



Melotik Complaint Final.pdf

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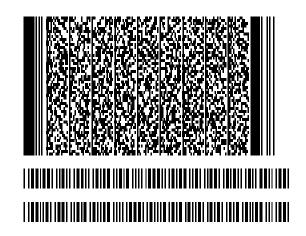
E-Signature 1: Morgan D. Hess (MH)

May 26, 2023 15:28:58 -6:00 [CAAFE7AF18A0] [107.123.1.8] morgan@assemblydemocrats.com (Principal) (ID Verified)

E-Signature Notary: Alex M. Becker (AMB)

May 26, 2023 15:28:58 -6:00 [B19F78D9BB9F] [24.183.69.206] abecker@staffordlaw.com

I, Alex M. Becker, did witness the participants named above electronically sign this document.



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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 COMPLAINT

- 1. This Verified Complaint is brought against Paul Melotik pursuant to Wis. Stat. § 5.06, Wis. Admin. Code § EL 2.07, and other Wisconsin laws governing elections and election campaigns.
- 2. Melotik seeks to be a candidate for Representative to the Assembly District 24 in next month's special election.
- 3. To qualify for ballot access in an election for the Wisconsin Assembly, a purported candidate must submit no less than 200 and no more than 400 valid nominating signatures in support of his candidacy. Wis. Stat. § 8.15(6)(d). To be valid, such signatures must be collected on nominating petitions that meet the requirements set forth in relevant portions of the Wisconsin Statutes. Wis. Stat. §§ 8.15(4)-(6).

- 4. Pursuant to public notice issued by the Wisconsin Elections Commission ("WEC"), valid nominating signatures to place a candidate on the ballot for the special election to fill the present vacancy in Wisconsin Assembly District 24 had to be submitted to WEC no later than Tuesday, May 23, 2023.
- 5. On Tuesday, May 23, 2023, WEC found that Melotik submitted 369 signatures in support of his candidacy for Representative to the Assembly District 24 in the July 18, 2023 special election. However, only 75 of the signatures Melotik collected are valid signatures.
- 6. In one example of many—a page circulated by Melotik himself—the header is obscured, interfering with the street address, zip code, party affiliation, title of office, and name of jurisdiction:

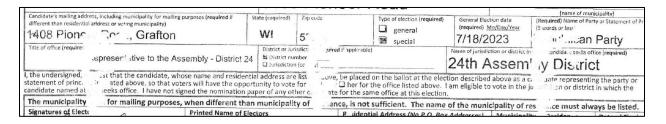


Exhibit A at 25.

- 7. That same page is one of many where the signatory certification is missing entire words, such that the elector had no way of knowing what they are attesting to by signing the paper.
- 8. In some instances, someone hand-wrote on the defective forms, seemingly in an after-the-fact attempt to cure the defective paperwork:

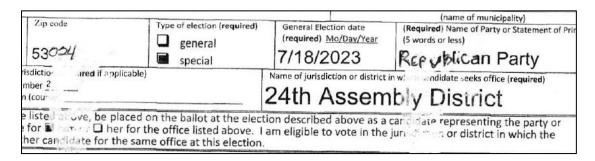


Exhibit A at 24.

9. Nine identical forms circulated by Tom Grabow, in addition to containing obscured signatory certifications, include a defective circulator certification, where pieces of the certification are cutoff entirely on the left margin, such that the circulator had no way of knowing what they were attesting to by signing the certification:

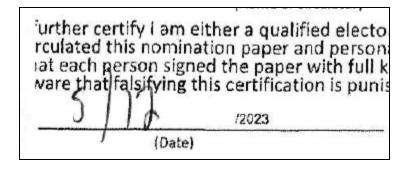


Exhibit A at 1-10.

- 10. In addition to the broad swaths of invalid pages, there are also thirty-four (34) individual signatures that are invalid for one of several reasons.
- 11. Accordingly, Melotik has not gathered the required 200 valid signatures and should be excluded from the ballot. Wis. Stat. § 8.15(6)(d).

BACKGROUND

- 12. Complainant Morgan Hess is a qualified elector and resident of the State of Wisconsin. Hess serves as the Executive Director of the Assembly Democratic Campaign Committee, with offices located at 7 North Pinckney Street, Suite 200, Madison, Wisconsin, 53703. Hess resides at 1945 Winnebago St., Apt. 303, Madison, Wisconsin, 53704.
- 13. Respondent Paul Melotik is a resident of Wisconsin, who, upon information and belief, resides at 1408 Pioneer Road, Grafton, Wisconsin, 53024.
- 14. Respondent Melotik holds himself out as a candidate for Representative to the Assembly District 24 in the July 18, 2023 special election.



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- 15. To secure a place on the ballot as a candidate, Melotik filed, or caused to be filed, nomination papers with WEC on May 23, 2023. Wis. Stat. § 8.50(3).
- 16. Wis. Stat. § 8.50, which governs special elections, provides: "Except as otherwise provided in this section, the provisions for the partisan primary under s. 8.15 are applicable to all partisan primaries held under this section[.]" Wis. Stat. § 8.50(3)(b).
- 17. Consequently, as a candidate for Representative to the Assembly – District 24, Melotik was required to timely submit to WEC nomination papers containing at least 200 valid signatures of electors. Wis. Stat. § 8.15(6)(d).
- WEC determined that Melotik submitted a total of three hundred sixty-nine (369) 18. signatures to the WEC on 44 separate, numbered nomination papers. The full set of nomination papers submitted by Melotik is attached to this Verified Complaint as Exhibit A.
- 19. Under Wisconsin law, nomination papers must contain certain information for the signatures on those papers to be valid and counted toward the minimum number of required signatures. Wis. Stat. §§ 8.15(4)-(6).
- 20. This Verified Complaint is timely filed with WEC on May 26, 2023, which is within three calendar days after the filing deadline for the challenged nomination papers. Wis. Stat. § 8.15(1); Wis. Admin. Code § EL 2.07(2)(a).
- 21. WEC has jurisdiction over this Verified Complaint, as provided in Wis. Stat. § 5.06 and Wis. Admin. Code § EL 2.07.

THE THREE RELEVANT CATEGORIES OF DEFECTS IN MELOTIK'S NOMINATION PAPERS

22. Two-hundred-eighty-seven (287) of the signatures submitted by Respondent Melotik appear on deficient nomination papers, leaving only eighty-two (82) signatures appearing

on valid nomination papers. Only those signatures on valid nomination papers may be counted toward the statutory requirement. Wis. Stat. § 8.15(1)

- Specifically, this Complaint challenges pages 1-6, 8-13, 15-17, 19-25, 28-31, 34-23. 41, and 44 (the "Challenged Papers"). A breakdown of the Challenged Papers, and the basis of the defects, appears in Chart A below. In addition, thirty-four (34) individual signatures are invalid, of which seven (7) are *not* contained on pages that fall within the Challenged Papers.
- 24. The Challenged Papers contain three types of defects, including defects to the: (1) Header; (2) Signatory / Elector Certification, and (3) Circulator Certification.

The Header Requirement.

- 25. "Each candidate shall include his or her mailing address on the candidate's nomination papers." Wis. Stat. § 8.15(5)(b).
- 26. WEC warns candidates in clear, express terms that "[c]orrectly filling out the top three lines of the nomination paper form is one of the most important things a candidate can do." Wis. Elections Comm'n, Candidate Ballot Access Procedures: Nomination Papers (Apr. 2020). 1 "If any of the boxes in the header are filled out incorrectly, electors might not be provided with all candidate and election information as required by law. A header that is incorrectly filled out also presents the possibility of challenges being issued to the validity of those nomination papers, resulting in the disqualification of all signatures on those pages." *Id.*

The Signatory / Elector Certification Requirement.

27. Wisconsin law mandates that "[e]ach nomination paper shall have substantially the following words printed at the top" and sets forth the following:

Available at https://elections.wi.gov/sites/default/files/legacy/2020-04/Ballot%2520Access% 2520Manual_2.pdf (last accessed May 26, 2023).

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.

Wis. Stat. § 8.15(5)(a).

28. If a person does not clearly see that they can sign nomination candidates for only one candidate, they may be deprived of the opportunity to sign in support of the candidate of their choosing. *See* Wis. Stat. § 8.04 ("If any person signs nomination papers for 2 candidates for the same office in the same election at different times, the earlier signature is valid and the later signature is invalid.").

The Circulator Certification Requirement.

- 29. The mandated certification by the circulator "shall appear at the bottom of each nomination paper[.]" Wis. Stat. § 8.15(4)(a). This certification requires the circulator to acknowledge that they are subject to Wis. Stat. § 12.13(3)(a), which, in turn, acknowledges the importance of pristine nomination papers, making it illegal to "defect *or* destroy a [...] nomination paper[.]" *Id.* (emphasis added). Violating Wis. Stat. § 12.13(3)(a) is a Class I felony, punishable by "a fine not to exceed \$10,000 or imprisonment not to exceed 3 years and 6 months, or both." Wis. Stat. §§ 12.60(1)(a), 939.50(3)(i).
- 30. "No signature on a nomination paper shall be counted unless the elector who circulated the nomination paper completes and signs the certificate of circulator and does so after, not before, the paper is circulated." Wis. Admin. Code § EL 2.05(14).

THE DEFECTS IN MELOTIK'S NOMINATION PAPERS

31. Those categories are discussed in greater detail below, but the following chart identifies which nomination papers contain which defects:

CHART A Breakdown of the Challenged Papers 287 Defective Signatures									
Ex. No.	Pages	Number of Signatures	Circulator	Defect(s)					
В	1-6, 8-10	88	Tom Grabow	Signatory/Elector Certification Circulator Certification					
С	12, 13, 20, 25	37	Paul Melotik	Header Signatory/Elector Certification Circulator Certification					
D	11, 21, 23, 41	34	Paul Melotik	Header Signatory/Elector Certification					
Е	15, 24, 36, 38	33	Various	Header Signatory/Elector Certification					
F	16, 30, 44	29	Paul Marti	Header Signatory/Elector Certification Circulator Certification					
G	17, 19, 39	25	Paul Melotik	Signatory/Elector Certification					
Н	28, 31, 35	17	Various	Signatory/Elector Certification					
I	29, 34, 40	16	Bonnie Bartel	Various					
J	37	8	Steven Richel	Header					

- 32. Once the 287 signatures on defective nomination papers are excluded from Melotik's submission, only 82 signatures remain.
- 33. In addition, thirty-four (34) of Melotik's individual signatures are invalid, of which seven (7) are *not* contained on the Challenged Papers. The bases for challenging each of those 34 individual signatures are reflected in Charts B and C at the end of this Complaint.
 - 34. All told, Melotik submitted only seventy-five (75) valid signatures.

ARGUMENT

I. The Challenged Papers Are Defective, Rendering Each Signature on those Pages Invalid.

- 35. As a candidate for public office, Melotik "has the responsibility to assure that his ... nomination papers are prepared, circulated, signed, and filed in compliance with statutory and other legal requirements." Wis. Admin. Code § EL 2.05(1); see also Wis. Stat. § 8.07.
- 36. Our statutes mandate that Melotik may not appear on the ballot if he failed to secure 200 valid signatures:

Only those candidates for whom nomination papers containing the necessary signatures acquired within the allotted time and filed before the deadline may have their names appear on the official partisan primary ballot.

Wis. Stat. 8.15(1); see also Wis. Admin. Code § EL 2.05(6) ("Nomination papers shall contain at least the minimum required number of signatures from the circuit, county, district or jurisdiction which the candidate seeks to represent.").

- 37. This Commission has previously held that "a regulation regarding the conduct of nomination paper circulators [...] must be construed as mandatory and 'must be strictly enforced in order to insure the orderly exercise' of the nomination process and ballot access decisions." Exhibit K (Decision and Order in Lipscomb v. Sullivan) at 5 (quoting Ahlgrimm v. State Elections Bd., 82 Wis.2d 585, 596, 263 N.W.2d 152 (1978)).²
- 38. As our Supreme Court has recognized, it may be an "unfortunate and regrettable" result to exclude a candidate from the ballot, but "nevertheless, the burden was on the petitioner to properly file." Ahlgrimm, 82 Wis. 2d at 597. "Ultimately, it is the candidate's responsibility to ensure that the nomination papers they file have the minimum number of required signatures."

² On this point, Wisconsin law is in accord with the general rule, whereby "[i]t is a prerequisite to the right of a candidate to have his or her name printed on the official ballot that the governing legal requirements be complied with." 29 C.J.S. Elections § 279.

Exhibit K (Decision and Order in Lipscomb v. Sullivan) at 7. "A candidate who does not vet their nomination papers prior to filing assumes the risks and mistakes resulting from circulators who are unaware of or do not comply with the regulations governing the circulation of nomination papers." Id.

- 39. This result is also compelled by the WEC's Administrative Code, which provides that "[e]ach of the nomination papers shall be numbered" but that "the absence of a page number will not invalidate the signatures on that page." Wis. Admin. Code § EL 2.05(2). It follows that other defects in the requirements—including the Header, Signatory / Elector Certification, or Circulator Certification—do "invalidate the signatures on that page." Wis. Admin. Code § EL 2.05(2); see also Steinlein v. Halstead, 52 Wis. 289, 8 N.W. 881, 883 (1881) ("Nor must the maxim expressio unius exclusio alterius be ignored or underrated in the interpretation and construction of this statute. There are many of the requirements of this statute whose performance is essential to the validity of the assignment, and made so in express terms; but this, as we have seen, is not one of them.").
- 40. Even if substantial compliance were all that is required, certificates or headers omitting words or portions of words do not amount to substantial compliance. "Substantial compliance requires the petitions be circulated in a manner that protects against fraud and that assures the signers knew the contents of the petitions." Matter of Recall of Redner, 153 Wis. 2d 383, 391, 450 N.W.2d 808, 811 (Ct. App. 1989) (analyzing petition requirement under recall procedures).
- 41. This is not a case of blurred or faint nomination papers. Indeed, dozens of the signatures this Complaint *does not* challenge appear on pages where the required information on the form is faint or blurred. (See, e.g., Signatory / Elector Certification on Exhibit A at 26 and 27)

But the Challenged Pages are not just faint. Rather, words and portions of words are missing entirely. Under such circumstances, there has been no substantial compliance. See Jacoway v. Gault, 20 Ark. 190, 194 (1859) ("A literal compliance with the statute is not required—the words of the statute need not be used—words of similar import may be employed, but the Courts cannot dispense with a substantial compliance with the statute. [...] Courts cannot, by intendment, supply important words omitted in the certificate[.]"); Schreiner v. Allen, 13 A.D.2d 871, 871, 216 N.Y.S.2d 57, 58 (1961) (in applying substantial-compliance standard to requirement that poll books contain a statement on each page, distinguishing between statements that are "faint" versus those that do not "appear in such form as to be visible and comprehensible").

42. The Challenged Papers, for the reasons articulated in Chart A, do not comply with the applicable statutory requirements and therefore the signatures on those pages cannot count towards Melotik's required 200 signatures.

II. Thirty-four of Melotik's Signatures Are Invalid and Cannot Be Counted.

- 43. Separate and apart from this Complaint's challenges to the Challenged Papers, thirty-four (34) individual signatures on Melotik's nomination papers are invalid.
- 44. For nomination signatures to be valid, the signatory must reside in the jurisdiction or district which the candidate named on the paper will represent if elected. Wis. Stat. § 8.15(3).
- 45. "In 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).
- 46. In addition, an "individual signature on a nomination paper may not be counted" when any of the following apply:

- (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. <u>6.03 (3)</u>, 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).

- 47. The challenge to addresses listed below are based on an investigation using the Wisconsin Legislative District Viewer, and, where that did not conclusively resolve the address issue, using the Ozaukee County Parcel search, available at https://maps.legis.wisconsin.gov/ and https://www.ascent.co.ozaukee.wi.us/LandRecords/PropertyListing/RealEstateTaxParcel#/Searc https://www.ascent.co.ozaukee.wi.us/LandRecords/PropertyListing/RealEstateTaxParcel#/Searc
- 48. Nor can a circulator 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." *Guthrie v. Wis. Emp. Rels. Comm'n*, 111 Wis. 2d 447, 456, 331 N.W.2d 331 (1983). If a circulator could certify his or her own signature, that would render the certification wholly illusory and defeat the intent of the certification. *See State v. Wilson*, 2017 WI 63, ¶42, 376 Wis. 2d 92, 896 N.W.2d 682 ("When construing statutes, meaning should be given to every word, clause and sentence in the statute, and a construction which would make part of the statute superfluous should be avoided wherever possible."). Allowing a circulator to certify their own signature makes no more sense that allowing

someone to notarize their own signature, which is forbidden. Dep't of Fin. Inst., *Notary Public Info*. (May 2020) at 8 ("A notary public may not perform a notarial act with respect to a record in which the notary or their spouse or domestic partner is a party or has direct beneficial interest. If you do, then the document may be voided.").³

- 49. The following defects are present:
 - 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.
- 50. The following Charts identify the specific signatures containing the defects:

Chart B - Signatures on Challenged Pages						
WEC Page	Signature Line	Name	Challenge Type			
1 viec i age	Signature Line	1.55				
1	1	Tom Grabow	Certified own signature			
2	3	Gordon Lueder	Out of District			
5	1	Lee Wiskirchen	Out of District			
6	8	Ken	Illegible Last Name			
8	1	Donald	Illegible Last Name			
8	2	Todd Welhouse	Address does not exist			
9	5	Mitch Longley	Out of District			
10	5	Craig	Illegible last name			
10	6	Robert Habich	Out of District			
11	4	Gene Sprenger	Out of District			
11	6	Sue Lesnik	Illegible Address			
11	8	Griffin Lietzau	Illegible Address			
17	3	Jim Brandenburg	Out of District			
17	4	Doris Brandenburg	Out of District			
17	5	Jackie Boklewski	Out of District			
20	1	Kevin Smith	Address does not exist			
20	5	Richard Schmidt	Address does not exist			
21	6	Chelsea Mingo	Out of District			

³ Available at https://www.wdfi.org/apostilles_notary_public_and_trademarks/pdf/dfi-not-102p.pdf (last accessed May 26, 2023).

23	8	Jes D'Acquisto	Out of District
25	2	Grace Smaxwill	Address Illegible
28	7	Dorothy Monson	Out of District
29	4	Gerald Zvara	Out of District
29	5	Janice Zvara	Out of District
34	3	Edward Olson	Address does not exist
35	4	Lawrence Recla II	Address does not exist
37	1	Steven Rishel	Certified own signature
38	1	Jacqueline Glomski	Certified own signature

Chart C - Signatures Not On Challenged Pages						
WEC Page	Signature Line	Name	Challenge Type			
7	1	Ken Michaud	Certified own signature			
14	9	Wendy Melotik	Certified own signature			
18	10	Scott Valdez	Out of District			
27	1	Vivian McCulley	Certified own signature			
32	1	Jacob Curtis	Certified own signature			
33	2	Mike Markowski	Out of District			
43	7	[James Trowerod?]	Illegible Address			

51. The signatures in Charts B and C are invalid and cannot be counted towards Melotik's required 200 signatures.

CONCLUSION

- 52. For the foregoing reasons, Respondent Paul Melotik has not properly submitted nominating papers that contain the requisite number of valid signatures to be placed on the ballot for Wisconsin's July 18, 2023 special election in Wisconsin Assembly District 24.
- 53. Complainant Morgan Hess respectfully requests that Wisconsin Elections Commission conduct any investigation it deems appropriate pursuant to Wis. Stat. § 5.06 and Wis. Admin. Code § EL 2.07, promptly hold a hearing on this matter to the extent it deems necessary, and ultimately rule that the nomination papers submitted by Melotik are legally deficient for the reasons set forth in this Verified Complaint.

Dated May 26, 2023.

Complaint prepared by:

STAFFORD ROSENBAUM LLP Jeffrey A. Mandell, SBN 1100406 Douglas M. Poland, SBN 1055189 David P. Hollander, SBN 1107233 Attorneys for Complainant

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LIST OF EXHIBITS

Exhibit A: Complete Set of Melotik's Nomination Papers Sequential Order

Exhibit B: Challenged Nomination Papers as Identified in Chart A

Exhibit C: Challenged Nomination Papers as Identified in Chart A

Exhibit D: Challenged Nomination Papers as Identified in Chart A

Exhibit E: Challenged Nomination Papers as Identified in Chart A

Exhibit F: Challenged Nomination Papers as Identified in Chart A

Exhibit G: Challenged Nomination Papers as Identified in Chart A

Exhibit H: Challenged Nomination Papers as Identified in Chart A

Exhibit I: Challenged Nomination Papers as Identified in Chart A

Exhibit J: Challenged Nomination Papers as Identified in Chart A

Exhibit K: Decision and Order in Lipscomb v. Sullivan; Decision and Order in Kennedy v.

Sullivan

VERIFICATION

Morgan Hess, being duly sworn, on oath, deposes and says:

- 1. That Morgan Hess is a qualified elector and resident of the State of Wisconsin.
- 2. That Morgan Hess has read the foregoing Verified Complaint and avers that the same is true and correct to the best of her knowledge, except as to those matters therein stated upon information and belief or based upon exhibits filed in support of this Verified Complaint, as to which matters she believes them to be true.

Signed in Madison, Wisconsin this <u>26th</u> day of May, 2023.

Morgan D. Hess

Morgan Hess

aler M. Brocker

Alex M. Becker

Notary Public, State of Wisconsin

My commission expires: July 24, 2024.

This notarial act involved the use of communication technology.

