



Wisconsin Elections Commission

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January 20, 2022

Abraham Voelker
738 Pine Place
Rice Lake, WI 54868

DeeAnn Cook
Barron County Clerk
335 E. Monroe Avenue, Room 2130
Barron, WI 54812

Sent via email: @abevoelker.com; deeann.cook@co.barron.wi.us;
john.muench@co.barron.wi.us

Re: In the Matter of: Abraham Voelker v. DeeAnn Cook (Case No.: EL 22-03)

Dear Mr. Voelker and Ms. Cook:

This letter is in response to the verified complaint submitted by Abraham Voelker (“Complainant”) to the Wisconsin Elections Commission (“Commission”), which was filed in reply to actions taken by election officials during the Spring of 2022 nomination paper review period. The complaint alleges that the Barron County Clerk, DeeAnn Cook (“Respondent”), violated Voelker’s rights by granting ballot access to his opponent, in violation of several provisions of Wisconsin Statute and Administrative Code. (e.g. Wis. Stats. §§ 8.10 and 8.15; Wis. Admin. Code § EL 2.05)

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 Barron County, and all supporting documentation. The Commission provides the following analysis and decision. In short, the Commission has determined that the Complainant did not show probable cause to believe that a violation of law or abuse of discretion occurred with relation to Wis. Stats. §§ 8.10 and 8.15, and Wis. Admin. Code § EL 2.05.

Complaint Allegations and Response

The Complainant is a candidate for the Barron County Board of Supervisors, District 19, in the upcoming Spring of 2022 election. On or about January 7, 2022, he filed a nomination paper challenge against his opponent, Jerry McRoberts (“Opponent”). The Complainant alleges that the Respondent improperly granted ballot access to the Opponent after the Respondent’s written findings dismissed the ballot access challenge.

Commissioners

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

Administrator
Meagan Wolfe

Complainant's ballot access challenges relied on arguments that his Opponent violated Wis. Stats. §§ 8.10 and 8.15, and Wis. Admin. Code § EL 2.05, when Opponent filed nomination papers with the Respondent that lacked a circulator signature. The Respondent clerk then allowed Opponent to return and sign the filed papers, rather than requiring a corrective affidavit to rectify the deficiency. Complainant included a copy of an email communication that took place with WEC staff as part of the complaint record. In that message, Complainant was informed that a corrective affidavit should have been used, and the nomination papers should not have been physically handled or fixed after they were submitted to the clerk. It was also noted by WEC staff that this was grounds for a challenge.

Both parties stipulate that the facts are not materially in dispute, which the Respondent formally acknowledges in her response filing, and the Complainant formally acknowledged in an email waiving his right to file a sworn reply. As such, the original, written decision of the Respondent dated January 11, 2022, ("Decision") becomes the primary response to the Complainant's Wis. Stat. § 5.06 ballot access appeal.

The Decision notes that the original ballot access challenge was timely filed, and the record shows that the Decision was also timely rendered. The Decision focused on the presumption of validity for nomination papers and a lack of prohibition on filling in missing circulator signatures within Wisconsin Statute and Administrative Code. The Decision also focuses on the Respondent's contention that the Complainant incorrectly applied provisions of Wisconsin Administrative Code to circulator signatures, where those provisions are only applicable to the elector signatures on nomination papers.

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. Voelker'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

Wisconsin Statute § 8.10(3) provides:

The certification of a qualified circulator under s. 8.15 (4) (a) shall be appended to each nomination paper. The number of required signatures on nomination papers filed under this section is as follows...

Additionally, Wis. Stat. § 8.15(4) states:

(a) The certification of a qualified circulator stating his or her residence with street and number, if any, shall appear at the bottom of each nomination paper, stating he or she personally circulated the nomination

paper and personally obtained each of the signatures; he or she knows they are electors of the ward, aldermanic district, municipality or county, as the nomination papers require; he or she knows they signed the paper with full knowledge of its content; he or she knows their respective residences given; he or she knows each signer signed on the date stated opposite his or her name; and, that he or she, the circulator, is a qualified elector of this state, or if not a qualified elector of this state, is a U.S. citizen age 18 or older who, if he or she were a resident of this state, would not be disqualified from voting under s. 6.03; that he or she intends to support the candidate; and that he or she is aware that falsifying the certification is punishable under s. 12.13 (3) (a). The circulator shall indicate the date that he or she makes the certification next to his or her signature. The certification may be made by the candidate or any qualified circulator.

(b) Nomination papers shall be accompanied by a declaration of candidacy under s. 8.21. If a candidate for state or local office has not filed a registration statement under s. 11.0202 (1) (a) at the time he or she files nomination papers, the candidate shall file the statement with the papers. A candidate for state office shall also file a statement of economic interests with the ethics commission under s. 19.43 (4) no later than 4:30 p.m. on the 3rd day following the last day for filing nomination papers under sub. (1), or no later than 4:30 p.m. on the next business day after the last day whenever that candidate is granted an extension of time for filing nomination papers under sub. (1).

The Complainant correctly points to the requirements in these provisions of statute when arguing that a circulator signature is required to be appended to the bottom of nomination papers. These statutory prerequisites are not materially in dispute anywhere in the record or this decision. The fact that the documents were signed by the circulator before the required deadline is not contested by the parties either. Subsequently, this analysis hinges on a consideration of provisions of administrative code and agency guidance when evaluating whether a corrective affidavit was required at law for the correction of the initially missing signature of the circulator.

The Complainant also bases his challenge on Wis. Admin. Code § EL 2.05 and specific WEC agency guidance (“Nomination Paper Challenges”) which states:

The circulator may correct errors in the certificate of the circulator, such as the circulator failed to sign or otherwise complete the certificate, or entered inadvertently erroneous data (for instance: the circulator dated the certificate before circulation, not after). If the circulator has not corrected these errors by affidavit by the correction deadline, the challenge must be approved and the signatures on those pages struck. Recommendations to this effect have been approved in prior cases. *Nomination Paper Challenges*, Wisconsin Elections Commission, <https://elections.wi.gov/publications/manuals/common-nomination-paper-challenges> (last visited January 15, 2022).

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. Wis. Admin. Code § EL 2.05(1). After a nomination paper has been filed, no signature may be added or removed. After a nomination paper has been signed, but before it has been filed, a signature may be removed by the circulator. The death of a signer after a nomination paper has been signed does not invalidate the signature. *Id.* at 2.05(16).

Wisconsin Administrative Code § EL 2.05(16) need not be evaluated here, because the Complainant has failed to recognize that this provision only applies to the signature of an elector signing the nomination papers, not the circulator's signature. This is evidenced by the fact that the code contemplates processes associated with counting signatures, circulator removal of signatures before submission, etc.

This leaves only the Complainant's arguments that Commission guidance documents mandate a corrective affidavit for missing circulator signatures and that a candidate is responsible for filing compliant nomination papers under Wis. Admin. Code § EL 2.05(1).

Wisconsin Administrative Code must be further evaluated when determining whether the Complainant's challenges have merit:

Any information which appears on a nomination paper is entitled to a presumption of validity. Notwithstanding any other provision of this chapter, errors in information contained in a nomination paper, committed by either a signer or a circulator, may be corrected by an affidavit of the circulator, an affidavit of the candidate, or an affidavit of a person who signed the nomination paper. The person giving the correcting affidavit shall have personal knowledge of the correct information and the correcting affidavit shall be filed with the filing officer not later than three calendar days after the applicable statutory due date for the nomination papers. *Id.* at 2.05(4). Where any required item of information on a nomination paper is incomplete, the filing officer shall accept the information as complete if there has been substantial compliance with the law. *Id.* at 2.05(5).

No signature on a nomination paper shall be counted unless the elector who circulated the nomination paper completes and signs the certificate of circulator and does so after, not before, the paper is circulated. No signature may be counted when the residency of the circulator cannot be determined by the information given on the nomination paper. *Id.* at 2.05(14).

The burden is on the challenger to establish any insufficiency. If the challenger establishes that the information on the nomination paper is insufficient, the burden is on the challenged candidate to establish its sufficiency. The invalidity or disqualification of one or more signatures on a nomination paper shall not affect the validity of any other signatures on that paper. Wis. Admin. Code § EL 2.07(3)(a).

The record shows that a signature was placed on the nomination papers by the circulator in accordance with Wis. Stat. § 8.15(4) and Wis. Admin. Code § EL 2.05(14). The Respondent interprets the word “may” in Wis. Admin. Code § EL 2.05(4) to be suggestive of a need to file a corrective affidavit, not a mandate for such an affidavit. That may not be a correct interpretation, but it is of no consequence in the instant matter.

The more consequential provision of Wis. Admin. Code § EL 2.05(4) is that information on the nomination paper is entitled to a presumption of validity. Additionally, filing officers are required to accept information on nomination papers as complete if a required item is missing but there has been substantial compliance with the law. Wis. Admin. Code § EL 2.05(5). A required item was not even missing in the challenged nomination papers here. Rather, the Complainant challenges whether a circulator signature was improperly allowed during the allowable period of correctability.

The corrective affidavit component of Wis. Admin. Code § EL 2.05(4) relied on by the Complainant is not sufficient by itself to meet the Complainant’s burden of establishing insufficiency when directly weighed against the presumption of validity and substantial compliance standards, and where the Respondent exercised a good-faith reliance on the clerk’s authorization to sign the nomination papers after their filing. Even the Nomination Paper Challenges manual cited by the Complainant notes that “...the facts of individual circumstances and challenges vary, and the application of these principles will be determined on a case by case basis.” (*see* Page 1).

Indeed, there could be circumstances under which the Complainant’s statutory and code-based challenges might be sustained (*e.g.* a circulator surreptitiously enters the clerk’s office without permission and modifies/signs filed nomination papers, etc.), but a strict interpretation of these requirements could lead to absurd results (*e.g.* a circulator hands the papers to the clerk and they are thus considered “filed,” the circulator turns to leave, and the clerk stops them from leaving because of a missing signature, etc.). A balancing test of various provisions of statute and code, under the facts presented in the instant matter, do not support a finding that the Complainant met his burden of establishing insufficiency.

Wisconsin Statute even contemplates the amendment/modification of other types of nomination papers after filing:

A candidate for state or local office shall file an amended declaration of candidacy under oath with the same officer or agency if any information contained in the declaration of candidacy changes at any time after the original declaration of candidacy is filed and before the candidate assumes office or is defeated for election or nomination. Wis. Stat. § 8.21(6)

The use of a corrective affidavit is primarily utilized to prevent alteration and ambiguity after the submission of nomination papers. However, a clerk allowing a circulator to sign nomination papers in her presence after filing is not fatal to the validity of such papers, and nothing in the record suggests any further alteration, ambiguity, or wrongdoing.

The Commission still views the use of corrective affidavits as the preferred method of lawful correction, and there is a strong public interest in utilizing that process to avoid even a perception of insufficiency or wrongdoing. The Commission will continue to emphasize the use of

corrective affidavits in its trainings and provide sample affidavits as needed by filing officers. Future complaints will also be evaluated on a case-by-case basis. Under the fact set presented here, the Complainant has not met the burden of proving insufficiency. Probable cause has not been established to believe that a violation of law or abuse of discretion occurred, and the ballot access challenge appeal is thus denied.

Commission Decision

Based upon the above review and analysis, the Commission finds no probable cause to believe that a violation of law or abuse of discretion has occurred with regards to Wis. Stats. §§ 8.10 and 8.15, and Wis. Admin. Code § EL 2.05.

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,

COMMISSION

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

Meagan Wolfe
Administrator

cc: Commission Members