

State of Wisconsin \ Government Accountability Board

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JUDGE VICTOR MANIAN
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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the June 14, 2016 Teleconference Board Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared and Presented by:
Nathan W. Judnic, Staff Counsel

SUBJECT: Section 5.06 Appeal – Candidate Brandon Jackson- 11th Assembly Dist.

This Memorandum summarizes Board staff's review of the Wis. Stat. § 5.06 appeal filed by Candidate Brandon Jackson, 11th Assembly District. Candidate Jackson is appealing the Board staff's determination that all signatures contained on his initial set of nomination papers were invalid because certain required information was missing from the header of his papers. Under Wis. Stat. § 5.06, candidates that believe an election official's actions related to the review of nomination papers is either contrary to law or an abuse of discretion in enforcing the law may file a sworn complaint with the Board. The complaint may request that the Board direct the election official to conform their actions or conduct to the law or correct any action inconsistent with the law or correct any action determined to be an abuse of discretion in administering the law.

Candidate Brandon Jackson, Democratic Party Candidate for the 11th Assembly District (Section 5.06 Appeal)

G.A.B. Case No. EL 16-079

Signatures required for office: 200

Approximate number submitted: 250

Signatures approved by staff: 0

Subject of Appeal: Missing information in header of nomination papers

Staff assigned: Nathan Judnic

Candidate Jackson filed his nomination papers on the June 1, 2016 deadline. Candidate Jackson submitted 23 pages of nomination papers. Each of Candidate Jackson's nomination papers failed to include at least 1 piece of required information in the header portion of his papers.

- All 23 pages of Candidate Jackson’s nomination papers were circulated and filed without listing the name of the party he would be representing in the header portion of the papers (Name of Party or Statement of Principle box)
- 14 of the 23 pages also failed to list the date of election (General Election date box)
- 9 of the 23 pages listed an election date, but the election date was wrong – he listed 11.1.2016 (General Election date box)

After review of his nomination papers, the Board staff informed him that a party affiliation or a 5 word statement of principle (if independent) is a required piece of information in the header portion of his nomination papers. The Board staff also informed him that the election date is a required piece of information in the header portion of his nomination papers. Finally, Board staff informed him that providing an election date, even if incorrect, has been deemed substantial compliance by the Board previously if electors were not confused as to when the candidate was running, but the Board could change their mind and that there is no guarantee that this issue would be resolved with the same result. The papers with the incorrect election date however, were still missing Candidate Jackson’s party name, so those signatures were still invalid. Staff informed Candidate Jackson that due to the insufficiencies contained in the header of his nomination papers, none of the signatures he collected would be deemed valid. Due to filing papers on the deadline, Candidate Jackson was unable to recirculate his papers with the required information in the header. The Board staff certified 0 valid signatures and issued Candidate Jackson a receipt on June 2, 2016 showing this total.

On June 6, 2016, Candidate Jackson sent an email to the Board staff indicating he wanted to appeal the Board staff’s decision to reject his nomination papers based on the missing party affiliation in the header. Appeals of election official decisions are filed under Wis. Stat. § 5.06 and must be filed via a verified complaint. The email was not verified, and contained minimal information as to the basis for the appeal, so the Board staff immediately tried to contact Candidate Jackson to get him to file a verified complaint. The Board staff reached out via phone and email to Candidate Jackson several times between June 6, 2016 and June 10, 2016. The original email outlined three statements identified as “the basis of the appeal.” The three statements contained in Candidate Jackson’s original email are as follows:

- 1) *Mr. Jackson is a known Democrat.*
- 2) *Mr. Jackson as well as his circulators verbally informed individuals signing his forms that he is a Democrat.*
- 3) *The 11th Assembly District has been historically Democratic for the last twenty plus years.*

On June 10, 2016, prior to the Board’s meeting to hear ballot access challenges, the Board staff received a verified document from Candidate Jackson, outlining seven statements identified as “the basis of the appeal.” The seven statements contained in Candidate Jackson’s verified appeal are as follows:

- 1) *Mr. Jackson is a known Democrat.*
- 2) *Mr. Jackson as well as his circulators verbally informed individuals signing his forms that he is a Democrat.*
- 3) *Mr. Jackson has always voted and aligned with the Democratic Party.*
- 4) *Mr. Jackson is a known former staffer to one of Wisconsin’s longest elected Democratic Senators.*

- 5) *The 11th Assembly District has been historically Democratic for the last twenty plus years.*
- 6) *The 11th Assembly District has consistently produced and been home to Democratic Electors and candidates.*
- 7) *Mr. Jackson highly doubts the ability of anyone to recall in the past 3 decades not only a Republican Candidate but moreover any Republican or any other Party's Elected.*

On June 13, 2016, the Board staff received a signed letter addressed to the Board from Candidate Jackson, along with a notarized “Amending Affidavit of Nomination Paper Circulator” executed by Chuckson D. Holloway on June 13, 2016 and a Milwaukee Journal Sentinel news article entitled, *Aide files complaint saying Lena Taylor made pay cut threat*, dated April 1, 2016, by Patrick Marley.

The June 13, 2016 letter from Candidate Jackson asks the Board to overturn the decision of the Board’s staff to “disqualify over 220 elector signatures.” All three of Candidate Jackson’s letters and subsequent attachments described above, follow this memorandum.

Staff Analysis and Recommendations

Wis. Stat. § 8.15(5)(a)¹, outlines the information required in the header of a candidate’s nomination paper:

(a) “[e]ach nomination paper shall have substantially the following words printed at the top: I, the undersigned, request that the name of (insert candidate’s last name plus first name, nickname or initial, and middle name, former legal surname, nickname or middle initial or initials if desired, but no other abbreviations or titles) residing at (insert candidate’s street address) be placed on the ballot at the (general or special) **election to be held on (date of election) as a candidate representing the (name of party)** so that voters will have the opportunity to vote for (him or her) for the office of (name of office). I am eligible to vote in (name of jurisdiction or district in which the candidate seeks office). I have not signed the nomination paper of any other candidate for the same office at this election.

“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). However, Wis. Admin. Code GAB § 2.05(5) states: “[w]here any required item of information on a nomination paper is incomplete, the filing officer shall accept the information as complete if there has been substantial compliance with the law.” “Any information which appears on a nomination paper is entitled to a presumption of validity.” Wis. Admin. Code GAB § 2.05(4). In making determinations as to whether missing or incorrect information contained on a nomination paper substantially complies with the legal requirements, the Board staff and the Board have also taken into account whether a signer may have been confused or misled by information presented to them on the nomination paper at the time of signing. Finally, in ruling on nomination paper challenges, the Board has found that the header portion of the nomination papers “must contain a minimum amount of information about the candidate and the election for which they are asking to be nominated, for the paper to substantially comply with the law.” See GAB Manual: [Nomination Paper Challenges](#), at page 3

¹ Wis. Stat. § 8.10(2)(a) provides the header requirements for non-partisan nomination papers which does not require the name of a party. Wis. Stat. § 8.15(5)(a) specifically states that the top portion of the nomination paper shall include the “name of party” of the candidate.

(referring to blank Election Date field and/or a blank Candidate's Address field in the header). Without some basic candidate information being required in the header, signers are not provided enough information to make an informed decision as to whether they support the candidate and the purpose of the required information in Wis. Stat. § 8.15(5)(a) is no longer met.

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. See GAB Manual: [Nomination Paper Challenges](#), at page 2.

The Board staff has consistently advised candidates that the "Name of Party" field is a required field, based on: 1) the language contained in Wis. Stat. § 8.15(5)(a), 2) the "(Required)" notation contained in the box of the form, and 3) the instructions for completing the form which instruct the candidate to "Insert the name of the party the candidate represent." The issue of a missing or incorrect party affiliation occurred in two other instances during this nomination paper cycle. The Board did not disagree with the staff's treatment of these papers, and in one instance, the Board passed a motion at its June 10, 2016 meeting which denied a candidate's request to review their first set of nomination papers that were submitted using a form that did not contain the "Name of Party" field. See Ballot Access Memo Fall General Election 6.10.16 at pgs. 4-5 (Lisa Riniker, candidate for Grant County D.A. and Dan Blank, candidate for Douglas County D.A.). In both of these instances, the Board staff directed the candidates with no "Name of Party" information in the header to recirculate their papers; they complied with the request and were granted ballot access.

The Board has previously found that nomination papers which fail to include an election date are not in substantial compliance with the requirements of Wis. Stat. § 8.15(5)(a) which applies to candidates for partisan office. For recent examples, see *In the Matter of Nomination Papers filed by David DiStefano*, EL 15-06 (10 signatures struck on page that contained no date of election), *In the Matter of Nomination Papers filed by Steve Gulasky*, EL 14-06 (8 signatures struck on page that contained no date of election), *In the Matter of Nomination Papers filed by Thomas Hibbard*, EL 12-31 (7 signatures struck because page contained no date of election).² The Board staff have consistently advised candidates that the "Date of Election" is a required field, based on: 1) the language contained in Wis. Stat. § 8.15(5)(a), 2) the "(Required)" notation contained in the box of the form, and 3) the instructions for completing the form which instruct the candidate to "Insert the date of the election." Additionally, the missing "Date of Election" issue is directly addressed in the Board's Common Nomination Paper Challenges manual and states that when a "date of election is completely missing from a petition, staff has recommended approving the

² The Board staff, in one instance, noted in the ballot access memo prepared for the Board regarding the 2013 special election in the 98th Assembly District, that a candidate did not include the date of election on his nomination papers, and that ballot access would not be affected by this irregularity. See *January 14, 2013 Board Meeting Materials: Ballot Access for the 2013 Spring Election and Special Legislative Election*, pg. 9 (Candidate Edward M. Baumann). No challenge to Candidate Baumann's papers were filed with the Board, the Board issued no separate Findings or Orders related to Candidate Baumann's papers, Candidate Baumann's papers clearly indicated he was running for the vacant seat which was the sole contest in the 98th Assembly District special election. Based on these unique circumstances, the staff concluded that the missing date did not affect the signer's ability to decide whether or not to nominate Candidate Baumann for the ballot. The Board did not object to the staff's conclusion.

challenge and striking the signatures on those pages....The Board has approved these recommendations.” See GAB Manual: [Nomination Paper Challenges](#), at page 2.

Candidate Jackson’s appeal contains statements about his party affiliation, his work with a long-serving Democratic State Senator, alignments with various social media outlets and causes popular with Democrats, and statements about the 11th Assembly District and past Democratic officeholders for the seat, and that all may well be true - but none of the statements provide a legal justification or basis for failing to include the party name and/or election date in the header as required by Wis. Stat. § 8.15(5)(a). At best, the staff believes the statements could arguably support the conclusion that the individuals signing the nomination papers were not misled or confused by the information on the page – that because of Candidate Jackson’s known reputation as a Democrat, his known views on various issues, as well as aligning himself publicly with the presumptive Democratic Party nominee for President, that this is enough to cure the defects contained in the header of his nomination papers. The Board staff believes that Candidate Jackson’s nomination papers did not substantially comply with the legal requirements of Wis. Stat. § 8.15(5)(a), and therefore believe their actions to invalidate all signatures filed on the deficient nomination papers was proper. The Board staff also relied upon the past precedent established by the Board and the former State Elections Board, which has consistently sustained challenges to nomination papers that have failed to include the Date of Election and/or the Party Name of the candidate.

Finally, Candidate Jackson submitted an affidavit from Mr. Chuckson D. Holloway which sought to supplement information contained on his nomination papers. In reviewing the nomination papers submitted by Candidate Jackson, Mr. Holloway did not circulate any of the nomination papers that were submitted to the Board. The affidavit states that Mr. Holloway personally trained and supervised those who circulated Candidate Jackson’s nomination papers and that he “personally observed them obtaining each of the signatures on this (sp?) papers.” Mr. Holloway certifies that the pages were “signed and completed by certified electors who were verbally made aware of Brandon Jackson’s known Democratic Party affiliation, as of the date of this affidavit.” Finally, Mr. Holloway certifies Candidate Jackson’s “known Democratic track record and Party affiliations.” Again, at best, the Board staff believes this affidavit could arguably support the conclusion that the individuals signing the nomination papers were not misled or confused by the information on the page - that because of Candidate Jackson’s known reputation as a Democrat, his known views on various issues, as well as aligning himself publicly with the presumptive Democratic Party nominee for President, that this is enough to cure the defects contained in the header of his nomination papers. The Board staff does not believe this affidavit is sufficient to cure the defects: 1) affidavits can rehabilitate signatures or certifications of circulators, but information in the header portion cannot be fixed, Wis. Admin. Code § GAB 2.05(4)³; 2) while of course possible, it is difficult to believe that Mr. Holloway observed every signature being signed by the 9 different circulators used by Candidate Jackson, and that every signer was provided information about Candidate Jackson’s party affiliation, party track record, his work on legislation and policy, his work for Sen. Taylor, his attendance at various conferences, his recognition as a leader within the party and his work with the presumptive Democratic nominee for President as the affidavit states.

³ See GAB Manual: [Nomination Paper Challenges](#), at page 2.

Recommended Motion: The Board dismisses the Section 5.06 complaint filed by Candidate Jackson and denies ballot status to Candidate Jackson for the reasons outlined above.