

STATE OF WISCONSIN
WISCONSIN ELECTIONS COMMISSION

IN THE MATTER OF:
NOMINATION PAPERS FILED BY PAUL MELOTIK
WITH RESPECT TO THE JULY 18, 2023 SPECIAL ELECTION FOR
REPRESENTATIVE TO THE ASSEMBLY – DISTRICT 24, STATE OF WISCONSIN

MORGAN HESS, Executive Director
Assembly Democratic Campaign Committee,

Complainant,

v.

Case No. _____

PAUL MELOTIK
1408 Pioneer Road
Grafton, WI 53024,

Respondent.

**VERIFIED RESPONSE OF PAUL MELOTIK IN OPPOSITION TO COMPLAINT
OF MORGAN HESS**

Introduction

Paul Melotik is the only Republican candidate for the July 18, 2023, Special Election for Representative to the 24th Assembly District (the “Election”), and hundreds of Wisconsinites are eager to vote for him in the Special Election. Pursuant to Wis. Stat. § 8.15(6)(d), the Melotik campaign filed nomination papers with the Wisconsin Election Commission containing 369 signatures—well over the 200 signatures the law requires. The Commission accepted all 369 of those signatures as valid. The complainant here, Morgan Hess, only alleges that a handful of the accepted signatures are invalid due to issues with the signatures themselves. Nor does she aver that

any of the signers were misled by information on the nomination form. Instead, she alleges the Challenged Papers omitted information from their (1) Header; (2) Signatory / Elector Certification, and/or (3) Circulator Certification that she claims should result in the invalidation of all of the signatures on the Challenged Papers. Complaint, ¶24. The Commission should deny the challenge and uphold the validity of the signatures against Hess’s categorical challenges.

Background Facts

Paul Melotik, a Republican candidate for Wisconsin Assembly whose campaign is run through Melotik for State Assembly (the “Campaign”), is the only Republican candidate for the July 18, 2023 Special Election for Representative to the 24th Assembly District (See Melotik Aff. ¶1). In support of his candidacy for the State Assembly, Melotik circulated, executed as a circulator, and included with his total nomination papers 15 nomination forms, including page numbers 11, 12, 13, 17, 18, 19, 20, 21, 22, 23, 25, 33, 39, 41, and 43, for a total of 140 signatures. (See Melotik Aff. ¶2). In addition, Paul Marti circulated and executed as a circulator three nomination forms, including page numbers 16, 30, and 44, for a total of 30 signatures (see Marti Aff. ¶2) and Tom Grabow circulated and executed as a circulator 10 nomination forms, including page numbers 1-6, 8-10, and 36, for a total of 95 signatures (see Grabow Aff. ¶2).

Melotik submitted 44 pages of nomination forms to the Wisconsin Elections Commission (“WEC”) on May 22, 2023 that included 369 total signatures, well above the minimum required of 200 signatures. (See Melotik Aff. ¶3; Ex. A to Complaint). The nomination forms were reviewed by WEC staff and found to be valid with no fatal flaws identified. (See Melotik Aff. ¶3.) That same day the WEC’s nomination tracker was updated, indicating Melotik submitted 369 valid

signatures. *Id.* Therefore, there was no reason to believe there was a fatal flaw to any of the nomination papers such that additional signatures would have needed to be collected prior to the May 23, 2023 deadline to file at least 200 nomination signatures. *Id.*

Pursuant to Wis. Stat. § 8.15(4)(a), all three circulators stated their respective residence with street and number at the bottom of each nomination page, personally circulated their nomination papers and personally obtained each of the signatures, and knew (to the best of their knowledge) that each elector signing the nomination form was an elector of the district, that each elector signed the paper with full knowledge of its content, that each elector knew their respective residences given, and that each signer signed on the date stated opposite his or her name. (See Melotik Aff. ¶¶4-6; Marti and Grabow Affs. ¶¶3-5). As circulators, all are qualified electors of this state, having residences, respectively, in Grafton, Wisconsin (in addition, all three circulators are a U.S. citizen aged 18 or older who would not be disqualified from voting under Wis. Stat. § 6.03). (See Melotik ¶7 and Marti and Grabow Affs. ¶6).

Melotik intends on supporting himself in the July 18, 2023 Special Election for the District 24 Assembly District and Mari and Grabow intend on supporting him as well. (See Melotik ¶8 and Marti and Grabow Affs. ¶7).

Specifically with respect to the Circulator Certification, all three circulators were aware that falsifying the certifications is punishable under Wis. Stat. § 12.13(3)(a) and indicated the date that they made each certification next to their respective signatures on each nomination form. (See Melotik ¶¶9-10 and Marti and Grabow Affs. ¶¶8-9). When executing the Circulator Certification,

for each of the nomination forms they submitted, the three circulators were aware of and agreed to the terms of the Certification, which reads in full:

I further certify I am either a qualified elector of Wisconsin, or a U.S. citizen, age 18 or older who, if I were a resident of this state, would not be disqualified from voting under Wis. Stat. § 6.03. I personally circulated this nomination paper and personally obtained each of the signatures on this paper. I know that the signers are electors of the jurisdiction or district the candidate seeks to represent. I know that each person signed the paper with full knowledge of its content on the date indicated opposite his or her name. I know their respective residences given. I intend to support this candidate. I am aware that falsifying this certification is punishable under Wis. Stat. § 12.13(3)(a).

(See Melotik ¶11 and Marti and Grabow Affs. ¶10). None of the circulators falsified any information in respect to or fraudulently defaced or destroyed any of the nomination papers and did not file any nomination paper knowing any part of it was falsely made. (See Melotik ¶12 and Marti and Grabow Affs. ¶11). All three circulators have stated to the extent any individual letters or words were omitted from any of the Header, Signatory / Elector Certification, and/or Circulator Certification sections of a nomination form, it was simply the result of poor photo copying and creases in the nomination form. (See Melotik ¶13 and Marti and Grabow Affs. ¶12).

Argument

I. Applicable Legal Principles

This is a challenge to the sufficiency of Melotik’s nomination papers brought pursuant to Wis. Adm. Code § EL 2.07. In such a challenge, “[t]he burden is on the challenger to establish any insufficiency,” and the challenger must meet this burden via clear and convincing evidence. Wis. Adm. Code §§ EL 2.07(3)(a), 2.07(4). If the challenger does meet that burden, the burden

then shifts to the challenged candidate to establish the sufficiency of the challenged information via clear and convincing evidence. Wis. Adm. Code § EL 2.07(3)(a); 2.07(4).

With respect to nomination papers in particular, it is well-established that “[a]ny information which appears on a nomination paper is entitled to a presumption of validity,” Wis. Admin. EL § 2.05(4). Further, “[w]here 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. Adm. Code § EL 2.05(5). In keeping with this rule, the Commission has consistently taken the position that technical irregularities on the nomination form do not invalidate the signatures on that form. For example, at its June 10, 2022 meeting, the Commission unanimously voted to deny the challenge to Gubernatorial candidate Timothy Michels’ signature pages. Similar to the case here, the complainant did not allege that any of the accepted signatures were invalid or that any of the signers were misled by information on the nomination form. Instead, the complaint alleged that one version of the nomination forms was “legally deficient” because the mailing address printed on that form did not include a specific municipality. One Commissioner commented she didn’t think the complaint “rose to the level where we can argue that it's sufficient to keep someone off the ballot is my inclination on this. It's up to the voters.” See <https://www.wpr.org/wisconsin-elections-commission-unanimously-rejects-challenge-tim-michels-nominating-petitions>.

Finally, as a general matter, election “statute[s] should be interpreted to enable [] people to vote” for their preferred candidate. *Sommerfeld v. Board of Canvassers of City of St. Francis*, 269 Wis. 299, 302, 69 N.W.2d 235, 237 (1955), *superseded by statute on other grounds as stated in*

Teigen v. WEC, 2002 WI 64, ¶80, 403 Wis. 2d 607, 976 N.W.2d 519. *Sommerfeld* explains that not all election “requirements” are mandatory. In particular, provisions merely “giving directions as to the mode and manner of conducting elections will be construed by the courts as directory, unless a noncompliance with their terms is expressly declared to be fatal, or will change or render doubtful the result.” 269 Wis. at 303 (quoting 29 C.J.S. Election § 214 and emphasis added). “[A]n act done in violation of a directory provision, while improper, may nevertheless be valid.” *Id.* A provision can be directory even when it uses words like “shall” that may appear to be mandatory. *Id.* at 303 (“We have held that the word ‘shall’ can be construed to mean ‘may.’”).

II. Hess’s Categorical Challenges Must Fail

Hess raises one or more of three distinct categorical challenges to entire pages of the nominating signatures submitted for Melotik. Specifically, Hess challenges pages 1-6, 8-13, 15-17, 19-25, 28-31, 34-41, and 44 of the nomination papers for alleged defects relating to (1) the Header; (2) the Signatory/Elector Certification; and (3) the Circulator Certification.

With respect to the Header Requirement, Wisconsin election law provides that “each candidate shall include his or her mailing address on the candidate’s nomination papers.” Wis. Stat. § 8.15(5)(b). Notably, however, the forms themselves have spaces for both the candidate’s residential address and the candidate’s mailing address, and only require that the mailing address be provided if it differs from the residential address. Otherwise, the forms contain several other spaces relating to the type of election, date of election, name of the candidate’s party, title of the office, district, and name of the jurisdiction or district in which the candidate seeks office.

With respect to the Signatory/Elector Certification, Wisconsin law mandates that “[e]ach nomination paper shall have *substantially* the following words printed at the top” and sets forth the following:

I, the undersigned, request that the name of (insert candidate's last name plus first name, nickname or initial, and middle name, former legal surname, nickname or middle initial or initials if desired, but no other abbreviations or titles) residing at (insert candidate's street address) be placed on the ballot at the (general or special) election to be held on (date of election) as a candidate representing the (name of party) so that voters will have the opportunity to vote for (him or her) for the office of (name of office). I am eligible to vote in (name of jurisdiction or district in which candidate seeks office). I have not signed the nomination paper of any other candidate for the same office at this election.

Complaint, ¶27 (quoting Wis. Stat. 8.15(5)(a) (emphasis added)).

With respect to Circulator Certification, Wis. Stat. § 8.15(4)(a) does not set forth a prescribed form for the certification, but instead sets forth the relevant requirements that must be met:

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.

Further, “[n]o 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.” Wis. Adm. Code § EL 2.05(14).

A. Analysis of the Categorical Challenges

Hess identifies each of the challenged pages of nomination papers, the number of signatures on those pages, and the alleged defects in those pages in a chart on page 7 of her complaint, and attaches the challenged pages as separate exhibits to the complaint. As set forth below, Hess’s challenges must fail with respect to a number of signatures that would more than suffice to allow Melotik to clear the 200-signature threshold.

As an initial matter, the complaint misstates and misapplies Wisconsin’s legal standards when it suggests the relevant Header, Signatory/Elector Certification, and Circulator Certification requirements are mandatory, not directory. The Complaint cites a part of the WEC’s Administrative Code that expressly provides that the absence of a page number will not invalidate the signatures on that page. The Complaint argues that the Code’s failure to identify other defects that would not result in the invalidation of signatures means that other defects would invalidate the signatures on the page.

This argument is not consistent with the legal principles discussed above, which plainly favor ballot access and allow for substantial compliance to be enough unless otherwise expressly provided by law. Wis. Stat. § 5.01, for example, makes clear that the statutory provisions at issue “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.*”

(emphasis added). And, Wis. Adm. Code § EL 2.05(5) allows the Commission to accept incomplete information so long as there has been substantial compliance.

Indeed, contrary to the Complaint’s suggestion that the relevant statutes and codes must expressly state that a defect will not invalidate the nomination papers in order for the nomination papers to survive, the rule is actually the contrary. It is the presence of an express declaration in statute or administrative code that a defect *will* result in the invalidation of the relevant paperwork that would lead to treating a requirement as mandatory. *See Sommerfeld*, 269 Wis. at 303 (quoting 29 C.J.S. Election § 214). Here, such a statement only exists with respect to the requirement that “the elector who circulated the nomination paper completes and signs the certificate of circulator and does so after, not before, the paper is circulated” and that “[n]o signature may be counted when the residency of the circulator cannot be determined by the information given on the nomination paper.” Wis. Adm. Code § EL 2.05(14). As relevant here, however, the law does not provide that signatures cannot be counted just because the certificate of the circulator—although signed appropriately, with the required residency information—has certain letters or characters obscured due to copying or creasing issues.

On this point, the Complaint’s reliance on the Decision and Order in *Lipscomb v. Sullivan* (see Exhibit K to Complaint) is wholly misplaced. There, Lipscomb filed a specific and unique challenge to the nomination papers of Sullivan, arguing that 1,001 of Sullivan’s signatures should be struck as invalid because the circulators who collected those signatures had previously circulated nomination papers for another candidate for the same office, David Crowley, in violation of Wis. Stat. § 8.04. See Exhibit K at 1. Sullivan focused on the distinction between

directory and mandatory prohibitions. *Id.* at 2. In determining that the prohibition on a serial circulation of nomination papers in Wis. Stat. 8.04 did not fit the category of a directory statute, the Commission found it was “not related to the actual conduct of an election, the exercise of the right to vote, or the interpretation of a vote on a ballot. Rather, it is a regulation regarding the *conduct* of nomination paper circulators.” *Id.* at 5 (emphasis added). In addition, the Commission found that “because 8.04 governs the *process* of circulating nomination papers and not the content of the papers, the challenged signatures cannot be counted as valid by virtue of EL § 2.05(5), Wis. Adm. Code.” *Id.* Recall, there the Code states that “[w]here 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.” In the present Complaint before the Commission, there is simply no allegation that the circulators supportive of Melotik incorrectly circulated the nomination forms or otherwise committed a “process” error. Instead, the Complaint focuses on individual letters and words missing from the certification. The present complaint involves content, not conduct, and thus EL § 2.05(5) applies.

Further, with respect to substantial compliance, one of the very cases cited in the Complaint supports a denial of the allegations here. The court in *Matter of Recall of Redner*, 153 Wis. 2d 383, 391, 450 N.W.2d 808, 811 (Ct. App. 1989) indeed emphasized that “[s]ubstantial compliance requires the petitions be circulated in a manner that protects against fraud and that assures the signers knew the contents of the petitions.” *Id.* at 391. However, the Court ultimately held that the recall petitions were sufficient to allege “cause” for recall. Among other arguments, the complainant argued the header “RECALL PETITION” and the affidavit of circulation must be on

one page. *Id.* at 392. The Court found that the requirement was directory and that the complainant “fails to convince us that any defect rose to the level where it facilitated misrepresentation or that the trial court erred when it found substantial compliance.” *Id.* In addition, similar to the claims here, the complainant alleged the affidavits of the electors did not properly allege personal knowledge as required by Wis. Stat. § 8.15(4)(a). The basic complaint was that the circulators stated, for example, “that each of the signers is a qualified elector within the City of Hudson,” rather than *I know* “that each of the signers is a qualified elector within the City of Hudson.” *Id.* at 393. The Court noted that the trial court found that this form substantially complied with the statutory requirements and did “not find an abuse of discretion in failing to issue a writ on these grounds.” *Id.* Overall, the Court found the following:

“Chapters 5 to 12 shall 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 its provisions.” *Stahovic v. Rajchel*, 122 Wis.2d 370, 376, 363 N.W.2d 243, 246 (Ct.App.1984). The petitions are not free of error. However, no one seriously disputes that, at least as of six months ago, a sufficient number of electors wished to vote on Mayor Redner's recall. Redner has not met his heavy burden of showing that a writ should issue and that the trial court abused its discretion by failing to issue a writ.

Id. at 395.

1. Hess's categorical challenge to Exhibit B (88 signatures) must fail.

With respect to Exhibit B, Hess seeks to invalidate 88 signatures from Pages 1-6 and 8-10 of the nominating papers, based on alleged defects to the Signatory/Elector Certification and the Circulator Certification. No such invalidating defects exist.

First, with respect to the Signatory/Elector Certification, the pages in Exhibit B appear to be missing the “I” in line one, the letter “s” in the “statement” in line two, and the letter “c” in the word “candidate” in line three. Complaint, Ex. B. Any reasonable reader reviewing the Signatory/Elector Certification on the pages in Exhibit B would understand the import of what the elector was seeking to do by signing the nomination paper and none of the omissions materially affect the substance of certification. Wis. Stat. § 8.15(5)(a) does not require that each nomination paper use the provided example of a signatory/elector certification verbatim and to the letter, but only requires that each nomination paper “shall have substantially the following words.” The Signatory/Elector Certification on the pages in Exhibit B has “substantially” the words provided by statute, even with the omitted letters, and at minimum substantial compliance with the signatory/elector certification has occurred. Hess’s challenge based on this requirement must fail.

Second, with respect to the Circulator Certification, the pages on Exhibit B appear to be missing the “I” and the letter “f” in the word “further” in line one, the letters “ci” in the word “circulated” in line two, the letters “th” in the word “that” in line three (and only missing a part of the letter “h”), and the letter “a” in the word “aware” in line four. Again, the omission of these letters does not alter the substance of the document and a reasonable reader would understand the substance of the certification, as indicated by the fact that the Commission originally accepted these signatures as valid. Each piece of information required by Wis. Stat. § 8.15(4)(a) is included in the certification. At minimum, substantial compliance with Wis. Stat. § 8.15(4)(a) has been established. And, because it contains the residency of the circulator and is signed and dated after

it was circulated, the mandatory requirements associated with this certification have also been established.

For the above reasons, the categorical challenge to Exhibit B (88 signatures) must fail.

2. Hess's categorical challenge to Exhibit C (37 signatures) must fail.

With respect to Exhibit C, Hess seeks to invalidate 37 signatures, from pages 13, 20, and 25 based on alleged defects to the Header, the Signatory/Elector Certification and the Circulator Certification. No such invalidating defects exist.

For Pages 13 and 20 of Exhibit C, the nomination papers contain all of the required information. The only defects are the omission of certain characters and/or words from the Header, the Signatory/Elector Certification and/or the Circulator Certification, but none of these omissions materially affect the meaning of the certifications or the header. Additionally, although Page 20 has obscured material in the "mailing address" and "zip code" spaces in the header, neither of those spaces were required. The mailing address space only needed to be filled out if it differed from the candidate's residential address (which it did not) and the zip code box is not identified as a required piece of information. These pages fully comply with the relevant requirements. At minimum, there is substantial compliance. The categorical challenge to the 19 signatures on these two pages should fail.

For Page 12 of Exhibit C, the same arguments regarding the omission of certain characters and/or words applies, except that this page does have, fully obscured, the required selection of whether it is a special or a general election. With respect to this issue, this is plainly the type of technical noncompliance that should not result in the invalidation of the 8 signatures on this page,

especially since there is no suggestion that the signatures were improperly gathered or that electors were misled as to the date of the upcoming election. The Commission should find substantial compliance with respect to this page.

Finally, for Page 25 of Exhibit C, the same arguments apply except this page also obscures the “3” from the “2023” in the date of the circulator’s certification, the inclusion of that character is not necessary to conclude from the context of the nominating paper that it was certified after the signatures were gathered and the challenge to the 10 signatures on this page should fail. The Commission should find substantial compliance with respect to this page.

3. Hess’s categorical challenge to Exhibit D (34 signatures) must fail.

With respect to Exhibit D, Hess seeks to invalidate 34 signatures from pages 11, 21, 23, and 41 of the nomination papers, based on alleged defects in the Header and/or the Signatory/Elector Certification. This challenge must fail. Again, the only alleged defects here are the omission of certain characters from certain entries in the Header and from the words in the Signatory/Elector Certification. None of the omissions in this exhibit would prevent a reasonable reader from understanding the substance of the entries or the certification, as indicated by the fact that the Commission originally accepted these signatures as valid.. With respect to the Header, each piece of required information can ultimately be deciphered and, regardless, strict compliance is not necessary and substantial compliance has occurred. With respect to the Signatory/Elector Certification, again although certain characters are obscured, the full substance of the Signatory/Elector Certification would be understood by a reasonable reader and the relevant statute does not demand a letter for letter recital of the sample certification provided in the statute. *See*

Wis. Stat. § 8.15(5)(a) (“Each nomination paper shall have *substantially* the following words” (emphasis added)). The Signatory/Elector Certification fully complies with the statutory requirements. At minimum, there is substantial compliance. The categorical challenge to the 34 signatures in Exhibit D must fail.

4. Hess’s categorical challenge to Exhibit E (33 signatures) must fail.

With respect to Exhibit E, Hess seeks to invalidate 33 signatures from Pages 15, 24, 36, and 38 of the nomination papers based on alleged defects in the Header and/or the Signatory/Elector Certification. This challenge must fail.

First, with respect to the 10 signatures contained on Page No. 15 within Exhibit E, all that has occurred is the obscuring or omission of certain characters or words in the Header and Signatory/Elector Certification, but the substance of these sections would be understood by a reasonable reader and has not been materially affected, as indicated by the fact that the Commission originally accepted these signatures as valid. With respect to the Signatory/Elector Certification in particular, the relevant statute does not demand a letter for letter recital of the sample certification provided in the statute. *See* Wis. Stat. § 8.15(5)(a) (“Each nomination paper shall have *substantially* the following words” (emphasis added)). The Header and Signatory/Elector Certification on Page No. 15 fully comply with the statutory requirements. At minimum, there is substantial compliance.

The challenge to the 23 signatures contained in Pages 24, 36, and 38 of Exhibit E should be rejected for the same reasons. These pages also do include some handwriting filling in some of the missing information, but no evidence has been presented as to when the handwriting was

added. Under these circumstances, there is no clear and convincing evidence that the forms were missing required information at the time they were circulated.

5. Hess’s categorical challenge to Exhibit F (29 signatures) must fail.

With respect to Exhibit F, Hess seeks to invalidate 29 signatures from Pages 16, 30, and 44 of the nomination papers, based on alleged defects to the Header, the Signatory/Elector Certification and the Circulator Certification. This challenge must fail. With respect to Pages 30 and 44 of Exhibit F, Hess’s objections are the same as with other exhibits—there are characters obscured in the Header, the Signatory/Elector Certification, and/or the Circulator Certification. As already discussed, the obscuring of these characters does not materially impact the meaning of the nomination papers and they would be understood by a reasonable reader, as indicated by the fact that the Commission originally accepted these signatures as valid. Pages 30 and 44 are in full compliance with the relevant requirements and, at minimum, there has been substantial compliance. The challenge to the 19 signatures represented by these pages must fail.

With respect to the 10 signatures on Page 16 of Exhibit F, the same arguments apply except here the day of the election in the “General Election Date” space is fully obscured. Nonetheless, this is the type of technical issue that should not result in the invalidation of the 10 signatures on this page, especially since there is no suggestion that the signatures were improperly gathered or that electors were misled as to the date of the upcoming election. The Commission should find substantial compliance with respect to this page.

6. Hess’s categorical challenge to Exhibit G (25 signatures) must fail.

With respect to Exhibit G, Hess seeks to invalidate 25 signatures from Pages 17, 19, and 39, based on alleged defects in the Signatory/Elector Certification. Again, all that has occurred here is that certain characters are obscured, but the full substance of the Signatory/Elector Certification would be understood by a reasonable reader and the relevant statute does not demand a letter for letter recital of the sample certification provided in the statute, as indicated by the fact that the Commission originally accepted these signatures as valid. *See* Wis. Stat. § 8.15(5)(a) (“Each nomination paper shall have *substantially* the following words” (emphasis added)). The Signatory/Elector Certification fully complies with the statutory requirements. At minimum, there is substantial compliance. The categorical challenge to the 25 signatures in Exhibit G must fail.

7. Hess’s categorical challenge to Exhibit H (17 signatures) must fail.

With respect to Exhibit H, Hess seeks to invalidate 17 signatures from pages 28, 31, and 35 of the nomination papers, based on alleged defects in the Signatory/Elector Certification. Again, all that has occurred here is that certain characters are obscured, but the full substance of the Signatory/Elector Certification would be understood by a reasonable reader and the relevant statute does not demand a letter for letter recital of the sample certification provided in the statute, as indicated by the fact that the Commission originally accepted these signatures as valid. *See* Wis. Stat. § 8.15(5)(a) (“Each nomination paper shall have *substantially* the following words” (emphasis added)). The Signatory/Elector Certification fully complies with the statutory

requirements. At minimum, there is substantial compliance. The categorical challenge to the 17 signatures in Exhibit H must fail.

8. Hess's categorical challenge to Exhibit I (16 signatures) must fail.

With respect to Exhibit I, Hess seeks to invalidate 16 signatures from Pages 29, 34, and 40 based on alleged "Various" defects. Hess makes no attempt to explain what specific defects she claims exist with respect to these signatures, but presumably she takes issue with the fact that certain characters are obscured in the headers and elector certifications on the pages in this exhibit. Again, however, a reasonable reader would understand the substance of the headers and the elector certifications, as indicated by the fact that the Commission originally accepted these signatures as valid. The headers and the elector certifications contain the required information, even if certain characters are obscured. At minimum, substantial compliance has occurred and the categorical challenge to the 16 signatures must fail.

9. Hess's categorical challenge to Exhibit J (8 signatures) must fail.

With respect to Exhibit J, Hess seeks to invalidate 8 signatures from Page No. 37 of the nominating papers, based on alleged defects to the Header. The Header for the single page contained in this exhibit appears to contain all required information, however, and it is unclear the basis for the challenge. Hess may be basing her challenge on the fact that the election date provided appears to contain some handwriting to fill in the date, but she provides no evidence as to when this handwriting was applied or provide any explanation for why a violation has occurred with respect to his form. The challenge to the 8 signatures in Exhibit J must fail.

III. Only 20 Of The Complaint's 34 Remaining Challenges To Individual Signatures Have Any Basis In Law.

As to the remaining challenges to individual signatures, the Wisconsin Statutes and Administrative Code lay out in detail the basis for any challenge. First, a signatory must reside in the jurisdiction or district which the candidate named on the paper will represent if elected. *See* Wis. Stat. § 8.15(3). Next, “[i]n addition to his or her signature, 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). Finally, the Administrative Code details five very specific bases for a challenge to an individual signature. An individual signature on a nomination paper may not be counted when any of the following occur: “(a) The date of the signature is missing, unless the date can be determined by reference to the dates of other signatures on the paper. (b) The signature is dated after the date of certification contained in the certificate of circulator. (c) The address of the signer is missing or incomplete, unless residency can be determined by the information provided on the nomination paper. (d) The signature is that of an individual who is not 18 years of age at the time the paper is signed. An individual who will not be 18 years of age until the subject election is not eligible to sign a nomination paper for that election. (e) The signature is that of an individual who has been adjudicated not to be a qualified elector on the grounds of incompetency or limited competency as provided in s. 6.03 (3), Stats., or is that of an individual who was not, for any other reason, a qualified elector at the time of signing the nomination paper.” Wis. Admin. Code § EL 2.05(15)(a)-(e).

The complaint focuses on the following four alleged defects: a. Fifteen (15) signatories listed addresses that lie outside of Assembly District 24. b. Seven (7) signatories have illegible names or addresses. c. Five (5) signatories list addresses that do not exist. d. In seven (7) instances, a circulator purported to certify their own signature. Complaint, ¶49.¹

With respect to “illegible names or addresses,” other than listing the WEC Page, signature line, name, and challenge type, the complaint offers no additional support for the allegation that the names or addresses are “illegible.” With respect to complaints, “[t]he burden is on the challenger to establish any insufficiency.” Wis. Admin. Code § EL 2.07(3)(a). Even if the Commission were to determine a piece of information or a single letter were “illegible,” the Code is clear that “[w]here 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). Here, without any evidence to the contrary offered by the Complaint, there has been substantial compliance with the law. The Commission should treat the following signatures, which Hess challenges as illegible, as valid:

WEC Page	Signature Line
6	8
8	1
10	5
11	6

¹ For purposes of efficiency, the Respondent does not offer a response to alleged defects relating to signatories who listed addresses that lie outside of Assembly District 24 and signatories that listed addresses that allegedly do not exist.

11	8
25	2
43	7

Next, with respect to the argument that a circulator cannot certify his or her own signature, this argument is baseless. The Complaint argues that a circulator cannot certify his or her own signature on a nomination paper “consistent with the bedrock principle that ‘no man can be a judge in his own case.’” Complaint, ¶48 (citing *Guthrie v. Wis. Emp. Rels. Comm’n*, 111 Wis. 2d 447, 456, 331 N.W.2d 331 (1983)). It further argues if a circulator could do so it would render the certification “wholly illusory and defeat the intent of the certification,” analogizing along the way to a process for notarizing documents and guidance provided by the Wisconsin Department of Financial Institutions. *Id.* But that is not the correct statutory analysis and wholly inconsistent with the statutory framework directly on point.

In Wisconsin, statutory interpretation follows the clearly detailed path enunciated in *State ex rel. Kalal v. Circuit Court*. 2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110. In *Kalal*, the Court held the purpose of statutory interpretation is to “determine what the statute means so that it may be given its full, proper, and intended effect.” *Id.* at ¶44. Statutory interpretation begins with the language of the statute and statutory language is “given its common, ordinary, and accepted meaning,” unless there are technical or specially-defined words or phrases. *Id.* at ¶45. If the statutory language yields a “plain, clear statutory meaning, then there is no ambiguity,” and there is no need to consult extrinsic sources of interpretation. *Id.* at ¶46. Applying this standard, the

key terms or phrases in the relevant statutory provisions appear unambiguous and are not “technical” in nature. Because of this, there is simply no need to consult extrinsic sources such as irrelevant case law or Department of Financial Institutions guidance. Instead, the Commission should focus on the statutory guidance related to the circulation of nomination forms.

In unambiguous and clear language it is declared that “[t]he certification may be made by the candidate or any qualified circulator.” Wis. Stat. § 8.15(4)(a). When the Legislature included the language allowing for the candidate or any qualified circulator to make the certification, it did not exclude a circulator who him or herself had also signed the nomination form. This comports with the Administrative Code directly on point. As explained above, Wisconsin Administrative Code § EL 2.05(15)(a)-(e) lays out in clear terms the five scenarios in which an individual signature on an a nomination paper may not be counted, including a missing signature date, the signature being dated after the date of certification, the address of the signer is missing or incomplete, the signer is not 18 years old, and the signature is that of an individual who has been adjudicated not to be a qualified elector. None of the proscriptions include a prohibition on the circulator him or herself from certifying their own signature. The Commission should treat the following signatures, which Hess challenges as invalid because certified by the same individual, as valid:

WEC Page	Signature Line
1	1
7	1
14	9

27	1
32	1
37	1
38	1

IV. The Commission May Exercise Its Discretion to Allow Ballot Access.

Even if the Commission believes that material errors exist with respect to Melotik’s nomination papers, the Commission can and should exercise its discretion to keep Melotik on the ballot. Wis. Stat. § 8.30(1)(a) provides that the Commission “may refuse to place the candidate’s name on the ballot if . . . [t]he nomination papers are not prepared, signed, and executed as required.” *In re Guardianship and Protective Placement of Catherine P.*, 2006 WI App 105, ¶ 72, 294 Wis. 2d 637, 671, 718 N.W.2d 205, 222 (“We generally construe the word ‘may’ in a statute as allowing for the exercise of discretion.” (citing *Rotfeld v. Wis. Dep’t of Nat. Res.*, 147 Wis.2d 720, 726, 434 N.W.2d 617 (Ct. App. 1988))). So even if the Complaint is correct, the Commission still has discretion to put Melotik on the ballot. There are good reasons for such an exercise of discretion here.

It is well-established that laws that affect candidates always also affect voters and “[t]he impact of candidate eligibility requirements on voters implicates basic constitutional rights” under the First and Fourteenth Amendments. *Anderson v. Celebrezze*, 460 U.S. 780, 786 (1983). For example, the Supreme Court has acknowledged that ballot access laws implicate “the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters,

regardless of their political persuasion, to cast their votes effectively.” *Williams v. Rhodes*, 393 U.S. 23, 30–31 (1968). “Both of these rights, of course, rank among our most precious freedoms.” *Id.* at 30; *see also Wagner v. Milwaukee Cnty. Election Comm’n*, 2003 WI 103, ¶ 76, 263 Wis. 2d 709 (“These types of cases often raise issues related to the First Amendment, due process, and equal protection under the law.”)

Here, preventing Melotik from appearing on the ballot would not serve any of the State’s legitimate regulatory interests and would deprive hundreds of Wisconsinites of their right to vote for their preferred candidate. With the exception of the thirty-four signatures for which Hess individually challenges their validity, there is no indication that any of the signatures that Hess seeks to invalidate for categorical reasons are not otherwise valid signatures from those eager to support Melotik. Ousting Melotik from the ballot simply because the forms used to collect those signatures, due to copying or creasing issues, omitted single characters or words in the Header, Signatory / Elector Certification, and Circulator Certification sections—without materially impacting the substance of those sections—would unreasonably impair the right of voters to associate and restricts the voters’ opportunity to cast a ballot for the candidate of their choice. This would be especially true when, as here, Melotik is the *only* Republican candidate to have secured the minimum number of signatures for placement on the Special Election ballot. Were the Commission to deny Melotik ballot access, the Commission would be denying at least one half of the voters of the 24th Assembly District the option of voting for a candidate in the General Election that aligns with their political beliefs. Therefore, even if the Commission deemed Melotik’s

challenged nomination forms invalid, it should exercise its discretion and allow Melotik on the ballot for the July 18, 2023 Special Election.

Conclusion

The Commission originally accepted all 369 of the signatures on the nominating petitions as valid. The Complaint seeks to invalidate wholesale entire pages of these signatures based on the minor obscuring of letters and numbers from the relevant paperwork due to copying issues or the creasing of the papers. The vast majority of these issues do not materially impact the meaning of the headers and relevant certifications, however, and even when it does there is a basis for a finding of substantial compliance. For the foregoing reasons, the Commission should reject Hess's Complaint and include Melotik on the ballot for the July 18, 2023 Special Election.

Dated this 30th day of May, 2023.

By: Electronically signed by Matthew J. Thome

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