



Wisconsin Elections Commission

201 West Washington Avenue | Second Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8005 | elections@wi.gov | elections.wi.gov

August 26, 2024

Town of Easton Clerk
Cherie Barnier

Jodi Schappe

Sent via email to: townclerkeaston@gmail.com, sgriffin@westdunn.com

Re: In the Matter of Jodi Schappe v. Cherie Barnier (Case No. EL 24–75)

Dear Ms. Schappe and Clerk Barnier:

This letter is in response to the verified complaint submitted by Jodi Schappe (Complainant) to the Wisconsin Elections Commission (Commission), which was filed to challenge actions taken by Town of Easton Clerk Cherie Barnier (Respondent). The complaint pertains to a recall petition submitted against the Complainant that was found sufficient by the Respondent.

The Commission has reviewed the complaint and response. The Commission provides the following analysis and decision. In short, the Commission finds that the Complainant did not show probable cause to believe that a violation of law or abuse of discretion occurred.

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

Under Wis. Stats. §§ 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 in this 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.

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.”

Wisconsin Elections Commissioners

Ann S. Jacobs, chair | Marge Bostelmann | Don M. Millis | Carrie Riepl | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

Complaint Allegations

On July 29, 2024, the Complainant filed a sworn complaint with the Commission pursuant to Wis. Stat. § 5.06, alleging that the Respondent did not properly follow Wis. Stats. §§ 9.10(1)(b), and 9.10(2)(b), (e), and (f) concerning a finding of sufficiency for a recall petition after administering an associated challenge.

First the complaint alleges that the Respondent “may violate Wis. Stat. § 9.10(1)(b) by accepting invalid addresses and signatures,” and that the Respondent’s “potential inclusion of invalid signatures from unqualified signatories would violate Wis. Stat. § 9.10(2)(e). The complaint states that “based on my communications with signatories it is my understanding that the petitions contain invalid signatures. Therefore, to the extent that any signatures are of invalid signatures, Ms. Schappe requests that these signatures must be stricken.” The complaint notes that signatories must provide their address and that they must reside within the district. The complaint also argues that a filing officer is not “granted authority to consider information beyond the scope of the address given when determining whether an individual is a resident of the jurisdiction.”

Second, the challenge alleges that the Respondent violated Wis. Stat. § 9.10(2)(b), which states that the petition “shall contain a statement of the reason for the recall which is related to the official responsibilities of the official for whom removal is sought,” by “overruling Ms. Schappe’s objection to the rationale provided in the Statement of Intent to Circulate a Recall Petition.” The challenges states that the statement on the petition was that Ms. Schappe called for “actions beyond the scope and authority of the elected position. Actions detrimental to the well-being of the Town of Easton.” The Complaint argues that this “vague and overbroad accusation does nothing to place Ms. Schappe on notice as to what acts she committed that might make her vulnerable to a recall” and that “the petition failed to provide any explanation regarding the reason for the recall that would relate the recall to Ms. Schappe’s official responsibilities as Supervisor.”

Third the complaint alleges that the Respondent abused her discretion by holding the Complainant to a higher standard than the petitioner by requiring that her challenge filings be notarized when only the challenge itself is required to be notarized.

Response

The response alleges that the recall petition was filed by Jason Hammond on June 20, 2024, against Town of Easton Supervisor I, Jodi Schappe, and that a challenge to the petition was filed by the Complainant on June 30. The response alleges that the Petitioner filed a timely challenge rebuttal and that the Complainant filed a timely challenge reply. The response alleges that after considering the challenge filings, the Respondent issued a determination on the challenge, found the petition insufficient, and provided the reasons for the insufficiency. The Response then alleges that the Petitioner submitted a timely amendment to the petition containing “affidavits and other proof correcting certain insufficiencies pursuant to Wis. Stat. § 9.10(4)(a). After receiving the amended petition, the Respondent alleges that she found the petition sufficient and informed the governing body on July 17.

The Respondent alleges that she “followed all applicable election laws related to recalling a local elected official.” She also alleges that the “complaint is notably lacking in any supporting evidence to back her assertion” and that it does not show probable cause that the Respondent abused her discretion regarding the recall proceedings. The Respondent alleges that she did use extrinsic sources to verify signatures. The response states that the complaint “is without even a shred of supporting evidence—even a single affidavit from one of the 125 signatures found by my office to be valid.”

The response alleges that the challenge to the petition failed to provide evidence that any signatory signed under a misrepresentation, and alleges that did not find that the burden of proof was met to disqualify any signatures on this basis.

The Respondent alleges that the “Complainant was never required by my office to file a reply as a notarized document. It was her choice to do so.”

The Respondent also included the challenge filings and her determinations. Because those filings were not provided or discussed in the Complaint, the Commission will not summarize them in this letter.

Reply

The Complainant’s reply asserts that the Respondent failed to address whether the statement of intent on the recall petition was sufficient in her response. Instead, the Complainant argues that the Respondent asserts statutes and provisions of administrative code that are ultimately not relevant to the question of whether the statement of intent is sufficient. Accordingly, the Complainant argues that the Respondent has failed to respond to the sufficiency of statement of intent argument, and that should be considered to be a concession on that issue. The Complainant reiterated her arguments that the statement of intent was insufficiently detailed.

Additionally, the Complainant indicates in her reply that she is withdrawing her argument that the Respondent additionally violated Wis. Stat. § 9.10 by holding the Complainant to a higher standard than the individual who filed the recall petition.

Discussion

The Commission notes that this complaint presented two issues—the sufficiency of the statement of the reason for the recall and whether a challenge rebuttal needs to be verified—that are very similar to those presented by another complaint received around the same time, *Sloane v. Cowling* (EL 24–74). The Commission’s discussion below concerning these issues is accordingly very similar to the discussion in that complaint.

As a preliminary matter, the Commission will note that the provisions of administrative code that govern complaint procedure do not provide support for the Complainant’s argument in her reply that a Respondent concedes to arguments or allegations in the complaint if they are not included in her response. In actuality, the administrative code states that a party who fails to respond entirely may be deemed to have admitted each allegation contained in the pleading. Wis. Admin. Code EL § 20.04(7). The administrative code is silent with respect to the implications of a partial response, but in any case, it is the Complainant who has raised the question of the sufficiency of the reason for the recall, and so the Commission will address that issue fully in its analysis, regardless of whether the Respondent weighed in on the issue in her response.

The statements in the complaint that the town clerk “may violate Wis. Stat. § 9.10(1)(b)” and that her “potential inclusion of invalid signatories would violate Wis. Stat. § 9.10(2)(e)” are supported only by the claim that, “based on my communications with signatories it is my understanding that the petitions contain invalid signatures.” The Complainant has not provided any concrete allegation that any invalid signatures were accepted by the Respondent. What is provided is merely a claim that unidentified people led the Complainant to believe that the petition contains invalid signatures. Any specific signature that the Complainant believed was invalid could have been challenged with evidence at the local level. It is possible that this occurred, but the Complainant did not allege that the Respondent failed to determine that the Complainant met her burden of

proof on any specific challenge. This argument is undeveloped, and the Commission will not take any action on this basis.

Regarding the argument that a filing officer may not consult extrinsic sources of evidence when evaluating a recall petition, Wis. Admin. Code § EL 2.09(1) incorporates the standards of Wis. Admin. Code § EL 2.05, which includes in subsection (3) that the filing officer may “consult maps, directories, and other extrinsic evidence to ascertain the correctness and sufficiency of information on a nomination paper.” The Respondent did not abuse her discretion in using WisVote and Adams County Land Records to help her examine the signatures for sufficiency. If anything, such review should be encouraged and is likely to identify additional signatures that should be struck due to an insufficiency that may not have been immediately apparent.

Second, the complaint argues that the statement for the reason for the recall was insufficient, and cites Wis. Stat. § 9.10(2)(b), which states that:

A recall petition for a city, village, town, town sanitary district, or school district office shall contain a statement of a reason for the recall which is related to the official responsibilities of the official for whom removal is sought.

This requirement divides into two elements. First, each petition page needs to contain “a statement of the reason for the recall.” Second, that reason must be related to the official responsibilities of the official. The first element is clearly met. The requirement is not to state cause or a reason with specificity or even a good reason but simply to state “a reason.” The petition states that the reason for the recall petition is that Ms. Schappe called for “actions beyond the scope and authority of the elected position. Actions detrimental to the well-being of the Town of Easton.”

Merriam-Webster’s online dictionary defines “reason” as “a statement offered in explanation or justification,” “a rational ground or motive,” “the thing that makes some fact intelligible,” and “a sufficient ground of explanation or of logical defense.”¹ The statement given meets these definitions. The statement is straightforwardly offered as the explanation, justification and motive for the petition, and it makes intelligible the petitioner’s interest in seeking the recall. The statement is not a logical defense, but it is a ground of explanation for the recall. As for sufficiency, that corresponds to the second element.

The relationship between the reason given for the recall and the official responsibilities of the office does not offer explicit detail. However, the reasons are, on the face of the petition still “related” to the official responsibilities. The statute does not require specificity, but only a relationship between the reason and the official responsibilities of the office. The reason concerns the scope and authority of the supervisor position and the well-being of the Town of Easton. The statement does not relate to any “personal, family, or discriminatory” reasons, but rather to town supervisor authority and governance. Any government official needs to govern within the scope and authority of her position, and to support the well-being of the jurisdiction. These reasons, though subjective, relate to government offices generally. A clerk’s duty to review the petition does not extend to making a determination on the truth or falsity of the statement. However, the statement does raise the vague questions of whether or not the Complainant is properly carrying out her duties. The Commission finds that the Respondent did not abuse her discretion in finding the petition containing this statement to be sufficient.

The Commission agrees with the Complainant that only the initial challenge filing is required to be sworn, or, alternatively, contain an unsworn declaration under Wis. Stat. § 887.015. The Commission is in the process of

¹ Reason, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/reason> (last visited August 15, 2024).

promulgating administrative rules to update and clarify Wis. Admin. Code Chapter EL 2. However, it does not appear that Wis. Admin. Code § EL 2.11(3) requires a rebuttal to be verified, and the reply is not addressed at all in that section. Wisconsin Administrative Code § EL 2.11(3) expressly addresses responses and merely links it to the governing statute and does not state that the response must be verified. This stands opposed to the express statement in Wis. Admin. Code § EL 2.07 that “[t]he response to a challenge to nomination papers shall be filed, by the candidate challenged, within 3 calendar days of the filing of the challenge and shall be verified.” Each response procedure is addressed in its own section and contains different requirements. Neither the governing statute of Wis. Stat. § 9.10(4)(a) or the Commission’s rules require a reply to be sworn.

Though the Commission agrees with the Complainant, it does not appear that the Complainant suffered any harm and there appears to be disagreement concerning whether the Respondent required the reply to be sworn. In any case, it appears that the Complainant submitted a verified reply to the challenge rebuttal and that the reply was accepted and reviewed. While verification is not required, it is permitted. Had the Respondent refused to consider a challenge reply due to it being unsworn, the Commission could have ordered the Respondent to consider the reply and determine whether her determination on the challenge needed to change as a result. Because the record appears to show that the Respondent did consider the reply, the Commission will not make this order. Both parties in these filings appear to agree that a challenge rebuttal and reply do not need to be verified, and the Commission agrees with these statements.

Commission Decision

Based upon the above review and analysis, the Commission does not find probable cause that the Respondent violated the cited statutes or abused her discretion in finding the recall petition sufficient.

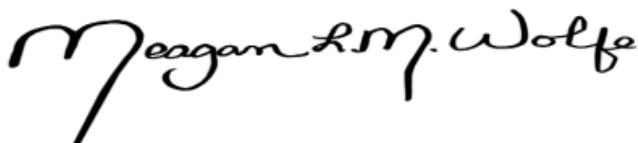
Right to Appeal – Circuit Court

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,

WISCONSIN ELECTIONS COMMISSION

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

Meagan Wolfe
Administrator

cc: Commission Members