FILED
08-23-2024
CLERK OF WISCONSIN
SUPREME COURT

STATE OF WISCONSIN
IN SUPREME COURT

Case No. 2024AP1643-OA

DAVID STRANGE, individually and as Deputy Operations Director—Wisconsin for the Democratic National Committee,

Petitioner,

v.

WISCONSIN ELECTIONS COMMISSION, MEAGAN WOLFE, in her capacity as administrator of Wisconsin Elections Commission, DON MILLIS, in his capacity as Commissioner Of Wisconsin Elections Commission, ROBERT SPINDELL, JR., in his official capacity as commissioner of Wisconsin Elections Commission, MARGE BOSTELMANN, in her capacity as commissioner of Wisconsin Elections Commission, ANN JACOBS, in her capacity as commissioner of Wisconsin Elections Commission, MARK THOMSEN, in his capacity as commissioner of Wisconsin Elections Commission and CARRIE RIEPL, in her capacity as commissioner of Wisconsin Elections Commission, and WISCONSIN GREEN PARTY,

Respondents.

RESPONSE TO PETITION FOR ORIGINAL ACTION

JOSHUA L. KAUL
Attorney General of Wisconsin

BRIAN P. KEENAN
Assistant Attorney General
State Bar #1056525

CHARLOTTE GIBSON
Assistant Attorney General
State Bar #1038845

Attorneys for Wisconsin Elections Commission, its Administrator, and its Commissioners

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-0020 (Keenan)
(608) 957-5218 (Gibson)
(608) 294-2907 (Fax)
keenanbp@doj.state.wi.us
gibsoncj@doj.state.wi.us

ISSUE PRESENTED

Should this Court grant the petition for an original action challenging the appearance of the Green Party's nominee for President on the general election ballot?

STATEMENT OF THE CASE

I. The Green Party qualifies for ballot access for the November 2024 general election.

Sharyl R. McFarland, the Green Party candidate for Secretary of State, received 1.58% of the vote in the November 2022 general election.[1] This entitled the Green Party to "a separate column on the general election ballot in every ward and election district." Wis. Stat. § 5.62(1)(b)1., Recognized political parties and parties that were listed as "independent" in the last general election are entitled to this placement if a "candidate for any statewide office received at least 1 percent of the total votes cast for that office." *Id.*

Because the Green Party was listed as "independent" at the November 2022 election, to secure ballot access it needed to file a "petition of the chairperson and secretary of the organization to the commission requesting such status and specifying their party name, which may not duplicate the name of an existing party." *Id.* The Green Party chair and secretary sent a petition to the Commission on January 31, 2024.[2] The Commission then approved the Green Party for

---

[1] Wis. Elections Comm'n, *Canvass Results for 2022 General Election* (Nov. 8, 2022), https://elections.wi.gov/sites/default/files/documents/Statewide%20Summary%20Results_1.pdf.

[2] Wis. Elections Comm'n, *Amended Open and Closed Session Materials* (Feb. 8, 2024) at 281–83, https://elections.wi.gov/sites/default/files/documents/Complete%20Amended%20Open%20Session%20Materials%20for%202.8.24.pdf .

ballot access for the 2024 partisan primary and general elections at its February 8, 2024, meeting.[3]

A party with ballot access must notify the Commission of the party's candidates for president and vice president. Wis. Stat. § 8.16(7). Specifically, "[t]he state or national chairperson of each such party shall certify the names of the party's nominees for president and vice president to the commission no later than 5 p.m. on the first Tuesday in September preceding a presidential election." *Id.*

II. Petitioner attempts to file complaints with the Commission to keep the Green Party candidate off of the general election ballot.

On August 14, 2024, Petitioner David Strange, the Deputy Operations Director – Wisconsin for the Democratic National Committee, filed a complaint, purportedly under Wis. Stat. § 5.06, against the Wisconsin Green Party. (Hollander Aff. Ex. A.) The next day, the Administrator of the Commission returned the complaint, without prejudice, because it did "not name an election official as a respondent, which is a requirement of Wis. Stat. § 5.06(1)." (Hollander Aff. Ex. B.)

On August 16, Petitioner filed another complaint naming the Commission, the Administrator, and each Commissioner as respondents, in addition to the Wisconsin Green Party. (Hollander Aff. Ex. C.) The Commission disposed of this complaint without consideration because of its position that it cannot decide complaints made against itself, the Administrator or Commission Staff. (Hollander Aff. Ex. D.)

---

[3] Wis. Elections Comm'n, *Open Session Minutes* (Feb. 8, 2024) at 17, https://elections.wi.gov/sites/default/files/documents/February%208%202024%20Open%20Session%20Minutes%20APPROVED.pdf.

ARGUMENT

I. The Commission agrees that the petition meets the criteria for an original action under Wis. Stat. § 5.62(1)(b)1.

Respondent Commission agrees that this case meets the criteria for an original action. Such cases are appropriate when the "questions presented are of such importance as under the circumstances to call for [a] speedy and authoritative determination by this court in the first instance." *Petition of Heil*, 230 Wis. 428, 284 N.W. 42, 50 (1938). The Commission agrees that this case presents pure legal issues and would not involve any fact disputes that might counsel in favor of beginning in the trial court.

As with other election cases where this Court has accepted jurisdiction of an original action or a case on a petition for bypass, this petition warrants acceptance based on the Court's historical treatment of election-related matters during an election year. *See Priorities USA v. WEC*, No. 2024AP0164 (Wis. Sup. Ct.) (election-related issue, bypass granted); *Brown v. WEC*, No. 2024AP0232 (Wis. Sup. Ct.) (election-related issue, bypass granted); *Jefferson v. Dane County*, 2020 WI 90, 394 Wis. 2d 602, 951 N.W.2d 556 (election-related issue, original action petition accepted); *Trump v. Biden,* 2020 WI 91, 394 Wis. 2d 629, 951 N.W.2d 568 (election-related issue, original action petition accepted); *Teigen v. WEC*, 2022 WI 64, 403 Wis. 2d 607, 976 N.W.2d 519 (election-related issue, bypass granted).

Here, the list of candidates for president needs to be finalized soon due to several upcoming deadlines. The Commission must provide required election notices to county clerks "no later than the 4th Tuesday in August," Wis. Stat. § 10.06(1)(i), August 27 this year. The required election notices contain candidate and statewide referenda information that county clerks need to begin preparing ballots. County clerks must then prepare ballots

"immediately upon receipt" of these notices. Wis. Stat. § 7.10(2). County clerks must also input the local races and referenda for their municipalities on the ballots. County clerks then must finalize and proof their ballots, send them to the printer, ensure accuracy, and place the print order.

This must be completed by September 17 because county clerks are statutorily required to deliver printed ballots to municipal clerks no later than September 18, 48 days before the general election. Wis. Stat. § 7.10(3). Municipal clerks are statutorily required to deliver absentee ballots to electors who request them no later than September 19, 47 days before the general election. Wis. Stat. § 7.15(1). And under the federal Uniform and Overseas Citizens Absentee Voting Act (UOCAVA), 52 U.S.C. §§ 20301-20311, municipalities must send ballots to all military and overseas voters no later than September 21, 45 days prior to the election.

II. The Commission takes no position on the merits of the Petition.

The Commission takes no position on the merits of the petition. Below, the Commission concluded that Petitioner had not brought a challenge it could hear. The complaints named respondents—the Green Party and the Commission itself—the Commission did not think it could consider complaints against under Wis. Stat. § 5.06(1). And both complaints were raised outside the ballot access procedures in Wis. Admin. Code EL § 2.07, promulgated under Wis. Stat. § 8.07. The Commission thus never decided whether Wis. Stat. §§ 8.18 or 8.30 operate in the way Petitioner proposes.

The Commission can hear certain types of challenges related to ballot access. Specifically, the statutes provide that "[t]he commission shall promulgate rules under this chapter for use by election officials in determining the validity of nomination papers and signatures thereon." Wis. Stat. § 8.07.

The Commission promulgated these rules in Wis. Admin. Code EL §§ 2.05 ("Treatment and sufficiency of nomination papers") and 2.07 ("Challenges to nomination papers"). While these rules reference Wis. Stat. § 5.06 at one point, *see* Wis. Admin. Code EL § 2.07(1), these types of complaints are a different type of complaint to the Wis. Stat. § 5.06 complaint Petitioner brought.

Here, Petitioner was not asking the Commission to rule on the validity of nomination papers per the rules promulgated under Wis. Stat. § 8.07, such as *Hawkins v. WEC*, 2020 WI 75, ¶ 2, 393 Wis. 2d 629, 948 N.W.2d 877. Instead, he brought two complaints directly under Wis. Stat. § 5.06(1), which allows an "elector of a jurisdiction or district served by an election official" who "believes that a decision or action of the official or the failure of the official to act . . . is contrary to law . . . may file a written sworn complaint with the commission." Wis. Stat. § 5.06(1). Petitioner presented no authority that Wis. Stat. § 5.06 allows complaints against the Commission to force it to remove a presidential candidate from the ballot based on alleged violations of Wis. Stat. §§ 8.18 or 8.30.

CONCLUSION

The Court should grant the petition for an original action. The Commission takes no position on the merits of the case.

Dated this 23rd day of August 2024.

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by:

Brian P. Keenan
BRIAN P. KEENAN
Assistant Attorney General
State Bar #1056525

CHARLOTTE GIBSON
Assistant Attorney General
State Bar #1038845

Attorneys for Wisconsin Elections Commission, its Administrator, and its Commissioners

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-0020 (Keenan)
(608) 957-5218 (Gibson)
(608) 294-2907 (Fax)
keenanbp@doj.state.wi.us
gibsoncj@doj.state.wi.us

CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Appellate Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

I further certify that a copy of the above document was mailed on August 23, 2024, to:

Wisconsin Green Party
Post Office Box 108
Madison, WI 53701

Dated this 23rd day of August 2024.

Electronically signed by:

Brian P. Keenan
BRIAN P. KEENAN
Assistant Attorney General