

August 16, 2024

VIA EMAIL

Wisconsin Elections Commission
201 West Washington Avenue, 2nd Floor
Madison, Wisconsin 53703
Email: elections@wisconsin.gov

RE: *In the Matter of Wisconsin Green Party Candidacy with respect to The November 5, 2024 Election for President and Vice President of the United States*

Dear Wisconsin Elections Commission:

Enclosed please find a copy of a verified complaint (“Complaint”) on behalf of David Strange (“Complainant”) as Deputy Operations Director – Wisconsin for the Democratic National Committee.

Yesterday afternoon, the Commission dismissed *Strange v. Wisconsin Green Party* – EL 24-82, without prejudice, reasoning that it “is not sufficient as to form because it does not name an election official as a respondent, which is a requirement of Wis. Stat. § 5.06(1)[.]” We appreciate the Commission having promptly addressed the complaint filed in EL 24-82, consistent with the Wisconsin Supreme Court’s recognition that the governing deadlines are “extremely short[.]” *Hawkins v. Wis. Elections Comm’n*, 2020 WI 75, ¶15, n.1, 393 Wis. 2d 629, 948 N.W.2d 877 (per curiam).

In light of the grounds identified by Administrator Wolfe for the Commission’s dismissal of the complaint in EL 24-82 without prejudice, Complainant tenders the new Complaint enclosed here to remedy the defect identified in Administrator Wolfe’s letter by naming as Respondents the Commission, its Administrator, and each of the Commissioners. We request that the Commission take up this new Complaint immediately and determine its justiciability by the Commission promptly, such that if the Commission does not believe it has the authority to adjudicate this matter, it immediately dismisses the Complaint so that Complainant may pursue his claims in the circuit court. Please do not hesitate to contact us if the Commission needs anything further.

Best regards,

STAFFORD ROSENBAUM LLP



David P. Hollander

cc: Wisconsin Green Party (via US Mail)

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STATE OF WISCONSIN
WISCONSIN ELECTIONS COMMISSION

IN THE MATTER OF:
WISCONSIN GREEN PARTY CANDIDACY WITH
RESPECT TO THE NOVEMBER 5, 2024 ELECTION FOR
PRESIDENT AND VICE PRESIDENT OF THE UNITED STATES

DAVID STRANGE, INDIVIDUALLY AND AS
DEPUTY OPERATIONS DIRECTOR – WISCONSIN
FOR THE DEMOCRATIC NATIONAL COMMITTEE,
1437 N. Jefferson Street, Unit 308
Milwaukee, WI 53202,

Complainant,

v.

Case No. _____

WISCONSIN ELECTIONS COMMISSION (WEC);
MEAGAN WOLFE, in her official capacity as
Administrator of WEC; DON MILLIS,
ROBERT SPINDELL, JR., MARGE BOSTELMANN,
ANN JACOBS, MARK THOMSEN, and
CARRIE RIEPL, in their official capacity as
Commissioners of WEC;
201 West Washington Avenue, Second Floor,
Madison, WI 53703,

and

WISCONSIN GREEN PARTY,
P.O. Box 1701
Madison, WI 53701-1701,

Respondents.

VERIFIED COMPLAINT

1. This Verified Complaint is brought against the Wisconsin Green Party (“WGP”) pursuant to Wis. Stat. § 5.06, Wis. Stat. § 8.30(1), and other Wisconsin laws governing elections and election campaigns

2. WGP has purportedly attained ballot status to place candidates for the offices of President and Vice President of the United States on the ballot in the general election in Wisconsin in November 2024,¹ and it must certify its candidates to the Wisconsin Elections Commission (“WEC” or the “Commission”) no later than September 3, 2024. Wis. Stat. § 8.16(7).

3. However, WGP failed to comply with Wisconsin’s election statutes, and Wisconsin law therefore bars any WGP candidate from appearing on the ballot for president in the November 5, 2024 election. In particular, and as set forth in this Complaint, WGP is legally foreclosed under Wisconsin law from nominating any presidential electors, and therefore cannot field candidates for president and vice president who are eligible to appear on the ballot.

4. Because of the central role that presidential electors play in our presidential elections, each state has enacted laws that define who is qualified to stand as an elector, how they are selected, and the actions that they are required to take to appear on the ballot. *See, e.g.*, Wis. Stat. §§ 5.10, 7.75(1), 8.25(1), 8.18.

5. Under Wisconsin law, “[a]lthough the names of the electors do not appear on the ballot and no reference is made to them, a vote for the president and vice president named on the ballot is a vote for the electors of the candidates for whom an elector’s vote is cast.” Wis. Stat. § 5.10.

¹ *U.S. President (On The Ballot)*, Wisconsin Elections Commission, <https://elections.wi.gov/candidates/federal-candidates#4257225834-2909155364> last accessed Aug. 14, 2024)

6. Each political party's presidential electors must be selected as set forth in Wisconsin Statute section 8.18. That statute provides that specified members of each political party that seek to run a candidate in the presidential election "shall meet in the state capitol at 10 a.m. on the first Tuesday in October of each year in which there is a presidential election" to nominate presidential electors for that political party. Wis. Stat. § 8.18(1). The statutorily prescribed members who must meet are: (i) "[c]andidates for the senate and assembly nominated by each political party at the primary"; (ii) "the state officers" of each political party; and (iii) "the holdover state senators of each political party[.]" *Id.*

7. Once those presidential electors are chosen in October, although the names of the candidates for president and vice president appear on the general election ballot, a vote for presidential and vice presidential candidates is, in actuality, a vote for those candidates' designated presidential electors. Wis. Stat. § 5.10. Consequently, if a candidate has no qualified presidential electors properly appointed in accordance with Wisconsin law, that candidate cannot qualify for the presidential ballot in Wisconsin. *See id.*

8. It has long been clear that WGP had no individual in the latter two categories who could be eligible to select presidential electors. However, WGP could have secured a candidate for a legislative seat with as few as 200 write-in votes. Wis. Stat. §§ 8.16(2), 8.15(6).

9. The August 13, 2024 primary was the last opportunity for WGP to nominate a candidate for Wisconsin Senate or Assembly before the 2024 general election. But, WGP failed to nominate any candidates for Wisconsin Senate or Assembly,² and a sufficient number of electors did not nominate a candidate by writing in any WGP candidate for Wisconsin Senate or Assembly, according to the requirements of Wisconsin Statute section 8.16(2).

² See *2024 Partisan Primary Candidates on Ballot*, Wisconsin Elections Commission, <https://elections.wi.gov/media/26866/download> (last accessed Aug. 14, 2024)

10. Thus, WGP conclusively has no candidates for Wisconsin Senate or Assembly in the general election, nor are there currently any WGP state officeholders or holdover senators. Consequently, no individual will be authorized under Wisconsin Statute section 8.18 to nominate presidential electors to represent WGP when the nomination meeting is held on the first Tuesday of October.

11. WGP's presidential ticket is therefore ineligible and unqualified to appear on the ballot for the November 2024 general election.

12. As set forth below, this Complaint is brought promptly after Complainant's claim became ripe, well within "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." Wis. Stat. § 5.06(3).³ Accordingly, the Wisconsin Elections Commission should promptly adjudicate this Complaint exclude WGP from the November 2024 ballot.

PARTIES

13. David Strange ("Complainant") is a qualified Wisconsin elector, residing at 1437 North Jefferson Street, Unit 308, Milwaukee, Wisconsin 53202.

14. Complainant brings this Complaint individually and in his capacity as Deputy Operations Director – Wisconsin for the Democratic National Committee.

15. Under the Charter and Bylaws of the Democratic Party of the United States, the "Democratic National Committee shall have general responsibility for the affairs of the

³ Complainant brought a Complaint on August 14, 2024, raising virtually identical claims to those asserted in this Complaint, and seeking the same relief. *See Strange v. Wisconsin Green Party* – EL 24-82. On August 15, 2024, WEC Administrator Meagan Wolfe dismissed that Complaint without prejudice, indicating that the Complaint was "timely and states allegations that could lead to a finding of probable cause," but that it "does not name an election official as a respondent, which is a requirement of Wis. Stat. § 5.06(1)[.]" Accordingly, Complainant filed this Complaint the very next day after the dismissal, this time naming the WEC Respondents as Respondents.

Democratic Party between National Conventions,” including, *inter alia*, “conducting the Party’s Presidential campaign[.]” Article III, § (1)(b).⁴

16. Complainant is an employee of the Democratic National Committee and is working to elect Kamala Harris and Timothy Walz as President and Vice President of the United States, respectively.

17. Complainant has contributed his time and money to electing Kamala Harris and Timothy Walz.

18. Respondent Wisconsin Elections Commission is the agency charged with “the responsibility for the administration of chs. 5 to 10 and 12 [of the Wisconsin statutes] and other laws relating to elections and election campaigns[.]” Wis. Stat. § 5.05(1).

19. Respondent Meagan Wolfe (“Wolfe”) is sued in her official capacity as WEC Administrator. She is the chief election officer of the State of Wisconsin. Wis. Stat. § 5.05(3g).

20. Respondents Don Millis, Robert Spindell, Jr., Marge Bostelmann, Ann Jacobs, Mark Thomsen, and Carrie Riepl (“Commissioners” and, with Wolfe, the “WEC Respondents”) are sued in their official capacities as WEC Commissioners. WEC’s commissioners have key roles in enforcing state election laws. Wis. Stat. § 5.05(2m).

21. The WEC Respondents are each an “election official,” Wis. Stat. § 5.06(1), and they are each “charged with [...] duties relating to the conduct of an election.” Wis. Stat. § 5.02(4e).

⁴ See <https://democrats.org/wp-content/uploads/2022/09/DNC-Charter-Bylaws-09.10.1022-1.pdf> (last accessed Aug. 14, 2024).

22. Respondent WGP is “a not for profit, non-stock Wisconsin Corporation”⁵ that is “part of the international Green movement for grassroots democracy, social and economic justice, nonviolence, and ecology.”⁶

23. WGP may endorse a candidate for public office “if the candidate has publicly stated acceptance of [WGP’s] adopted Key Values, Platform, and other adopted policies regarding endorsement, and is a Member in Good Standing.”⁷

TIMING OF THIS COMPLAINT

24. As the Wisconsin Supreme Court has recognized that “the time between the date the Commission makes its rulings on ballot access and the date that ballots must be sent to voters is extremely short” and a court must “decide the matter on an extremely expedited basis.” *Hawkins v. Wis. Elections Comm’n*, 2020 WI 75, ¶5, n.1, 393 Wis. 2d 629, 948 N.W.2d 877 (per curiam).

25. Accordingly, Complainant urges the Commission to decide this Complaint as soon as possible.

26. The Commission has frequently resolved ballot access challenges in a week or less.

27. For example, the Commission has recently decided challenges to Democratic, Republican, and independent candidates at meetings held *six* days after the challenges were filed. *See, e.g., Janel Brandtjen v. Matthew Brown* (Case No. EL 22-52); *Jordan Moskowitz v. Rustin Provance* (Case No. EL 22-48); *Bryan Lee Complaint v. Amber Provance* (Case No. EL 22-42); *Dylan Anderson v. David Kunelius II* (Case No. EL 22-49); *Jordan Moskowitz v. Jacob*

⁵ Bylaws of the Wisconsin Green Party, art. 1, § 1, Wisconsin Green Party, available at <https://www.wisconsinngreenparty.org/bylaws> (last accessed Aug. 14, 2024).

⁶ Platform of the Wisconsin Green Party, Wisconsin Green Party, available at <https://www.wisconsinngreenparty.org/platform> (last accessed Aug. 14, 2024).

⁷ Bylaws of the Wisconsin Green Party, art. 9, § 2, Wisconsin Green Party, available at <https://www.wisconsinngreenparty.org/bylaws> (last accessed Aug. 14, 2024).

VandenPlas (Case No. EL 22-45); *Cathy Zeuske v. Shaun Clarmont* (Case No. EL 22-44); *Cathy Zeuske v. Paul Boucher* (Case No. EL 22-43); *Eric LaGesse v. Mark Trofimchuck* (Case No. EL 22-50); *Morgan Hess v. Micah Behnke* (Case No. EL 22-51); *Jane Bernstein v. Timothy Michels* (Case No. EL 22-46); *Trevor Ford v. Patty Schachtner* (Case No. EL 22-47); *Morgan Hess v. Paul Melotik* (Case No. EL 23-44).⁸

28. Indeed, in June of this year, the Commission adjudicated twelve ballot access challenges a mere *seven* days after the complaints were filed.⁹

29. Complainant filed this Complaint at the first possible opportunity to do so.¹⁰ “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.” Wis. Stat. § 5.06(3). Complainant filed this Complaint immediately after it became clear that WGP had failed to qualify a single individual to nominate the party’s presidential electors.

30. WGP had two opportunities to properly nominate a state legislative candidate.

⁸ *Open Session Minutes*, Wisconsin Elections Commission (June 10, 2022), <https://elections.wi.gov/sites/default/files/documents/Open%20Session%20Minutes%20June%2010%2C%202022%20%28Approved%29.pdf>; *Special Meeting*, Wisconsin Elections Commission (June 1, 2023), <https://elections.wi.gov/event/612023-special-meeting>

⁹ *Ballot Access Meetings*, <https://elections.wi.gov/event/612023-special-meeting> (last accessed Aug. 14, 2024).

¹⁰ Further, Complainant was not required to file this Complaint sooner. To be sure, the Commission accepted challenges to independent candidates last week, on August 9, 2024. But those challenges were required to be filed by August 9 by the provision of the Commission’s Administrative Code stating: “Any challenge to the sufficiency of a nomination paper shall be filed within 3 calendar days after the filing deadline for the challenged nomination papers.” Wis. Admin. Code EL § 2.07(1). Unlike the challenges required to be filed by August 9, this Complaint does not allege a challenge to “the sufficiency of a nomination paper,” *id.*, and so the time limit set forth in EL § 2.07(1) does not apply.

31. Specifically, a WGP candidate for Wisconsin Senate or Assembly could have filed the requisite number of qualifying elector signatures and a declaration of candidacy with the Commission by 5 p.m. on June 1, 2024. Wis. Stat. § 8.15(1).

32. Alternatively, WGP could have supported a write-in candidate for Wisconsin Senate or Assembly at the 2024 partisan primary. Wis. Stat. § 8.16(2).

33. WGP could have secured a candidate for the Wisconsin Senate with as few as 400 signatures, Wisconsin Statute section 8.15(6)(c), or a candidate for Wisconsin Assembly with as few as 200 signatures, Wisconsin Statute section 8.15(6)(d).

34. Likewise, WGP could have secured a candidate for the Wisconsin Senate with as few as 400 write-in votes or a candidate for the Wisconsin Assembly with as few as 200 write-in votes at the August 13, 2024 primary. Wis. Stat. § 8.16(2).

35. Had WGP done so, its presidential electors could have been selected by WGP's "[c]andidates for the senate and assembly nominated by each political party at the primary." Wis. Stat. § 8.18(1).

36. Having chosen not to do so, however, WGP is now legally foreclosed under Wisconsin law from nominating any presidential electors.

37. Accordingly, Complainant could not file a complaint until August 14, 2024, as he could not have known that WGP would fail to qualify a single state legislative candidate for the ballot. A "claim is not ripe if it rests on contingent future events that may not occur as anticipated, or indeed may not occur at all." *Int. of C. G.*, 2021 WI App 11, ¶29 n.7, 396 Wis. 2d 105, 955 N.W.2d 443, *aff'd*, 2022 WI 60, 403 Wis. 2d 229, 976 N.W.2d 318 (internal quotations omitted). When the resolution of a claim "depends on hypothetical or future facts, [it is] not ripe for

adjudication and will not be addressed by this court.” *Tammi v. Porsche Cars N. Am., Inc.*, 2009 WI 83, ¶3, 320 Wis. 2d 45, 768 N.W.2d 783 (internal quotations omitted).

38. Accordingly, Complainant respectfully requests that the Commission take up and deny WGP’s request for ballot status as soon as possible.

FACTUAL ALLEGATIONS

I. Background on the Law Governing Presidential Electors.

A. Relevant Federal Law.

39. The United States Constitution provides that the president and vice president are elected by a majority vote of the presidential electors of the 50 states and the District of Columbia. U.S. Const., art. II, § 1, cl. 3.

40. Those presidential electors are appointed pursuant to the laws of each state. *Id.* at cl. 2.

41. Ultimately, each state’s Governor “shall issue a certificate of ascertainment of appointment of electors, *under and in pursuance of the laws of such State* providing for such appointment and ascertainment enacted prior to election day.” 3 U.S.C. § 5 (emphasis added).

B. Relevant Wisconsin Law.

42. In Wisconsin, the slate of presidential electors representing each candidate whose names will appear on the ballot are nominated through specific procedures prior to each presidential election. *See* Wis. Stat. §§ 8.18, 8.185, 8.20.

43. Once the slate of presidential electors representing each candidate has been chosen, although the names of the presidential electors “do not appear on the ballot and no reference is made to them, a vote for the president and vice president named on the ballot is a vote for the electors of the candidates for whom an elector’s vote is cast.” Wis. Stat. § 5.10. Thus, under

Wisconsin's election statutes, "all references to the presidential election, the casting of votes and the canvassing of votes for president, or for president and vice president, mean votes for them through their pledged presidential electors." *Id.*

44. Accordingly, after the election:

The presidential electors, when convened, shall vote by ballot for that person for president and that person for vice president who are, respectively, the candidates of the political party which nominated them under s. 8.18, the candidates whose names appeared on the nomination papers filed under s. 8.20, or the candidate or candidates who filed their names under s. 8.185 (2)[.]

Wis. Stat. § 7.75(2).

II. WGP's Avenues to Select Presidential Electors.

45. Under Wisconsin Statute section 7.75(2), the statutes contemplate only three types of presidential electors, who each "shall vote" for certain candidates, depending on the process by which they were elected: (1) presidential electors nominated by a political party under section 8.18; (2) presidential electors supporting an independent candidate under section 8.20; and (3) presidential electors supporting a write-in candidate under section 8.185(2).

46. This Complaint addresses each type of presidential elector in turn.

A. Wisconsin Statute Section 8.18: WGP Failed to Comply With the Political Party Procedure For Selecting Presidential Electors.

47. Political parties in Wisconsin qualify for a party column on the ballot under Wisconsin Statute section 5.62. *See* Wis. Stat. § 5.02(16m). Once parties qualify for a party column, they must nominate their presidential electors through the processes laid out in Wisconsin Statute section 8.18.

48. Thus, to secure ballot access for the party's presidential and vice presidential candidates, all political parties, including WGP, must both qualify through Wisconsin Statute section 5.62 and comply with Wisconsin Statute section 8.18.

49. Although WGP qualified through Wisconsin Statute section 5.62, it failed to comply with section 8.18.

i. Compliance with Wisconsin Statute Section 5.62.

50. This Complaint involves WGP's attempt to qualify for ballot access through Wisconsin Statute section 5.62(1)(b).¹¹

51. Specifically, a political organization that was listed as "independent" at the last general election and whose candidate for any statewide office in that election received at least 1% of the total votes cast for that office is entitled to a separate column or row on the primary ballot if the organization files a petition with the Commission by 5 p.m. on April 1 of an election year. Wis. Stat. § 5.62(1)(b).

52. In 2022, Sharyl McFarland, a candidate affiliated with WGP, gained ballot access as an independent candidate for Wisconsin Secretary of State. Ms. McFarland received 1.58% of the total statewide vote in the Secretary of State race.¹²

53. Based solely upon the votes cast for Ms. McFarland, WGP petitioned the Commission in 2024 to obtain status as a recognized political party under Wisconsin law.

¹¹ Alternatively, a political organization may submit a petition to the Commission with 10,000 signatures, at least 1,000 of which are from Wisconsin electors residing within each of Wisconsin's eight congressional districts. Such a petition must be filed by 5 p.m. on April 1 of an election year. Wis. Stat. § 5.62(2)(a). At least one other party has used this procedure. *See, e.g.*, Molly Beck and Jessie Opoien, 'No Labels' party has enough signatures for ballot access in Wisconsin, Milwaukee Journal Sentinel <https://www.jsonline.com/story/news/politics/elections/2024/03/28/no-labels-party-says-it-has-enough-signatures-for-wisconsin-ballot/73135485007/> (last accessed Aug. 14, 2024).

¹² *Ballot Status History—Wisconsin Green Party*, GPUS Elections Database, <https://www.greenpartyus.org/ballot-status-history/wisconsin/> (last accessed Aug. 14, 2024); Sarah Lehr, *Wisconsin Green Party clears hurdle to appear on ballot in 2024*, Wisconsin Public Radio (Nov. 30, 2022), <https://www.wpr.org/politics/wisconsin-green-party-election-ballot-2024> (last accessed Aug. 14, 2024).

54. The Commission accepted the petition and granted WGP ballot access status as a political party in the 2024 general election for president and vice president.¹³

55. Upon information and belief, WGP purports to be a recognized political party as a result of the Commission's acceptance of WGP's letter requesting that status.

ii. Compliance with Wisconsin Statute Section 8.18.

56. Wisconsin law dictates how a political party with ballot status selects its presidential electors:

(1) Candidates for the senate and assembly nominated by each political party at the primary, the state officers¹⁴ and the holdover state senators of each political party shall meet in the state capitol at 10 a.m. on the first Tuesday in October of each year in which there is a presidential election.

(2) The purpose of the convention is to nominate one presidential elector from each congressional district and 2 electors from the state at large. The names of the nominees shall be certified immediately by the chairperson of the state committee of each party to the chairperson of the commission.

Wis. Stat. § 8.18.

57. Pursuant to Wisconsin Statute section 8.18, the Commission has scheduled a 10:00 a.m. "Presidential Electors Nomination Meeting" on October 1, 2024, at the State Capitol.¹⁵

58. Only the enumerated party representatives—namely, "[c]andidates for the senate and assembly nominated by each political party at the primary, the state officers and the holdover state senators of each political party"—may select the party's electors. Wis. Stat. § 8.18(1).

¹³ *U.S. President (On The Ballot)*, Wisconsin Elections Commission, <https://elections.wi.gov/candidates/federal-candidates#4257225834-2909155364> (last accessed Aug. 14, 2024).

¹⁴ The term "state office" is defined in Wis. Stat. § 5.02(23) as "the offices of governor, lieutenant governor, secretary of state, state treasurer, attorney general, state superintendent, justice of the supreme court, court of appeals judge, circuit court judge, state senator, state representative to the assembly and district attorney."

¹⁵ *Presidential Elections Nomination Meeting*, Wisconsin Elections Commission, <https://elections.wi.gov/event/presidential-electors-nomination-meeting-0> (last accessed Aug. 14, 2024).

59. WGP currently does not have any state officers or holdover Wisconsin senators.

60. WGP also does not have any candidates for Wisconsin Senate or Assembly. It could have done so in two different ways.

61. **First**, WGP could have nominated candidates for Wisconsin Senate or Assembly at the 2024 partisan primary.

62. Specifically, a WGP candidate for Wisconsin Senate or Assembly would have been required to file the requisite number of qualifying elector signatures and a declaration of candidacy with the Commission by 5 p.m. on June 1, 2024. Wis. Stat. § 8.15(1).

63. To declare a candidacy, WGP could have secured a candidate for the Wisconsin Senate with as few as 400 signatures, Wis. Stat. § 8.15(6)(c), or a candidate for Wisconsin Assembly with as few as 200 signatures, Wis. Stat. § 8.15(6)(d).

64. No WGP candidate submitted the requisite number of signatures for any Wisconsin Senate or Assembly seat on or before June 1, 2024.¹⁶

65. **Second**, WGP could have supported a write-in candidate for the Wisconsin Senate or Assembly at the 2024 partisan primary. Wis. Stat. § 8.16(2).

66. To nominate by write in, WGP could have secured a candidate for the Wisconsin Senate with as few as 400 write-in votes or a candidate for the Wisconsin Assembly with as few as 200 write-in votes. Wis. Stat. § 8.16(2).

67. WGP did not secure a candidate for Wisconsin Senate or Assembly at the August 13, 2024 primary. While the canvass of the August 13, 2024 primary will not be completed until August 23, 2024, Wisconsin Statute section 7.60(5), Complainant reviewed unofficial County

¹⁶ See *2024 Partisan Primary Candidates on Ballot*, Wisconsin Elections Commission, <https://elections.wi.gov/media/26866/download> (last accessed Aug. 14, 2024).

reporting data for the August 13, 2024 election, and WGP did not come close to securing a candidate through the write-in procedure.

68. As of mid-day on August 14, 2024, 96% of all precincts in Wisconsin had reported results. The vast majority of Senate and Assembly Districts had reached 100% of precincts reporting. Of all of the districts with 100 percent reporting, the highest number of Scattering write-in votes (for any candidate) was 23 votes. Most districts received far fewer write-in votes.

69. Only seven districts do not have 100% of precincts reporting, but in each case it is clear that there will only be a handful of write-in votes:

District	Scattering (Write-In Totals)	County	% Precincts Reporting
SD10	4	Buffalo, Dunn, Pepin, Pierce, St. Croix, Trempealeau	66%
SD10	4	Buffalo, Dunn, Pepin, Pierce, St. Croix, Trempealeau	66%
AD28	1	Dunn, Pierce, St. Croix	42%
AD67	1	Barron, Chippewa, Dunn	67%
AD74	2	Ashland, Bayfield, Burnett, Douglas, Iron, Sawyer, Washburn	88%
AD92	0	Chippewa, Dunn	52%
AD93	4	Dunn, Eau Claire, Trempealeau	72%

70. As such, on information and belief, WGP did not secure any candidate for the Wisconsin Senate or Assembly at the August 13, 2024 primary.

71. Accordingly, WGP has no party representative legally authorized to participate in the Presidential Electors Nomination Meeting on October 1, 2024.

B. Wisconsin Statute Section 8.20: WGP Failed to Use The Independent Candidate Procedure For Selecting Presidential Electors.

72. WGP could have placed its preferred candidate on the November ballot by using the independent candidate procedure. Wis. Stat. § 8.20.

73. By invoking this procedure, WGP would have been required only to gather 2,000 signatures statewide. Wis. Stat. § 8.20(4).

74. Even through the independent candidate procedure, a WGP candidate could provide “the party or principles each candidate represents, if any, in 5 words or less.” Wis. Stat. § 8.20(2)(c).

75. However, the statutory deadline for nomination papers for independent presidential and vice presidential candidates was August 6, 2024. Wis. Stat. § 8.20(8)(am).

76. According to the Commission’s public database, Badger Voters, four independent candidates attempted to submit the required number of signatures before the August 6, 2024 deadline.¹⁷

77. However, no independent candidate supported by WGP filed nomination papers for president and vice president on or before August 6, 2024.

78. Accordingly, WGP did not select presidential electors under the independent candidate procedure.

¹⁷ See Badger Voters, Wisconsin Elections Commission, <https://badgervoters.wi.gov/Requests/NewRequest> (last accessed Aug. 14, 2024).

C. Wisconsin Statute Section 8.185(2): WGP Could Still Select Electors Through The Write-In Process, But Would Not Appear on the Ballot.

79. A write-in candidate would not select their presidential electors until October 22, 2024. Wis. Stat. § 8.185(2).

80. The write-in procedure under Wisconsin Statute section 8.185(2) remains available to WGP.

81. However, it is axiomatic that a write-in candidacy does not appear on the ballot. Wis. Stat. § 5.64(1)(g) (“Following under the independent candidates for each office, a space shall be provided for the elector to write in the name of a candidate of his or her choice for that office.”).

ARGUMENT

82. Under Wisconsin Statute section 8.30(1), the Commission “may refuse to place the candidate’s name on the ballot if any of the following apply:”

- (a) The nomination papers are not prepared, signed, and executed as required under this chapter.
- (b) It conclusively appears, either on the face of the nomination papers offered for filing, or by admission of the candidate or otherwise, that *the candidate is ineligible to be nominated or elected*.
- (c) The *candidate, if elected, could not qualify* for the office sought within the time allowed by law for qualification because of age, residence, or other impediment.

Id. (emphasis added).

83. As explained above, WGP has no representative legally authorized to participate in the Presidential Electors Nomination Meeting on October 1, 2024, and thus, cannot nominate presidential electors. Wis. Stat. § 8.18. As such, the Commission should exclude WGP’s ineligible and unqualified candidates from the ballot.

84. Because under Wisconsin law a “vote for the president and vice president nominations of any party *is* a vote for the electors of the nominees,” Wisconsin Statute

section 8.25(1) (emphasis added), with no qualified WGP presidential electors, there is simply no one for whom Wisconsinites can functionally cast their vote. In other words, if WGP presidential and vice presidential candidates were placed on the ballot, Wisconsinites voting for those candidates would be voting for presidential electors who do not exist.¹⁸

85. Moreover, the Wisconsin Supreme Court has recognized that “[w]hile the right to vote is an inherent or constitutional right, the right to be a candidate is not of that character. It is a political privilege which depends upon the favor of the people and this favor may be coupled with reasonable conditions for the public good.” *State ex rel. Frederick v. Zimmerman*, 254 Wis. 600, 617, 37 N.W.2d 473 (1949). Because WGP cannot nominate presidential electors, it follows that WGP’s candidate cannot appear on the ballot for president and vice president, as “the law does not permit or require that which is futile[.]” *State ex rel. Kropf v. Gilbert*, 213 Wis. 196, 251 N.W. 478, 484 (1933); *accord, e.g., Logan v. City of Two Rivers*, 227 Wis. 499, 278 N.W. 861, 863 (1938).

86. Indeed, the State of Wisconsin has “an interest, if not a duty, to protect the integrity of its political processes from frivolous or fraudulent candidacies.” *Bullock v. Carter*, 405 U.S. 134, 145 (1972). Thus, the Supreme Court of the United States has rejected the contention that “voters are entitled to cast their ballots for unqualified candidates,” explaining “that limiting the choice of candidates to those who have complied with state election law requirements is the prototypical example of a regulation that, while it affects the right to vote, is eminently

¹⁸ Additionally, placing presidential and vice presidential candidates on the ballot that do not have properly nominated presidential electors could place Wisconsin’s Governor in an impossible situation. Under federal law, once the state’s presidential electors have met, the Governor “shall issue a certificate of ascertainment of appointment of electors, *under and in pursuance of the laws of such State* providing for such appointment and ascertainment enacted prior to election day.” 3 U.S.C. § 5 (emphasis added). If WGP presidential and vice presidential candidates were included on the Wisconsin ballot in the November 2024 general election and were to receive the most votes, the Governor could not truthfully certify that those electors were lawfully selected “under and in pursuance of the laws of” Wisconsin. *Id.*

reasonable.” *Burdick v. Takushi*, 504 U.S. 428, 440 n.10 (1992). Indeed, “it is both wasteful and confusing to encumber the ballot with the names of frivolous candidates.” *Anderson v. Celebrezze*, 460 U.S. 780, 788 n.9 (1983).

87. A party does not have “a right to use the ballot itself to send a particularized message, to its candidate and to the voters” as “[b]allots serve primarily to elect candidates, not as forums for political expression.” *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 363 (1997); *see also Burdick*, 504 U.S. at 438 (The “function of the election process is to winnow out and finally reject all but the chosen candidates” and “[a]ttributing to elections a more generalized expressive function would undermine the ability of States to operate elections fairly and efficiently.”).

88. As a result, states do not place a candidate on the ballot when they cannot possibly win the election and assume the office. *See Am. Party of Texas v. White*, 415 U.S. 767, 782 (1974) (holding that states may “insist that political parties appearing on the general ballot demonstrate a significant, measurable quantum of community support”); *Lindsay v. Bowen*, 750 F.3d 1061, 1063 (9th Cir. 2014) (excluding a candidate from a ballot “based on undisputed ineligibility due to age do not limit political participation by an identifiable political group whose members share a particular viewpoint, associational preference or economic status” (internal quotations omitted)); *Hassan v. Colorado*, 495 F. App’x 947, 948–49 (10th Cir. 2012) (affirming decision to exclude a naturalized citizen, ineligible to hold office, from the presidential ballot); *Socialist Workers Party of Ill. v. Ogilvie*, 357 F. Supp. 109, 113 (N.D. Ill. 1972) (*per curiam*) (affirming Illinois’ exclusion of a thirty-one-year-old candidate from the presidential ballot).

89. For example, in a case decided by then-Judge Gorsuch, a candidate argued that even if he was “ineligible to *assume the office* of president [...] it was still an unlawful act of

discrimination for the state to deny him *a place on the ballot.*” *Hassan*, 495 F. App’x at 948 (emphasis in the original). Justice Gorsuch rejected that contention, concluding that “a state’s legitimate interest in protecting the integrity and practical functioning of the political process permits it to exclude from the ballot candidates who are constitutionally prohibited from assuming office.” *Id.*

90. These principles apply with great weight here, as WGP could have complied with Wisconsin law, but chose not to do so.

91. WGP could have encouraged and supported one or more people to collect sufficient signatures and file nomination papers with declarations of candidacy by June 1, 2024. It did not do so.

92. WGP also could have encouraged and supported one or more individuals to run as write-in candidates for nomination at the partisan primary. It did not.

93. It follows that WGP now lacks the requisite representatives to convene at the Capitol on the first Tuesday in October for the purpose of nominating presidential electors, as Wisconsin Statute section 8.18 requires. Wisconsin law provides no other means for WGP, or any other political party, to nominate presidential electors in Wisconsin; section 8.18 is the sole mechanism under Wisconsin law to nominate presidential electors. For the 2024 general election of president and vice president, it is no longer possible for WGP to comply with the requirements of section 8.18.

94. Accordingly, under Wisconsin Statute section 8.30(1), the Commission should not place the ineligible WGP candidates on the ballot for the general election in Wisconsin in November 2024.

CONCLUSION

Complainant respectfully requests that, pursuant to Wisconsin Statute section 8.30(1), the Wisconsin Elections Commission not place the ineligible and unqualified WGP candidates on the ballot for the general election in Wisconsin in November 2024.

Dated August 16, 2024.

Complaint prepared by:

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CERTIFICATE OF SERVICE

I hereby certify that on August 16, 2024, before submitting this Verified Complaint, I caused to be mailed true and correct copies of this Verified Complaint and the cover letter enclosing it on the following:

Wisconsin Green Party
P.O. Box 1701
Madison, WI 53701-1701

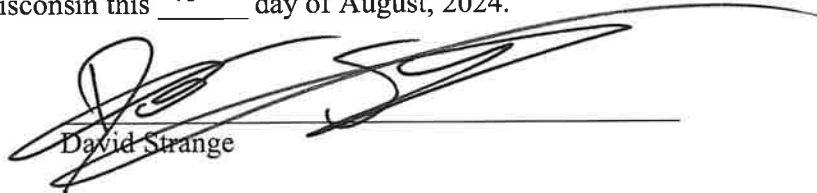
Melissa Minkoff
Registered Agent
Wisconsin Green Party, Inc.
2304 Atwood Ave., Apt 101
Madison, WI 53704

VERIFICATION

David Strange, being duly sworn, on oath, deposes and says:

1. That David Strange is a qualified elector and resident of the State of Wisconsin.
2. That David Strange has read the foregoing Verified Complaint and avers that the facts alleged therein are true and correct to the best of his knowledge, except as to those matters therein stated upon information and belief, as to which matters he believes them to be true.

Signed in Milwaukee, Wisconsin this 16th day of August, 2024.



David Strange

Subscribed and sworn to before me
this 16th day of August, 2024.

Nancy A. Haselwood
 Printed Name: Nancy A. Haselwood
 Notary Public, State of Wisconsin

My commission expires: 8-13-26

