



Wisconsin Elections Commission

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October 16, 2023

Garrett Sowle
712 McDonald Street
Oconto, WI 54153

Brittany Bickel
1210 Main Street
Oconto, WI 54153

Sent via email to: Garrett.Sowle@outlook.com, admin@cityofoconto.com

Re: In the Matter of Garrett Sowle v. Brittany Bickel (Case No.: EL 23-2)

Dear Mr. Sowle and Ms. Bickel:

This letter is in response to the verified complaint submitted by Garrett Sowle (Complainant) to the Wisconsin Elections Commission (Commission), which was filed to challenge actions taken by Brittany Bickel (Respondent) concerning the alleged premature declaration of a nomination paper deadline extension in violation of Wis. Stat. § 8.10(2)(a).

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, Ms. Bickel's response, and the Complainant's reply. The Commission provides the following analysis and decision. In short, the Commission finds that the complaint does show probable cause to believe that a violation of law occurred with relation to Respondent's announcement of an extension for nomination papers on December 30, 2022.

Complaint Allegation, Response and Reply

On January 4, 2023, the Commission received a sworn complaint filed by Garrett Sowle alleging Brittany Bickel prematurely announced a nomination paper deadline extension in violation of Wis. Stat. § 8.10(2)(a). The Complainant states that the Respondent announced the extension on December 30, 2022, that 8.10(2)(a) does not allow extensions until an incumbent fails to file nomination papers, and that the Respondent did not yet know of such failure as the deadline to file nomination papers was January 3, 2022.

On January 26, 2023, the Commission received a sworn response. The Respondent claims the deadline for an incumbent to file a Notification of Noncandidacy was December 23, 2022, and that she received such notification via email on December 28, 2022, but did not see it until December 30. The Respondent states that

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Administrator
Meagan Wolfe

on December 30 she posted notice of the filing online and announced an extension for nomination papers to January 6, 2023. The Respondent notes the City of Oconto was closed on January 2.

On February 17, the Commission received a sworn reply stating that the complaint does not concern the notification of noncandidacy but rather extension announcement date. It states that an extension cannot be announced “until the original deadline passes and the incumbent actually fails to file nomination papers.”

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 Garret Sowle’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

Alleged Violations of Wis. Stat. § 8.10(2)(a)

Wis. Stat. § 8.10(2)(a) provides the deadlines and appropriate extensions for nomination papers for a Spring Election. Wis. Stat. § 8.10(2)(a) states:

Nomination papers for offices to be filled at the spring election may be circulated no sooner than December 1 preceding the election and may be filed no later than 5 p.m. on the first Tuesday in January preceding the election, or the next day if Tuesday is a holiday, except as authorized in this paragraph. If an incumbent fails to file nomination papers and a declaration of candidacy by the time prescribed in this paragraph, all candidates for the office held by the incumbent, other than the incumbent, may file nomination papers no later than 72 hours after the latest time prescribed in this paragraph. No extension of the time for filing nomination papers applies if the incumbent files written notification with the filing officer or agency with whom nomination papers are filed for the office which the incumbent holds, no later than 5 p.m. on the 2nd Friday preceding the latest time prescribed in this paragraph for filing nomination papers, that the incumbent is not a candidate for reelection to his or her office, and the incumbent does not file nomination papers for that office within the time prescribed in this paragraph.

Per Wis. Stat. § 8.10(2)(a), the applicable deadline for filing nomination papers was January 3, 2023, and if a 72-hour extension applied, the deadline would be extended to January 6. Both parties agree that the Respondent announced a 72-hour extension on December 30, 2022, extending the deadline for nomination papers to January 6. The Complainant claims this was premature and in violation of Wis. Stat. § 8.10(2)(a) and the Respondent claims it was not premature and done in accordance with Wis. Stat. § 8.10(2)(a).

Wis. Stat. § 8.10(2)(a) holds that there can be no extension if, “the incumbent files written notification . . . no later than 5 p.m. on the 2nd Friday preceding the latest time prescribed in this paragraph for filing nomination papers, that the incumbent is not a candidate for reelection to his or her office, and the incumbent does not file

nomination papers for that office within the time prescribed in this paragraph.” The appropriate 2nd Friday was December 23 as it was the 2nd Friday before the January 3 filing deadline. The Respondent claims the incumbent gave written notice of not being a candidate for reelection on December 28, and this fact is uncontested by the Complainant. Thus, because no notice of noncandidacy was received by the deadline, an extension could apply in this case under Wis. Stat. § 8.10(2)(a).

The Complainant argues that a notice of an extension could not be given until January 3 as the statute requires an incumbent to fail to file a declaration of candidacy and nomination papers by January 3 for an extension to apply. The Respondent argues that since a Notice of Noncandidacy was filed after December 23 she was free to make and announce an extension as an extension could apply. The Complainant is correct. Despite the notice given on December 28, the incumbent could still have filed nomination papers by the January 3 deadline and legally prevented an extension from applying. Therefore, it was an error under Wis. Stat. § 8.10(2)(a) to announce an extension for nomination papers before the January 3 deadline. Though it appears that the incumbent did not later file nomination papers and that the extension did in fact apply, announcing an extension early could lead potential candidates to rely on a later filing deadline and thus fail to file on time if an incumbent decided at the last minute to file nomination papers.

In her decision-making process, the Respondent may have relied in part on language used in the calendar provided by the Wisconsin Election Commission, which stated for December 23, 2022: “[d]eadline (5:00 p.m.) for incumbents not seeking reelection to file Notification of Noncandidacy (EL-163) with the filing officer. Failure to notify will extend nomination paper deadline 72 hours for that office.” This language could be confusing to the extent that it does not explicitly state that an incumbent who does not intend to seek reelection must in fact fail to file nomination papers in order for an extension to apply. In response to this complaint, the Commission will revise the language in the calendar to prevent confusion concerning when an extension should be announced.

Commission Decision

Based upon the above review and analysis, the Commission finds probable cause that a violation of law occurred under Wis. Stat. § 8.10(2)(a) based on the announcement of a 72-hour extension for nomination papers on December 30, rather than on January 3. The Commission hereby orders Brittany Bickel to refrain from announcing extensions for nomination papers unless an incumbent has failed to file a notice of noncandidacy and has failed to file nomination papers by the deadline.

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.

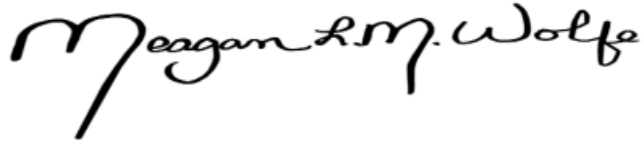
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Sincerely,

WISCONSIN ELECTIONS COMMISSION

A handwritten signature in black ink that reads "Meagan Wolfe". The signature is written in a cursive, flowing style.

Meagan Wolfe
Administrator

cc: Commission Members