



Wisconsin Elections Commission

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September 18, 2024

Brenda Petersen
Town of Westfield Clerk
PO Box 157
Westfield, WI 53964

Sharon Galonski
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Westfield, Wisconsin 53964

Sent via email to: clerk@townofwestfieldwi.com, elaron@ammr.net, SGoettsche@staffordlaw.com,
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Re: In the Matter of Sharon Galonski v. Brenda Petersen (Case No. EL 24–88)

Dear Ms. Galonski and Clerk Petersen:

This letter is in response to the verified complaint submitted by Sharon Galonski (Complainant) to the Wisconsin Elections Commission (Commission), which was filed to challenge actions taken by Town of Westfield (Marquette County) Clerk Brenda Petersen (Respondent). The complaint pertains to alleged abuse of discretion and actions contrary to law regarding a recall petition and challenge that was submitted against the Complainant, which 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 with regard to the finding of sufficiency. The Commission does find an abuse of discretion regarding the acceptance of an assertion not supported by affidavit or other proof as correcting a failure of a circulator and orders the Respondent to apply a higher standard in any future recall petition filing. However, the signatures that should not have been accepted due to this reason do not affect the Respondent's ultimate determination of sufficiency.

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.

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

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.”

Complaint Allegations

The complaint alleges that the Respondent “abused her discretion and acted contrary to law in certifying the sufficiency of the recall petition brought by Terry L. Johnson. The complaint alleges that “[n]o date has yet been scheduled for the recall election.” The Complaint alleges that Mr. Johnson filed a registration statement that circled the word “oppose” on the Campaign Finance Registration Statement of the Wisconsin Ethics Commission, called the CF-1, which means that the Committee opposes the recall of the official.

The Complainant alleges that the recall petition was filed on July 15, received by the Complainant late in the evening on July 25, challenged by the Complainant on August 2, and found sufficient on August 13. The Complainant alleges that she was notified on July 30 by the Respondent would “consider whatever information [concerning the petition] you may provide on or before August 5, 2024.” The Complainant states that her challenge to the recall petition alleged that the registration statement contained a materially false statement and that the petition in any case did not contain enough valid signatures. The Complainant states that the August 8 rebuttal admitted that choosing “oppose” was an error but that it was corrected within the rebuttal, that an affidavit for one circulator was submitted, and that the rebuttal alleged that the challenge was untimely. The Complainant states that the reply argued that the corrections offered in the rebuttal were untimely and that the response should be rejected for being unverified.

Regarding the finding of sufficiency, the complaint summarizes that the Respondent found that:

- The registration statement was sufficient because the support or oppose checkbox is “arguably ambiguous, and regardless the intent of the registration for recall was clear.”
- The Gary Schaeffer circulator certifications were sufficient because he submitted a correcting affidavit for his address.
- The Virginia Dagle pages were invalid due to an incorrect and uncorrected address.
- The Tim Marotz and Richard Murry certifications were sufficient due to completing their addresses on updated circulation pages.
- The James Johnson certification was presumed to be valid.
- That there were 131 valid signatures, exceeding the threshold of 110.

The complaint alleges that the Respondent should have rejected the response for being unverified. The complaint argues that response was required to be verified in accordance with Wis. Admin. Code § EL 2.11(1), and that subsection (3) requires a different filing time, but does not expressly provide that the response need not be verified. Further, the complaint argues that the reference in Wis. Admin. Code § 2.11(2)(a) that the “legal sufficiency” of the complaint shall comply with Wis. Admin. Code EL 20 applies to the verification of the complaint, while the filing deadline, as a procedural element, is governed by Wis. Admin. Code § EL 2.11(3).

The challenge alleges that the Respondent should have found the petition insufficient due to the “materially false statement” that the registration statement stated that the recall committee was opposed to the recall, meaning that a proper registration never took place and that no signatures could have been collected under Wis. Stat. §

9.10(2)(d). The challenge further alleges that the correction on August 8, which was argued as not complying with the correction provisions of Wis. Stat. § 11.0903(3), Wis. Admin. Code § EL 6.02 or § ETH 6.02, could not fix the registration that needed to take place before any signatures were collected, amounting to a fatal error. The complaint cites Wis. Stat. § 11.0101(27) and the Ethics Commission’s CF-1 form instructions to argue that a recall committee is formed for the purpose of “supporting or opposing the recall” of an official, and that this language is specific to recall committees.

The complaint alleges that the Respondent improperly accepted a correcting affidavit of circulator Schaeffer concerning 32 signatures, and corrections from circulator Marotz concerning 9 signatures and circulator Murry concerning 9 signatures. The complaint alleges that the three-day deadline for filing correcting affidavits in Wis. Admin. Code § 2.05(4) applies to recall petitions and that because the affidavit was not provided within three calendar days of either filing the petition or the latest date on which the petition could have been filed, it was not timely.

The complaint alleges that the corrections of Marotz and Murry were not done by affidavit and do not contain sufficient proof, in addition to containing the same timeline issue as circulator Schaeffer described above. The complaint alleges that these individuals purportedly added their addresses and their initials to the certifications but did not create an affidavit or provide any proof of the addresses.

Response

The Respondent states that her conclusions for finding the recall petition sufficient are found in Exhibit I of the complaint, that this complaint raises the same issues, and that she believes her decision was correct. The response states that the decision was made “in good faith,” that she “stand[s] by [her] Certificate of Sufficiency,” and that she “rigorously avoided favoring one side over the other.”

Reply

The final reply from the Complainant states that the response “neither addressed nor disputed the specific factual allegations or legal arguments set forth in the Complaint,” and that the Commission must assume the factual allegations are true and the legal arguments unrebutted. The reply reiterates the argument that the recall petition was insufficient because the recall committee was formed to oppose the recall of Sharon Galonski instead of to support it, and therefore that proper registration has not occurred and all signatures on the petition are invalid. It also reiterates that insufficient circulator certifications were not corrected, and thus that 68 signatures should be disqualified on that additional basis.

Discussion

First, after reviewing the complaint and attachments as well as the brief response directing the Commission to the Respondent’s original findings concerning the petition, the Commission finds that the Complainant accurately summarized the Respondent’s findings, which were not objected to by the Respondent. The Commission will, therefore, refer to the complaint filings rather than the underlying challenge documents. Second, much of this decision mirrors the language of complaint EL 24-74, Ann Sloane v. Crystal Cowling. The reason for this is simple: the allegations are nearly identical. For the purpose of creating a clear record, the Commission provides its reasoning again in this decision letter.

The Complaint argues that any signatures collected before a proper registration are invalid and that this registration was invalid. It is correct that registration must occur before signatures are collected. The complaint cites Wis. Stat. § 9.10(2)(d), which states that:

No petition may be offered for filing for the recall of an officer unless the petitioner first files a registration statement under s. 11.0902 with the filing officer with whom the petition is filed. The petitioner shall append to the registration a statement indicating his or her intent to circulate a recall petition, the name of the officer for whom recall is sought and, in the case of a petition for the recall of a city, village, town, town sanitary district, or school district officer, a statement of a reason for the recall which is related to the official responsibilities of the official for whom removal is sought. No petitioner may circulate a petition for the recall of an officer prior to completing registration. The last date that a petition for the recall of an officer may be offered for filing is 5 p.m. on the 60th day commencing after registration. After the recall petition has been offered for filing, no name may be added or removed. No signature may be counted unless the date of the signature is within the period provided in this paragraph.

This section makes clear that the failure to register would invalidate any signatures collected on a petition. A challenge may be brought under Wis. Stat. § 9.10(2)(e)2. that signatures were collected outside of the circulation period, and because the circulation period is 60 days after registration, the failure to register would mean a failure to begin the circulation period. Therefore, signatures must be struck in a challenge if the burden of showing that registration did not take place was met.

However, the Commission finds that the registration did take place. Regarding the argument that initial recall registration statement was invalid, the complaint cites Wis. Admin. Code § ETH 6.02(1), which states in relevant part:

Any registration filed with a filing officer under ss. . . . 11.0901, 11.0902, and 11.0903, [concerning recall committees] Stats., which is insufficient as to essential form, information or attestation shall be rejected by such officer and shall be promptly returned if possible to the proposed registrant indicating the nature of the insufficiency. The proposed registrant shall be informed that the attempted registration is not effective.

The Elections Commission does not administer, and cannot enforce, Wis. Admin. Code § ETH 6.02(1). Whether or not the Respondent should have returned the CF-1 form to the Petitioner under Wis. Admin. Code § ETH 6.02(1) or accepted the form and informed the Petitioner of a need to rectify the problem under Wis. Admin. Code § ETH 6.02(2) is a question for the Ethics Commission and not the Elections Commission.

The Commission can enforce Wis. Admin. Code § EL 6.02, which states in subsection (1) that a filing officer must reject a registration statement that is “insufficient as to essential form” and in subsection (2) that a filing officer must provide 15 days to the registrant to correct a substantially compliant form that is “insufficient or incomplete in some manner.” The question for the Elections Commission under its statutes and rules is whether a registration statement under Wis. Stat. § 11.0902, which is linked by cross-reference to Wis. Stat. § 11.0903, was properly filed with the filing officer and whether a sufficient and complete statement of intent was filed along with the CF-1.

The Complainant provided the CF-1 form as well as the intent to recall that were filed together on May 31. Viewing the CF-1 alongside the intent to recall, it is clear that the registration was intended to support the recall

election against Sharon Galonski. The Commission agrees that the best reading of the CF-1 would appear to be that “oppose” in box C.3 means oppose the recall election, but it would also be possible to read that box as supporting or opposing the official. The Commission also notes that “support” or “oppose” does not appear to be a required piece of information under Wis. Stat. § 11.0903. It also does not appear that this recall committee would be required to submit any reports under Wis. Stat. § 11.0904, which is where the language about support or oppose appear to originate. No information presented to the Commission has alleged that this recall campaign accepted or spent any money.

The Commission does not make any determination concerning whether this committee was required to register with the Ethics Commission in addition to the local filing officer or whether the form itself complies with campaign finance laws and rules administered by the Ethics Commission. The Elections Commission finds only that the form complies with the requirements of Wis. Stat. § 9.10(2)(d) by providing the information required by Wis. Stat. § 11.0902(1), and, by cross reference, Wis. Stat. § 11.0903, neither of which list “support” or “oppose” as a required element. The Commission, considering especially the intent to recall form that states unambiguously an intent to circulate a petition for a recall election against Sharon Galonski, finds that the Respondent did not abuse her discretion in accepting the original CF-1 form as sufficient and complete, which is the only form at issue regarding registration. Had the form been insufficient, the form submitted on August 8 could not have corrected the error because the registration must be complete before signatures can be collected.

The complaint alleges that the challenge rebuttal should have been rejected for being unsworn. The Commission is in the process of 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. Wis. Admin. Code § EL 2.11(1) applies to the standards established in EL 2.07 for the filing officer’s review of the challenge rather than the filing standards. The filing standards for the challenge itself are linked to Wis. Admin. Code Chapter EL 20 by Wis. Admin. Code § EL 2.11(2)(a), but the response is not addressed in that section and the Commission will not read that section to cover rebuttals at all when subsection (3) clearly addresses responses and merely links them to the governing statute and does not state that the response 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. It is not clear why the State Elections Board, which was a predecessor of the Commission, did not require the response, which must be taken to mean the rebuttal in this context, to be verified, but it is clear that it individually listed the requirements for this type of response, and did not require it to be verified. Thus, the Commission cannot find that the Respondent abused her discretion in accepting the response as an unsworn document.

The Commission disagrees with the Complainant’s argument that the three-day window in Wis. Admin. Code § EL 2.05(4) to file a correcting affidavit applies to a recall petition at all. Looking only at Wis. Stat. § 9.10(2)(r), the Complainant’s argument would likely be correct because that section does not contain an acceptable time period for an affidavit to be filed “correcting insufficiencies,” and Wis. Admin. Code EL 2, through a series of cross references cited in the complaint, supplies a three-day period. However, the Commission must also examine Wis. Stat. § 9.10(4)(a), which provides that “[t]he petition may be amended to correct any insufficiency within 5 days following the affixing of the original certificate.” The “correcting insufficiency” language in § 9.10(2)(r) mirrors the “amended to correct any insufficiency” language in § 9.10(4)(a) and must be read together to mean that the failure of a circulator to provide all necessary information may be corrected after a finding of insufficiency has been made. Further, § 9.10(4)(a) does not apply only if a challenge has been filed but also if a clerk finds a petition insufficient regardless of a challenge. The Commission cannot accept an

argument that a petition can be corrected three days after filing and then again within 5 days after a determination of insufficiency but not in between. Rather, the Commission must conclude that Wis. Stat. § 9.10 governs if there is any conflict between it and Wis. Admin. Code § EL 2, and that a petitioner may file a correcting affidavit concerning the failure of a circulator to include all necessary information at any time up until 5 days following a finding of insufficiency. The Commission makes no finding concerning other correcting affidavits that are not expressly stated in Wis. Stat. § 9.10(2)(r).

Due to the Commission's finding that a correcting affidavit for a recall petition concerning the failure of a circulator to provide all necessary information can be filed at any time up to 5 days following a determination of insufficiency, it rejects the allegation that the Schaeffer affidavit was untimely.

The Commission agrees that the pages submitted by circulators Tim Marotz and Richard Murry, amounting to 18 signatures, should not have been accepted because no affidavit or other proof was provided. The recall petition pages supplied by the Complainant and not contested by the Respondent show that Tim Marotz on page 14 and Richard Murray on page 19 did not provide any municipality. Because a circulator need not even be a resident of this state, the Commission cannot find that a number and street name alone constitute a residential address. Though there is an affidavit signed by Gary Schaffer correcting his address as well as a number of other issues concerning his pages not raised in the complaint before the Commission, there are no such sworn statements from Tim Marotz or Richard Murry in the record. The additions and initials provided within the rebuttal on pages 14 and 19 presumably are from these two individuals, but, unlike Mr. Schaeffer, they have not sworn that that is so. Wis. Stat. § 9.10(4)(a) allows correcting a petition and § 9.10(2)(r) allows an affidavit or other proof to correct circulator errors, but no proof was provided beyond an assertion of additional address information, and there are no affidavits confirming who provided this information. The Commission finds that the clerk erred by accepting these 18 signatures and orders that in the future she only accept corrections by affidavit or sufficient other proof regarding the failure of circulators to include all necessary information. However, as the loss of 18 signatures still leaves 113 signatures, which is above the uncontested threshold of 110, the Commission will not order the Respondent to reexamine her ultimate conclusion that the petition was valid.

The Commission also will address an issue raised in the complaint concerning the proper timing of the challenges. Wis. Stat. § 9.10(4)(a) clearly allows that "the officer against whom the petition is filed may file a written challenge with the municipal clerk" within 10 days after the petition is filed with the clerk. The statute is silent concerning the transmittal of the documents to the official. From the filings, it appears that the Complainant was aware of the petition and requested copies of it before July 25, when, at 9:26 p.m., the Respondent provided copies. It is not clear to the Commission when copies were first requested, however, a ten-day delay is clearly too late to have sent copies of the recall petition to the Complainant as that is the entire period provide for a challenge to be filed. It appears that the Respondent did then allow the full ten-day period to respond to the petition, followed by a rebuttal period and a final reply period. In summary, the clerk appears to have delayed sending the petition to the official, accepted a challenge more than 10 days after the petition was filed but within 10 days after the petition was sent to the official, and then administered the rebuttal and reply periods following receipt of the previous filing all within the overall 31-day period from the offering of the petition provided by § 9.10(4)(a). The Complainant does not argue that her challenge was filed late, and thus the Commission will not address this issue in an order, but the Commission stridently urges the Respondent to transmit any recall petition to the official as soon as possible, and not later than one business day after the petition is filed.

Commission Decision

Based upon the above review and analysis, the Commission does not find probable cause that the Respondent violated the cited statutes or rules or abused her discretion in finding the recall petition sufficient. The Commission orders the Respondent, in any future recall, to require an affidavit or other proof before accepting a correction of information provided by a circulator. The Commission also strongly suggests that the Respondent send the official the full recall petition as soon as possible and no later than one business day following the offering of the petition to the Respondent.

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.