



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

Gloria Smith
6657 N. 54th Street
Milwaukee, WI 53223

Executive Director Woodall-Vogg
200 E. Wells Street, Room 501
Milwaukee, WI 53202

Sent via email: maryjame@sbcglobal.net; ecastro@pinesbach.com; cwooda@milwaukee.gov;

Re: In the Matter of Gloria Smith v. City of Milwaukee Election Commission (EL 23-10)

Dear Ms. Smith and Executive Director Woodall-Vogg,

This decision letter is in response to the verified complaint submitted by Gloria Smith (Complainant) to the Wisconsin Elections Commission (Commission), which was filed in reply to actions taken by the City of Milwaukee Election Commission (Respondent) during the Spring 2023 election for the District 1 Milwaukee Board of School Directors position under Wis. Stat. §8.10(3)(i) and Wis. Admin. Code EL §2.05(3) and EL §20.03. The Complaint alleges that the Respondent erred by acting under Wis. Admin. Code EL §20.03 and violated Wis. Stat. §8.10(3)(i) and Wis. Admin. Code EL §2.05(3) by accepting excess nominator signatures in order to meet the minimum number of qualified electors required by law.

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, the Response of the MEC, Complainant’s Reply, and all supporting documentation. The Commission provides the following analysis and decision. In short, the Commission has determined that the Complainants have not shown probable cause to believe that a violation of law or abuse of discretion occurred with relation to Wis. Stat. §8.10(3)(i) or Wis. Admin. Code EL §2.05(3).

Summary of Complaint, Response, and Reply

The Complaint alleges that the Respondent, in finding that Shandowlyon Hendricks Reaves qualified to be placed on the Spring 2023 Election Ballot for the position of District 1 City of Milwaukee Board of School Directors, unlawfully considered nomination papers and signatures submitted in excess of the maximum allowed by law. Complainant asserts two primary contentions with Respondent’s decision to allow Hendricks Reaves on the Spring 2023 ballot. First, Complainant contends that the Respondent lacked the authority to act pursuant to Wis. Admin. Code EL §20.03. Second, Complainant asserts that Respondent violated Wis. Stat. §8.10(3)(i) and Wis. Admin. Code EL §2.05(3) when it considered more than 800 signatures to find that Hendricks Reaves met the minimum qualified nominators. Complainant requests that the Commission direct Respondent to reverse its placement of Hendricks Reaves on the Spring 2023 ballot.

According to the Complaint, Hendricks Reaves submitted 103 pages of nomination papers containing 941 nominating signatures to the MEC on January 3, 2023. After reviewing the first 800 signatures pursuant to Wis. Stat. §8.10(3)(i) and

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

Wis. Admin. Code EL §2.05(3), the Respondent determined that only 362 of the signatories were valid electors, putting Hendricks Reaves below the statutory minimum of 400 electors to qualify for the ballot. In response, two Affidavits to Contest were submitted to the Respondent. The Respondent considered these affidavits during a meeting on January 9, 2023 and ultimately decided to place Hendricks Reaves on the ballot after considering a video from the Commission which stated that signatures over the statutory limit could be treated as supplemental and reviewed if necessary. Complainant argues that Respondent erred in considering the affidavits because only the WEC has jurisdiction to consider complaints brought under EL §20.03.

The Complaint also asserts that, by considering the excess 141 nominating signatures filed by Hendricks Reaves to the find the additional electors needed to qualify for the ballot, the Respondent violated Wis. Stat. §8.10(3)(i) and EL §2.05(3). Additionally, because Commission guidance does have the same force as law, Complainant argues that the Respondent should not have relied on the Commission's video, and thus the Respondent's decision was in error and should be reversed.

The Response provides similar facts as were detailed in the Complaint and asks the WEC for guidance on what Respondents deem to be a narrow, legal issue: the proper way to interpret Wis. Stat. §8.10(3)(i) and Wis. Admin. Code EL §2.05(3). The Response also details a number of hypothetical situations related to the interpretation of these two laws and asks the Commission to provide guidance about how to appropriately each scenario.

In the Reply, Complainant reasserts that the proper interpretation of the statute and code at issue is to not allow signatures above the statutory thresholds to be considered and again requests the Commission to remove Hendricks Reaves from the Spring Election ballot. The Reply also suggests that, by not refuting the claims in the Complaint, the Respondent concedes that it was improper to consider the excess signatures and place Hendricks Reaves on the ballot under Wis. Stat. §8.10(3)(i) and Wis. Admin. Code EL §2.05(3). Finally, the Reply urges the Commission to only consider the facts of the case at hand and not respond to the hypothetical scenarios raised in the Response.

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 Gloria Smith'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 Violation of Wis. Admin. Code EL §20.03

The Commission need not address this argument at length. The Complainant improperly alleges that the Respondent somehow lacked the authority to act pursuant to Wis. Admin. Code EL §20.03. Chapter EL 20 details the processes under which the Commission considers sworn complaints. However, local filing officers have the statutory authority consider ballot access. Per Wis. Stat. §8.07, "The commission shall promulgate rules under this chapter for use by election officials in determining the validity of nomination papers and signatures thereon." The Commission followed this directive by promulgating Wis. Admin. Code Chapter EL 2, which specifically details the process local filing officers and municipal commissions should follow in reviewing ballot access and nomination materials. Wisconsin Administrative Code EL §2.07(2)(a) requires that "the form of the complaint and its filing shall comply with the requirements of ch. EL 20." Though Chapter EL 2 applies the form and filing requirements from Chapter EL 20, it clearly states in EL §2.07(1) that "the local filing officer shall review any verified complaint concerning the sufficiency of nomination papers of a candidate for local office that is filed with the local filing officer under s. 8.07, Stats." It is those local decisions that may be appealed to the Commission, as is the case here.

Wisconsin Statute §8.10(3) details the “number of required *signatures* on nomination papers” for elected positions ranging from statewide offices to local school district officers. [emphasis added] However, when discussing the specific number of signatures required for each position, the statute references ‘electors’, not signatures or individuals. For example, Wis. Stat. §8.10(3)(i) identifies that “not less than 400 nor more than 800 *electors* [are required] for members of the board of school directors elected from election districts.” [emphasis added]. In fact, the term ‘elector’ is exclusively used in Wis. Stat. §8.10(3) to detail the number requirements for each position. Given the use of these two different terms, it is important to analyze what statutory meaning can be gleaned from the format and language of the statute.

The Wisconsin Supreme Court has held that, when interpreting a statute, the “language is given its common, ordinary, and accepted meaning.” *State ex rel. Kalal v. Cir. Ct. Of Dane Cnty.* When determining meaning, context is important, as well as the structure of the statute. *Id.* When determining the meaning of a specific word or phrase in a statute, it would be interpreted as a part of the whole context in which it is used, not in isolation. *Id.* Further, statutory language should be read “to give reasonable effect to every word, in order to avoid surplusage.” *Id.* Should this method of interpretation result in a plain, clear meaning, “then there is no ambiguity and the statute is applied according to this ascertainment of its meaning.” *Id.* (quoting *Bruno v. Milwaukee County*).

Dictionary definitions often help determine the common, ordinary meaning of words. The term ‘signature’ is defined by Merriam-Webster as ‘the act of signing one’s name to something; the name of a person written by his or her own hand.’ The term ‘elector’ is defined by Merriam-Webster as “a person qualified to vote in an election.” This definition is also echoed in Wis. Stat. §6.02, which defines the general qualifications of an ‘elector’. According to the statute, “Every U.S. citizen age 18 or older who has resided in an election district or ward for 28 consecutive days before any election where the citizen offers to vote is an eligible elector.” Wis. Stat. §6.02. The terms “eligible elector” and “qualified elector” are synonymous. Both the dictionary and statutory definition of ‘elector’ involve a qualification or eligibility to vote. The statutory definition clarifies that the qualification to be an ‘elector’ in Wisconsin centers on where a person resides. The definition of signature, as well as its common understanding, tells us that a signature is not a person, but rather something that a person has or does.

As the legislature used these two different terms within the statute, and the common understandings of the terms are not interchangeable with one another, each term should be given their own effect to avoid surplusage. When comparing the definitions of the two terms, and the context of the statute, a logical interpretation emerges: the numerical requirements in §8.10(3) apply to the number of eligible electors who need to sign nomination papers, not the overall number of signatures on nomination papers. So, in this case, Hendricks Reaves needed to submit the signatures of more than 400 eligible electors, but not more than 800 electors. The total number of signatures submitted and considered could be above 800 if some of the signatures were from individuals who do not qualify as electors. The limitation applies to the total number of eligible electors on the nomination papers, not the total number of signatures a candidate is able to submit.

This interpretation is further supported by the emphasis on residency requirements throughout Wis. Stat. §8.10. The language to be placed at the top of each nomination paper, as set forth in Wis. Stat. §8.10(2)(b), requires a signer to attest that they are “eligible to vote in” the jurisdiction or district in which candidate seeks office. As perhaps the clearest example, §8.10(4) explicitly requires that “all signers on each nomination paper shall reside in the jurisdiction or district which the candidate named on the paper will represent, if elected.” §8.10(4)(b) then requires that “each signer of a nomination paper shall legibly print his or her name in a space provided next to his or her signature and shall list his or her municipality of residence for voting purposes”, presumably to verify that they meet the §8.10(4) residency requirement and meet the Wis. Stat. §6.02 of a qualified elector. While a ‘signer’ is submitting their signature, they are also providing their residency information to affirm that they are an eligible elector. Again, the two terms work in tandem, not interchangeably.

Wisconsin Statute §8.10(3) was also drafted to include another important piece of qualifying language when it said the “...number of *required* signatures on nomination papers under this section is as follows.” [emphasis added] “Required” cannot refer to or modify the number of signatures spelled out in the subsections that follow. Instead, the Commission posits that “required” refers more broadly to the “eligibility” or “validity” of each signature, but that position goes beyond the analysis of what constitutes a “qualified elector” elector above. Eligible or valid signatures also refer to those signatures that are not disqualified for other reasons. For example, signatures on the entire page are not eligible or valid if the circulator signs and dates the nomination paper before the signatories sign and date each line. Thus, Ms. Hendricks

Reaves did not violate Wis. Stat. §8.10(3) by submitting additional signatures, because that volume is allowed under statute so that a candidate may meet the “required” and “elector” components within that provision.

Given our conclusion about the proper interpretation of Wis. Stat. §8.10(3), Wis. Admin. Code EL §2.05(3) cannot be construed to align with the reading or conclusion that Complainant asserts. Instead, the phrase “up to the maximum number permitted” in §2.05(3) should be considered to apply to the nomination papers that contain at least, but not more than the number of signatures of qualified electors required under Wis. Stat. §8.10(3). Further, it should be noted that Wis. Admin. Code EL §2.05(3) applies to the facial review all information contained on nomination papers, not solely the elector signature requirements in Wis. Stat. §8.10(3).

Because Complainant raised policy considerations in their Reply, we briefly respond to the concerns in light of our interpretations above. Complainant asserts that “caps ensure local filing officers are not burdened with analyzing a limitless number of nominating signatures.” Though our interpretation may lead to local filing officers considering a slightly higher number of signatures, there are still statutory requirements that encourage candidates, circulators, and even potential signers to ensure that signatures are only gathered from qualified electors. For example, as previously discussed, Wis. Stat. §8.10(2)(b) requires an elector to attest that they are “eligible to vote in” the proper jurisdiction when signing a nomination form. The language of Wis. Stat. §8.10(4) also dictates that signers “shall reside in the jurisdiction or district.” Further, Wis. Admin. Code EL §2.05(1) advises that “each candidate for public office has the responsibility to assure that his or her nomination papers are prepared, circulated, signed, and filed in compliance with statutory and other legal requirements.”

Additionally, candidates will likely want to preserve resources and time, and ensure they are meeting the requirements to qualify for the ballot, by taking efforts to only collect signatures from qualified electors. Given the statutory requirements and realities of running a campaign, our interpretation should not place a substantially greater burden on local filing officers. What is more, Wis. Stat. §8.10(4)(b) states that, “Only one signature per person for the same office is valid...”

Finally, because the Commission’s role in resolving verified complaints filed under Wis. Stat. §5.06 is to determine whether a local official acted contrary to applicable election laws or abused their discretion in administering applicable election laws, we decline to respond to the hypotheticals raised in the Response and instead only evaluate the facts of this case.

Commission Decision

Based on the above review and analysis, the Commission does not find probable cause to believe that a violation of law or abuse of discretion has occurred with regard to Wis. Stat. §8.10(3)(i) or Wis. Admin. Code EL §2.05(3). The Commission orders the Respondent to allow Shandowlyon Hendricks Reaves to remain on the Spring Election ballot for the position of Milwaukee Board of Directors District 1.


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 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 "Meagan R.M. Wolfe". The signature is written in a cursive, flowing style.

Meagan Wolfe

Administrator

cc: Commission Members