed to expedite processes related to ballot access challenges. It does not place a "statute of limitation" on other complaint types appropriately raised under Wis. Stat. § 5.06. Thus, the complaint was timely filed in accordance with statute. The Respondents' motion to dismiss is, therefore, denied on all grounds.

Residency Considerations

Wisconsin Statute § 6.10(1) states "the residence of a person in the place where the person's habitation is fixed, without any present intent to move, and to which, when absent, the person intends to return." The Complainant also correctly asserts that statute requires 28 days of residency to establish a voting presence in the new location. Wis. Stat. § 6.02(1). However, residency is an extremely complicated factor to establish and/or dispute.

Many considerations or circumstances work in conjunction to establish an elector's lawful residency, even where that residency may otherwise appear dubious. These factors include an intent to return to a previous location, overseas voting, homeless voting processes, transient workers, caregivers living with another party, and other similarly-situated individuals whose residency might be viewed as temporarily in flux, but lawful nonetheless. The Commission has

also consistently held that challenges to residency require demonstrable evidentiary support, as it is challenging to prove that a person is not a legitimate resident of the voting district.

In this instance, the voters in question were not a party to this complaint. The record, therefore, lacks the perspective of the very parties that the Respondents are said to have improperly determined to be residents. These electors self-registered in the MyVote portal, without the assistance of the Respondents, and it would have been necessary to provide proof of residency. Furthermore, the electors would have been required to make an assertion during the registration process that all the information was true. Those considerations combine with the overall lack of evidentiary support in the record to overcome the Complainant's contention that these electors were not lawful residents of the Village of Lac La Belle. Based upon the above review and analysis, the Commission finds that the complaints do not raise probable cause to believe that a violation of law or abuse of discretion has occurred with regard to this residency determination.

Caucus Planning Requirements

Wisconsin Statute § 8.05(1)(a) provides that:

When nomination papers are not used, there shall be a caucus to nominate candidates. The governing body shall between December 1 and January 1 decide the date of the caucus. The date of the caucus may be established between January 2 and January 21. When possible, preference should be given to having the caucus on January 21.

The parties do not dispute that the governing body in the village set the date of the caucus during its November of 2020 meeting. Chapter 8 of the Wisconsin Statutes provides a clear directive that the governing body shall set the caucus date between December 1st and January 1st. It is not inconceivable to understand the Respondents' mitigating arguments as to why they met early to set the caucus date. The pandemic is an ever-evolving situation, requiring election officials to constantly adapt. It may also be beneficial to set a date early so that the citizenry and public officials of the village have more time to prepare.

None of this defeats the statutory obligation to meet and set the caucus date during a specific time of the year. The Respondents even admit to making a mistake when this issue was left off the December of 2019 meeting agenda for the governing body as well. For this reason, the Commission has determined that probable cause exists to believe that a violation of law or abuse of discretion has occurred in relation to the village's efforts to set a caucus date. It is hereby ordered that the Respondents conform all future activity with the requirements of Wis. Stat. § 8.05(1)(a) and set the caucus date during the appropriate timeframe. This process also requires a vote of the collective governing body to pass a motion approving the selected caucus date.

The statute gives preference to a January 21st date, but clearly gives the governing body discretion to set the date between January 2nd and January 21st. As such, the actions of the Respondents in selecting a date were not improper, and need not be considered further, even if the process of approving the date was improper.

Spring Election Notices

Wisconsin Statute § 8.05(1)(a) provides:

Type A — The type A notice shall be entitled “Notice of Election”. The notice shall list the date of the election. For an election to fill any office, the notice shall list each office to be filled and the incumbent for each; the length of the term of each office and the expiration date of the term; and the beginning date for circulating, the place and deadline for filing declarations of candidacy and nomination papers, where required, for each office listed and the date of the primary election, if required. If a redistricting since the most recent election makes the description of the incumbent's office of limited usefulness, the notice may contain supplementary information describing the territory in which an election is to be held. For an election at which a referendum is held, the notice shall contain the text of the question and a statement specifying where a copy of the resolution directing submission of the question may be obtained. Whenever an election is noticed to be held within a district, the notice shall contain a statement specifying where information concerning district boundaries may be obtained. The type A notice shall be published once by the county clerk of each county for each national, state or county election, and once by the clerk of each municipality or special purpose district for each municipal or special purpose district election, at the times designated in s. 10.06.

Additionally, Wisconsin Statute § 10.06(3)(a) requires:

On the 4th Tuesday in November preceding a spring municipal election the municipal clerk shall publish one type A notice for municipal offices. Publication shall be on the following day if Tuesday is a holiday.

There is significant discussion by the parties in their submissions analyzing the sufficiency of the village's three posting locations, and other non-essential facts, for which specific violations of election law are not alleged. These considerations are inconsequential to the allegations of a Chapter 10 violation.

It is undisputed in the record that the type A notice was not timely posted. The clerk acknowledges the flurry of activity following the November 2020 General Election, and that the notice did not get posted until December. The Commission, therefore, determines that probable cause exists to believe that a violation of law or abuse of discretion has occurred in relation to the village's delayed posting of the type A notice. It is ordered that the village conform all future posting of elections notices with the requirements of Chapter 10 of the Wisconsin Statutes.

Commission Decision

Based upon the above review and analysis, the Commission finds probable cause to believe that a violation of law or abuse of discretion has occurred with regard to the village's deficiencies in determining a caucus date and noticing the Spring of 2021 Election. The Commission does not

find probable cause to believe a violation of law or abuse of discretion has occurred with regard to the residency of Michael and Lara Anderson are hereby dismissed.

Right to Appeal – Circuit Court

This letter constitutes the Commission's resolution of this complaint. Wis. Stat. § 5.06(2). Pursuant to Wis. Stat. § 5.06(8), any aggrieved party may appeal this decision to circuit court no later than 30 days after the issuance of this decision.

If any of the parties should have questions about this letter or the Commission's decision, please feel free to contact me.

Sincerely,

COMMISSION

A handwritten signature in black ink that reads "Meagan R.M. Wolfe". The signature is written in a cursive style with a large, stylized 'M' at the beginning.

Meagan Wolfe
Administrator

cc: Commission Members