

June 7, 2018

David L. Anstaett
DAnstaett@perkinscoie.com
D. +1.608.663.5408
F. +1.608.663.7499

BY ELECTRONIC MAIL: ELECTIONS@WI.GOV

Wisconsin Elections Commission
212 E. Washington Avenue
3rd Floor
Madison, WI 53703

Re: Verified Response to Complaint of the Republican Party of Wisconsin and Mark Morgan Against Andy Gronik

Dear Commissioners:

On behalf of our client, Andy Gronik, we submit this Verified Response to the Complaint brought by Mark Morgan and the Republican Party of Wisconsin against Mr. Gronik.¹

INTRODUCTION

The Complaint purports to challenge Mr. Gronik's nomination papers on five counts. None presents probable cause to believe that any of the papers are invalid. All are contradicted by facts and law. Finally, the Complaint is fashioned entirely on misstatements of law and/or unsupported speculation, and fails repeatedly to meet Commission standards. The Commission should not just dismiss the Complaint, but find it also to be frivolous, and impose a forfeiture up to the maximum amount authorized by law.²

STANDARD OF REVIEW

Mr. Gronik's nomination papers are presumed valid. *See* Wis. Adm. Code EL § 2.05(4) ("Any information which appears on a nomination paper is entitled to a presumption of validity."). The Commission has already reviewed them and correctly found 3,602 signatures to be valid. *See* Compl. ¶ 4. The Republican Party and Mr. Morgan bear the burden of proving that Mr. Gronik's nomination papers were insufficient, and Mr. Gronik need show nothing unless they meet that

¹ The Complaint is styled as against "David S. Gronik Jr." However, Mr. Gronik is running under his nickname—Andy—and has filed his paperwork with the Commission and circulated his nomination papers accordingly. *See, e.g.,* http://elections.wi.gov/sites/default/files/gab_forms/3/el_162_declaration_of_candidacy_rev_2018_04_fill_15639.pdf (last accessed June 7, 2018) ("A nickname may replace a legal name."). To avoid confusion, this Verified Response and its supporting documents refer consistently to Andy Gronik.

² *See* Wisconsin Election Commission, Nomination Paper Challenges, at 1 (January 2018), http://elections.wi.gov/sites/default/files/publication/65/common_nomination_paper_challenges_manual_1_2018__66730.pdf.

burden. *See* Wis. Adm. Code EL § 2.07(3)(a) (“The burden is on the challenger to establish any insufficiency”). Specifically, the Republican Party and Mr. Morgan must establish “probable cause” that Mr. Gronik’s nomination papers are invalid: they must “allege facts, which, if true, would constitute a violation of Wisconsin’s elections . . . statutes.” Michael Haas and Nathan Judnic, *Challengers to Nomination Papers and Other Interested Parties 2018 General Election*, Wisconsin Elections Commission Memorandum at 4 (June 1, 2018) (hereinafter “Challengers Memorandum”) (“To be considered by the Commission, a complaint/challenge must establish probable cause to believe that a violation of election law has occurred.”).

The Republican Party and Mr. Morgan were supposed to “familiarize themselves with the requirements of Wisconsin Statutes Chapter 8 . . .” Challengers Memorandum at 1. They were supposed to present “evidence . . . demonstrating a failure to comply with statutory or other legal requirements,” *id.* at 2, which was to include “affidavits or other relevant documentation.” *Id.* at 3. “Any challenge which is not established by the materials submitted . . . will be denied.” *Id.* Challenges based on a purportedly defective circulator certification were supposed to “include a copy of at least one of the pages with the deficiency (or deficiencies) circled . . .” *Id.* at 5.

ARGUMENT

None of the five counts advanced by the Republican Party and Mr. Morgan presents probable cause that any nomination paper submitted by Mr. Gronik and accepted by the Commission is invalid. Counts 1, 2 and 3 hinge on misstatements of law that complainants should have known were incorrect. Counts 4 and 5 are supported by nothing except complainants’ conjecture. The Complaint presents no affidavit nor other evidence in support, besides Mr. Morgan’s own statements, and it provides no copy of any supposedly defective nomination paper. The evidence available to Mr. Gronik’s campaign and submitted with this Verified Response demonstrates that the five counts are, indeed, meritless. The Commission should dismiss the Complaint, find it frivolous, and impose a forfeiture.

A. Counts 1 and 2 Misstate the Law Regarding Who May Circulate Nomination Papers and Should Be Dismissed

Making a key omission, Paragraph 8 of the Complaint erroneously states: “Wis. Stat. § 6.03 disqualifies any person convicted of a felony from voting in Wisconsin elections.” Compl. ¶ 8. The Complaint falsely states that two of Mr. Gronik’s circulators are “disqualified from voting under Wis. Stat. §6.03 as a result of [their] . . . felony conviction[s] and . . . therefore [are] not qualified to circulate nomination papers under Wis. Stat. §8.15.” Compl. ¶¶ 12, 17. The Complaint ignores the fact that, when one has been convicted of a felony, “his or her right to vote is restored when he or she completes the term of imprisonment or probation for the crime

that led to the disqualification.” Wis. Stat. § 304.078(3). This is what happened with the two circulators referenced in Counts 1 and 2, and so these counts should be dismissed.

Read literally, Counts 1 and 2 fail to allege any invalid signatures. Circulators indeed must certify that they are qualified Wisconsin electors, or, if not, that they would not be disqualified from voting under § 6.03 if they were State residents. *See* Wis. Stat. § 8.15(4)(a). Section 6.03(b) indeed forbids “[a]ny person convicted of . . . felony” from voting—“unless the person’s right to vote is restored through a pardon or under s. 304.078(3) . . .” Wis. Stat. § 6.03(b) (emphasis added). However, “[i]f a person is disqualified from voting under s. 6.03(1)(b), his or her right to vote is restored when he or she completes the term of imprisonment or probation for the crime that led to the disqualification.” Wis. Stat. § 304.078(3) (emphases added). Thus, a circulator might well have been found guilty of a felony in the past—as the Complaint alleges—and still be eligible to vote and circulate nomination papers.

The evidence shows that this was the case with the two circulators referenced by Counts 1 and 2. While the Complaint alleged that they were ineligible to circulate papers because of felony convictions that were nearly six and three years old, respectively, *see* Compl. ¶¶ 10-11, 16, the evidence shows that both were qualified Wisconsin electors who had their rights to vote restored before circulating the papers. *See* Aff. of Patricia Lacy (“Lacy Aff.”) at ¶ 4; Aff. of Torre Johnson (“Johnson Aff.”) at ¶ 4; *see also* Wis. Stat. § 8.15(4)(a); *id.* at § 6.03(b); *id.* at § 304.078(3).

With no factual basis whatsoever, the Complaint simply assumes incorrectly that the two circulators had not paid their debts to society and had their rights to vote restored, in the manner ordinarily provided by Wisconsin law. Counts 1 and 2 should accordingly be dismissed.

B. Count 3 Ignores Commission Guidance on the Standard for Indicating Municipalities, Fails to Present Any Evidence of Breach, and Should Be Dismissed

Count 3 of the Complaint alleges that an array of Mr. Gronik’s “nomination pages are invalid because the circulator did not fully indicate the municipality of his or her residential address as required under Wis. Stat. § 8.15(4)(a) . . .” Compl. at ¶ 21. The Complaint ignores relevant Commission guidance, fails to allege any actual breach, and should be dismissed.

As an initial matter, the Complaint was supposed to “include a copy of at least one of the pages with the deficiency (or deficiencies) circled . . .” Challengers Memorandum at 5. None was provided, and unsurprisingly so. Even a cursory review of the municipalities listed on the pages set forth in Attachment A shows several instances in which the name of the municipality was fully spelled out, making it impossible to identify any basis for the allegation. *See* Ex. 1.

However, even where the municipality was not fully spelled out, the Complaint ignores relevant Commission guidance. The circulator certification must simply state the circulator's "residence with street and number, if any, ... at the bottom of each nomination paper ..." Wis. Stat. § 8.15(4)(a). The Commission has allowed abbreviated municipality names to meet similar requirements. *See* Nomination Paper Challenges, Wisconsin Elections Commission at 7 (Jan. 2018) (accepting "WFB" on a nomination petition as validly indicating "Whitefish Bay" and "Gtown," "by the zip code [as] indicat[ing] 'Germantown'").

Thus, there is no basis to contest the 154³ pages of signatures that contain an abbreviation on the petition circulator affidavit of the municipality of Milwaukee as "Mil" or "Milw," nor the four pages that contain the abbreviation of "M" or "Mi"—and certainly not the nine pages of signatures that spell out the municipalities of "Milwaukee" or "Fox Pt" (which also contain the ZIP code).⁴

Even if one were to assume the municipalities were not adequately identified, the affidavits accompanying this Verified Response should suffice to repair any deficiency. The Commission advises that:

[D]efects or deficiencies in the Signatory section and the Certificate of the Circulator ... may be "repaired" or "rehabilitated" by affidavit. Correcting affidavits "repairing" or "rehabilitating" deficiencies raised by the complaint must be received by the Commission by the due date for the response to the complaint (within 3 calendar days of the challenge being filed, Wis. Adm. Code EL § 2.07(2)(b)).

Memorandum from Michael Haas, Staff Counsel, and Nathan W. Judnik, Senior Elections Specialist, to All Candidates Subject to a Nomination Papers Challenge 2018 General Election, at 3 (June 1, 2018) (hereinafter "Candidates Memorandum") (emphasis in original). In most cases involving the circulator's certification, "the defect has no effect on the validity of the signatures or on the information presented to the signatories when they signed." *Id.* at 5. The accompanying affidavits confirm the municipalities in which the circulators resided. *See* Lacy Aff. at ¶ 2; Johnson Aff. at ¶ 2; Aff. of Keith Pettis ("K. Pettis Aff.") at ¶ 2; Aff. of Lisa Pettis at ¶ 2.

In any case, because the Complaint presents no evidence that any of the circulator certifications are inadequate, the Commission should dismiss Count 3.

³ As of the time of submission of this Verified Response, we have been unable to acquire a copy of pages 140 and 724 of the nomination papers, referenced by complainants.

⁴ *See* Wis. Adm. Code EL § 2.05(15)(c) ("The address of the signer is missing or incomplete, unless residency can be determined by the information provided on the nomination paper.").

C. Count 4 Fails to Allege or Prove Any Deficient Signature, Is Contradicted by Applicable Law, and Should Be Dismissed

Count 4 of the Complaint alleges that certain nomination pages of the petition “are invalid or partially invalid because the circulator of the nomination paper and not the actual signer of the nomination paper listed the municipality of the signer ...” Compl. at ¶ 24. Once again, the Complaint presents no evidence of non-compliance, is undercut by applicable law, and should be dismissed.

The complainants failed to meet their burden of proof, offering no evidence that anyone besides the signer wrote the municipality. The allegation hinges entirely on speculation, offering no affidavit from any signatory, no evidence from any handwriting expert, and not even presenting a single page to illustrate any supposed deficiency. The statute requires more than that: a challenge must “be established by affidavit, or other supporting evidence, demonstrating a failure to comply with statutory or other legal requirements.” Wis. Adm. Code EL § 2.07(2)(a). The Complaint has failed to meet complainants’ burden of proof.

Even assuming *arguendo* that the Republican Party and Mr. Morgan had met their burden of proof, Count 4 still would fail. The statute provides that “in order for the signature to be valid, 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, the street and number, if any, on which the signer resides, and the date of signing.” Wis. Stat. § 8.15(2). However, in *In re Recall of Redner*, 153 Wis. 2d 383 (Ct. App. 1989), the court held that “the failure of many of the petition’s signatories to [personally] list their municipality of residence, as required by sec. 8.15(2), Stats” did not render their signatures invalid, as long as the petition contained their city of residence, and there were no allegations that the signers did not actually reside in that city. 153 Wis. 2d at 391. The appellate court “agree[d] with the trial court that this constitutes substantial compliance and is not grounds for the issuance of a writ” of mandamus directing the court to dismiss those signatures. *Id.*

D. Count 5 Is Based Wholly on Speculation, Is Contradicted by the True Facts, and Should Be Dismissed

Count 5 of the Complaint alleges that certain “nomination pages and all signatures contained within are invalid *if* they were not in fact personally circulated and certified by Keith Pettis.” Compl. at ¶ 30 (emphasis added). It relies entirely on speculation to assume—without evidence—that Mr. Pettis did not circulate the pages. Rather, the Complaint says simply that “there is reason to question whether it was Keith Pettis who personally circulated the above referenced nomination pages,” because a bench warrant had been issued prior to the time he collected signatures on Mr. Gronik’s nomination papers. *Id.* at ¶ 29. A “reason to question” is not the same as probable cause, and so Count 5 should be dismissed.

Wisconsin Elections Commission
June 7, 2018
Page 6

In any case, accompanying this Verified Response is an affidavit, executed by Mr. Pettis, affirming that he did, in fact, personally obtain each of the signatures. *See* K. Pettis Aff. at ¶ 5. Even if the Commission were to credit the Complaint's unsupported speculation, Count 5 should still be dismissed.

CONCLUSION

For the reasons set forth above, we respectfully request that the Commission dismiss the Complaint against Mr. Gronik and seek appropriate forfeiture from the complainants.

Very truly yours,

A handwritten signature in blue ink, appearing to be 'DAS', written over a horizontal line.

David L. Anstaett
Brian G. Svoboda
Jacki L. Anderson
Counsel to Andy Gronik

cc: Mark Morgan, Republican Party of Wisconsin (by hand)
Michael Haas, Wisconsin Elections Commission (by email)
Nathan W. Judnic, Wisconsin Elections Commission (by email)

VERIFICATION

I certify that, on June 7, 2018, I caused a copy of the Verified Response to be delivered by hand to the Complainant at the address indicated below:

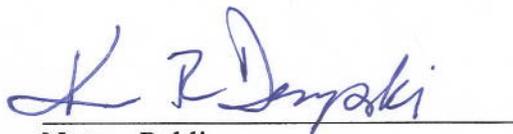
Mark Morgan
Republican Party of Wisconsin
148 East Johnson Street
Madison, WI 53703

Further, I hereby swear that the foregoing response submitted on behalf of Andy Gronik is true based on information and belief.



David L. Anstaett

STATE OF WISCONSIN)
County of Dane)
SUBSCRIBED AND SWORN to before me this 7th day of June, 2018.



Notary Public

My Commission Expires:

12/11/20 