

**STATE OF WISCONSIN
WISCONSIN ELECTIONS COMMISSION**

In the Matter of:)	
)	
Nomination Papers Filed by Louis Kowieski)	Decision and Order
)	
Louis Kowieski,)	
)	
 Petitioner,)	WEC Case No. EL 20-10
)	
and)	
)	
Diane Coenen, Oconomowoc City Clerk)	
)	
Respondent.)	
)	
)	

Pursuant to Wis. Stat. §§ 5.05(1)(e) and 5.06(6), the Wisconsin Elections Commission (“Commission”) is provided with the inherent, general, and specific authority to consider the submissions of parties to a complaint, and to issue findings and orders. Louis Kowieski has filed a verified complaint with the Commission appealing the decision of the City of Oconomowoc Clerk, Diane Coenen, to deny Mr. Kowieski ballot access for the 2020 Spring Election as a candidate for Mayor. The Commission has reviewed the complaint and supporting documentation as well as the verified response of Clerk Coenen. The Commission issues the following Decision and Order.

Procedural Background

Mr. Kowieski timely filed nomination papers for the Office of Mayor for the City of Oconomowoc with the City Clerk on January 7, 2020. After two rounds of review of the nomination papers, Clerk Coenen determined that Mr. Kowieski submitted 214 valid signatures. There is no dispute that all other required ballot access documents were timely submitted to Clerk Coenen by Mr. Kowieski. On January 10, 2020, Ms. Tara Fox filed a timely challenge complaint with Clerk Coenen, challenging the sufficiency of Mr. Kowieski’s nomination papers. Mr. Kowieski filed a timely response to the challenge on January 13, 2020. On January 15, 2020, Clerk Coenen issued a sufficiency determination on the complaint, which found that some signatures were invalid and were struck (challenge sustained), and other signatures were valid and were accepted (challenge rejected). Ultimately, Clerk Coenen issued a sufficiency determination finding 200 valid signatures, the minimum number allowed to obtain ballot access for that office. On January 17, 2020, Ms. Fox filed a verified complaint with the Commission, appealing the sufficiency determination issued by Clerk Coenen.

On January 22, 2020, Commission staff commenced its initial review of the complaint to ensure that on its face, the complaint was timely, sufficient as to form and stated probable cause pursuant to Wis. Admin. Code § EL 20.04(1). Based on this initial review, Commission staff was unable to determine which 200 signatures Clerk Coenen had determined were valid. Commission staff contacted Clerk Coenen for clarification as to which signatures were struck after the original challenge filed by Ms. Fox, and which signatures were accepted. Upon further review, Clerk Coenen determined that Mr. Kowieski did not have a sufficient number of signatures to be placed on the ballot – less than the required minimum of 200.

On that same day, January 22, 2020, Clerk Coenen issued an “Amended Determination on Complaint to Sufficiency of Nomination Papers” that stated: “I used my best judgement when I made my determination of January 15, 2020, however after consulting with the Wisconsin Elections Commission, I am persuaded that the sufficiency of nomination papers, that were filed by Louis Kowieski, candidate for the office of Mayor of the City of Oconomowoc, did not meet the requisite number of valid nominations to qualify to be on the ballot.”

On January 30, 2020, Mr. Kowieski filed a verified complaint with the Commission, appealing the decision of Clerk Coenen that denied him ballot access for the 2020 Spring Election.

On February 4, 2020, Clerk Coenen filed a verified response to the complaint.

On February 5, 2020, the Commission received confirmation through Mr. Kowieski’s counsel that a reply to the response would not be filed in this matter.

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 serves as the Commission’s final decision regarding the issues raised by Mr. Kowieski’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.

Complaint

Mr. Kowieski alleges that Clerk Coenen “abused her discretion and misapplied the applicable law to exclude Mr. Kowieski’s [*sic*] from the ballot based on her review of the sufficiency of his nomination papers.” Complaint, Pg. 1.

Mr. Kowieski generally alleges that Clerk Coenen abused her discretion by issuing an amended sufficiency determination after an appeal by Ms. Fox had already been filed with the Commission, which alleged that certain signatures subject to her challenge should not have

been counted. Ms. Fox’s complaint alleged that Clerk Coenen abused her discretion in rejecting the challenges to certain signatures, and that Mr. Kowieski failed to qualify for the ballot for failure to submit 200 valid signatures. Due to the abbreviated amended sufficiency determination issued by Clerk Coenen and the abbreviated response to this complaint filed by Clerk Coenen which provide very little detail or reasoning on why the amended sufficiency was issued (number of valid signatures, what changed from the initial sufficiency to the amended sufficiency, etc.), Mr. Kowieski and the Commission had to rely on the initial sufficiency determination for details on what signatures were struck and for what reason. Clerk Coenen verbally informed Mr. Kowieski that “she struck two additional signatures”. Complaint Pg. 5.

The Commission’s findings will therefore address: 1) Clerk Coenen’s issuance of the amended determination of sufficiency, and 2) the specific decisions on signatures that Clerk Coenen made when deciding the original challenge filed by Ms. Fox. Both of these issues must be resolved so that a final number of valid signatures for Mr. Kowieski can be provided.

Response

Clerk Coenen’s response to the complaint stated: “On January 22, 2020 I amended my determination, after consultation with WEC, stating Kowieski did not meet the requisite number of valid nominations. The amendment was made because, upon further review, an insufficient number of valid signatures was presented. I offer no further response.”

While very brief, Clerk Coenen’s response does provide the basis for amending the initial determination (upon further review of the valid signatures after the challenge, the original determination of finding sufficiency was not correct), and it can be implied from this response that she stands by the decisions she made regarding signatures she either struck or accepted as a result of Ms. Fox’s challenge.

Commission Findings

Issuance of Amended Determination of Sufficiency

Mr. Kowieski argues that the amended determination of sufficiency issued by Clerk Coenen is either “Void Ab Initio”¹ or should be voided as an abuse of discretion.

While an amended determination of sufficiency being issued after a complaint is formally filed with Commission is certainly uncommon, given the set of facts presented here, the Commission believes the amended determination of sufficiency is valid, and Clerk Coenen’s actions to correct an error were not an abuse of discretion.

Clerk Coenen’s Initial Determination of Sufficiency Contained an Error

¹ “Void Ab Initio” comes from the Latin phrase “ab initio” (from the beginning) and is more commonly used in contract litigation and generally means that something (like an agreement) should be treated as invalid from the outset or the beginning.

The initial determination finding Mr. Kowieski's papers to be sufficient was incorrect because the number of valid signatures that remained after processing the initial challenge was less than 200. In his complaint, Mr. Kowieski apparently reached the same conclusion after reviewing Clerk Coenen's decision and applying her decisions to the actual nomination papers:

There is some confusion regarding the Clerk's initial January 15, 2020 Decision. They concluded that there were 200 valid signatures and based on that finding Ms. Fox filed her appeal with the WEC. **A review of her analysis and the nomination papers themselves; however, could result in a total of 197 valid signatures. Ultimately, this is a distinction without a difference.** Adding back in even just 7 signatures from the two pages Mr. Kowieski circulated would still yield 204 valid signatures. Adding all 14 back in would yield 211. (emphasis added)

Complaint, Pg. 10, FN 1.

With due respect to Mr. Kowieski's argument, whether the initial decision of the clerk (the decision that is the basis for an appeal to the Commission by the party that disagrees with the decision) is correct or not, especially in this instance, cannot be characterized as a "distinction without a difference." Finding 200 valid signatures after the challenge puts Mr. Kowieski on the ballot and Ms. Fox can appeal that decision to the WEC; finding less than 200 signatures after the challenge does not put Mr. Kowieski on the ballot and then he is able to file an appeal of that decision to the WEC. This is certainly a distinction that matters.

This important distinction played out in this case – Ms. Fox filed a complaint appealing the initial decision that 200 signatures were valid and when that changed, Mr. Kowieski filed a complaint appealing the amended decision that less than 200 signatures were valid. This is the process contemplated by Wis. Stat. § 5.06, which allows individuals that believe an election official's actions or decisions were contrary to law, or they in some way abused their discretion in applying the law or making a decision, to file a complaint with the Commission.

The Commission has a responsibility to determine whether a complaint filed under Wis. Stat. § 5.06 is "timely, is sufficient as to form and states probable cause." See Wis. Admin. Code § EL 20.04(1). Due to a counting error discovered by Commission staff when reviewing the complaint, allegations that Clerk Coenen's abused her decision placing Mr. Kowieski's name on the ballot due to signature issues was no longer a proper claim before the Commission that could be acted upon. Once the amended determination of sufficiency was issued to correct the counting error, Ms. Fox's complaint no longer had grounds to argue that Mr. Kowieski's name should not be on the ballot – it had been removed by virtue of the amended sufficiency determination.

After the amended sufficiency determination was issued, Mr. Kowieski became the party that could file an appeal of Clerk Coenen's decision. Mr. Kowieski filed his appeal on January 30, 2020.

Clerk Coenen Corrected the Error by Amending the Initial Sufficiency Determination

When a nomination paper challenge is filed, the local clerk is tasked with reviewing the complaint and response and making a determination as to whether a sufficient number of signatures remain after the challenge. “The filing officer shall apply the standards in s. EL 2.05 to determine the sufficiency of nomination papers, including consulting extrinsic sources of evidence under s. EL 2.05(3).” Wis. Admin. Code § EL 2.07(1). “After the deadline for filing a response to a challenge, but not later than the date for certifying candidates to the ballot ... the local filing officer shall decide the challenge with or without a hearing.” Wis. Admin. Code § EL 2.07(2)(b).

There are no provisions in the Commission’s administrative code that govern “amended” determinations of sufficiency, therefore the Commission must decide whether the issuance of such an amendment was within the filing officer’s discretion, or whether it was an abuse of that discretion. The Commission believes that Clerk Coenen was within her authority to correct an error in her original sufficiency determination. The error significantly impacted several parties, and correcting the error placed the proper party before the Commission on appeal. The error was corrected immediately upon discovery and shared with the parties involved as soon as possible to allow Mr. Kowieski time to prepare and file an appeal with the Commission. The amended sufficiency was issued prior to Ms. Fox’s complaint being forwarded to Clerk Coenen for a response. The error was corrected, and the amended sufficiency was issued prior to ballots being printed for the Spring Primary in the City to avoid potential voter confusion or the reprinting of ballots for that election. Had the error not been discovered and corrected by Clerk Coenen, Mr. Kowieski’s name would have improperly appeared on the ballot because he had not met the minimum requirements for ballot access. See Wis. Stat. § 8.30(1)(a) and (b) (candidates ineligible for ballot placement).

Additionally, it could be argued that ignoring the discovered error and not attempting to fix it within a reasonable timeframe could be a more egregious abuse of discretion by the clerk than what is alleged in Mr. Kowieski’s complaint.

The Commission believes that under the circumstances, it was not an abuse of discretion by Clerk Coenen to issue the amended determination of sufficiency to correct the discovered error.

The Amended Sufficiency Determination Does Not Deny Mr. Kowieski the Right to Appeal to the Commission or the Courts

Mr. Kowieski argues that allowing the filing officer the ability to amend the decision after it has been appealed would harm both candidates and challengers by effectively denying them their right to review by the Commission and ultimately the courts. The Commission agrees with Mr. Kowieski that a candidate challenging a clerk’s decision must first obtain a decision from the Commission before being able to file an appeal in Circuit Court. Complaint, Pg. 4. This decision and order of the Commission is an administrative agency decision that can be appealed to the courts under Wis. Stat. ch. 227. Allowing Clerk Coenen to amend her sufficiency determination to correct an error, even though a complaint had been filed with the

Commission, does not deny Mr. Kowieski any of the appeal opportunities afforded by Wis. Stat. § 5.06. “Any election official or complainant who is aggrieved by an order issued under sub. (6) may appeal the decision of the commission to circuit court for the county where the official conducts business or the complainant resides no later than 30 days after issuance of the order. Pendency of an appeal does not stay the effect of an order unless the court so orders.” Wis. Stat. § 5.06(9).

The Amended Sufficiency Determination Lacks Detailed Reasoning

The Commission agrees with Mr. Kowieski that the amended sufficiency determination issued by Clerk Coenen lacks information that the Commission and a Court on review would prefer, however, the original decision by Clerk Coenen that provides an analysis of her line by line determinations on the challenged signatures provides the Commission and Mr. Kowieski with enough information to determine which signatures were accepted and which signatures were rejected. Again, Mr. Kowieski admits in the complaint, that based on Clerk Coenen’s initial determination it “could result in a total of 197 valid signatures.” Complaint, Pg. 10, FN 1. While lacking detail, reading the amended determination to correct the counting error contained in the initial determination provided Mr. Kowieski enough information to question the signatures that Clerk Coenen struck, and make legal arguments as to why those signatures should be accepted.

While the amended sufficiency determination certainly lacks some reasoning and a final number of valid signatures, it is not “devoid of any analysis of the law or the facts” when read together with Clerk Coenen’s initial determination that in actuality resulted in a number of signatures below the required minimum for ballot access.

Clerk Coenen’s Challenge Review Process Should be Examined and Changed if Necessary to Avoid Similar Future Issues

The counting error that was discovered and corrected through the amended sufficiency determination issued by Clerk Coenen is certainly unfortunate and may have been avoided if some additional best practices were in place. The Commission staff have reviewed many nomination papers and challenges to those papers over the years, and have developed procedures that would have likely caught this type of issue much earlier in the process, and likely before any sufficiency determination was issued by the clerk.² For example, Step 4 of the Commission’s “Nomination Paper Review Guidelines” publication, entitled “Count the Signatures” sets forth a proven process for organizing the petition pages by groups depending on the number of valid signatures found on a page. So, pages with 10 signatures are grouped together with other pages that contain 10 signatures, pages with 9 signatures are grouped together with other pages that contain 9 signatures, and so on. Tally sheets to count the number of pages that contain each number of signatures is a good doublecheck to any raw number of signatures that has been calculated by counting signatures line by line from a page. Two separate individuals prepare independent tally sheets based on the same set of papers,

² The Elections Commission has published a detailed guide and step by step video demonstrating best practices for reviewing nomination papers and determining sufficiency:
<https://elections.wi.gov/publications/video/NomPaperReviewGuidance>

and those numbers must agree before a final number is determined and shared with a candidate. From conversations with Clerk Coenen about the review process used, it is unclear whether this best practice was used when reviewing Mr. Kowieski's nomination papers after receiving Ms. Fox's challenge. If not, the Commission recommends that Clerk Coenen implement this best practice to minimize the risk of this error occurring in the future. The Commission staff is willing and able to assist in reviewing current procedures and providing any assistance or guidance where needed.

Challenges Filed Against Mr. Kowieski's Nomination Papers – Clerk's Original Sufficiency Decision

Mr. Kowieski alleges that Clerk Coenen should have rejected certain challenges to his nomination papers, leaving him with a sufficient number of signatures for ballot access.

To determine whether Clerk Coenen's decision to deny Mr. Kowieski ballot access for failure to submit enough valid signatures is appropriate, the Commission must review the Clerk's reasoning and decision on the signatures originally challenged and decide if 200 or more valid signatures were submitted. Mr. Kowieski's complaint also provides argument as to why certain signatures should not have been struck, or why signatures that were accepted by Clerk Coenen should not be struck now by the Commission on appeal.

"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). While the responsibility to prepare nomination papers with all required information clearly falls on the candidate, the statutes and administrative code still allow discretion on the part of the filing officer to make decisions as to whether papers that do not fully comply with all the requirements, substantially comply with the law. "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." Wis. Admin. Code EL § 2.05(5). Under Wis. Stat. § 8.30(1), "the official or agency with whom declarations of candidacy are required to be filed may refuse to place the candidate's name on the ballot if . . . (a) [t]he nomination papers are not prepared, signed, and executed as required under [Wis. Stat. ch. 8]."

"Any information which appears on a nomination paper is entitled to a presumption of validity." Wis. Admin. Code EL § 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." Wis. Admin. Code EL § 2.05(5).

Ultimately, it is the candidate's responsibility to ensure that the nomination papers they file have the minimum number of required signatures.

Clerk Coenen's Decision

After an initial facial review and second review of Mr. Kowieski's nomination papers, Clerk Coenen determined that 214 valid signatures had been submitted. She reached this decision by stating the following:

First Review

- The candidate struck signatures (were crossed off) on Page 5, Line 7 and Page 9, Line 3.
- Signatures were struck on Page 2, Line 9 (crossed off and outside of City); Page 7, Line 5 (crossed off and outside of City); Page 7, Line 6 (crossed off and missing information); Page 18, Line 2 (outside of City), Page 18, Line 3 (missing signer municipality).

Second Review

- Signatures were struck on Page 5, Line 3 (missing address and date of signature); Page 23, Line 1 (duplicate signature)

There is no dispute by Mr. Kowieski that the above signatures were properly struck prior to Ms. Fox's challenge being filed. The Commission confirms that the above signatures were properly struck by Clerk Coenen.

Challenges to Individual Signatures

The signature on Page 2, Line 5 was challenged because the signer failed to provide the date of signing the paper. Clerk Coenen rejected the challenge and counted the signature, citing Wis. Admin. Code § 2.05(15)(a) which states that a signature may not be counted if the date of the signature is missing, unless the date can be determined by reference to the dates of other signatures on the paper. In examining the papers, she noted that the date prior to this missing date is 12/1/19 (which is within the appropriate circulation period) and having consulted maps as allowed under the administrative code, she concluded it is more reasonable that the signature was obtained on 12/1/19 (previous signature) rather than 12/3/19 given the proximity of the residents on the respective dates. Finding that 12/1/19 was the date of signature was important, because if she found that it was 12/3/19 (the date of the signature immediately following), the signature would have been struck due to the date the circulator signed their certification (12/1/19). Clerk Coenen was able to determine "by reference to the dates of other signatures on the paper" that it was more likely signed on 12/1/19. The Commission believes that accepting this signature is consistent with Wis. Admin. Code § EL 2.05(15)(a), and therefore accepts Clerk Coenen's original determination on this signature.

Signatures contained on Page 2, Lines, 6, 7, 8, 10; Page 3, Lines 9, 10; Page 7, Lines 9, 10; Page 10, Line 10; Page 12, Lines 6, 7, 9; Page 20, Lines 7, 8 were challenged because the signature dates were after the date upon which the circulator certified as circulating the page. Wis. Admin. Code § 2.05(15)(b) states, "An individual signature may not be counted when

any of the following occur: The signature is dated after the date of certification contained in the certificate of circulator.” This is exactly what occurred on the challenged pages, and Clerk Coenen struck these signatures as invalid because the date of signature was after the date contained in the circulator’s certification. The Commission’s administrative rules allow candidates that file nomination papers which contain errors to file a correcting affidavit to rehabilitate the page or signature(s) contained on the page. “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 deadline for the nomination papers.” Wis. Admin. Code EL § 2.05(4).

For correcting affidavits to be accepted by a filing officer for the Spring 2020 election cycle, correcting affidavits needed to be filed with the filing officer by the close of business on Friday, January 10, 2020. The Commission considers a filing deadline, clearly articulated in the administrative code provisions governing nomination paper review, to be mandatory and not directory or discretionary. If the correcting affidavit is properly completed and timely filed, it can correct filing dates, clarify addresses for which a signature was collected, correct the circulator date included in a circulator’s certification statement and add information to the circulator’s certification such as the municipality of residence. Correcting affidavits were filed by Mr. Kowieski, but were filed on January 13, 2020, 3 days after the deadline. Because they were filed after the deadline, they were not able to rehabilitate the date errors contained on the pages and were therefore properly struck by Clerk Coenen.

Signatures on Page 14, Lines 4-9 were challenged for the same reason, but the date in the circulator’s certification can be read as 12/26/19, therefore the signatures collected were all prior to that date. Clerk Coenen rejected the challenge to these signatures and the Commission agrees with her decision on these signatures that they are valid.

Mr. Kowieski argues that Clerk Coenen “improperly ignored Mr. Kowieski’s corrective affidavits despite receiving them well before she rendered her January 15, 2020 Decision.” Complaint, pg. 8. He argues that the deadline for filing corrective affidavits (within 3 days of the filing deadline) “is immaterial” and therefore the Commission should accept those signatures as valid. Citing Wis. Stat. § 5.01(1) and Wis. Admin. Code § EL 2.05(5), Mr. Kowieski argues that the “will of the elector” should be honored here, that substantial compliance with the requirement has been achieved and that the affidavits supplied contained all the necessary information to allow the clerk to give effect to the will of the electors that signed the nomination papers. *Id.*

Wis. Stat. § 5.01(1) states that “Except as otherwise provided, chs. 5 to 12 shall be construed to give effect to the will of the electors, if that can be ascertained from the proceedings, notwithstanding informality or failure to fully comply with some of their provisions.” Consistent with applicable court decisions, the Commission believes that the “will of the electors” language does not apply to the collection, submission or review of nomination papers, but only to the actual conduct of elections and determining the proper interpretation of

votes on a ballot after the election has been held. See *State ex. Rel. Oaks v. Brown*, 211 Wis. 571, 579, 249 N.W. 50, 53 (1933); *City of Chippewa Falls v. Town of Hallie*, 231 Wis. 2d 85, 604 N.W. 2d 300 (Ct. App. 1999); See also *Sullivan v. WEC*, 2020AP164-LV (opinion and order).

In addition, the Commission notes that the substantial compliance language of Wis. Admin. Code § EL 2.05(5) applies only to assessing the information on the nomination papers, not to procedural requirements and deadlines related to nomination papers. The Commission believes the administrative rule provision on signature dates is very explicit, and that the method for correcting this issue by filing a corrective affidavit filed within 3 days of the statutory filing deadline is also very explicit in Wis. Admin. Code § EL 2.05(4). The Commission cannot waive those deadlines which all candidates must observe. The signatures cited above containing this issue were properly struck by Clerk Coenen in accordance with Wis. Admin. Code ch. 2.

The signature on Page 7, Line 2 was challenged based on legibility of the name and signature for the signer. The statutory requirement is that "...in order for the signature to be valid, each signer of a nomination paper shall legibly print his or her name in the space provided next to his or her signature..." Wis. Stat. § 8.10(4)(b). While requiring some subjective judgment by filing officers, the Commission has adopted standards that do not require a hyper-technical application of the phrase "legibly print." In this case, Clerk Coenen stated that she had "no difficulty reading the signature" and therefore rejected the challenge and accepted the signature as valid. The Commission believes Clerk Coenen applied the standards properly and agree with her determination for this signature.

Legibility also comes into play during the general review of other information on the nomination paper, like signature dates. The signatures on Page 7, Line 8 was challenged because the challenger believed the day was an "8" and the clerk found that it could be a "6". The significance is that reading it as an "8" would cause the signature to be struck, while reading it as a "6" would cause the signature to be accepted based on the date contained in the circulator's certification. Clerk Coenen stated the following in accepting the signature as valid: "I am unable to unequivocally find that the handwritten date is 12/6 or 12/8. Based on the gap between the previous signature date and the subsequent signature date, I find that I cannot rebut the presumption of validity." Clerk Coenen combined the language of Wis. Admin. Code § EL 2.05(15)(a) (date can be determined by reference to the dates of other signatures on the page) and the presumption of validity for papers contained in Wis. Admin. Code § EL 2.05(4) to reach the conclusion that the challenger had not met their burden to prove the signature should be struck. The Commission believes Clerk Coenen applied these standards properly and agree that this signature should be counted as valid.

Similar to the challenge to the signature on Page 7, Line 2 for date legibility, the signature on Page 10, Line 1 also was challenged and Clerk Coenen used Wis. Admin. Code § EL 2.05(15)(a) to reason that the signature was collected in sequence and that the date for that signature was 12/1, and not 12/11 which would have put that signature beyond the date contained in the circulator's certification. While certainly a close call, the Commission

believes Clerk Coenen was within her authority and applied these standards properly and will not disturb her decision accepting the signature as valid.

The signature on Page 11, Line 6 was accepted. There appear to be questions as to the handwriting as it appears similar and is from two individuals that live in the same household, but the signatures are distinctly different. There is no issue with another individual assisting with filling out the information for another signer, as long as the individual for which the information appears actually signs it. That appears to be the case here, and Clerk Coenen accepted the signature. The Commission agrees with her decision and the signature should be counted.

The signature on Page 21, Line 10 was challenged because it is the last signature on the page, and it is missing a signature date. Clerk Coenen stated that the other dates contained on the page were the same and reasoned that all the other signatures (except for Line 3 which was blank) were collected on 12/22/19, therefore she believed it was likely that the signature was collected on the same day. Had this signature been presented to Commission staff on a nomination paper submitted by a federal or state level candidate, it would have been struck as invalid. This signature is the last signature contained on this page, which is significant because of the “bracketing” method used during review to find substantial compliance. Bracketing allows signatures with missing dates of signing to be counted if the signature “above and below” the missing date is valid.³ That is not the case here. The signature on Page 21, Line 10 should not have been counted as it does not contain a date, it cannot be “bracketed” because it is the last signature on the page, and simply stating that all of the other signatures were collected on the same date (not technically correct) is not a sufficient reason to count this signature under Wis. Admin. Code § 2.05(15)(a). Therefore, the Commission finds that the signature on Page 21, Line 10 is struck for failure to contain a date of signature as required by Wis. Stat. § 8.10(4)(b).

Challenge to Nomination Paper Header

The nomination paper heading was challenged due to irregularities in how the “City of Oconomowoc” appeared and Pages 17-21, and that on Page 25 no name of jurisdiction appeared at all in the heading box.

The significance of finding information in the header of a nomination paper defective, is that all signatures collected on that page are struck as invalid. None of the information in the header of a nomination paper (candidate’s name, candidate’s address, date of election, office sought, name of jurisdiction or district candidate seeks) may be altered, amended, corrected or added after circulation of the nomination papers. The header contains the information that a signer observed and relied upon when deciding to sign the paper in support of placing a candidate’s name on the ballot. Nomination Papers Challenges, January 2018:
<https://elections.wi.gov/publications/manuals/common-nomination-paper-challenges>

³ The Elections Commission has published a detailed guide and step by step video demonstrating best practices for reviewing nomination papers and determining sufficiency:
<https://elections.wi.gov/publications/video/NomPaperReviewGuidance>

Wis. Stat. § 8.10(2)(b) lists the information that is to be provided by the candidate on the top of the nomination paper. The Commission's Form EL-169 (Nomination Paper for Non-Partisan Office), which is used by the majority of candidates for non-partisan office, includes boxes for candidates to complete to ensure that all required information is contained on the form and presented to signers during the circulation process. One of the key boxes, is "Name of Jurisdiction or District in Which Candidate Seeks Office (required)". This is an important box because of the language that is to appear on each nomination page per Wis. Stat. § 8.10(2)(b). Individuals signing the nomination paper are stating that they are "eligible to vote in the jurisdiction or district in which the candidate named above seeks office." For this statement to be true, the nomination paper must contain the name of the jurisdiction or district in which the candidate seeks office. This is why the Form EL-169 contains a notation in the box in bold font that says, "required." This piece of information, similar to other pieces of information in the header like election date, must be on the page for the header to be complete and valid.

Pages 17-21 contain an irregular looking spelling of the "Oconomowoc" in that the first letter "O" appears to be a square or checkbox. While certainly irregular, read together with the rest of the letters in the City's name, it is pretty clear that the "City of Oconomowoc" is present on those pages. Clerk Coenen rejected the challenges to these pages and the Commission agrees with that decision based on a reasonable reading of the word on the page.

Page 25 however, is much more problematic, because this box is completely blank. Clerk Coenen accepted the signatures on this page because "the City of Oconomowoc is clearly displayed in the upper left corner of the Nomination Papers."

Providing the name of the jurisdiction for which Mr. Kowieski was running for mayor is not optional and the 10 signatures contained on Page 25 should have been struck. The City of Oconomowoc is contained in the box for Mr. Kowieski's "municipality for voting purposes" and is contained in the upper right corner of the page. That is required information related to the candidate, not the municipality that he is seeking office. To run for the office of mayor, a candidate does not need to be a resident of the district for which they are running until the election occurs. Wis. Stat. § 62.09(2)(a). This is significant because Mr. Kowieski could have been circulating nomination papers for Mayor in any jurisdiction in Wisconsin, not just the City of Oconomowoc. Naming the jurisdiction for which a candidate is running for office, and for which the signers state they are a resident of is important to the nomination paper process - that is why the result of failing to include a piece of required information is harsh.

The Commission believes Clerk Coenen did not properly strike the 10 signatures contained on Page 25 due to a defective header. 10 additional signatures shall be struck from Mr. Kowieski's total due to this error.

Initial Counting Error

After review of all pages filed by Mr. Kowieski, it appears that the error likely occurred when counting Page 7 of his papers. Based on the markings contained on the page, it appears Clerk Coenen had counted 8 valid signatures during her first and second review of the papers. After

the challenge, two additional signatures were struck on that page, Lines 9 and 10 – which would have left 6 valid signatures on that page. However, the number 8 remained on the top corner of the page instead of 6 which affected the counting and final total that was initially certified – and why the amended sufficiency determination was necessary after this was discovered.

Total Valid Signatures by Page

The following is the page by page count of valid signatures after the Commission’s decision, so that Mr. Kowieski has a detailed record to appeal to circuit court should he decide to do so.

- Page 1: 10 valid signatures
- Page 2: 5 valid signatures (Lines 1-5)
- Page 3: 8 valid signatures (Lines 1-8)
- Page 4: 10 valid signatures
- Page 5: 8 valid signatures (Lines 1-2, 4-6, 8-10)
- Page 6: 10 valid signatures
- Page 7: 6 valid signatures (Lines 1-4, 7-8)
- Page 8: 10 valid signatures
- Page 9: 9 valid signatures (Lines 1-2, 4-10)
- Page 10: 9 valid signatures (Lines 1-9)
- Page 11: 10 valid signatures
- Page 12: 5 valid signatures (Lines 1-5)
- Page 13: 10 valid signatures
- Page 14: 3 valid signatures (Lines 1-3)
- Page 15: 10 valid signatures
- Page 16: 10 valid signatures
- Page 17: 10 valid signatures
- Page 18: 8 valid signatures (Line 1, 4-10)
- Page 19: 1 valid signature (Line 1)
- Page 20: 6 valid signatures (Lines 1-6)
- Page 21: 9 valid signatures (Lines 1-9)
- Page 22: 9 valid signatures (Lines 1-9)
- Page 23: 6 valid signatures (Lines 2-7)
- Page 24: 1 valid signature (Line 1)
- Page 25: 0 valid signatures
- Page 26: 3 valid signatures (Lines 1-3)

Total Valid Signatures: 186

Order

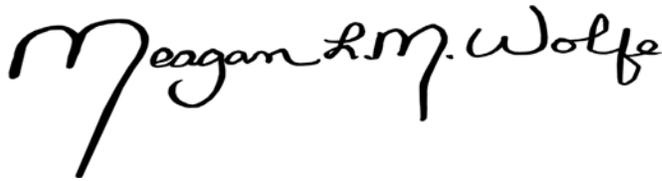
The Commission finds that Louis Kowieski filed 186 valid signatures for the Office of Mayor in the City of Oconomowoc, 14 signatures short of the required minimum to achieve ballot access. Mr. Kowieski’s name shall not appear on the ballot at the 2020 Spring Primary or Spring Election.

Right to Appeal – Circuit Court

This letter containing the Commission's decision and order constitutes the Commission's resolution of this complaint. Wis. Stat. § 5.06(6). 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.

Dated this 11th day of February, 2020.

WISCONSIN ELECTIONS COMMISSION

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

Meagan Wolfe
Administrator