

January 8, 2024

TO: Milwaukee Election Commissioners

FROM: Paulina Gutiérrez, Deputy Director

RE: Coggs v Payton

Alderwoman Coggs filed a challenge to Mr. Payton's nomination forms on Friday, January 5, at 9:45am. In her challenge, Coggs sites various objections to Mr. Payton's nomination papers for her challenge, which are summarized below. An itemized list with Election Commission findings is also attached.

- a. In the header of 24 pages, the city box was not checked and insufficient.
- b. Payton's circulator certification was lacking the municipality and insufficient on 3 pages.
- c. 10 addresses are out of the district, illegible and/or may not exist and are not sufficient.
- d. 4 instances of 2 signatures being signed by the same person.
- e. 2 lines contained illegible and/or incomplete names and were insufficient.
- f. 2 addresses are commercial businesses, have no residents, and are insufficient.
- g. 1 address was uninhabited and therefore the signature is insufficient.
- h. 1 address which includes a storefront was missing an apartment number and is insufficient.

Payton submitted 24 pages without the city box being checked in the header under the, "Candidate's municipality for voting purposes." Challenges to petitions where the candidate has not specified a municipality for voting purposes have been rejected in the past. Wis. Stat. §§ 8.10(2)(c) and 8.15(5)(b) provide that "[e]ach candidate shall include his or her mailing address on the candidate's nomination papers," but is silent with regards to inclusion of municipality for voting purposes. The established policy of the Commission in reviewing nomination papers has been to find substantial compliance with Wis. Stat. §§ 8.10 and 8.15 by presuming the validity of the information listed unless evidence to the contrary is presented. While the city box was not checked, Milwaukee was written in each of these instances. **Staff recommending dismissing all challenges on the basis of the header not having the municipality checked.**

In her second assertion, Coggs sites 3 pages where the municipality of the circulator is missing. The Wisconsin Election Commission has recommended finding substantial compliance for papers missing the municipality in the circulator's address where the circulator is the candidate and where the missing information is supplied by reference to other information on the same page (e.g., the candidate's address in the header). 2 pages missing the circulator's municipality were circulated by the candidate, whose address with the municipality is found in the header. The remaining page missing the

circulator's municipality, the circulator signed the nomination paper on line 10 and the municipality is written. **With this additional information, the 3 pages remain substantially compliant.**

Coggs alleges 4 different instances where two signatures were signed by the same person, however provides no evidence. State Law dictates that the burden of proof is on the challenger to establish any insufficiency, and Wisconsin State Administrative Code EL 2.07 (4) establishes that the burden of proof applicable to establishing or rebutting a challenge is clear and convincing evidence. **Without any evidence, the Election Commission Staff recommends rejecting these challenges.**

Coggs objects to 3 addresses, alleging that they are commercial properties and therefore would have no residents. Election Commission staff conducted a review of property tax records and found that 2 addresses do in fact have at least one residential unit on its parcel, along with a commercial unit. The property tax record of 1 address did confirm that it did not have any residential units and only contained a commercial unit. **Election Commission Staff recommend removing 1 address as no residential units were found at that address.**

Coggs objects to 1 address alleging it is uninhabited. She provides a google photo of that property. Election Commission staff conducted a review of the property tax record and found that this property contained 6 residential units. Additionally, the photo submitted as evidence shows that it was taken on December 2022. **Given that the property does contain residential units and the photo is just over one year old, Election Commission staff recommend rejecting this objection.**

Coggs objects to 1 address because it does not have an apartment number. Wis. Stat. §§ 8.10(4)(b), 8.15(2) require that a signer of a nomination paper "shall list his or her municipality of residence for voting purposes, the street and number, if any, on which the signer resides." **The Election Commission has recommended that signatures be found in substantial compliance where the insufficiency is a missing apartment number.** This recommendation has been approved in prior cases.

Based upon the analysis provided in the memo, the Milwaukee Election Commission recommends the following action summarized below. Challenges that have been confirmed as valid and requiring clear and convincing evidence by the challenged to the contrary have been bolded.

1. 24 pages with out the City box checked in the header – reject challenge based on the header substantially conforming. There is not a town or village of Milwaukee.
2. Pages 22, 23, 34: missing municipality in the circulator certification – reject challenge because the circulator's municipality is recorded in the header.
3. **Page 2, line 6: 3118 N 20th St. address out of district and/or does not exist - CONFIRM**
4. Page 3, line 2: 3245 N 16th St illegible address – reject challenge as staff are able to read the address.
5. **Page 3, line 6: 508 W Center St commercial property not a residence - CONFIRM**

6. Page 7, lines 7, 9: 2474 W Hopkins St commercial property not a residence – reject, as there is a residential unit in addition to the tavern according to property records.
7. Page 8, lines 6, 7 signed by the same person – reject; no supporting evidence was provided.
8. Page 10, lines 2, 3 signed by the same person – reject; no supporting evidence was provided.
9. Page 10, line 6: Elbert Jones illegible/incomplete name – reject – name was not illegible.
10. Page 11, Line 1: Gaddis Stribling illegible/incomplete name – reject – name was not illegible.
11. Page 11, Line 7: Address without an apartment number – reject – WEC history of accepting addresses without apartment numbers since they substantially comply.
12. **Page 12, Line 2: 1436 N 12th St address out of district and/or does not exist – CONFIRM**
13. Page 16, line 10: 3359 N 8th St address out of district and/or does not exist – reject – valid address within the district.
14. Page 17, line 8: Address is illegible – reject - address is legible and valid; Mara Davis is registered at address
15. **Page 18, line 9: Address is illegible – see below- staff defer to Commissioners’ assessment**
16. Page 22, line 3, 4: signed by the same person – reject challenge as no evidence provided
17. Page 22, line 5, 6: signed by the same person – reject challenge as no evidence provided
18. Page 24, line 1: 3027 N 9th St Address is illegible – reject as staff can read address
19. Page 25, line 3: Address is out of district – NO ACTION (this line was not counted as a verified signature)
20. Page 28, line 2310 W Atkinson St Address is uninhabited – reject - no evidence provided that the property is uninhabited. 6 units according to tax records.
21. Page 32, line 1 2718/2720 N Richards St Address is illegible – reject – staff can read address and it is a valid property.
22. **Page 33/34 Line 1 –2930 N 19th Address does not exist – CONFIRM**

When successful challenges place a candidate narrowly (less than 3 signatures) below the threshold for placement on the ballot, the Milwaukee Election Commission executive director conducts a line by line review of all signatures to ensure staff did not make errors. In this review, Woodall found two errors in the staff’s disqualification of signatures. On pg. 2, line 8, the signature was disqualified for being illegible. Woodall agrees that something was written and crossed out, but the remaining address reads 3005 N 21st. The signer is registered at this address, which falls narrowly into District 7 (the east side of the block is AD6; the west side of the block is AD7). **This address should remain disqualified.** Page 26, Line 8 was disqualified for an invalid or illegible address. Again, Woodall is not sure why staff were unable to read 3843 N 25th Street. This address was printed fairly clearly and also appeared on Line 6 where a family member with the same last name signed. **This address should also be restored, as it is a valid Aldermanic District 6 address.** These adjustments are noted in the attached spreadsheet.

Commission staff defer to the Commissioners’ assessment of pg. 18, line 9. Payton reads the address to be 3216 N Achilles St. Upon closer review, staff think there is an argument for the address to read

either 2216 or 3216 N. Achilles. Staff will have the original nomination papers present for their viewing. It is winged by signatures in the 3200 and 3100 blocks of N Achilles. Staff believe the signature reads Joseph or Josephine Bennett, but there is no one by that name registered to vote at the address. That should not be taken into consideration for disqualification, but staff cannot confirm or reject this signature.

Payton submitted a response to the challenger on January 8, 2024. The MEC Staff provide the following analysis of the affidavits submitted by Payton:

- The affidavit of Tamika Toombs in response to the challenge of page 22, lines 5 and 6 does not change the MEC's analysis, but strengthens its recommendation to preserve both signatures.
- The affidavit of Carmelita Groce in response to the challenge of page 32, line 1 does not change the MEC's analysis, but strengthens its recommendation to preserve the signature.
- The affidavit of Charles Lampley in response to the challenge of pg 33/34, line 1 does not change the MEC's recommendation to strike the signature. Mr. Lampley's affidavit is an affidavit of correction, as he clearly wrote 2930 N 19 St on the original nomination papers, which is a vacant parcel of land owned by the City of Milwaukee. The deadline to submit affidavits of correction run concurrent to the challenge deadline and closed at 5:00pm on Friday, January 5. Thus, the Commission should not consider this affidavit.

Payton's total is currently at 199 valid District 6 signatures with page 18, line 9 undecided. This total includes the one signature on page 26, line 8 that should not have been disqualified by staff. The Board of Commissioners will need to decide whether page 18, line 9 reads 2216 or 3216 N Achilles and if it meets the legibility requirements for the elector's name. Should the Commission decide that page 18, line 9 is acceptable, Payton will have 200 signatures and be sufficient to place on the ballot. Should the Commission decide that the line is not acceptable, Payton will remain at 199 valid District 6 signatures and not qualify for ballot placement.