

State of Wisconsin\Government Accountability Board

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KEVIN J. KENNEDY
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MEMORANDUM

DATE: For the June 10, 2016, Board Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy
Director and General Counsel
Government Accountability Board

Prepared and Presented by:
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Government Accountability Board

SUBJECT: Ballot Access for the 2016 General Election

This memorandum presents a summary of important and noteworthy information about candidates requesting ballot access for the 2016 General Election.

Summary

The nomination paper filing deadline for the 2016 General Election for congressional, legislative and district attorney offices was 5:00 pm on Wednesday, June 1, 2016. Four hundred five (405) candidates applied to run in the election. Forty (40) of those candidates ultimately did not submit any nomination papers, two of which were incumbents. Four incumbents registered for the election, but later filed notifications of noncandidacy.

A total of three hundred sixty-five (365) candidates filed nomination papers with the Government Accountability Board Elections Division. The first day to circulate nomination papers was April 15, 2016, and the first set of papers was filed on April 18th. Due to an extension of the filing deadline for two offices, two candidates filed during the extension period, which expired at 5 pm on Monday, June 6th. The reason for the extension is discussed in the next section. The number of sets of papers received by week is set out below:

<u>Week of...</u>	<u>Sets of Papers</u>
April 18 th	1
April 25 th	5
May 2 nd	9
May 9 th	28
May 16 th	52
May 23 rd	146
May 31 st and June 1 st	122 (64 filed on the June 1 st deadline)
June 6 th *	2

Notifications of Noncandidacy

Twenty four (24) incumbents filed notifications of noncandidacy with the Elections Division by the May 20, 2016 deadline. These were incumbents who were not seeking re-election to their currently held office. Two incumbents did not timely file either nomination papers or a notification of noncandidacy, which resulted in a 72-hour extension for the office of Representative to the Assembly, District 11 and Waupaca County District Attorney. One candidate for each office filed ballot access documents during the extended time period resulting in a three-candidate Democratic race for Assembly 11. A challenge was filed to the nomination papers of one candidate in Assembly 11, and the deadline for the candidate's response is June 13, 2016, requiring the Board to reconvene to resolve that matter. A Democratic candidate and a Republican candidate for Waupaca County District Attorney will square off at the general election. A listing of candidates who filed notifications of noncandidacy is included with this memo.

Nomination Paper Review

In reviewing the nomination papers, staff examined each candidate's submission to determine that it contained a valid number of signatures for the office.

- Candidates for United States Senator must file a minimum of **2,000** valid signatures of qualified electors of the state to qualify for ballot access. Wis. Stat. § 8.15 (6)(a).
- Candidates for Representative in Congress must file a minimum of **1,000** valid signatures of qualified electors from the district to qualify for ballot access. Wis. Stat. § 8.15(6)(b).
- Candidates for State Senator must file a minimum of **400** valid signatures of qualified electors from the district to qualify for ballot access. Wis. Stat. § 8.15 (6)(c).
- Candidates for Representative to the Assembly must file a minimum of **200** valid signatures of qualified electors from the district to qualify for ballot access. Wis. Stat. § 8.15(6)(d).
- Candidates for District Attorney in counties with a population of 100,000 or less must file a minimum of 200 valid signatures of qualified electors of the county to qualify for ballot access. Wis. Stat. § 8.15(6)(dm).
- Candidates for District Attorney in counties with a population over 100,000 must file a minimum of 500 valid signatures of qualified electors of the county to qualify for ballot access. Wis. Stat. § 8.15(6)(dm).

In addition to filing sufficient nomination paper signatures, each state candidate is also required to file a Campaign Registration Statement (ETHCF-1), Declaration of Candidacy (GAB-162), and Statement of Economic Interests (SEI) in order to qualify for ballot access. Wis. Stat. §§ 11.05(2g), 8.21, 19.43(4). For the 2016 Fall Elections, Statements of Economic Interests were due in the G.A.B. office by Monday, June 6, 2016 at 5:00 p.m. If a 2016

Statement of Economic Interest (SEI) was already filed with the G.A.B. for another purpose, that SEI was used to fulfill the filing requirement. Extensions for the form are only given when an incumbent fails to timely file a Notice of Noncandidacy. Therefore the two candidates who filed during the extension period were required to file SEIs by Tuesday, June 7th. Both candidates submitted the form on June 6th. G.A.B. staff accepts SEIs via mail, fax or email and electronic signatures are accepted. When a SEI is turned in, G.A.B. staff reviews the document for any errors and signatures. Accepted SEIs are recorded as being received and filed. All SEIs for 2016 Fall Candidates are available for public inspection.

Federal candidates are only required to file a Declaration of Candidacy in addition to their nomination papers. Wis. Stat. § 8.21.

Failure to file any required ballot access document prevents the candidate's name from appearing on the ballot. Wis. Stat. § 8.30. Staff used the guidance provided in Wis. Admin. Code GAB § 2.05 to review the nomination papers submitted to determine if a given signature was facially valid. No affirmative steps were taken to find and eliminate duplicate signatures or signatures from individuals who are ineligible to vote due to age, residency, citizenship, or other disqualifying factors. However, signatures were struck for a variety of issues including incomplete addresses, dates, illegible printed name or an incomplete certification of the circulator.

It has been the policy of the staff of the Government Accountability Board and its predecessor agency, the State Elections Board, to review all nomination papers and make a determination regarding sufficiency within 24 hours of submission. Further, for papers received on deadline day, a determination regarding sufficiency is to be made before staff retires for the evening. Staff was able to make determinations with respect to sufficiency within 24 hours in all cases.

In total, staff reviewed roughly 180,000 signatures. Staff made use of temporary services personnel to provide the necessary capacity to review nomination papers within the same day they were submitted.

By the deadline for filing nomination papers, eighty six (86) candidates had also filed additional nomination papers or correcting affidavits to supplement their original filing. One of the candidates who filed during the extension period also filed supplemental signatures.

Irregularities in Ballot Access Documents Not Affecting Ballot Status

During review of nomination papers and other ballot access documents, Elections Division staff identified the following irregularities, none of which affected ballot status:

Name of Office Sought

- Staff allowed for irregularities in listing office titles, such as “Assembly,” “State Assembly,” “State Representative,” “Assembly Seat,” “Senate,” “Senator” and “Member of Congress.” A candidate for District Attorney used “9th Judicial District” as the jurisdiction in which the candidate seeks office. Staff determined that the papers were sufficient as long as the electors could determine the office and district the candidate was

pursuing by information provided in the nomination paper heading. In all cases the district sought was identified.

The nomination papers of a candidate for Assembly District 11 clearly indicated the office sought. But the candidate inadvertently substituted “19th Assembly District” in the statement certifying the signer is an elector of the district in which the candidate is running. The candidate recirculated and subsequently submitted sufficient signatures with the correct header.

Election Date

- Staff identified candidates who used the primary date of August 9, 2016 or 8/9/16. In all cases, staff determined that the electors understood the nomination papers were for the fall 2016 general election.
- Two candidates listed an election date that was neither the date of the primary nor the general election.
 - Kelly McKnight, candidate for Ashland County District Attorney used 11/05/20016 (not a typo) on 13 of the 42 pages he submitted. Twenty nine pages contained the correct election date. Staff certified 375 signatures. The 29 pages by themselves contained 266 valid signatures, which is sufficient for ballot access.
 - Brandon Jackson, candidate for Assembly District 11, submitted nomination papers containing an election date of 11.01.2016. Mr. Jackson’s papers also did not contain a party or statement of principle. The candidate was advised that staff would recommend that the candidate be denied ballot access. Mr. Jackson recirculated and submitted sufficient signatures during the filing extension period for this office. Staff certified 214 signatures from the corrected filing. Mr. Jackson has filed a letter appealing the staff decision to reject signatures from the initial submission. The challenge deadline for this office was 4:30 p.m. on Thursday, June 9th and a challenge has been filed. The deadline for the candidate’s response to the challenge is June 13th. As such the Board will need to reconvene next week to resolve the matter.

Party or Statement of Principle

- Lisa Riniker, candidate for Grant County District Attorney, used her campaign committee name as the name of the party she represents. The candidate recirculated and submitted sufficient signatures on a form containing the appropriate party name.
- Dan Blank, candidate for Douglas County District Attorney, used the language from a nomination paper for nonpartisan office, which does not include the required “name of party” field. The candidate recirculated and submitted sufficient signatures on a form that included the appropriate party name.

Prior to circulation, the candidate sent the form to staff for format approval. Staff did not notice the omission of the party name and incorrectly approved the form. A letter from

Suzanne Blank is included with this memorandum. Ms. Blank relied upon the approval of staff and for that reason requests that the initial nomination paper submission be submitted to the board for review and certification as sufficient.

Recommended Motion: The Board denies Ms. Blank's request for the board to review the first set of nomination papers submitted using a form that was missing a required field. "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. Admin. Code GAB § 2.05(1).

Circulator Error

- One candidate's circulator evidently signed and dated the Certification of Circulator, made photocopies of the certified form and began obtaining signatures. None of the papers she circulated contained an original circulator signature. The circulator was able to correct this error by submitting a correcting affidavit.

Miscellaneous

- There were several candidates whose papers contained signatures that appeared to be written or printed by the same person. Staff allowed for the benefit of the doubt, leaving allegations of forgery to the challenge process.
- A number of candidates submitted sets of nomination papers that contained pages where either or both the affirmation of signer or certification of circulator wording was cut off during duplication of the nomination paper template prior to circulation. In all cases if the meaning could still be understood, signatures were not struck.

Staff Recommendations for Ballot Status

A listing of candidates recommended for ballot status is included with this memorandum. Staff requests the Board affirmatively approve the ballot status of those candidates listed who have met or exceeded the minimum valid signatures and have filed all necessary ballot access documents.

This listing includes the following four candidates whose papers contain election dates that are neither the primary or general election date. It is the sense of the staff that the dates, though incorrect, are close enough to the actual election date that signers were not confused or misled in any way. Staff recommends that the board certify these candidates for the ballot despite the irregularities in election dates.

- Jon Rygiewicz, candidate for Assembly District 76, submitted papers containing an election date of 11/01/2016. Staff certified 279 signatures. The candidate was advised that staff would accept the papers but the irregularity would be presented to the Board for a final determination. The candidate did not recirculate.
- Steven Gibbs, candidate for Chippewa County District Attorney, submitted papers containing an election date of November 1, 2016. Staff verified 241 signatures. The

candidate was advised that staff would accept the papers but the irregularity would be presented to the Board for a final determination. The candidate did not recirculate.

- Tom Crofton, candidate for Assembly District 50, submitted nomination papers containing the election date of 11/09.2016. Staff verified 315 signatures. The candidate was advised that staff would accept the papers but the irregularity would be presented to the Board for a final determination. The candidate did not recirculate.
- Stacy Smith, candidate for Juneau County District Attorney, submitted nomination papers containing an election date of 11/09/2016. Staff verified 331 signatures. The candidate was advised that staff would accept the papers but the irregularity would be presented to the Board for a final determination. The candidate did not recirculate.

Candidates Recommended by Staff to be Denied Ballot Access

Staff recommends that the following candidates be denied ballot status.

1. Gary E. Schomburg, candidate for Congressional District 8
On June 1, 2016, Mr. Schomburg filed approximately 1,210 signatures on 125 nomination paper pages. Staff determined the papers were insufficient with 906 valid signatures.
2. Jade Thomson, candidate for Assembly District 57
On June 1, 2016, Ms. Thomson submitted approximately 220 signatures. Staff reviewed the submission and determined the papers were insufficient with 175 valid signatures. This candidate's nomination papers were also challenged. See G.A.B. Case No. EL 16-75.
3. Abram Smith, candidate for Assembly District 76
On June 1, 2016, Mr. Smith submitted approximately 205 signatures. Staff determined the papers were insufficient with 55 valid signatures.
4. 40 candidates for various offices
40 candidates registered for an office but did not submit nomination papers.

Challenges to Ballot Status

The deadline for challenges to ballot status was Monday, June 6, 2016. Challenges will be discussed in a separate memorandum and presented by staff counsels.

Compliance Review Appeals

Brandon Jackson, Candidate for the 11th Assembly District – EL 16-079

Candidate Jackson filed his first set of nomination papers on June 1, 2016. The first set of nomination papers circulated and filed with the Board did not contain a party affiliation in the candidate information section of the page (hereinafter "header"). [Wis. Stat. § 8.15\(5\)\(a\)](#) provides that each nomination paper shall have substantially the following words, among

others, printed at the top: “candidate representing the (name of party).” Board policy is that none of the information in the header of the nomination paper, (i.e., candidate’s name, candidate’s address, political party represented, date of election, office sought, name of jurisdiction or district in which candidate seeks office), may be altered, amended, corrected or added after circulation of the nomination paper. This is the information that each signatory saw and relied upon in deciding to sign the paper in support of placing the candidate’s name on the ballot. As the nomination papers Candidate Jackson submitted on June 1st did not contain the name of the party he was representing, all of his nomination papers were deemed invalid.

Fortunately for Candidate Jackson, incumbent Representative Mandela Barnes did not file nomination papers by the June 1st deadline and also did not file a Notification of Noncandidacy with the Board on or before May 20, 2016. This extended the nomination paper deadline for this office to June 6, 2016. Candidate Jackson was subsequently able to recirculate nomination papers with a corrected header properly showing his Democratic party affiliation. Candidate Jackson then filed his corrected set of nomination papers on June 6, 2016. Board staff reviewed this set of nomination papers and verified 214 signatures. The minimum number of signatures required to appear on the ballot for the office of Representative to the Assembly is 200.

Candidate Jackson filed an appeal of Board staff’s decision to reject his initial set of nomination papers on June 6, 2016. The appeal was not signed or notarized, contrary to the requirements of [Wis. Stat. § 5.06\(1\)](#). The appeal is sparse, simply noting that Candidate Jackson wished to appeal the staff’s decision because: “Mr. Jackson is a known Democrat. Mr. Jackson as well as his circulators verbally informed individuals signing his forms that he is a Democrat. The 11th Assembly District has been historically Democratic for the last twenty plus years.” Board staff attempted to contact Candidate Jackson to obtain a sworn complaint, but was unable to reach the candidate.

On June 9, 2016, a challenge was filed to the second set of nomination papers. Candidate Jackson has until June 13th to file a response to that complaint. As this matter is still pending, Board staff recommends delaying any action on this appeal of the staff decision until after June 13th.