



**CORRESPONDENCE/MEMORANDUM****DEPARTMENT OF JUSTICE**

Date: August 25, 2009

To: Investigation re: Colon Nomination Papers  
Case File

From: Barbara Oswald   
Assistant Attorney General

David Maas   
Assistant Attorney General

Subject: Election Violations by Pedro Colon

We were appointed by the Milwaukee County Circuit Court to serve as special prosecutors to investigate potential crimes related to the circulation of nomination papers for the office of State Representative to the Assembly, 8th District, in 2008. That special prosecutor appointment came at the request of the Milwaukee County District Attorney's Office, which had received a complaint on behalf of one of Representative Pedro Colon's Democratic challengers. We have now completed our investigation. For the reasons discussed below, we have determined that criminal charges against Mr. Colon for election fraud are not appropriate in this case.

***Factual Background***

Representative Colon ran for re-election in the September 2008 primary election. On July 3, 2008, one of Mr. Colon's campaign volunteers filed a total of 33 nomination papers with the Government Accountability Board ("GAB"), requesting that Mr. Colon be placed on the November ballot. Laura Manriquez, one of Mr. Colon's opponents in the primary, challenged Mr. Colon's nomination papers on the grounds that some addresses were incomplete or invalid, and that some signatures appeared to be in the same handwriting.<sup>1</sup>

In response to Ms. Manriquez's challenge, Mr. Colon filed a response with the GAB to supplement information about allegedly invalid or incomplete addresses. The GAB conducted a hearing to address Ms. Manriquez's challenge and ultimately decided that Mr. Colon's name should be placed on the September primary ballot. In reaching its conclusion, the GAB did not address the issue of alleged forged signatures because GAB determined that Manriquez did not provide information regarding those allegations in a timely way. In addition, at the hearing the GAB did not make any findings about the specific number of signatures that were ultimately

---

<sup>1</sup> The complaint filed with the Milwaukee County District Attorney's Office was substantially the same. It was that complaint that led to the appointment of a special prosecutor in this matter.

deemed valid on Mr. Colon's papers but instead determined that Mr. Colon had more than the 200 signatures required. In information later provided to the Department of Justice (DOJ), the GAB determined that Mr. Colon had 241<sup>2</sup> valid signatures.

Mr. Colon defeated Ms. Manriquez and Jose Guzman in the September primary and was re-elected in the November election.

*Applicable Statutes and Administrative Code*

Wis. Stat. § 12.13(3)(a) prohibits the falsification of information on a nomination paper:

**12.13 Election Fraud.**

...

**(3) PROHIBITED ACTS.** No person may:

(a) Falsify any information in respect to or fraudulently deface or destroy a certificate of nomination, nomination paper, declaration of candidacy or petition for an election, including a recall petition or petition for a referendum; or file or receive for filing a certificate of nomination, nomination paper, declaration of candidacy or any such petition, knowing any part is falsely made.

A violation of § 12.13(3)(a) is a Class I felony, punishable by a maximum penalty of 3 years and 6 months imprisonment and a fine of \$10,000. Wis. Stat. §§ 12.60(1) and 939.50(3)(i).

Under Wis. Stat. § 8.15(4)(a), each nomination paper must contain a certification by the circulator. The circulator must certify, among other things, that he or she:

- personally circulated the nomination paper;
- personally obtained each of the signatures;
- knows they are electors of the ward, aldermanic district, municipality or county, as the nomination papers require;
- knows they signed the paper with full knowledge of its content;
- knows their respective residences given; and
- knows each signer signed on the date stated opposite his or her name.

---

<sup>2</sup> 200 signatures were required for a candidate to appear on the ballot.

The circulator must also certify that he or she:

- is a qualified elector of this state, and
- is aware that falsifying the certification is punishable under Wis. Stat. § 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.

An elector must sign his or her own name to nomination papers unless unable to do so because of physical disability. Wis. Admin. Code § GAB 2.05(8). An elector unable to sign due to physical disability shall be present when another person signs on behalf of the disabled elector and shall specifically authorize the signing. *Id.* A person may not sign for his or her spouse, or for any other person, even if they have been given a power of attorney by that person, unless that other person is disabled. Wis. Admin. Code § GAB 2.05(9).

### ***Summary of the Investigation***

The Milwaukee Police Department (“MPD”) initially started as the lead law enforcement agency investigating the Manriquez complaint. DOJ’s Division of Criminal Investigation (“DCI”) was assigned to assist. However, reassignments within the MPD resulted in DCI ultimately taking over the investigation. Investigators interviewed witnesses and obtained and reviewed a variety of documents. Other investigative tools were used as well. For example, a number of documents were submitted to the Wisconsin State Crime Lab for handwriting analysis.<sup>3</sup>

Our investigation was not undertaken to determine the validity of each of the signatures on Mr. Colon’s nomination papers or assess whether Mr. Colon had enough valid signatures to be placed on the ballot. That is the function of the GAB. Nor did our investigation examine Manriquez’s allegations that addresses were not valid, as we believe those allegations were adequately addressed by the GAB.

Instead, our investigation focused on those instances where an individual may have been listed as a signer on Mr. Colon’s nomination papers without that person’s knowledge or consent,

---

<sup>3</sup> Due to the nature and amount of evidence needed for handwriting analysis, the usefulness of that analysis is extremely limited in this case.

based upon the fact that the signature appeared to be in the same handwriting as another signature.<sup>4</sup>

The investigation initially focused on the Colon nomination papers allegedly circulated by Yadira Colon, because those pages contained a number of signatures that all appeared to be in the same handwriting and because Ms. Manriquez provided affidavits from several of the alleged signers indicating they had not signed Mr. Colon's papers. Evidence obtained during the investigation clearly substantiated allegations that the pages circulated by Ms. Colon contained forged signatures and that Ms. Colon did not reside at the address she listed.

Investigators then reviewed other pages of the nomination papers to determine if there were any other incidents in which it appeared that more than one signature was signed by the same person. Most of Mr. Colon's nomination papers were circulated by campaign volunteers. Those pages did not contain any signatures that appeared to warrant further investigation. However, four of the thirty-three pages were purportedly circulated by Pedro Colon himself and contained signatures that warranted review.

Each of these four pages contains a signed certification that reads:

I, Pedro A. Colon, certify: I reside at 821 S. 3rd Street, Milwaukee. 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 that 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 s. 12.13(3)(a) Wis. Stats.

Mr. Colon's signature on two of these certifications appears markedly different from Mr. Colon's signature on the other two pages. Handwriting analysis by the State Crime Lab further questioned whether each of the signatures on Mr. Colon's certifications were in fact his signature. However, during his interview with agents, Mr. Colon indicated he circulated these papers and signed the certifications. Another witness familiar with Mr. Colon's signature identified the signatures on all four pages as being similar to his handwriting. Consequently,

---

<sup>4</sup> There appeared to be examples of printed names, addresses, dates, and municipalities possibly being written in the same handwriting. While statutes requires each signer to sign his or her name and list his or her address and date of signing, it appears common practice for someone other than the signer to fill in some of the other information for the signer, such as street address or municipality. For example, it appears circulators will sometimes fill in the date and municipality for each signer after they have signed. Such a practice, while potentially a technical violation of the law, does not appear to involve any fraud or lack of knowledge on the part of the signer.

there is insufficient evidence to suggest that Mr. Colon did not personally sign those certifications.

Investigators also interviewed the electors whose signatures were of concern on these pages, as well as other relevant witnesses, and obtained evidence that there were two separate and distinct incidents in which one person signed more than one name on the papers certified by Mr. Colon personally.

The first instance occurred on June 7, 2008, when Erendira Jimenez signed both her name and that of her husband, Victor Jimenez, at a school function where Mr. Colon was speaking. It is unclear whether Victor Jimenez knew Erendira had signed his name at that time or whether he found out at a later time. Regardless, the evidence is undisputed that even though Mr. Jimenez was present at the school on that day, he did not sign Mr. Colon's nomination papers.<sup>5</sup> Further, there is substantial evidence to show that Pedro Colon did not personally obtain signatures from either Jimenez. Neither Erendira nor Victor Jimenez spoke with Mr. Colon at that school function. Rather, Mrs. Jimenez signed the nomination papers at the request of Lisi Campos, an employee of the school, who knew Mr. Colon from past contacts.

When questioned by law enforcement, Lisi Campos made conflicting statements about how the nomination papers got signed at the school. She repeatedly denied that she had asked anyone to sign Mr. Colon's nomination papers.

When agents interviewed Mr. Colon about whether anyone was circulating nomination papers for him at the elementary school, he said someone may have been but he could not recall. When asked specifically about Lisi Campos, Mr. Colon said he did not know who she was, despite having held several campaign events at a restaurant owned by Campos' family. Later in the interview, Mr. Colon said he remembered her but could not recall if she was circulating papers for him at that event.

The Jimenezes' signatures appear to be the only ones that Campos obtained. Other signers of that same page said they were asked to sign by Mr. Colon himself. Mr. Colon certified this nomination paper on June 10, 2008.

In the second instance, on June 12, 2008, Mr. Colon approached a group of three or four people sitting on the porch of a residence in the city of Milwaukee and asked them to sign his nomination papers. Several of those individuals lived elsewhere in the city and informed Mr. Colon that they did not actually reside at that address. According to those individuals,

---

<sup>5</sup> Mr. Jimenez told interviewers that he did not sign Pedro Colon's nomination papers at the school but did sign them on a later date when Mr. Colon came to their residence circulating papers. Mr. Jimenez is mistaken on this point; the nomination papers he signed later were those of Jose Guzman, one of Mr. Colon's opponents in the primary.

Mr. Colon told them that they could sign his papers anyway. One of the individuals who was only visiting that address, Norma Darracott, decided she did not wish to sign. However, her sister, Vanessa Darracott, stated that she knew a lot of people and Mr. Colon responded by saying something to the effect of "The more people you know, the better." Vanessa Darracott then proceeded to sign not only her name but also the names of Norma Darracott, Kelly Darracott (her mother), and Luis Davila (her boyfriend). Norma and Vanessa Darracott later told investigators that Kelly Darracott was not present at that time. It is unclear whether Luis Davila was present on the porch when the papers were signed, or whether he even resided at that address. The information provided by members of the Darracott family at times was inconsistent and conflicted with information provided by others. Regardless, there is sufficient evidence to believe that Vanessa Darracott signed the names of Norma Darracott, Kelly Darracott, and Luis Davila, and did so in Mr. Colon's presence. Mr. Colon certified that nomination paper on June 22, 2008.

Based on information provided by the GAB, Mr. Colon would have had enough signatures to warrant placement on the ballot even without the signatures of Victor and Erendira Jimenez or the signatures from the individuals in the Darracott group.

### ***Reasons That Charges Are Not Appropriate In This Case***

#### *Evidentiary Issues*

With respect to the signatures of Erendira and Victor Jimenez, the credible evidence provides reason to believe that Mr. Colon did not personally obtain either signature and that Victor Jimenez did not sign the nomination paper at issue and thus had no knowledge of the content of the papers. If so, Mr. Colon's certification to the contrary is false.

However, while section 12.13(3)(c) does not contain a specific intent or knowledge element, the state would likely have to prove that Mr. Colon knew the certification was false when he signed it. Mr. Colon might be able to persuade a jury that he did not know Lisi Campos had obtained the Jimenez signatures for him because he gave his nomination papers to someone to sign and had no idea the papers got passed on to others. Witnesses will agree that there were a lot of people at this event and Mr. Colon did personally ask a number of people to sign. In addition, since Mr. Colon did not see Erendira Jimenez sign the nomination paper, he had no way of knowing that she signed Victor Jimenez's name.

The incident involving the Darracott family also presents evidentiary difficulties. As already discussed, the state would need to prove that Mr. Colon knew his certification of this nomination paper was false at the time he signed it. Therefore, we would need to prove: (1) that Mr. Colon was aware that Vanessa Darracott signed more than just her own name; and

(2) Mr. Colon was conscious of that fact when he signed the certification on that particular page ten days later.

In addition, some of the witnesses to this particular incident present significant credibility issues based on their conflicting versions of events. Further, some of these witnesses are difficult to locate. For example, we have been unable to locate Luis Davilla for an interview, and other witnesses have changed addresses several times. We are concerned that the state will not be able to locate all of the necessary witnesses needed for prosecution. We are also concerned that some witnesses' testimony may be inconsistent with their prior statements and with other testimony.

#### Additional Considerations

While our decision regarding criminal charges against Mr. Colon is based primarily on evidentiary issues, there are several additional considerations that weigh in favor of not issuing criminal charges in this particular case.

First, even assuming the state has sufficient evidence to charge Mr. Colon, the nature of this case might not persuade a jury if the jury views Mr. Colon's conduct as something less than criminal. For example, even if the state could prove Mr. Colon knew he didn't personally obtain the signatures of Erendira and Victor Jimenez, a jury might find him not guilty because Mr. Colon was at the event and both Jimenezes were qualified electors. In other words, a jury might conclude "no harm, no foul." Similarly, a jury might view Mr. Colon's conduct as isolated and relatively minor -- there are only two incidents, they are unrelated, they likely were not planned in advance and they did not affect the outcome of the election.

Second, the only available charges in this case would be felony charges; there are no misdemeanor or forfeiture statutes applicable to the types of violations Mr. Colon may have committed. While all violations of our election laws are serious, in this case the consequences that flow to the citizens in Mr. Colon's district from a felony prosecution against him are arguably disproportionate to the conduct in which he engaged, particularly in light of the public policy behind our election laws.

If Mr. Colon were convicted of a felony for a violation of Wis. Stat. § 12.13, he would be ineligible to hold office and his current office would be deemed vacant. *See* Wis. Stat. § 17.03(5) (A public office is deemed vacant when the incumbent is convicted and sentenced for a felony). Such vacation of office would serve essentially to vacate the election in which voters chose Mr. Colon as their representative. Thus, a successful prosecution would override the will of the voters in Mr. Colon's district. Such a result would run contrary to the purpose of the election laws. Our legislature has made clear that our election laws must be construed to give effect to the will of the electors. *See* Wis. Stat. § 5.01(1) ("[C]hs. 5 to 12 shall be construed to

File

August 13, 2009

Page 8

give effect to the will of the electors, if that can be ascertained from the proceedings, notwithstanding informality or failure to comply with some of their provisions.”). Given the purpose of our election laws and the limitations on their scope, courts have held that only *substantial* violations of the elections laws should operate to vacate an election. *Carlson v. Oconto County Board of Canvassers*, 2001 WI App 20, ¶ 9, 240 Wis.2d 438, 623 N.W.2d 195.

In cases where the courts have been asked to vacate elections for irregularities, the courts have looked at whether the violations were so significant in number or so egregious in character as to seriously undermine the appearance of fairness in the election. *Id.* at ¶ 11, quoting *State v. Tollander*, 100 Wis. 2d 490, 505, 302 N.W.2d 440 (1981). Although that standard is not required to be applied in criminal cases, it is nonetheless a valid consideration in determining whether charges are appropriate under all of the circumstances of the case. In this case, Mr. Colon’s conduct appears to have consisted of two distinct incidents, one of which may not have involved any knowledge on Mr. Colon’s part. And despite finding evidence that Yadira Colon forged a number of electors’ signatures on papers she circulated for Mr. Colon, we found no evidence that Mr. Colon was aware of Ms. Colon’s conduct or participated in that conduct with her. In other words, we found no evidence that Mr. Colon engaged in a coordinated effort to obtain forged signatures on his nomination papers.

Further, since Mr. Colon had more than enough *valid* signatures to be placed on the ballot, we have no evidence that his conduct affected his ability to appear on the ballot. In view of these considerations, a felony conviction leading to the vacancy of his office would seemingly be contrary to the will of the voters in that district and excessively harsh in this case.

We do not suggest that isolated incidents of this nature should not form the basis of felony charges under Wis. Stat. § 12.13(3)(a). But for the reasons we have discussed, we conclude that, based upon currently available information, felony charges should not be pursued against Pedro Colon in this matter.

BLO/DWM/mlld