

**State of Wisconsin  
Before the Elections Commission**

January 17th, 2020

The Complaint of  
Garner E Moffat  
1508 E 6th St  
Superior WI 54440  
against  
**Brent Fennessey**  
**810 E 3rd St**  
**Superior WI 54880**

**And**  
**Terri Kalan, City Clerk**  
**City of Superior**  
**1316 N 14th St**  
**Superior WI 54880**

This complaint is filed under Chapter 8.10 (3) j, Chapter EL 2 & 2.05 of the Wisconsin Administrative Code, “Wisconsin Elections Commission: Nomination Paper Challenges” guide, dated January 2018.

I Garner E Moffat, allege that Mr. Fennessey failed to submit 20 valid signatures and is therefore ineligible to appear on the ballot.

Wisconsin State Statutes, Chapter 8.10 (3) j requires a minimum of 20 signatures of electors to achieve nomination for alderperson in a city of the 2nd or 3rd class. Mr. Fennessey submitted four nomination sheets containing signatures of presumably qualified Electors, although my analysis did not research individual names, addresses, or voting eligibility.

The first sheet, beginning with the signature of Patty Johnson, signatures 5-10 are all dated December 14th, 2019. The Certification of Circulator is dated December 2nd, 2019. EL 2.05 (14) requires the dating of the Certification of Circulator take place “after, not before, the paper is circulated”. EL 2.05 (15) reads:

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.

The signatures of *Spencer Miller, Lauren Miller, Nicole Corbin, Eli Corbin, Lexy Leksell, and Jesse Minter*, do not comply with these rules and must not be counted.

The second sheet, with a Certification of Circulator date of December 14th, 2019, contains the signatures of *Joan Everson and Peter Brandt* on lines 5 and 6, respectively. Both electors signed on December 22nd, 2019, after the circulation date and in violation EL 2.05 (14) and (15) and must not be counted.

On the third sheet, to the best of my knowledge, the information is presumed to be valid.

The fourth sheet, containing the signatures of *Dave Cone, Brent Fennessey* (crossed out), and *Ashley Fennessey*, is not signed or dated by any circulator. Chapter EL 2 of the Wisconsin Administrative Code (EL 2), Section 2.05 (14) reads: “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. No signature may be counted when the residency of the circulator cannot be determined by the information given on the nomination paper.” These three signatures must not be counted by the filing officer.

The “Wisconsin Elections Commission: Nomination Paper Challenges” guide, dated January 2018 states:

Challenge: The date of certification is incomplete or incorrect, as required by Wis. Stat. §§ 8.10(3), 8.15(4)(a).

Analysis: The circulator may correct errors in the certificate of the circulator, such as the circulator failed to sign or otherwise complete the certificate, or entered inadvertently erroneous data (for instance: the circulator dated the certificate before circulation, not after). If the circulator has not corrected these errors by affidavit by the correction deadline, the challenge must be approved and the signatures on those pages struck. Recommendations to this effect have been approved in prior cases.

This does allow Mr. Fennessey the opportunity to correct errors such as the “dated the certificate before circulation, not after”, with a valid affidavit. This opportunity is permitted only before the correction deadline, January 10th, 2020. The Wisconsin Elections Commission has also confirmed this deadline.

The remaining, presumably valid signatures, total 18 electors. As noted above, Wis Stat 8.10(3)j requires 20 signatures for placement on the spring ballots and EL 2.05 (6) requires the minimum number of signatures from the district the candidate seeks to represent. The Superior WI Clerk’s Office received and dated Mr. Fennessey’s nomination forms on Dec 23rd, 2019, but released his name as a valid candidate to the media this week, so I must operate under the assumption that they did not review his paperwork as required by the State of Wisconsin and bring this matter to your immediate attention. I am respectfully demanding that you find Mr. Fennessey’s nomination paperwork incomplete and insufficient and withhold him from the ballot.

On Monday, January 13th, we received a reply that the elections officer, Mrs Kalan, and Mr Fennessey arrived before 5pm and corrected the dates with a sworn affidavit. The notarized form clarifies that the paperwork was signed at 4:59pm. Our understanding of the law sets the deadline at 5pm or whenever the office closes on Friday, the 10th. As the office was closed and locked by 4:42pm, regular closing is listed as 4:30pm, and the only working employee had left the office and prevented further complaints from being filed, we must find that the office was closed, and further actions could not be taken.

It is unclear to us whether they arrived and signed the paperwork at 4:59pm. We filed a concern with the county administrator and the district attorney, and requested to review camera footage of the entrances, as the front doors were locked and it’s clear they didn’t enter through the public entrance where we were standing. The county is reviewing the cameras; if they arrived after 5pm, this constitutes a False Affidavit, which should bring criminal charges and preclude Mr Fennessey’s inclusion on the ballot as a certified candidate. If they arrived prior to 5pm through a back entrance, it’s clear to us that the office was completely closed and Mr Fennessey’s Affidavit should not have been accepted as meeting the timetable; after all, other citizens were unable to enter and file any complaints or corrections. This choice by the clerk shows preferential treatment to Mr Fennessey’s campaign who failed to submit adequate nomination papers.

We must request that the Elections Commission review this matter, both with the District Attorney and County Administrator to validate whether a False Affidavit was provided or not, and furthermore find that if the paperwork was corrected prior to 5pm, but after the office and building were closed and locked that the corrections were not legally accepted and Mr Fennessey's nomination papers stand at 18 signatures, not the 20 signatures required to be placed on the ballot. Thank you for your prompt attention to this matter.

Date: January 17th, 2020

(complainant's signature)

I Garner E Moffat, being first duly sworn on oath state that I personally read the above complaint, and that the above allegations are true based on my personal knowledge and, as to those stated on information and belief, I believe them to be true.

(complainant's signature)

STATE OF WISCONSIN )

) ss.

Douglas County,

Sworn to before me this 17th day of January, 2020

(Signature of person authorized to administer oaths)

My commission expires ,

or is permanent

Notary Public or (official title if not notary)