

STATE OF WISCONSIN  
BEFORE THE ELECTIONS COMMISSION

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GLORIA SMITH,

Complainant,

CASE NO. EL 23-10

v.

CITY OF MILWAUKEE ELECTION COMMISSION,

Respondent.

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**VERIFIED REPLY OF COMPLAINANT GLORIA SMITH IN SUPPORT OF  
COMPLAINT AGAINST THE CITY OF MILWAUKEE ELECTION COMMISSION**

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The City of Milwaukee Election Commission (“MEC”) acknowledges that the issue presented is a “narrow, legal one:” the unambiguous meaning of Wis. Stat. § 8.10(3)(1) and Wis. Admin. Code EL § 2.05(3). *Resp. at 3.*<sup>1</sup> That narrow legal issue is presented on an undisputed factual record provided in the Complaint and accompanying documents. MEC takes no position on this Complaint and offers no supplemental facts. The proper application of this clear statute and regulation directed MEC, in the situation presented, to not consider nomination signatures beyond the thresholds set by law. Nevertheless, it did so. Accordingly, the Wisconsin Election Commission should issue an order commanding MEC to not place Shandowlyn Hendricks Reaves (“Hendricks Reaves”) on the Spring Election ballot.

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<sup>1</sup> Formally, “Verified Response of Respondent City of Milwaukee Election Commission,” dated February 7, 2023.

## ARGUMENT

### **A. MEC concedes that it was improper to consider the excess signatures and place Hendricks Reaves on the ballot.**

Wisconsin election law did not permit MEC to consider signatures beyond the 800 allowed by statute to determine whether Hendricks Reaves qualified for the ballot. Consequently, it was legal error for MEC to look to the excess signatures to find valid nominators for Hendricks Reaves to meet the minimum threshold to be placed on the ballot.

In its response brief, MEC does not refute Complainant's interpretations of Wis. Stat. § 8.10(3)(i) and Wis. Admin. Code EL § 2.05(3) or offer any alternative interpretations. Nor does it refute that it was error to place Hendricks Reaves on the ballot or cite to any law authorizing it to do so.<sup>2</sup> Accordingly, the WEC may consider Complainant's arguments conceded by MEC. *Singler v. Zurich Am. Ins. Co.*, 2014 WI App 108, ¶ 28, 357 Wis. 2d 604, 620, 855 N.W.2d 707, 715 ("Arguments not refuted are deemed conceded.").<sup>3</sup>

### **B. MEC may issue an order on this matter based upon the facts presented.**

MEC only seeks "as much clarity as possible" from WEC, which it believes is only necessary "in the event a filing officer were limited to reviewing a maximum

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<sup>2</sup> Indeed, MEC originally agreed with Complainant's interpretation of Wis. Stat. § 8.10(3)(i) and Wis. Admin. Code EL § 2.05(3). *Compl. Ex. A* at 2.

<sup>3</sup> In a footnote, MEC also contends that it "seems of little moment" whether it MEC should have heard Hendricks Reaves and Elijah Reaves's "Affidavits to Contest." *Resp.* at 1 n.1. Clearly, the "Affidavits to Contest" were meant to be a § 5.06 complaint, which should only be heard by WEC, not the local filing officer. Wis. Stat. § 5.06.

amount of signatures.” *Resp.* at 3 and at 3 n.3. MEC further asks that WEC address a number of hypothetical situations, including how a local filing officer should treat signatures that were crossed out by the circulator or candidate. *Id.* at 3 n.3. Such facts are not present here, and therefore those questions are not before the WEC. Considering these hypothetical scenarios in ruling on this Complaint would be improper because the additional legal questions MEC seeks to have answered are not reachable on the facts of this case. *State ex rel. Collision v. City of Milwaukee Board of Review*, 2021 WI 48, ¶ 45, 397 Wis. 2d 246, 960 N.W.2d 1. Moreover, WEC has other avenues to provide the clarity MEC seeks. *See e.g.*, Wis. Stat. § 227.111 (the administrative rule-making process). WEC should decide this case on the narrow legal issue presented by the facts in the record and not extend to providing an advisory opinion.

Here, MEC considered sequentially the first 800 of the 941 signatures submitted by Hendricks Reaves. Of those 800, MEC determined that 438 of those who signed the nomination papers resided outside of the relevant district and, consequently, Hendricks Reaves had not submitted enough valid signatures. *Complaint*, Ex. A at 2. MEC contravened the law by then considering signatures in excess of the 800-signature maximum set by law. *Id.*, Ex. B at 1; *Aff. of Zombor* ¶ 7. On these facts, WEC should determine that MEC contravened Wis. Stat. § 8.10(3)(i) and Wis. Admin. Code EL § 2.07(1) by considering excess signatures to place Hendricks Reaves on the Spring Election ballot, and that Hendricks Reaves failed to qualify for the ballot.

Indeed, the facts in this matter illustrate important policy considerations undergirding the signature caps. The caps ensure that local filing officers are not

burdened with analyzing a limitless number of nominating signatures to determine if a candidate has qualified for the ballot. The limits appropriately place the burden of discerning valid nominators and submitting valid nominator signatures on the candidates themselves. By placing the onus on the candidate to submit no more than 800 signatures, including at least 400 valid ones, the caps also serve to minimize voter confusion by encouraging candidates to ensure signers are nominating a candidate who they can later vote for. Here, at least 438 people signed nomination papers for Hendricks Reaves who could not later vote for her, but apparently were led to believe they could.

Ultimately, Wis. Stat. § 8.10 and Wis. Admin. Code EL § 2.05 place clear, statutory limits on the nomination signatures that may be considered by a local filing officer. It was error for MEC to go beyond these thresholds to place Hendricks Reaves on the ballot, and WEC should correct that error.

### **CONCLUSION**

Accordingly, for the reasons stated herein, Ms. Smith requests WEC issue an order directing MEC to not place Hendricks Reaves on the Spring Election Ballot.

Respectfully submitted this 20th day of February, 2023.

PINES BACH LLP

*Electronically Signed: Eduardo E. Castro*

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### VERIFICATION

I, Gloria Smith, being first duly sworn upon oath, state that I personally read the above Verified Reply and that it is true and correct based upon my personal knowledge.

Dated this 20<sup>th</sup> day of February, 2023.

  
Gloria Smith

Subscribed and sworn to before me  
this 20<sup>th</sup> day of February, 2023.

  
Notary Public, State of Wisconsin  
My Commission expires: 10/31/24

