



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

October 16, 2023

James Barrette
9907 14th Street
Kenosha, WI 53144

Michael Griswold
37317 65th St.
Burlington, WI 53105

Michelle Shramek
6969 236th Ave.
Salem, WI 53168

Sent via USPS

Re: In the Matter of James Barrette v. Michelle Shramek et al. (Case No.: EL 22-56)

Dear Mr. Barrette, Mr. Griswold, and Ms. Shramek:

This letter is in response to the verified complaint submitted by James Barrette (Complainant) to the Wisconsin Elections Commission (Commission), which was filed to challenge actions taken by Michael Griswold and Michelle Shramek (Respondents) concerning the oversight of the creation of a duplicate ballot. The Complainant alleges that the level of oversight present would violate Wis. Stats. §§ 5.85(2)(b) or 5.85(3).

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 complaints, Mr. Griswold's response, and Ms. Shramek's affidavit and responses. The Commission provides the following analysis and decision. In short, the Commission finds that the Complainant has shown probable cause that a violation of law occurred with relation to Respondent Griswold's creation of a duplicate ballot but does not find probable cause of any violation of law regarding Respondent Schramek.

Complaint Allegations and Responses

The Commission received a series of complaints and responses all pertaining to the same events that occurred on April 5, 2022. On June 30, 2022, the Commission received a sworn complaint filed by James Barrette alleging Michael Griswold remade absentee ballots rejected by a voting machine alone in violation of Wis. Stat. § 5.85 in the Municipality of Paddock on April 5, 2022. On July 20, the Commission received a sworn affidavit from Paddock's municipal clerk, Respondent Shramek, attesting to facts occurring on April 5. On July 23 the Commission received response from Respondent Griswold addressing the original complaint. On August 5 the Commission received an amended complaint from the Complainant addressing the response. On August 11 the Commission received a sworn response from Respondent Shramek addressing the August 5 complaint. Finally,

Wisconsin Elections Commissioners

Don M. Millis, chair | Marge Bostelmann | Joseph J. Czarnetzki | Ann S. Jacobs | Robert Spindell | Mark L. Thomsen

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on August 22 the Commission received a sworn reply from the Complainant addressing the August 11 response from Respondent Shramek.

In the June 30 Complaint, the Complainant states he was working alongside the Respondents as election inspectors in the municipality of Paddock Lake on April 5, 2022. The complaint alleges that Respondent Griswold remade ballots rejected by the voting machine alone in violation of Wis. Stat. § 5.85(2)(b) or 5.85(3) asserting either statute requires two inspectors to be involved in the remake process. The Complainant claims he asked Respondent Griswold to not remake ballots alone and alleges that Respondent Griswold continued to do so until the clerk, Michelle Shramek, stopped him. The Complainant also alleges that despite his protestations the remade ballots were still counted.

Respondent Griswold claims that one absentee ballot was rejected by the voting machine due to unreadable marks. He claims this one ballot received a “BAD BALLOT” sticker endorsed by two election officials and was given a new ballot marked with a “GOOD BALLOT” sticker also endorsed by two election officials and that he proceeded to remake the ballot at a table near election officials preoccupied with different tasks. He states that the Complainant approached him expressing concern that there was “no second party or witness” to the remake. Respondent Griswold claims he asked the Complainant to compare the original ballot to the remake and that the Complainant agreed and did not express any inaccuracies between the two. Respondent Griswold asserts this was sufficient oversight and thus had the remake counted and the original placed into the proper rejected ballot envelope.

In the affidavit, Respondent Shramek swears to have monitored the actions of election inspectors in the Village of Paddock Lake. She claims she was in another room when the ballot was remade and later told Respondent Griswold that one inspector from each party should have been involved in the remake process and that only one absentee ballot was remade by Respondent Griswold.

In the August 5 Complaint, the Complainant addressed Respondent Griswold claiming he remade more than one ballot alleging Respondent Griswold signed an issue book multiple times indicating issues with multiple ballots. The Complainant states the table at which the remake process occurred had a stack of blank ballots on it, that the table was 20 feet away behind all election workers, that no one could see him remaking ballots, and that he remade them alone. The Complainant claims the table was set up by Respondent Shramek. The Complainant agrees he looked at a ballot handed to him by Respondent Griswold but claims he did not inspect it for errors as he believed a different worker should have inspected it due to his inexperience checking remake ballots. The Complainant claims he witnessed Respondent Griswold talk with another inspector named Linda but asserts Linda and Respondent Griswold are of the same political party.

In the August 11 response, Respondent Shramek addresses the August 5 complaint stating Respondent Griswold could not have been 20 feet away from anyone in the room because the room was only 15 feet wide, that Griswold is unaffiliated with any political party, and that the Complainant never talked to the Chief Inspector on duty about any of the events. Respondent Shramek admits to setting up the room.

In the August 22 complaint, the Complainant addresses the August 11 response claiming the room was wider than 15 feet as 15 feet is the width of a typical living room, and that the room was much bigger than most living rooms. He also notes he does not believe Respondent Shramek intentionally did anything wrong, but that Respondent Griswold took advantage of the set up to manipulate the voting process.

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 Mr. Barrette'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. Stats. §§ 5.85(2)(b) and 5.85(3)

Wis. Stat. § 5.85(2)(b) describes the procedure to address overvotes. The facts here present no issue regarding overvotes and therefore Wis. Stat. § 5.85(2)(b) does not apply. Wis. Stat. § 5.85(3) provides the procedure for handling defective ballots unable to be counted by voting machines and is relevant to the facts of this complaint. Wis. Stat. § 5.85(3) states in relevant part:

If any ballot is damaged or defective so that it cannot be properly counted by the automatic tabulating equipment, the election officials, in the presence of witnesses, shall make a true duplicate ballot of all votes on that ballot by using one of the marking devices so as to transfer all votes of the elector to an official ballot of that kind used by the elector who voted the original ballot in that election. Unless election officials are selected under s. 7.30 (4) (c) without regard to party affiliation, whenever election officials of both of the 2 major political parties are present, the election officials acting under this subsection shall consist in each case of at least one official of each of the parties.

Regarding Respondent Shramek, the Complainant states, "I don't believe that Ms. Shramek intentionally did anything wrong. I believe that Mr. Griswold took advantage of the setup to manipulate the voting process." The complaints appear to argue that her set up incidentally made it easier for Respondent Griswold to allegedly violate election law, but do not provide allegations or evidence that Respondent Shramek herself violated any election law. For this reason, the complaint against Respondent Shramek must be dismissed.

However, the Complainant has presented sufficient evidence to support the allegation that Mr. Griswold's creation of a duplicate ballot was not created with another election official.

To comply with Wis. Stat. § 5.85(3), the remake process for a defective ballot must be done by, "the election officials" and if officials of both of the two major political parties are present, the process must include at least one official from each of the parties. All parties agree that at least one ballot was rejected by a voting machine and remade by Respondent Griswold. All parties agree that the ballot was handled by Complainant Barrette and at least one other person, Linda, prior to being counted, but disagree on whether the duplicate ballot was made before multiple election officials.

The Commission does not have evidence before it showing that officials appointed from the two major political parties were available at the polling place. The bipartisan requirement of Wis. Stat. § 5.85(3) only applies when

election officials are appointed by both of the two major political parties and not simply when there are election officials that may personally vote for either of the two major parties. Without officials being officially appointed from both of the two major political parties the bipartisan requirement of Wis. Stat. § 5.85(3) does not apply. If officials were appointed from the two major political parties, a member of each should have been present to remake the ballot, but without sufficient evidence to show that such officials were appointed and were working at the polling place that day, the Commission cannot issue a finding regarding this aspect of the statute.

Wis. Stat. § 5.85(3) states that “the election officials, in the presence of witnesses, shall make a true duplicate ballot,” and thus requires multiple election officials to be present during the physical creation of the duplicate ballot, not just witness to the duplicate ballot itself at some point.

The complaints allege that Respondent Griswold was at a table “about 20 feet away and behind all other election workers, who were attending to other duties, and unable to closely observe what Mr. Griswold was doing.” Griswold claims he was near other election inspectors but agrees they were preoccupied with other tasks. The parties disagree how close Griswold was to other election inspectors and how well they could potentially see him, but the parties agree any nearby election inspectors were preoccupied with other tasks and not actively observing the creation of the ballot. All parties also agree Griswold was alone at the table when he created the duplicate. Therefore, there was insufficient oversight, the creation of the duplicate ballot was not done by “the election officials” but rather Respondent Griswold alone, and Wis. Stat. § 5.85(3) was violated.

Commission Decision

Based upon the above review and analysis, the Commission finds probable cause that a violation of law occurred under Wis. Stat. § 5.085(3) based on the absence of a second election official throughout Respondent Griswold’s creation of a duplicate ballot. The Commission hereby orders Michael Griswold, during any future election, to refrain from making duplicate ballots without another election official present through the entire remake process and, if officials appointed from both major political parties are present, the remake must be done with at least one official appointed by each party.

The Commission does not find probable cause Respondent Shramek violated election law and therefore, the complaint against Michelle Shramek is 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.

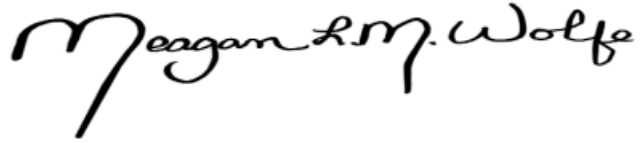
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Sincerely,

WISCONSIN ELECTIONS COMMISSION

A handwritten signature in black ink that reads "Megan Wolfe". The signature is written in a cursive style with a large, sweeping initial "M".

Meagan Wolfe

Administrator

cc: Commission Members