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MEMORANDUM

DATE: For the June 11, 2018 Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Meagan Wolfe
Interim Administrator

Prepared and Presented by:
Michael Haas, Staff Counsel
Nathan W. Judnic, Senior Elections Specialist

SUBJECT: Final 2018 Ballot Access Challenges

This Memorandum summarizes Commission staff's review of challenges that have been filed to nomination papers of candidates for the 2018 General Election. Challenges were filed to twelve candidates, but three challenges have since been withdrawn. One challenge (to Candidate Ahna Key) was withdrawn because the candidate did not file a Statement of Economic Interests which is a required ballot access document. The candidate does not qualify for the ballot and therefore the challenge is moot. Two other challenges (to Candidates Loren Oldenburg and Gabriel Szerlong) were withdrawn after the challenger's review of supplemental signatures filed by the candidates. Therefore, there are 9 challenges presented to the Commission for its consideration and action.

The burden of proof applicable to establishing or rebutting a challenge is clear and convincing evidence. Wis. Adm. Code EL § 2.07(4). Below, staff has summarized the challenges and responses, and provided analyses and recommendations. Accompanying this Memorandum as exhibits are staff's Challenge Worksheets which document staff's thorough review of all challenges except for those which were withdrawn. Additional exhibits are also provided with the Challenge Worksheets for some of the challenges to illustrate the issues presented and staff's analysis.

1. Cynthia Werner Complaint against Timothy L. Rogers, Republican Party Candidate for Representative in Congress, District 4
Case No. EL 18-13

Signatures required for office: 1,000
Signatures challenged: 255

Signatures initially approved: 1,009

Staff assigned: Michael Haas

This complaint alleges that 1) 213 signatures should not be counted because the circulator dated the certification prior to the dates of some of the signatures; 2) 30 signatures should not be counted because three separate circulators omitted their respective municipalities in the address portion of the circulator affidavit, including one instance where the candidate signed the certification rather than the circulator; and 3) 12 signatures should not be counted because the signers resided outside the 1st Congressional District.

The staff's Challenge Worksheet is attached as Exhibit Rogers-1.

Correcting Affidavit:

The deadline for candidates to file affidavits to correct errors contained on their nomination papers that were committed by either the circulator or the signer was June 4, 2018. Wis. Adm. Code EL § 2.05(4).

Candidate Rogers submitted correcting affidavits on May 31, 2018 and June 4, 2018 to rehabilitate 205 signatures originally struck by staff which corrected the date contained in the circulator's certification on papers circulated by Candidate Rogers. The affidavits state that the date of the certification on all pages circulated by Candidate Rogers should be May 31, 2018, rather than the dates on the nomination papers which preceded the dates of petition signers. Commission staff accepted the correcting affidavits submitted by Candidate Rogers pursuant to the applicable administrative rules. All but 9 of the rehabilitated signatures were already included in the total number of 1,009 signatures verified by staff. Some of the pages corrected by the affidavits were subject to the challenge filed with the Commission, and therefore any challenges to signatures accepted by the Commission will be subtracted from the adjusted total of 1,018 signatures.

Challenges due to invalid date on circulator certification:

The complaint alleges that 217 signatures should not be counted because the date of the circulator certification on a number of pages circulated by Candidate Rogers and other circulators preceded the date of some of the signatures (the face of the complaint cites 213 challenged signatures but the line-by-line list totals 217 challenged signatures). An individual signature may not be counted when it is dated after the date contained in the circulator certification. Wis. Adm. Code EL § 2.05(15)(b).

Candidate Response:

Candidate Rogers filed a response to this portion of the complaint. The response notes that Candidate Rogers filed correcting affidavits which successfully rehabilitated signatures identified as insufficient due to the date of the circulator's certification on nomination papers which he personally circulated. The response states that Candidate Rogers submitted his nomination papers on May 31, 2018, and that all circulator certifications on pages he circulated should include that date. Several challenged signatures in this category were struck for other reasons such as incomplete addresses.

Therefore, Commission staff recommends rejecting this challenge as to the 194 signatures on nomination papers circulated by Candidate Rogers and included in the original staff total, and adding 9 additional signatures resulting from the staff's review of the correcting affidavit. Commission staff recommends accepting the challenges to 20 signatures on nomination papers circulated by other individuals which contain an invalid certification date, and which were not corrected. However, the accepted challenges do not change the total number of valid signatures because staff had already struck those 20 signatures.

Challenge to signatures due to circulator's incomplete address:

Each circulator must sign a certification on each nomination page stating their address and that they personally obtained each of the signatures on the page. Wis. Stat. § 8.15(4)(a), Wis. Adm. Code EL § 2.05(14). Section EL 2.05(14) of the Administrative Code states:

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 on the nomination paper.

The complaint alleges that 30 signatures should not be counted because three circulators did not include their municipality of residence in the circulator's certification. An example of such a page is attached as Exhibit Rogers - 2. In that particular example, it appears that Candidate Rogers also signed the certification in place of the circulator.

Candidate Response:

Candidate Rogers did not file a response to this aspect of the challenge. Commission staff recommends accepting the challenge to the 30 signatures identified due to this insufficiency. In the case of Exhibit Rogers - 2, all of the signatures also should be struck because the proper individual did not sign the circulator certification. However, staff had already struck all 22 of 30 of these signatures in its initial review of the nomination papers, and therefore this challenge reduces the total number of signatures verified by staff by 8.

Challenges to signatures from outside the district:

For a signature to be counted, a signer of the nomination papers must reside in the district which the candidate named on the paper will represent, if elected. Wis. Stat. §§ 8.15(2) and (3).

The complaint alleges that 12 signatures were obtained from individuals that do not reside within the 1st Congressional District, and includes printouts from the Wisconsin Legislature's website "Who Are My Legislators?" to support the allegation. Commission staff attempted to verify the addresses of the individuals identified in the complaint and determine if those addresses were in fact within the appropriate district. Commission staff uses the WisVote system and MyVote Wisconsin website, as well as the "Who Are

My Legislators?” website to pinpoint addresses and determine the districts that those addresses represent.

Using the WisVote system, staff determined that the addresses of all 12 challenged signatures are from individuals that do not reside in the 1st Congressional District. These signatures were not struck during the staff’s initial review. Therefore, staff recommends accepting the challenge to these 12 signatures and reducing the number of signatures verified by staff by 12.

Candidate Response:

Candidate Rogers did not submit a response to this portion of the challenge.

Supplemental Signatures:

Candidate Rogers filed supplemental signatures which are not reviewed for validity unless the total number of valid signatures would otherwise fall below the required minimum number of signatures. Because the challenges would have resulted in a total of 998 valid signatures, staff reviewed the supplemental signatures and determined that 35 were valid, resulting in a total number of 1,033 verified signatures.

Recommended Motion:

- 1) Sustain challenges to 20 of the 217 signatures which originally contained dates after the date of the circulator’s certification and which were not successfully rehabilitated through a correcting affidavit but do not reduce the verified total because staff had already struck those signatures.
- 2) Reject the remaining challenges related to the date of the circulator’s certification because the correcting affidavits rehabilitated those signatures, and increase the total valid signatures by 9 due to the staff’s review of the correcting affidavits and signatures which were previously struck.
- 3) Sustain challenges to 30 signatures due to incomplete circulator addresses and reduce the verified number of signatures by 8 because the remaining signatures were previously struck by staff.
- 4) Sustain challenges to 12 signatures because the signers reside outside the 1st Congressional District and reduce the verified number of signatures by 12.
- 5) Increase the number of verified signatures by 35 due to the supplemental signatures submitted by Candidate Rogers.
- 6) Verify a total of 1,033 valid signatures, grant ballot access to Candidate Rogers, and direct staff to prepare and issue a Findings and Order consistent with this motion.

**2. Jenny Toftness Complaint against Charisse Daniels, Democratic Party
Candidate for Representative to the Assembly, District 37
Case No. EL 18-14**

Signatures required for office: 200
Signatures challenged: 43

Signatures initially approved: 201

Staff assigned: Nathan Judnic

This complaint alleges that 40 signatures should not be counted because they were fraudulently obtained and submitted, and that 3 signatures should not be counted because 3 individuals signed the candidate's nomination paper twice.

The complaint also requests that the Commission conduct an investigation for election fraud in violation of Wis. Stat. § 12.13(3)(a) and take any civil or criminal enforcement actions necessary, pursuant to Wis. Stat. § 5.05(2m), including a referral to the appropriate law enforcement agency. **Please note:** Verified complaints filed under Wis. Stat. § 5.05(2m), alleging violations of Chapter 12 are to be treated confidentially, and any discussion of such complaints should be conducted in closed session of the Commission, per Wis. Stat. §§ 5.05(5s), 12.13(5) and 19.851. If the Commission wishes to discuss the complainant's request for an investigation into election fraud under Chapter 12, such discussion should occur in closed session. The meeting notice provides that the Commission will convene in open session, move into closed session and may reconvene in open session.

The complainant filed a Verified Amendment to Complaint on June 6, 2018, which purports "to amend the original complaint by addition of new information and/or evidence."

Candidate Daniels did not file a written response to the challenge complaint.

A Commission Staff Challenge Worksheet outlining the challenges and result of each challenge after staff review is included as Exhibit Daniels – 1. Pages 5, 8, 11 and 14 of Candidate Daniels' nomination papers are included as Exhibit Daniels – 2. Exhibits 2-16 from the challenge complaint are included as Exhibit Daniels – 3. Exhibit 17 from the challenge complaint is included as Exhibit Daniels – 4. Exhibit 18 from the challenge complaint is included as Exhibit Daniels – 5.

Correcting Affidavits:

The deadline for candidates to file affidavits to correct errors contained on their nomination papers that were committed by either the circulator or the signer was June 4, 2018. Wis. Adm. Code EL § 2.05(4).

Candidate Daniels submitted a correcting affidavit from circulator Barbara Weiss on June 4, 2018 to correct 6 signatures on Page 13 originally struck by staff which corrected the date contained in the circulator's certification. Candidate Daniels submitted a correcting affidavit from circulator Roni J. Lester on June 4, 2018 to correct 11 signatures on Pages 1 and 28 originally struck by staff which corrected the date contained in the circulator's certification. Candidate Daniels submitted a correcting affidavit from circulator Wendy Pliska on June 4, 2018 to correct 3 signatures on Page 26 originally struck by staff which corrected the date contained in the circulator's certification. Candidate Daniels submitted

a correcting affidavit on June 4, 2018 for Page 18, a page which she personally circulated, to provide the addresses for the two signers on Lines 1 and 3 of that page.

The Commission staff accepted all the correcting affidavits submitted by Candidate Daniels pursuant to the applicable administrative rules, which adds 22 signatures to her original verified total by staff, giving her an adjusted total of 223 signatures. None of the pages corrected by affidavit were subject to the challenge filed with the Commission, therefore any challenges to signatures accepted by the Commission will be subtracted from the adjusted total of 223 verified signatures.

Challenges to signatures fraudulently or improperly submitted:

“Each candidate for public office has the responsibility to assure that his or her nomination papers are prepared, circulated, signed, and filed in compliance with statutory and other legal requirements.” Wis. Adm. Code EL § 2.05(1). “An elector shall sign his or her own name unless unable to do so because of physical disability. An elector unable to sign because of physical disability shall be present when another person signs on behalf of the disabled elector and shall specifically authorize the signing.” Wis. Adm. Code EL § 2.05(8). “A person may not sign for his or her spouse, or for any other person, even when they have been given a power of attorney by that person, unless sub. (8) applies.” Wis. Adm. Code EL § 2.05(9). “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).

“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 referendum; or file or receive for filing a certification of nomination, nomination paper, declaration of candidacy or any such petition, knowing any part is falsely made.” Wis. Stat. § 12.13(3)(a).

“Any information which appears on a nomination paper is entitled to a presumption of validity.” Wis. Adm. Code EL § 2.05(4). “The invalidity or disqualification of one or more signatures on a nomination paper shall not affect the validity of any other signatures on that paper.” Wis. Adm. Code EL § 2.07(3)(a). “The filing officer shall examine any evidence offered by the parties when reviewing a complaint challenging the sufficiency of the nomination papers of a candidate for state or local office. The burden of proof applicable to establishing or rebutting a challenge is clear and convincing evidence.” Wis. Adm. Code EL § 2.07(4).

The complaint alleges that 40 signatures should be struck because they were fraudulently signed or forged (Exhibit Daniels – 2). In support of this allegation, the complaint contains 15 affidavits (Exhibit Daniels – 3) from individuals that appear on Candidate Daniels’ nomination papers, but who deny signing her nomination papers, an affidavit from State Representative John Jagler that describes actions he personally took to

investigate the validity of signatures contained on Pages 5, 8, 11 and 14 (Exhibit Daniels - 4), and a picture of a vacant residential lot described in Rep. Jagler's affidavit as 530 Brookstone Way (Exhibit Daniels - 5), an address that appears on Page 11, Line 6 of Candidate Daniels' nomination papers.

Exhibits 2-16: Commission staff reviewed the 15 affidavits provided as Exhibits 2-16 of the challenge complaint. Each signer of the affidavit states under oath that they did not sign the nomination papers for Charisse Daniels on the date indicated next to their name on the nomination paper nor did they sign her nomination papers on any other date. Candidate Daniels did not file a response challenging the validity of these affidavits, or rebutting the evidence in any way, therefore the Commission staff believes the complainant has presented clear and convincing evidence that 15 signatures were not obtained from the individuals indicated on the paper, and recommends striking 15 signatures contained on: Page 5, Lines 1, 3-6 and 10; Page 8, Lines 2-4, 8; Page 11, Lines 1-2, 5, 10; Page 14, Line 10.

Exhibit 17: Commission staff reviewed the affidavit submitted by State Representative John Jagler provided as Exhibit 17 of the challenge complaint. The affidavit states that Mr. Jagler contacted 28 individuals whose names appeared on Pages 5, 8, 11 and 14 of Candidate Daniels' nomination papers. Mr. Jagler's affidavit indicates that 15 individuals he contacted signed an affidavit which stated they had not signed Candidate Daniels' nomination papers. An additional 5 individuals stated they had not signed Candidate Daniels' nomination papers and would attest to that fact, but a notary was not available to take a sworn statement from them at that time. 7 individuals stated that they had not signed Candidate Daniels' nomination papers but declined to sign an affidavit.

Candidate Daniels did not file a response challenging the validity of the contents of Mr. Jagler's affidavit, or rebutting the evidence presented in any way, therefore the Commission staff believes the complainant has presented clear and convincing evidence that 12 signatures were not obtained from the individuals indicated on the paper, and recommends striking 12 signatures contained on: Page 5, Lines 2, 7, 8, 9; Page 8, Lines 5, 6, 10; Page 11, Line 4; Page 14, Lines 2-4, 6. Commission staff does not believe the complainant met its burden of proof in establishing that the signatures contained on Page 11, Lines 3 (spoke with someone that said the individual didn't live there) and 6 (vacant lot which an individual could list as their address, no structure needed if they in fact live there – no evidence to rebut presumption that someone lives at that address; and Page 14, Line 7 (spoke with someone that said that individual didn't live there) were fraudulently obtained.

Exhibit 18: Commission staff reviewed the picture of a vacant residential lot described in State Representative Jagler's affidavit as 530 Brookstone Way, and address that appears on Page 11, Line 6 of Candidate Daniels' nomination papers. As discussed in the paragraph above, while not common, an individual may use a vacant lot as their residential address if that is where they reside. The existence of a dwelling is not required for an individual to live at an address. "Any information which appears on a nomination paper is entitled to a presumption of validity." Wis. Adm. Code EL §

2.05(4). The picture alone contained in Exhibit 18, without establishing that the individual that is listed on the nomination paper does not reside there, does not overcome the presumption of validity of the signature.

Signatures alleged to be fraudulent with no affidavit support: “The invalidity or disqualification of one or more signatures on a nomination paper shall not affect the validity of any other signatures on that paper.” Wis. Adm. Code EL § 2.07(3)(a). “Any information which appears on a nomination paper is entitled to a presumption of validity.” Wis. Adm. Code EL § 2.05(4). Commission staff reviewed the remaining signatures that were not identified or supported as fraudulent by an affidavit on Pages 5, 8, 11, and 14 of Candidate Daniels’ nomination papers. The complaint requests that due to irregularities and alleged fraud related to some signatures on these pages, all signatures on these pages should be struck. Based on the applicable administrative code provisions, the Commission staff recommends rejecting the challenge to the following signatures for failing to meet the burden of proof to establish that they were fraudulently obtained: Page 8, Lines 1, 7, 8; Page 11, Lines 7-9; Page 14, Lines 1, 5, 8, 9.

Amendment to complaint:

The deadline for filing a nomination paper challenge complaint was June 4, 2018. Wis. Adm. Code EL § 2.07(2)(a). Complainant filed a verified amendment to the complaint on June 6, 2018 which includes 5 additional affidavits from individuals whose names appear on Candidate Daniels’ nomination papers, but who deny signing her nomination papers.

Challengers to nomination papers are provided a memorandum outlining the process for filing a ballot access challenge complaint with the Commission. The memorandum is also posted on the Commission’s website here:

<http://elections.wi.gov/publications/other/2018-fall-challenge-information>

The challenger memorandum states in part:

New grounds for a challenge which are not raised in an initial complaint, and which are not raised until after the deadline for filing a challenge, will not be considered by the Commission. Grounds which are alleged in a timely-filed complaint, but which are based on information and sworn statements to be provided after the deadline for filing challenges to nomination papers also will not be considered.

Challenger Memo 2018 General Election, pg. 4.

Commission staff believes the amendment to the complaint falls into the latter category described in the paragraph above: the original complaint alleges fraud was committed in collecting nomination paper signatures and includes 15 affidavits, and the amendment seeks to add 5 additional affidavits to support the original allegations of fraud.

The policy of disallowing the introduction of additional evidence after the nomination paper challenge deadline goes back to at least 2012, where individuals looking to file a challenge were provided a memo with substantially similar language. A similar memo containing substantially similar language was issued in 2014, 2016 and now again in 2018. Commission staff is not aware of any instances in which the former Government Accountability Board allowed additional evidence to be added to a challenge complaint after the deadline had passed.

Commission staff believes there are at least three reasons why the this policy has been in place over the course of the last three partisan statewide election cycles: 1) due to the tight timeframes involved under the statute for certification of candidates and ballot printing, adhering to tight deadlines is necessary, 2) the impact of a successful challenge deprives a candidate ballot access, so some due process must be allowed for a candidate to respond - allowing continuous amendments in such a short timeframe is not feasible and possibly violative of the candidate's due process rights to respond, and 3) equal treatment of all parties filing challenge complaints - meaning allowing an amendment now when the instructions stated that no additional evidence would be allowed could disadvantage complainants that wanted to submit additional evidence but did not believe they could do so under the policy.

Based on the former action of the G.A.B. on this topic, the instructions contained in the Challenger Memo and the reasons stated above, the Commission staff recommends disallowing the June 6, 2018 amendment to the complaint containing 5 additional affidavits for purposes of deciding ballot access for Candidate Daniels.

Challenges to duplicate signatures:

“Only one signature per person for the same office is valid.” Wis. Stat. § 8.15(2), Wis. Adm. Code EL § 2.05(11). “If a challenger establishes that an elector signed the nomination papers of a candidate more than once or signed the nomination papers of more than one candidate for the same office, the 2nd and subsequent signatures may not be counted.” Wis. Adm. Code EL § 2.07(3)(b).

The challenge alleges 3 instances of individuals signing Candidate Daniels' nomination papers twice. The Commission staff reviewed the challenged signatures and determined that all 3 individuals signed Candidate Daniels' nomination papers twice. The Commission staff recommends accepting the challenge to duplicate signatures in all three instances, and striking a total of 3 signatures on: Page 10, Line 5; Page 20, Line 2; Page 4, Line 7.

Recommended Motion:

- 1) Sustain challenges to 15 signatures on Page 5, Lines 1, 3-6 and 10; Page 8, Lines 2-4, 8; Page 11, Lines 1-2, 5, 10; Page 14, Line 10.
- 2) Sustain challenges to 12 signatures on Page 5, Lines 2, 7, 8, 9; Page 8, Lines 5, 6, 10; Page 11, Line 4; Page 14, Lines 2-4, 6. Reject challenges to 3 signatures contained on Page 11, Lines 3 and 6; Page 14, Line 7.

- 3) Reject challenges to 10 signatures contained on Page 8, Lines 1, 7, 8; Page 11, Lines 7-9; Page 14, Lines 1, 5, 8, 9.
- 4) Sustain challenges to 3 duplicate signatures on Page 4, Line 7; Page 10, Line 5; Page 20, Line 2.
- 5) Verify a total of 193 valid signatures, deny ballot access to Candidate Daniels, and direct staff to prepare and issue a Findings and Order consistent with this motion.

3. Douglas Hyant Complaint against Jim Duncan, Republican Party Candidate for Representative to the Assembly, District 57
Case No. EL 18-15

Signatures required for office: 200
Signatures challenged: 77
Signatures initially approved: 243

Staff assigned: Michael Haas

This complaint alleges that 69 signatures should not be counted because signers reside outside of the 57th State Assembly District, 7 signatures should not be counted because the signers are not qualified electors due to having been convicted of felonies, and 1 signature should not be counted because the signer is deceased.

Candidate Duncan did not submit a response to the complaint, and therefore the staff analysis and recommendations are based on its review of the complaint. The staff's Challenge Worksheet is attached as Exhibit Duncan - 1.

Challenges to signatures from outside the district:

For a signature to be counted, a signer of the nomination papers must reside in the district which the candidate named on the paper will represent, if elected. Wis. Stat. §§ 8.15(2) and (3).

The complaint alleges that 69 signatures were obtained from individuals that do not reside within the 57th State Assembly District, and includes printouts from the Wisconsin Legislature's website "Who Are My Legislators?" to support the allegation. Commission staff attempted to verify the addresses of the individuals identified in the complaint and determine if those addresses were in fact within the appropriate district. Commission staff uses the WisVote system and MyVote Wisconsin website, as well as the "Who Are My Legislators?" website to pinpoint addresses and determine the districts that those addresses represent.

Using the WisVote system, staff determined that the addresses of 68 of the challenged signatures are from individuals that do not reside in the 57th Assembly District.

Therefore, staff recommends accepting the challenge to these 68 signatures, reducing the number of signatures verified by staff.

Challenge to eligibility of signers due to felony convictions:

An individual signature on a nomination paper may not be counted when the signer is an individual who is not a qualified elector at the time they signed the nomination paper. Wis. Adm. Code EL § 2.05(15)(e). A qualified elector is a U.S. citizen who is 18 years old, has resided in an election district or ward for 10 consecutive days before any election where the citizen offers to vote and is not disqualified for any other reason. Wis. Stat. § 6.02(1); Per *One Wisconsin Institute* Court Order. An individual is disqualified from voting, and therefore disqualified from signing a nomination paper if they are a convicted felon and are still serving any part of their felony sentence, including parole or probation supervision.

The challenge alleges that 7 individuals signed a nomination paper who were disqualified from signing due to a felony conviction. To support these allegations, the complaint included screenshots from the Circuit Court Access Program (CCAP) purporting to establish that each of the 7 individuals had been convicted of felonies prior to signing the nomination papers. The CCAP documentation does not indicate either the date of the felony convictions, the date or length of the sentences imposed, or the discharge date of each sentence. There is a question, therefore, as to whether the evidence supporting the allegations constitute clear and convincing evidence that the signers are not qualified electors and that the signatures should not be counted. Wis. Adm. Code EL §§ 2.07(2) and (3).

Because Commission staff regularly compares voter registration data with Department of Corrections records of felony convictions in Wisconsin, the Commission has access to records indicating the discharge dates associated with sentences imposed due to felony convictions. Commission staff reviewed the felony sentence information related to each of the 7 individuals identified in the complaint as potentially ineligible signers. Commission staff confirmed that two of the signers identified were under felony supervision at the time of signing the nomination papers, and therefore the signatures on Page 15, Line 8 and Page 21, Line 10 should be struck. Department of Corrections records confirmed that the remaining 5 individuals identified in the complaint had completed their felony sentences prior to signing the nomination papers, with discharge dates ranging from five to fourteen years ago, and therefore the challenges to the remaining 5 signatures should be rejected.

Commission staff recommends sustaining the challenge due to felony convictions as to 2 signatures and rejecting the challenge as to the remaining 5 signatures.

Challenge to eligibility of signer due to being deceased:

The complaint alleges that one signature should not be counted because the signer was deceased, and included a copy of an obituary from 2014 to support the challenge. Using WisVote, Commission staff confirmed that an active voter with the same name as the deceased individual but different birthdate as the deceased individual resides at the

address indicated on the nomination paper, and therefore staff recommends that the challenge to the signature on Page 25, Line 6 should be rejected.

Recommended Motion: Sustain the challenge to 68 signatures due to signers residing outside the 57th State Assembly District and reject one such challenge; sustain the challenge to 2 signatures due to the signers serving felony sentences and reject 5 such challenges, and reject the challenge alleging that one signature identified an individual who was deceased. Verify a total of 173 valid signatures, deny ballot access to Candidate Duncan, and direct staff to prepare and issue a Findings and Order consistent with this motion.

4. **Douglas Hyant Complaint against Loren Oldenburg, Republican Party**
Candidate for Representative to the Assembly, District 96
Case No. EL 18-16

Signatures required for office: 200

Signatures challenged: 20

Signatures initially approved: 213

Staff assigned: Nathan Judnic

This complaint has been withdrawn by the Complainant.

On June 8, 2018, the Complainant notified the Commission that he wished to withdraw his challenge to the nomination papers of Candidate Oldenburg after reviewing the supplemental signatures which the Challenger was not aware had been submitted at the time the complaint was filed. Therefore, the Commission is not required to rule on the challenge filed in this matter.

Candidate Oldenburg's response to the complaint did request that the Commission find that certain challenges within the complaint filed in this matter were frivolous, resulting in a waste of time and effort by the Board, Staff, and Respondent and to sanction the Complainant the greater of \$500 or the expense incurred investigating this challenge.

Commission staff does not recommend a finding that the complaint was frivolous. If the challenge had been pursued, staff would have recommended accepting 8 of the 20 challenges to signatures. The rejection of individual challenges does not automatically justify a finding that the challenge was frivolous, especially given the short timeline for the parties to review nomination papers and file challenges and in this instance the Complainant not aware that supplemental signatures were filed. Furthermore, prior to invoking Wis. Stat. § 5.05(2m)(am) to impose any forfeiture based on a finding that a complaint is frivolous, staff believes it may be necessary to more fully research whether that statute applies to nomination paper challenges. There may be statutory interpretation issues that require further research and consideration to ensure that the Commission could enforce any monetary penalty imposed.

**5. Douglas Hyant Complaint against Maria Villareal, Democratic Party
Candidate for Representative to the Assembly, District 8
Case No. EL 18-17**

Signatures required for office: 200
Signatures challenged: 55
Signatures initially approved: 217

Staff assigned: Michael Haas

This complaint alleges that 51 signatures should not be counted because the signers reside outside the 8th State Assembly District, 1 signature should not be counted because the signature of the signer does not match the printed name; 2 signatures should not be counted due to incomplete addresses; and 1 signature should not be counted because the date of the signature is missing.

Candidate Villarreal did not submit a response to the complaint, and therefore the staff analysis and recommendations are based on its review of the correcting affidavits and the complaint. The staff's Challenge Worksheet is attached as Exhibit Villarreal - 1.

Correcting Affidavit:

The deadline for candidates to file affidavits to correct errors contained on their nomination papers that were committed by either the circulator or the signer was June 4, 2018. Wis. Adm. Code EL § 2.05(4).

Candidate Villarreal submitted two correcting affidavits on June 4, 2018 to rehabilitate 20 signatures originally struck by staff which corrected the date contained in the circulator's certification on papers circulated by Candidate Villarreal, and to insert the year of signatures on papers circulated by Candidate Villarreal. One of the affidavits state that the date of the certification on all pages circulated by Candidate Villarreal should be June 4, 2018, rather than the dates on the nomination papers which preceded the dates of petition signers. The second affidavit stated that the date of signatures should include the year 2018, which was originally omitted on 9 signatures. Commission staff accepted the correcting affidavits submitted by Candidate Villarreal pursuant to the applicable administrative rules, increasing the total number to 237. Some of the pages corrected by the affidavits were subject to the challenge filed with the Commission, and therefore any challenges to signatures accepted by the Commission will be subtracted from the adjusted total of 237 signatures.

Challenges to signatures from outside the district:

For a signature to be counted, a signer of the nomination papers must reside in the district which the candidate named on the paper will represent, if elected. Wis. Stat. §§ 8.15(2) and (3).

The complaint alleges that 51 signatures were obtained from individuals that do not reside within the 8th State Assembly District, and includes printouts from the Wisconsin Legislature's website "Who Are My Legislators?" to support the allegation. Commission staff attempted to verify the addresses of the individuals identified in the complaint and determine if those addresses were in fact within the appropriate district. Commission staff uses the WisVote system and MyVote Wisconsin website, as well as the "Who Are My Legislators?" website to pinpoint addresses and determine the districts that those addresses represent.

Using the WisVote system, staff determined that the addresses of all 51 challenged signatures are from individuals that do not reside in the 8th State Assembly District. These signatures were not struck during the staff's initial review. Therefore, staff recommends accepting the challenge to these 51 signatures, reducing the number of signatures verified by staff by 51.

Signatory's printed name and signature do not match:

The complaint alleges that Page 9, Line 9 contains a signature that is different from the printed name. Wis. Stat. § 8.15(2) and Wis. Adm. Code EL § 2.05(14) require the individual signing a nomination paper to include both their printed name and signature. The challenged signature appears to be that of Candidate Villarreal, and that page is attached as Exhibit Villarreal - 2.

Staff recommends accepting this challenge but not decreasing the total number of verified signatures because the signature was also struck due to the above challenge regarding signatures outside of the district.

Signatories did not provide full address information:

Wis. Stat. 8.15(2) and Wis. Adm. Code EL § 2.05(12) require the signer to include a complete address: "A complete address, including municipality of residence for voting purposes, and the street and number, if any, of the residence, (or a postal address if it is located in the jurisdiction that the candidate seeks to represent), shall be listed for each signature on a nomination paper." Wis. Adm. Code EL § 2.05(12).

The complaint alleges that 2 signatures did not include the municipality of residence. Staff review confirmed that the municipality of residence was omitted in both instances, but that staff had previously struck 1 of the signatures. Staff recommends accepting the challenges but only decreasing the total number of signatures by 1.

Signature did not include a complete date:

Wis. Stat. § 8.15(2) and Wis. Adm. Code EL § 2.05(15)(a) require the signer to include the date of the signature. The complaint challenges 1 signature on Page 17, Line 8 because of the lack of a date. Staff recommends rejecting this challenge because the date can be determined by the dates of the signatures above and below it. However, this signature was already struck due to the separate challenge related to an incomplete address.

Recommended Motion: Sustain challenges to 51 signatures which are outside the 8th State Assembly District; sustain one challenge due to an incorrect signature; sustain two challenges due to incomplete addresses; and reject one challenge related to the validity of a date. Due to duplicate challenges and staff previously striking challenged signatures, strike two additional signatures for a total of 53 successful challenges. Verify a total of 185 valid signatures, deny ballot access to Candidate Villarreal, and direct staff to prepare and issue a Findings and Order consistent with this motion.

**6. Douglas Hyant Complaint against Thomas C. Leager, Libertarian Party
Candidate for Representative to the Assembly, District 76
Case No. EL 18-18**

Signatures required for office: 200
Signatures challenged: 37
Signatures initially approved: 200

Staff assigned: Nathan Judnic

This complaint alleges that 34 signatures were obtained from individuals residing outside of the 76th State Assembly District, 2 signatures were obtained prior to April 15, 2018 which was the first day that signatures could be obtained, and that 1 signer did not provide full address information.

A Commission Staff Challenge Worksheet outlining the challenges and result of each challenge after staff review is included as Exhibit Leager – 1.

Candidate Leager did not file a written response to the challenge complaint.

Correcting Affidavits:

The deadline for candidates to file affidavits to correct errors contained on their nomination papers that were committed by either the circulator or the signer was June 4, 2018. Wis. Adm. Code EL § 2.05(4).

Candidate Leager submitted a correcting affidavit on June 1, 2018, correcting 22 signatures on 5 pages he personally circulated. This affidavit corrected the date contained in the circulator's certification which allowed these signatures to be counted as valid. Based on this affidavit, staff approved 200 total signatures. Candidate Leager submitted a correcting affidavit from circulator Ashley Wickingson on June 4, 2018 to correct 5 signatures on Page 9 originally struck by staff, which corrected the date contained in the circulator's certification. The Commission staff accepted this correcting affidavit submitted by Candidate Leager pursuant to applicable administrative rules, which adds 5 signatures to his original total, giving him an adjusted total of 205 signatures after this affidavit was processed.

Challenges to signatures from outside the district:

For a signature to be counted, a signer of the nomination papers for the office of Representative to the Assembly must reside in the district which the candidate named on the paper will represent, if elected. Wis. Stat. §§ 8.15(2) and (3).

The challenge alleges that 34 signatures were obtained from individuals that do not reside within the 76th State Assembly District. The Commission staff attempted to verify the addresses of the individuals identified in the complaint and determine if those addresses were in fact within the appropriate district. The Commission staff uses the WisVote system, MyVoteWI, as well as the Wisconsin Legislature’s website “Who Are My Legislators?” to pinpoint addresses and determine the districts that those addresses represent.

All 34 signatures challenged for being outside of the district were researched by Commission staff, and it was determined that all 34 challenged signatures were not in the 76th State Assembly District. Staff recommends accepting the challenge to all 34 signatures and striking 34 signatures from Candidate Leager’s total.

Signatures obtained prior to April 15, 2018:

The circulation period for nomination papers for the 2018 General Election was April 15, 2018 through June 1, 2018. Wis. Stat. § 8.15(1). Signatures containing dates outside of this circulation window are not valid and cannot be counted.

2 signatures were challenged for being obtained prior to April 15, 2018. The signatures were contained on Page 12, Lines 2 and 3. Line 2 indicates a signature date of 2/30/28 and Line 3 indicates a signature date of 2/30/18. Both signatures contain complete dates that are invalid and cannot be bracketed by valid dates. Staff recommends accepting the challenge to these 2 signatures and striking 2 signatures from Candidate Leager’s total.

Signers did not provide full address information:

“A complete address, including municipality of residence for voting purposes, and the street and number, if any, of the residence, (or a postal address if it is located in the jurisdiction that the candidate seeks to represent), shall be listed for each signature on a nomination paper.” Wis. Adm. Code EL § 2.05(12).

1 signature on Page 10, Line 4 was challenged for failing to include a complete residential address. The signature on Page 10, Line 4 only includes a street name, city, state and zip code, and does not include a house number. Staff recommends accepting the challenge to this signature for an incomplete residential address and striking 1 signature from Candidate Leager’s total.

Recommended Motion: Sustain challenges to 34 signatures at: Page 1, Line 7; Page 2, Lines 6, 7, 10; Page 3, Lines 1, 3, 9; Page 5, Line 3; Page 7, Lines 6, 9 10; Page 8, Line 9; Page 9, Line 6; Page 11, Line 8; Page 13, Lines 4, 5; Page 14, Lines 6, 7, 10; Page 19, Lines 4, 6, 7, 8; Page 20, Lines 1, 3, 5; Page 21, Lines 1, 2, 4, 7, 8, 9; Page 22, Lines 2, 6 for signers residing outside of the 76th State Assembly District. Sustain challenges to 2

signatures on Page 12, Lines 2 and 3 for containing improper dates of signing. Sustain the challenge to 1 signature on Page 10, Line 4 for failure to include a complete residential address. Verify a total of 168 valid signatures, deny ballot access to Candidate Leager, and direct staff to prepare and issue a Findings and Order consistent with this motion.

7. **Mark Morgan Complaint against Dana Wachs, Democratic Party Candidate for Governor**

Case No. EL 18-19

Signatures required for office: 2000

Signatures challenged: 371

Signatures initially approved: 2254

Staff assigned: Nathan Judnic

This complaint alleges that 20 signatures are invalid because the circulator did not fully indicate the municipality of his/her residential address, 312 signatures do not contain a full residential address including municipality, 19 signers failed to legibly print his or her name beside the signature, 15 signatures are invalid because the signer failed to sign his or her name and 5 signatures should be struck because the signature date is after the date contained in the circulator's certification.

A Commission Staff Challenge Worksheet outlining the challenges and result of each challenge after staff review is included as Exhibit Wachs – 1. Examples of nomination papers challenged from some of the issues are attached at Exhibits Wachs – 2 through Wachs – 9.

Candidate Wachs filed a timely verified response to the challenge complaint on June 7, 2018.

Candidate Wachs has an estimated 60 supplemental signatures on file with the Commission.

Circulator failed to indicate the municipality of his/her residential address:

Each circulator must sign a certification on each nomination page stating their residence with street and number if any, and states they personally obtained each of the signatures on the page. Wis. Stat. § 8.15(4)(a). Additionally, Wis. Adm. Code EL § 2.05(14) states:

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 on the nomination paper.

The complaint alleges that 20 signatures on Pages 33 and 119 should be struck because the circulators of those pages did not fully indicate the municipality of his or her residence. The circulator of Page 33 of Candidate Wachs' nomination papers included his municipality of "Eagle Point" as well as including in parenthesis "Chippewa Falls." The circulator of Page 119 of Candidate Wachs' nomination papers included "EC" and the zip code of "54701" which is an Eau Claire zip code. Common abbreviations of municipal names are acceptable if the municipality can be determined by the common usage of the abbreviation or other information contained on the nomination paper. Commission staff recommends rejecting the challenge to the 20 signatures contained on Pages 33 and 119, as the circulator's municipality of residence was present or could be determined by other information contained on the nomination paper.

Candidate Response:

Candidate Wachs asserts that the circulator of Page 33 included his municipality of residence and mailing address municipality and the circulator of Page 119 abbreviated Eau Claire with the initials "EC" and included an Eau Claire zip code in the certification. Challenges should be rejected.

Signatories provided incomplete residential address information:

"A complete address, including municipality of residence for voting purposes, and the street and number, if any, of the residence, (or a postal address if it is located in the jurisdiction that the candidate seeks to represent), shall be listed for each signature on a nomination paper." Wis. Adm. Code EL § 2.05(12). Failure to check the correct box to indicate "Town, Village or City" on a nomination paper is not a basis for disqualifying a signature unless a challenger can show that the challenged address is outside the appropriate jurisdiction. *Common Nomination Paper Challenge Manual*, pg. 7 (January 2018). For the Office of Governor, the appropriate district is the State of Wisconsin. "A signature shall be counted when identical residential information or dates for different electors are indicated by ditto marks." Wis. Adm. Code EL § 2.05(13). "Challenges to signatures alleged not include the proper municipality of residence, where the municipality can be determined by other information contained on the nomination papers, pursuant to Wis. Adm. Code EL § 2.05(15)(c) have been rejected in the past. For instance, the municipality of "WFB" was determined by the mailing address to indicate "Whitefish Bay" or "Gtown" was determined by the zip code to indicate "Germantown." *Common Nomination Paper Challenge Manual*, pg. 7 (January 2018).

The complaint alleges that 312 signatures did not contain complete residential address information and should therefore be struck. The challenges in this category are for signers that failed to include the type of street they live on (street, lane, road, court, etc.), signers that did not check the box as to the type of municipality they reside in (Town, Village, City), signers that used "ditto marks" to indicate that a portion of their address like the city was the same as the signer above it, and signers that abbreviated the name of a city (Milw. for Milwaukee, E.C. for Eau Claire, WFB for Whitefish Bay, etc.). For some signatures challenged under this category, Commission staff was unable to determine the issue that was being challenged as the signature appeared to include all

required elements. An example of each of these issues is included as Exhibits Wachs – 2 through Wachs – 6.

The Commission staff reviewed each of the 312 issues raised by the complaint. The Commission staff recommends accepting the challenge to the signatures on Page 1, Line 5; Page 83, Lines 1-3 (already struck by staff); Page 196, Line 6 (already struck by staff); Page 28, Line 4 (already struck by staff). This results in a net loss of 1 signature due to the challenge. Commission staff recommends rejecting the challenge to the remaining 306 challenges raised by the complaint, as the signatures substantially comply with the signer's residential address requirements.

Candidate Response:

Candidate Wachs provided a line by line response to each of the 312 signatures challenged in this section by attaching a spreadsheet to his response. Candidate Wachs asserts that the challenge should fail because some of the challenges are to signatures already struck by staff and that the challenge is premised on false conclusions about entirely proper signer addresses.

Printed name is illegible:

In 2014, the Government Accountability Board (G.A.B.) adopted staff recommendations regarding nomination paper standards and review relating to 2013 Wisconsin Act 160. This Act amended Wis. Stat. § 8.15(2) to state that for a 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." The G.A.B. adopted a guidance document that set forth the standard for reviewing the legibility of printed names. The Commission staff continues to consult the same guidance when reviewing printed names for legibility under the requirements of Wis. Stat. § 8.15(2):

- 1. If the filing officer can discern no part of the printed name, it should be deemed illegible and the signature should not be counted.*
- 2. If the filing officer can discern a possible name, but may not be certain of the exact spelling of the name, the printed name is deemed legible and the signature may be counted if otherwise valid.*
- 3. The filing officer is not required to consult extrinsic sources of information (voter registration records, telephone directories, etc.), but may do so if it assists the filing officer in discerning a possible name.*

The guidance further states:

The above standards are intended to preserve the presumption of validity for the information contained on the petition, but also ensure that invalid signatures are not counted when there is absolutely no readable information to determine the name of the signer. This standard for legibility requires more than an unintelligible mark, but also provides filing officers with the flexibility to find a printed name to be legible even when 100% of the letters in that name cannot be determined.

The review standards described in this memorandum will govern only the filing officer's review. If signatures are subsequently challenged based on the legibility of the printed name, then the filing officer must consider all the evidence presented by both parties, and reject signatures where the challenger has met their burden of providing clear and convincing evidence that overcomes the presumption of validity. Wis. Adm. Code EL § 2.07(4).

The complaint alleges that 19 signers of Candidate Wachs' nomination papers did not legibly print his or her name as required by Wis. Stat. § 8.15(2). Commission staff reviewed each of the challenged signatures to determine if the signer's printed name met the legibility standards as set forth above. The nomination papers in which this is alleged are attached as Exhibit Wachs – 7.

While determining the legibility of printed names can be somewhat subjective, Commission staff recommends accepting the challenge and therefore striking 1 signature on Page 43, Line 6 and rejecting the remaining 18 challenges.

Candidate Response:

Candidate Wachs asserts that the challenges should be rejected because the names provided are legible. Candidate Wachs asserts that the challenge ignores the established legibility standards established and used by the Commission during review.

Signer failed to sign his or her name:

“An elector shall sign his or her own name unless unable to do so because of physical disability. An elector unable to sign because of physical disability shall be present when another person signs on behalf of the disabled elector and shall specifically authorize the signing.” Wis. Adm. Code EL § 2.05(8).

The complaint alleges that 15 signatures on Candidate Wachs' nomination papers are invalid because the individual did not sign his or her name. Commission staff reviewed each of the signatures raised by the complaint to determine if a signature of the individual was present on the nomination paper. The nomination papers in which this is alleged are attached as Exhibit Wachs – 8. Commission staff recommends rejecting the challenges to all 15 signatures and striking no signatures based on this challenge. All of the challenged signatures contained a signature as required by Wis. Adm. Code EL §§ 2.05(8) and 2.05(15)(c).

Candidate Response:

Candidate Wachs asserts that the complaint does not detail any particular shortcoming, and asserts that any attack is premised on the notion that a printed name or an initial followed by a last name are not signatures, which contradicts the Commission's standards for signature review.

Signature date after date contained in circulator’s certification:

Signatures may not be counted when the signature date is after the date contained in the circulator’s certification. Wis. Adm. Code EL § 2.05(15)(b). Circulators of nomination papers are permitted to add or correct signatory date information if the correction information is within their personal knowledge. Such additions or corrections may be made to the signatory date on the nomination paper prior to the circulator completing their certification or through a correcting affidavit if filed by the deadline. Wis. Adm. Code EL § 2.05(4).

The complaint alleges that 5 signatures from Candidate Wachs’ nomination papers should be struck because these signatures were dated after the date contained in the circulator’s certification. Commission staff reviewed the signatures subject to this challenge. The nomination papers in which this is alleged are attached as Exhibit Wachs – 9. The signature challenged on Page 98, Line 7 is dated 5/5/18, the same day as the circulator which is acceptable. The signatures challenged on Page 68, Lines 1-4 are dated 5/22/18, the same day as the circulator which is acceptable. The signatures challenged on Page 68 were amended by the circulator on the same day which is permitted under Wis. Adm. Code EL § 2.05(4). Commission staff recommends rejecting the challenges to all 5 signatures and striking no signatures based on this challenge.

Candidate Response:

Candidate Wachs asserts that the signatures on Page 68 were initially dated in error and were corrected by the circulator prior to submission. Candidate Wachs asserts that the date on Page 98 is May 5, 2018, the same date contained in the circulator’s certification.

Recommended Motion: Sustain challenges to 2 signatures at: Page 1, Line 5 (illegible address) and Page 43, Line 6 (signer’s first name illegible and last name unable to discern) and reject the remaining challenges to signatures as described above. Verify a total 2,252 signatures, grant ballot access to Candidate Wachs, and direct staff to prepare and issue a Findings and Order consistent with this motion.

**8. Mark Morgan Complaint against Richard Pulcher, Democratic Party
Candidate for State Senator, District 29
Case No. EL 18-20**

Signatures required for office: 400
Signatures challenged: 56
Signatures initially approved: 435

Staff assigned: Nathan Judnic

This complaint alleges that 18 signers failed to include an apartment or unit number in their residential address, 5 signatures contained a missing or incorrect municipality of residence, 1 signer failed to sign the page, 2 signatures do not match the printed name, 3 signers listed a business address, 15 signatures contain addresses that are incomplete or

do not exist, 3 signatures contain dates that are missing or are ineligible, 2 individuals signed the candidate's papers twice, the same individual signed for another signer (1 instance), a signer signed another candidate's nomination papers first, 2 signers do not reside within the 29th State Senate District.

A Commission Staff Challenge Worksheet outlining the challenges and result of each challenge after staff review is included as Exhibit Pulcher – 1. Two examples of nomination papers challenged that assert a printed name does not match the signature are attached as Exhibit Pulcher – 2.

Candidate Pulcher filed a timely verified response to the challenge complaint on June 7, 2018.

Address does not include an apartment or unit number:

“A complete address, including municipality of residence for voting purposes, and the street and number, if any, of the residence, (or a postal address if it is located in the jurisdiction that the candidate seeks to represent), shall be listed for each signature on a nomination paper.” Wis. Adm. Code EL § 2.05(12). The former Government Accountability Board found substantial compliance with the requirement where the insufficiency in the address was a missing apartment number. *Common Nomination Paper Challenge Manual*, pg. 7 (January 2018). Unless a challenger can establish that the apartment number affects the district in which the signer resides, and such distinction affects the signer's eligibility, the street number, street name and municipality are sufficient in determining whether an address is valid.

The complaint alleges that 18 signatures should be struck because the signature is missing an apartment or unit number. The Commission staff reviewed the signatures subject to review. Based on the precedent established by the former G.A.B. and outlined in the *Common Nomination Paper Challenges Manual*, Commission staff recommends finding that the challenged signatures substantially comply with the address requirement and reject the challenge to all 18 signatures that did not contain an apartment or unit number.

Candidate Response:

Candidate Pulcher filed an affidavit along with his verified response which states he circulated the nomination papers that are missing the apartment or unit number. Candidate Pulcher cites the guidance contained in the *Common Nomination Paper Challenges Manual* on this point and asserts that the addresses substantially comply with the address requirement. Within his affidavit, Candidate Pulcher provides the apartment numbers for each of the signatures that were challenged.

Missing or incorrect municipality of residence:

“A complete address, including municipality of residence for voting purposes, and the street and number, if any, of the residence, (or a postal address if it is located in the jurisdiction that the candidate seeks to represent), shall be listed for each signature on a nomination paper.” Wis. Adm. Code EL § 2.05(12). The deadline for candidates to file

affidavits to correct errors contained on their nomination papers that were committed by either the circulator or the signer was June 4, 2018. Wis. Adm. Code EL § 2.05(4).

The complaint alleges that 5 signatures are either missing a municipality of residence or the municipality of residence is incorrect. Commission staff researched each of the addresses provided by the signers on Page 5, Lines 7-8; Page 15, Line 8; Page 36, Line 8; Page 43, Line 4 and considered the response filed by Candidate Pulcher. Candidate Pulcher admits in his response that he inadvertently certified some signatures with incomplete addresses, dates, and municipality of residence and offers his affidavit to correct these errors. The affidavit filed by Candidate Pulcher can assist in clarifying information contained on a nomination paper, but the affidavit cannot correct errors on the pages as the deadline to do so was June 4, 2018. The complaint and the affidavit filed by Candidate Pulcher provide evidence that the 5 signers above did not list a correct municipality of residence when signing the nomination paper, therefore Commission staff recommends striking the 5 signatures noted above.

Candidate Response:

Candidate Pulcher asserts that his correcting affidavit corrects insufficiencies to 39 signatures and the Complainant has not met his burden to invalidate 6 signatures on Page 2, Line 6; Page 14, Line 4; Page 16, Line 6; Page 30, Line 8; Page 32, Lines 5 and 6.

Missing signature:

“An elector shall sign his or her own name unless unable to do so because of physical disability. An elector unable to sign because of physical disability shall be present when another person signs on behalf of the disabled elector and shall specifically authorize the signing.” Wis. Adm. Code EL § 2.05(8).

The complaint challenges 1 signature for it missing the signer’s signature. Commission staff reviewed the signature and a signature is present, therefore Commission staff recommends rejecting the challenge to the signature on Page 2, Line 6.

Candidate Response:

Candidate Pulcher asserts that his correcting affidavit corrects insufficiencies to 39 signatures and the Complainant has not met his burden to invalidate 6 signatures on Page 2, Line 6; Page 14, Line 4; Page 16, Line 6; Page 30, Line 8; Page 32, Lines 5 and 6.

Signature does not match the printed name:

Wis. Stat. § 8.15(2) states that for a 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.”

The complaint challenges 2 signatures where it is alleged that the printed name does not match the signature. Commission staff reviewed the challenged signatures and determined that the printed name and signature meet the Commission standards for legibility and completeness. Commission staff recommends rejecting the challenge to the signatures on Page 4, Line 1 and Page 14, Line 4. The nomination papers in which this is alleged are attached as Exhibit Pulcher – 2.

Candidate Response:

Candidate Pulcher asserts that his correcting affidavit corrects insufficiencies to 39 signatures and the Complainant has not met his burden to invalidate 6 signatures on Page 2, Line 6; Page 14, Line 4; Page 16, Line 6; Page 30, Line 8; Page 32, Lines 5 and 6.

Address listed is a business address:

“A complete address, including municipality of residence for voting purposes, and the street and number, if any, of the residence, (or a postal address if it is located in the jurisdiction that the candidate seeks to represent), shall be listed for each signature on a nomination paper.” Wis. Adm. Code EL § 2.05(12). “All information which appears on a nomination paper is entitled to a presumption of validity.” Wis. Adm. Code EL § 2.05(4).

The complaint challenges 3 signatures because they are business addresses. Commission staff reviewed the challenged signatures and found that a voter is registered at the address contained on Page 11, Line 6, which is evidence that the signer resides at that address. The address contained on Page 32, Line 3 appears to be the address for Tracy’s Automotive, however the complaint provides no evidence that the signer does not reside at that address. The address contained on Page 41, Line 10 appears to be a commercial address when using Google maps, however the complaint provides no evidence that the signer does not reside at that address. Commission staff recommends rejecting the challenges to the signatures on Page 11, Line 6; Page 32, Line 3; Page 41, Line as complainant has not provided evidence that the individual listed does not reside at the address listed, and therefore the presumption of validity is not overcome.

Candidate Response:

Candidate Pulcher asserts that his correcting affidavit corrects insufficiencies to 39 signatures and the Complainant has not met his burden to invalidate 6 signatures on Page 2, Line 6; Page 14, Line 4; Page 16, Line 6; Page 30, Line 8; Page 32, Lines 5 and 6.

Address is incomplete or does not exist:

“A complete address, including municipality of residence for voting purposes, and the street and number, if any, of the residence, (or a postal address if it is located in the jurisdiction that the candidate seeks to represent), shall be listed for each signature on a nomination paper.” Wis. Adm. Code EL § 2.05(12).

The complaint challenges 15 signatures as having incomplete addresses, or the address does not exist. The Commission staff reviewed the challenged signatures and was able to establish that 14 of the 15 challenged addresses were valid: 3 addresses were found doing a basic Google address search (Page 3, Line 7, Page 21, Lines 3 and 4); 3 addresses were confirmed in appropriate county GIS systems as valid addresses (Page 21, Lines 5 and 6; Page 29, Line 3); and 8 addresses were confirmed in the Commission’s WisVote system (Page 30, Line 8; Page 31, Line 4; Page 32, Line 4; Page 38, Lines 9 and 10; Page 40 Line 7; Page 48, Lines 3 and 4). The signature at Page 38, Line 2 was missing the street

number. Commission staff recommends rejecting the challenge to the 14 signatures listed above, and striking the signature at Page 38, Line 2 for a missing street number.

Candidate Response:

Candidate Pulcher asserts that his correcting affidavit corrects insufficiencies to 39 signatures and the Complainant has not met his burden to invalidate 6 signatures on Page 2, Line 6; Page 14, Line 4; Page 16, Line 6; Page 30, Line 8; Page 32, Lines 5 and 6.

Signature dates are missing or ineligible:

A signature may not be counted when the date of signing is missing unless the date can be determined by reference to the date of other signatures on the paper. Wis. Adm. Code EL § 2.05(15)(a).

The complaint alleges that 3 signatures have dates that are missing or are ineligible. The Commission staff reviewed the challenged signatures and determined that the signature on Page 6, Line 1 was missing or otherwise outside of the valid circulation period and the signature on Page 6, Line 10 was dated with an incorrect year and could not be bracketed. The signature on Page 42, Line 4 has no issues with the date of signing. Commission staff recommends accepting the challenges to signatures on Page 6, Lines 1 and 10, and rejecting the challenge to the signature on Page 42, Line 4.

Candidate Response:

Candidate Pulcher asserts that his correcting affidavit corrects insufficiencies to 39 signatures and the Complainant has not met his burden to invalidate 6 signatures on Page 2, Line 6; Page 14, Line 4; Page 16, Line 6; Page 30, Line 8; Page 32, Lines 5 and 6.

Duplicate signatures:

“Only one signature per person for the same office is valid.” Wis. Stat. § 8.15(2), Wis. Adm. Code EL § 2.05(11). “If a challenger establishes that an elector signed the nomination papers of a candidate more than once or signed the nomination papers of more than one candidate for the same office, the 2nd and subsequent signatures may not be counted.” Wis. Adm. Code EL § 2.07(3)(b). “All information which appears on a nomination paper is entitled to a presumption of validity.” Wis. Adm. Code EL § 2.05(4).

The complaint alleges that 2 duplicate signatures appear within Candidate Pulcher’s nomination papers. The Commission staff reviewed the challenged signatures and determined that an individual signed Candidate Pulcher’s nomination papers on Page 26, Line 1 and on Page 27, Line 7; and an individual signed Candidate Pulcher’s nomination papers on Page 32, Line 6 and Page 36, Line 7. Commission staff recommends striking 2 signatures on Page 27, Line 7 and on Page 36, Line 7. The signatures on Page 35, Lines 5 and 6 are challenged because complainant asserts that the same person completed both lines. While the handwriting looks similar, there is no clear and convincing evidence presented by complainant that would overcome the presumption of validity, therefore the Commission staff recommends rejecting the challenge to the signatures on Page 35, Lines 5 and 6. An individual signed both Candidate Petrowski’s nomination papers on 4/22/18

and Candidate Pulcher's nomination papers on 5/30/18. The Commission staff recommends striking the duplicate signature on Candidate Pulcher's nomination papers on Page 47, Line 7.

Candidate Response:

Candidate Pulcher asserts that his correcting affidavit corrects insufficiencies to 39 signatures and the Complainant has not met his burden to invalidate 6 signatures on Page 2, Line 6; Page 14, Line 4; Page 16, Line 6; Page 30, Line 8; Page 32, Lines 5 and 6.

Challenges to signatures from individuals that do not live at address listed:

For a signature to be counted, a signer of the nomination papers for the office of State Senator must reside in the district which the candidate named on the paper will represent, if elected. Wis. Stat. §§ 8.15(2) and (3). "All information which appears on a nomination paper is entitled to a presumption of validity." Wis. Adm. Code EL § 2.05(4).

The complaint challenges 2 signatures, alleging that the individuals that signed the nomination paper do not reside at the address listed. The Commission staff reviewed the challenged signatures and determined that the address at Page 16, Line 6 exists in the appropriate county GIS system. The complainant does not provide evidence that the listed signer does not reside at the address listed, and therefore the presumption of validity is not overcome. The address on Page 19, Line 1 appears to be N281 8 ½ Ave and appears in the county GIS system. Candidate Pulcher's affidavit clarifies that the address listed should be N285 8 ½ Ave in the Town of Roosevelt. Both addresses are within the appropriate State Senate District and substantially comply with the requirement for the signer to list their residential address. The Commission staff recommends rejecting the challenge to the signatures on Page 16, Line 6 and Page 19, Line 1.

Recommended Motion: Sustain challenges to 11 signatures at: Page 27, Line 7; Page 36, Line 7; Page 47, Line 7; Page 5, Lines 7 and 8; Page 15, Line 8; Page 36, Line 8; Page 43, Line 4; Page 6, Lines 1 and 10; page 38, Line 2 and reject the remaining challenges to signatures as described above. Verify a total of 424 signatures, grant ballot access to Candidate Pulcher, and direct staff to prepare and issue a Findings and Order consistent with this motion.

9. Douglas Hyant Complaint against Ahna Key, Republican Party Candidate for Representative to the Assembly, District 96

Case No. EL 18-21

This complaint has been withdrawn. Candidate Key chose not to file a Statement of Economic Interests by the deadline, which is a required ballot access document. This candidate is listed as "Denied" on the Commission's Candidate Tracking Report.

No separate action by the Commission is required on this complaint.

10. Mark Morgan Complaint against Andy Gronik, Democratic Party Candidate for Governor
Case No. EL 18-22

Signatures required for office: 2000
Signatures challenged: 2,594
Signatures initially approved: 3,602

Staff assigned: Michael Haas

This complaint alleges that 498 signatures should not be counted because the circulators were not qualified electors due to felony convictions; 1,566 signatures should not be counted because the municipality of residence was missing from circulator certifications; 472 signatures should not be counted because the signer's municipality was inserted by the circulator; and that 58 signatures should not be counted because the named circulator may not have actually obtained the signatures.

The Commission staff's Challenge Worksheet is attached as Exhibit Gronik - 1.

Challenge to eligibility of signers due to felony convictions of circulators:

An individual signature on a nomination paper may not be counted if the circulator is not a qualified elector due to a felony conviction, unless the person's right to vote is restored through either a pardon or the completion of the terms of the sentence, including any period of probation or parole supervision. Wis. Stat. §§ 8.15(4)(a), 6.03(1)(b), Wis. Adm. Code EL § 2.05(15)(e). An individual is disqualified from voting, and therefore disqualified from circulating or signing a nomination paper if they are a convicted felon and are still serving any part of their felony sentence, including parole or probation supervision.

The challenge alleges that two individuals circulated nomination papers who were disqualified from signing due to felony convictions. To support these allegations, the complaint cites court cases, but does not include supporting documentation, indicating that the two circulators were found guilty of felony violations in separate cases dating to 2003, 2012 and 2015. The complaint does not indicate the date or length of any sentences imposed, or the discharge dates of each sentence. There is a question, therefore, as to whether the evidence supporting the allegations constitute clear and convincing evidence that the signers are not qualified electors and that the signatures should not be counted. Wis. Adm. Code EL ss. 2.07(2) and (3).

Because Commission staff regularly compares voter registration data with Department of Corrections records of felony convictions in Wisconsin, the Commission has access to records indicating the discharge dates associated with sentences imposed due to felony convictions. Commission staff reviewed the felony sentence information related to each of the two individuals identified in the complaint as potentially ineligible circulators.

Commission staff confirmed that both of the circulators had completed the terms of their sentences prior to the period for circulating nomination papers.

Candidate Response:

Candidate Gronik's response notes that an individual convicted of a felony becomes an eligible elector who is qualified to circulate nomination papers following the completion of their felony sentence. The response also includes affidavits from both of the challenged circulators stating, as did their circulator certifications, that they are qualified electors and were at the time they circulated nomination papers.

Commission staff recommends rejecting the challenges to the 498 signatures which are based on the prior felony convictions of circulators.

Challenges to signatures based on circulator's incomplete address information:

The complaint alleges that circulators did not fully identify their respective municipalities of residence in the circulator certifications. Commission staff reviewed all 1,566 signatures challenged for this reason. All circulator certifications included a municipality in the address. Some circulators used abbreviations to identify the municipality, such as "Mke" for Milwaukee, or "WFB" for Whitefish Bay. Wis. Adm. Code EL § 2.05(15)(c) states that a signature is valid if the address is missing or incomplete, but residency can be determined by the information provided on the nomination paper. Based on this provision, the longstanding policy of the elections agency has been to count signatures that use abbreviations to identify the municipality.

Candidate Response:

Candidate Gronik's response outlines the administrative code provision and standard practice of the agency permitting abbreviations to identify municipalities in an address. Attached as Exhibit Gronik - 2 are examples of nomination papers which include an abbreviation for the circulator's municipality that may or may not be considered illegible. Commission staff determined that the abbreviation indicated "Milwaukee" and counted the signatures on those pages during its initial review. In this case, Candidate Gronik's response also included an affidavit from the circulator of those pages stating that her residence was in Milwaukee.

Commission staff recommends rejecting the 1,556 challenges to signatures based on the allegation that circulators omitted their municipality from their address.

Municipality of signatories completed by circulator rather than signatories:

The complaint alleges that 472 signatures should not be counted because it appears that the circulator entered the name of the signer's municipality on behalf of the signer. The complaint does not include any documentation establishing that any individual circulator inserted the municipality information.

Candidate Response:

Candidate Gronik's response alleges that the complaint does not satisfy the Challenger's burden of proof in establishing that anyone other than the signer provided their

municipality in their address information in accordance with the requirement of Wis. Stat. § 8.15(2) which requires the signer to “list his or her municipality of residence for voting purposes....” The response cites the decision in *In re Recall of Redner*, 153 Wis. 2d 383 (Ct.App. 1989). In that case the court held that signatures were not invalid solely because the signer did not personally list their municipality of residence, provided the petition included the municipality, and there were no allegations that the signer did not actually reside in that municipality. In this case there are no allegations that any of the signers do not reside in the municipalities identified on the nomination papers.

Common practice and agency precedent also supports the conclusion that substantial compliance with the statutory requirements is accomplished if someone other than the signer enters the municipality information. During consideration of recall petitions in 2011 and 2012, the Government Accountability Board specifically ruled that circulators could enter certain information on behalf of signers, including their municipality, but not their printed name and signature, except where the signer needed assistance in writing the information.

Commission staff recommends rejecting the challenges to 58 signatures for which the complaint alleges that circulators rather than signers completed the signer’s municipality information.

Circulator not responsible for circulation of nomination papers:

The complaint alleges that there is reason to question whether a circulator actually circulated nomination papers containing 58 signatures based on evidence that a bench warrant was issued on May 8, 2018 for the arrest of the circulator by a circuit court. The complaint surmises that the circulator was likely evading the detection of law enforcement during the circulation period and therefore also was unlikely to circulate nomination papers at that time.

The complaint does not include any direct evidence that the circulator was not the individual who signed the circulator’s certification. In the opinion of Commission staff, the complaint does not satisfy the Challenger’s burden to establish by clear and convincing evidence that the signatures are not valid.

Candidate Response:

Candidate Gronik’s response alleges that this challenge relies entirely on speculation rather than evidence. The response also includes an affidavit signed by the circulator which states, as does the circulator’s certification, that he personally obtained each of the signatures on the pages he signed as the circulator.

Commission staff recommends rejecting the challenges to the 58 signatures contained in the nomination papers certified by the identified circulator.

The response also requests that the Commission determine the complaint to be frivolous and impose an appropriate forfeiture, pursuant to Wis. Stat. § 5.02(2m)(am), which permits a forfeiture equal to the greater of \$500 or the expenses incurred by the

Commission in reviewing a complaint. While Commission staff agrees that the complaint both lacks direct evidence and disregards established precedent regarding nomination paper challenges, staff does not recommend imposing a forfeiture. Prior to invoking Wis. Stat. 5.05(2m)(am) to impose any forfeiture based on a finding that a complaint is frivolous, staff believes it may be necessary to more fully research whether that statute applies to nomination paper challenges. There may be statutory interpretation issues that require further research and consideration to ensure that the Commission could enforce any monetary penalty, which has not been attempted by the Commission's predecessor agencies.

Recommended Motion: Reject all challenges included in the complaint. Verify 3,602 valid signatures as originally verified by Commission staff. Grant ballot access to Candidate Gronik and direct staff to prepare and issue a Findings and Order consistent with this motion.

11. Douglas Hyant Complaint against Gabriel Szerlong, Republican Party Candidate for Representative to the Assembly, District 43
Case No. EL 18-23

This complaint has been withdrawn. On June 8, 2018, Challenger Hyant notified the Commission that he wished to withdraw the challenge to the nomination papers of Candidate Szerlong, after reviewing the supplemental signatures which the Challenger was not aware had been submitted at the time the complaint was filed. Therefore, the Commission is not required to rule on the challenge filed in this matter.

Candidate Szerlong's response requests that the Commission find that 4 out of the 20 challenges constitute frivolous challenges and impose a forfeiture on the Challenger. The response argues that the challenges against the 4 signatures lacked any supporting evidence that the addresses were either incomplete or outside of the 43rd State Assembly District. The response requests that the Commission impose a forfeiture equal to the greater of \$500 or the expenses incurred by the Commission in reviewing the Challenge, pursuant to Wis. Stat. 5.05(2m)(am).

Commission staff does not recommend a finding that the complaint is frivolous. If the challenge had been pursued, staff would recommend accepting 16 of the 20 challenges, which would have resulted in Candidate Szerlong being denied ballot access, except for consideration of the supplemental signature pages, which the Challenger was not aware had been filed. The rejection of a small percentage of individual challenges does not automatically justify a finding that the challenge was frivolous, especially given the short timeline for the parties to review nomination papers and file challenges. Furthermore, prior to invoking Wis. Stat. 5.05(2m)(am) to impose any forfeiture based on a finding that a complaint is frivolous, staff believes it may be necessary to more fully research whether that statute applies to nomination paper challenges. There may be statutory interpretation issues that require further research and consideration to ensure that the

Commission could enforce any monetary penalty, which has not been attempted by the Commission's predecessor agencies.

**12. Richard Strohm Complaint against Kevin Nicholson, Republican Party
Candidate for United States Senator
Case No. EL 18-24**

Signatures required for office: 2000
Signatures challenged: 2700+
Signatures initially approved: 3,906

Staff assigned: Michael Haas

This complaint alleges that 50 signatures should not be counted because the circulator date precedes the date of the signatures, and that more than 2,700 signatures should not be counted because the circulators were not residents of the State of Wisconsin. Commission staff's Challenge Worksheet is attached as Exhibit Nicholson - 1.

Challenges due to invalid date on circulator certification:

The complaint alleges that 50 signatures should not be counted because the date of the circulator certification on five pages precedes the date of all the signatures on those pages. An individual signature may not be counted when it is dated after the date contained in the circulator certification. Wis. Adm. Code EL § 2.05(15)(b).

Commission staff had already struck all the challenged signatures due to the invalid signature date and an incomplete address in the circulator certification. Staff recommends accepting challenges to 50 signatures but not reducing the total number of verified signatures.

Candidate Response:

Candidate Nicholson's response did not address this portion of the complaint.

Circulator not a qualified elector of the State of Wisconsin:

The complaint alleges that more than 2,700 signatures should not be counted because the circulators are not qualified electors of the State of Wisconsin. Wis. Stat. 8.15(4)(a) requires the circulator to certify that he or she "is a qualified elector of this state, or if not a qualified elector of this state, is a U.S. citizen age 18 or older who, if he or she were a resident of this state, would not be disqualified from voting under s. 6.03...." This statutory language is incorporated into the circulator certification which appears at the bottom of each nomination paper.

The nomination papers challenged include signed certifications of eight circulators who list their addresses in other states. The complaint does not provide any evidence that the circulators would not be disqualified from voting if they were qualified electors of the State of Wisconsin.

Candidate Response:

Candidate Nicholson's response argues that a circulator is not required to be a qualified elector of the State of Wisconsin, and notes that a previous version of the statute requiring circulators to be residents of the State was declared unconstitutional by a federal court in *Frami v. Ponto*, 255 F.Supp.2d (2003).

Given the clear statutory language permitting circulators to be residents of another state provided they would otherwise qualify as Wisconsin electors, and the fact that the challenged circulators executed the same certification as other circulators, Commission staff recommends rejecting all challenges based on the allegation that circulators were not qualified electors of the State.

Candidate Nicholson's response also requests that the Commission declare the complaint to be frivolous and to impose a \$500 forfeiture against the Challenger pursuant to Wis. Stat. 5.05(2m)(am). Commission staff agrees that the complaint entirely ignores well-settled statutory and case law as well as agency precedent. However, Commission staff does not recommend a finding that the complaint is frivolous. Prior to invoking Wis. Stat. 5.05(2m)(am) to impose any forfeiture based on a finding that a complaint is frivolous, staff believes it may be necessary to more fully research whether that statute applies to nomination paper challenges. There may be statutory interpretation issues that require further research and consideration to ensure that the Commission could enforce any monetary penalty, which has not been attempted by the Commission's predecessor agencies.

Recommended Motion: Sustain challenges to 50 signatures due to invalid circulator dates but do not reduce the number of verified signatures because staff had previously struck them; reject all challenges to signatures based on the allegation that circulators are not qualified electors of the State of Wisconsin. Verify 3,906 signatures as originally verified by Commission staff, grant ballot access to Candidate Nicholson, and direct staff to prepare and issue a Findings and Order consistent with this motion.