

State of Wisconsin \ Government Accountability Board

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JUDGE THOMAS H. BARLAND
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the June 10, 2014 Board Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared and Presented by:
Shane W. Falk, Staff Counsel
Nathan W. Judnic, Staff Counsel
Pauline Shoemaker, Legal Intern

SUBJECT: Final 2014 Ballot Access Challenges

This Memorandum summarizes Board staff's review of challenges that have been filed to nomination papers of candidates for the 2014 General Election.¹ Challenges have been filed to 17 candidates. The burden of proof applicable to establishing or rebutting a challenge is clear and convincing evidence. Wis. Adm. Code GAB § 2.07(4). Below, staff has summarized the challenges, responses, and provided analyses and recommendations. Following this Memorandum are staff's Challenge Worksheets for any complaint that challenges individual signatures and which documents staff's line-by-line thorough review of all challenges.

1. Frederick P. Kessler Complaint against Ollie Dombrow, Democratic Candidate for the 12th Assembly District
G.A.B. Case No. EL 14-04

Signatures required for office: 200
Signatures challenged: 183
Signatures initially approved: 238

Staff assigned: Nathan W. Judnic

The complaint alleges that 182 signatures were obtained from individuals that did not reside in the 12th State Assembly District and that one individual signed nomination papers for 2 candidates. Due to these insufficiencies, the complaint alleges that Candidate Dombrow

¹ Three other candidates have filed compliance review appeals of staff's initial determinations pursuant to Wis. Stat. § 5.06 and those are addressed within the Ballot Access Memorandum.

filed an insufficient number of nomination paper signatures and should be denied ballot status. Candidate Dombrow did not provide a written response to the complaint.

Board staff determined that Candidate Dombrow submitted nomination papers containing 238 signatures. State law requires a minimum of 200 signatures for the office of Representative to the Assembly.

Challenge to signatures from individuals outside of district: Upon reviewing the complaint, and after conducting a verification via the My Vote Wisconsin function of SVRS, Board staff determined 181 signatures are of individuals residing outside of the 12th State Assembly District. Staff had previously struck or did not count 3 of the challenged signatures. Staff determined that 1 challenged signature was within the 12th Assembly 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 jurisdiction or district which the candidate named on the paper will represent, if elected. Wis. Stat. § 8.15(3). Board staff recommends accepting the challenge as to 178 signatures and rejecting the challenge to 1 signature of individuals residing outside the 12th State Assembly District.

As documented in the Challenge Worksheet that follows this Memorandum, staff rejected the out-of-district challenges to 2 signatures and sustained the out-of-district challenges to 178 signatures, leaving the candidate with only 60 valid signatures.

Challenge to individual signing nomination papers of both candidates for the same office: Wis. Stat. § 8.15(2) and Wis. Admin. Code GAB § 2.05(11) in relevant part both state that “only one signature per person for the same office valid.” The complaint did not provide sufficient evidence to support the claim that 1 individual signed nomination papers for both candidates, therefore Board staff recommends rejecting the challenge to this signature.

Recommended Motion: Approve challenge to 178 signatures and dismiss the remainder of the complaint, verify 60 valid signatures, and deny ballot status for Candidate Dombrow.

2. **Joel Gratz Complaint against Russell Goodwin, Republican Candidate for 12th Assembly District**
G.A.B. Case No. EL 14-05

Signatures required for office: 200
Signatures challenged: 153
Signatures initially approved: 306

Staff assigned: Shane W. Falk

The complaint alleges that 153 signatures were obtained from individuals that did not reside in the 12th State Assembly District.

Pursuant to Wis. Stat. § 8.15(6)(d), candidates for representatives to the assembly must obtain nomination paper signatures from not less than 200 nor more than 400 electors. Furthermore, pursuant to Wis. Stat. § 8.15(3), each signer on each separate nomination paper for a particular

office shall reside in the district which the candidate named on the paper will represent, if elected.

Staff researched the addresses for each of the 153 signatures by entering the information in MyVote (SVRS application.) If the address was not found in MyVote, staff next entered the information directly into SVRS. Finally, if the address was not found in SVRS, staff entered the information into WhitePages.com. At each step, staff performed a minimum of 3 separate searches.

As documented in the Challenge Worksheet that follows this Memorandum, staff rejected the out-of-district challenges to 3 signatures and sustained the out-of-district challenges to 150 signatures, leaving the candidate with only 156 valid signatures.

Response of Candidate Goodwin: Candidate Goodwin alleges that the complaint did not include documentation supporting the belief that a signer of the nomination papers did not reside within the 12th State Assembly District. Candidate Goodwin cites Wis. Adm. Code GAB § 2.05(5) which states in part: “the challenger may attempt to establish the geographical location of an address indicated on a nomination paper, by providing district maps, or by providing a statement from a postmaster or other public official.” Candidate Goodwin also relies upon Wis. Adm. Code GAB § 2.05(4) which provides that “any information which appears on a nomination paper is entitled to a presumption of validity.”

However, the challenger filed a sworn complaint in which he specifically asserted that he used the “Who Represents Me?” search engine available on the Wisconsin Legislature’s website to check the addresses found on the nomination papers, provided the web site address that he used which is public, identified the various challenged signature by page and line number as well as name, and even provided the proper State Assembly District according to the Legislature’s website.

Wis. Adm. Code GAB § 2.07(4) mandates that the Board shall examine any evidence offered by the parties when reviewing a complaint challenging the sufficiency of the nomination papers of a candidate. In the past, the Board has accepted out-of-district challenges filed as a sworn complaint which referenced the search engine or method used to determine the proper district of the address and provides a spreadsheet which specifically identifies the signatures challenged. The challenger’s complaint meets those requirements here. This information is publicly available through the Legislature’s website or the MyVote on the G.A.B.’s website. G.A.B. staff verify the out-of-district challenges through MyVote and SVRS, since the Legislature’s website district maps are not as accurate as those in SVRS. In this challenge, it seems incredulous that the Board should be asked to dismiss the complaint, when staff determined that 150 of the signers were not eligible to sign Candidate Goodwin’s nomination papers and cannot vote for him.

Recommended Motion: Deny challenges to 3 signatures a p. 13, line 6, p. 14, line 7, and a duplicate challenge to p. 9, line 6, sustain challenges to 150 signatures identified in the Challenge Worksheet, verify a total of 156 valid signatures, deny ballot access, and direct staff to prepare and issue a Findings and Order consistent with this motion.

3. **Joel Gratz Complaint against Steve Gulasky, Democratic Candidate for the 42nd Assembly District**
G.A.B. Case No. EL 14-06

Signatures required for office: 200
Signatures challenged: 113
Signatures initially approved: 207

Staff assigned: Pauline Shoemaker

The complaint alleges that the nomination papers did not comply with requirements for completed header information or circulation dates, including 3 pages with incorrect or missing heading information and 7 pages with inaccurate dates of circulation, making 10 pages containing 104 signatures insufficient or false. The complaint also alleges various deficiencies of individual signatures including signers who do not reside in the 42nd State Assembly District, signers who had previously signed papers for another candidate for the same office, signers who may have signed the same papers more than once, and possibly forged signatures, making an additional 9 signatures invalid.

Candidate Gulasky did not provide a written response to the complaint.

The complaint challenges 1 page of the candidate’s nomination papers containing 9 signatures and alleges that that page does not contain the office sought by the candidate. Wis. Stat. § 8.15(5)(a) requires that each nomination paper identify the office sought by the candidate. Because the title and district are completely missing from page 17, staff recommends sustaining this challenge and striking the 9 signatures on this page.

The complaint challenges 2 pages of the candidate’s nomination papers containing 18 signatures and alleges that the date of the election is missing or incorrect. Wis. Stat. § 8.15(5)(a) requires each nomination paper to include the date of the election. Because the date of the election is completely missing on page 1, staff recommends sustaining the challenge and striking the 8 signatures on this page. The complaint alleges that page 13 lists the date of the election as “Nov. 14, 2014.” When a date is listed but incomplete or incorrect (e.g., using the date of the primary, not indicating the year, indicating the month and year but not the day, indicating an incorrect date, or incorrectly indicating “general” as the type of election on the petition heading), past policy for this Board and the former State Elections Board found substantial compliance with Wis. Stat. § 8.15 where there was sufficient notice to the signers that the candidate was seeking office at the election immediately following circulation of the nomination papers. Consequently, staff has typically allowed for irregularities in the listed election date where it can be determined that electors understood the nomination papers were for the fall election event. Staff recommends denying the challenge to this page.

The complaint challenges 8 pages of the candidate’s nomination papers containing 75 signatures and alleges that the date of circulation is ambiguous. The complaint alleges that 8 pages list multiple dates of circulation where the circulator appears to have entered both the first and last day of circulation. Because in all cases the last date listed is the same date as or postdates the final signature on each page, staff recommends finding these pages to be in substantial compliance with the requirement of Wis. Stat. § 8.15(4)(a) that the circulator indicate the date of certification and denying the challenge.

The complaint challenges 3 signatures as duplicate signatures or the signer having previously signed for another candidate and 4 signatures because the signers reside outside the 42nd District. Wis. Stat. § 8.15(2) and Wis. Admin. Code GAB § 2.05(11) in relevant part both state that “only one signature per person for the same office is valid.” The complaint provided evidence that one individual signed papers for the Candidate George Ferriter prior to signing Candidate Gulasky’s papers. Staff reviewed Candidate Ferriter’s nomination papers and recommends striking this signature from Candidate Gulasky’s papers. The complaint also alleges that two individuals appear to have signed Candidate Gulasky’s papers twice. As documented in the Challenge Worksheet that follows this Memorandum, staff recommends striking the duplicate signatures.

Pursuant to Wis. Stat. § 8.15(3), each signer on each separate nomination paper for a particular office shall reside in the district which the candidate named on the paper will represent, if elected. The complaint alleges that four signers do not reside in the 42nd State Assembly District. Two of these signatures had already been struck on staff review; the other two have since been struck for other reasons.

Recommended Motion: Sustain challenges to 17 signatures on pages 1 and 17 missing election date and office title, deny challenge to incorrect election date on p. 13 because the candidate substantially complied with the date requirement of Wis. Stat. § 8.15(5)(a), sustain challenge to 3 duplicate signatures on p. 24, line 7, p. 1, line 8, and p. 12, line 1, deny challenge to circulation dates on pages 11, 13, 16, 19-21, 25, and 30 because the candidate substantially complied with the date requirement of Wis. Stat. § 8.15(4)(a), verify 187 signatures, deny ballot access, and direct staff to prepare and issue a Findings and Order consistent with this motion.

4. **Jennifer Toftness Complaint against Justin Krueger, Democratic Candidate for the 3rd Assembly District**

G.A.B. Case No. EL 14-09

Signatures required for office: 200

Signatures challenged: 19

Signatures initially approved: 209

Staff assigned: Nathan W. Judnic

The complaint alleges that signatures were obtained from individuals that did not reside in the 3rd State Assembly District, various insufficiencies regarding individual signatures including incomplete information and legibility of a printed name and that one individual signed the nomination papers of the same candidate twice. Due to these insufficiencies, the complaint requests that the Board declare the nomination papers to be invalid in whole or in part; and render such other relief the Board may deem just and equitable.

In total, the complaint challenges 19 signatures contained on Candidate Krueger’s nomination papers. The complaint alleges that 11 signatures were obtained from individuals that did not reside in the 3rd State Assembly District, various insufficiencies regarding individual signatures including 2 individuals with an incomplete date of signing, 4 individuals did not provide a legible printed name and that one individual signed nomination papers of the same candidate

twice (both signatures challenged). Candidate Krueger did not provide a written response to the complaint.

Board staff determined that Candidate Krueger submitted nomination papers containing 209 signatures. State law requires a minimum of 200 signatures for the office of Representative to the Assembly.

As documented in the Challenge Worksheet that follows this Memorandum, staff sustained the out-of-district challenges to 11 signatures and 1 challenge to an individual sign nomination papers twice, leaving the candidate with only 197 valid signatures.

Challenge to signatures from individuals outside of district: Upon reviewing the complaint, and after conducting a verification via the My Vote Wisconsin function of SVRS, Board staff determined 11 signatures are of individuals residing outside of the 3rd State Assembly 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 jurisdiction or district which the candidate named on the paper will represent, if elected. Wis. Stat. § 8.15(3). Board staff recommends accepting the challenge of these 11 signatures.

Challenge to signatures omitting the date of signing: Wis. Stat. § 8.15(2) states that for a signature to be valid, “each signer of a nomination paper... shall list... the date of signing. 1 challenged signature contains ditto marks in the date of signing field. Wis. Admin. Code GAB § 2.05(13) states that a “signature shall be counted when identical residential information or dates for different electors are indicated by ditto marks.” Dates of signing within the allowable period for circulation for different electors are clearly contained on the nomination paper containing this signature. Board staff therefore recommends the challenge to this signature be rejected. 1 challenged signature contains no date of signing. Wis. Admin. Code GAB § 2.01(15)(a) allows for a signature to survive an omitted date challenge if “the date can be determined by reference to the dates of other signatures on the paper.” The challenged signature appears after a signature that contains ditto marks referencing a date of signing by a different elector within an allowable period for circulation. Accordingly, this signature substantially complies with the necessary requirements via information that can be determined from other surrounding signatures on the page. Board staff recommends the challenge to this signature be rejected.

Challenges to legibility of printed names of signers: At its April 17, 2014 meeting, the Board 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 Board also adopted guidance that was provided to all Wisconsin County and Municipal Clerks and the Milwaukee County and City Election Commissions and posted publicly on the Board’s website. *See* GAB Memorandum, Nomination Paper Standards and Review, dated April 10, 2014 from Michael Haas, Elections Division Administrator and David Buerger, Elections Specialist (hereinafter guidance memorandum). The guidance memorandum outlines at page 2 the adopted standard for reviewing the legibility of printed names:

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 memorandum at pages 2-3 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. Admin. Code GAB 2.07(4).

The complaint challenges 4 signatures claiming the printed name is not legible and therefore should be rejected. Upon review of the 4 challenged signatures, Board staff believes all signatures meet the standard for legibility as articulated in the guidance memorandum. Board staff is able to discern a possible name in all 4 instances, even though staff may not be certain to the exact spelling of the name in each case. The burden of proof to overcome the presumption of validity is contained in Wis. Admin. Code GAB 2.07(4). Board staff does not believe the challenger has met her burden of providing clear and convincing evidence to overcome the presumption of validity of these signatures. Board staff recommends rejecting the printed name legibility challenge of these 4 signatures.

Challenge to individual signing nomination papers of same candidate twice: Wis. Stat. § 8.15(2) and Wis. Admin. Code GAB § 2.05(11) in relevant part both state that “only one signature per person for the same office is valid.” Upon review of the challenged signatures, Board staff found that an individual with the same printed name, signature, street number, street name, municipality type and municipality name signed Mr. Krueger’s nomination papers on May 22, 2014 and again on May 29, 2014. Both signatures were originally counted by Board staff. Board staff recommends rejecting the challenge of the May 22, 2014 signature of this individual, and accepting the challenge of the May 29, 2014 signature of this individual.

Recommended Motion: The Board verifies a total of 197 signatures (209 original signatures minus 12 signature challenges accepted: 11 signatures outside of district and 1 duplicate signature), dismisses the remainder of the complaint, and denies ballot status to Candidate Krueger.

5. **RPW/Joe Fadness Complaint against William C. Thompkins III, Restoring Responsibility and Power Candidate for the 21st Senate District**
G.A.B. Case No. EL 14-10

Signatures required for office: 400
Signatures challenged: 365
Signatures initially approved: 401

Staff assigned: Shane W. Falk

The complaint alleges that the nomination papers did not comply with requirements for completed header information due to an incomplete residence address of the candidate, making 53 pages containing 357 signatures insufficient. The complaint also alleges that G.A.B. staff miscounted signatures on one page which resulted in one additional signature that did not exist. (Upon review of the challenge, staff discovered that they undercounted another page by one signature, which results in no change of the initial valid signatures.) Finally, the complaint alleges various deficiencies of individual signatures including 2 signers who did not properly date their signatures, 3 signers who did not provide a complete address, and 2 signers who do not reside in the 21st State Senate District, making an additional 7 signatures invalid.

In addition to the challenge complaint, the candidate self-reported that he did not personally witness signatures for approximately 12 of the nomination papers for which he affixed his signatures as circulator. Upon staff's notification of this potential violation of the certification of circulator affirming that he personally circulated and obtained each of the signatures as prescribed by Wis. Stat. § 8.15(4)(a), we attempted to have the candidate identify those specific nomination paper pages that he may not have witnessed (i.e. left on a counter.) He was unable to provide any specifics and he is a first time candidate. Since the challenged signatures are sufficient to deny the candidate ballot access and since we are unable to determine exactly which nomination papers may be invalid on the basis of the improper circulator's certification, staff does not recommend any specific findings related to this issue.

The candidate did submit 5 supplemental nomination papers totaling approximately 27 additional signatures; however, these were received by the G.A.B. on June 4, 2014. These supplemental nomination papers were not received by 5:00 p.m. on June 2, 2014, as required by Wis. Stat. § 8.15(1)(a) and by operation of Wis. Stat. § 990.001(4)(b). The filing deadline for ballot access documents (Declaration of Candidacy, Campaign Finance Registration Statement, nomination papers, and statement of economic interest, if required) is mandatory and failure to meet the deadline is fatal to a candidate's ballot access. See *Ahlgrimm v. S.E.B.*, 82 Wis.2d 585 (Wis. 1978). Staff properly rejected the candidate's supplement nomination papers.

The complaint challenges 53 pages of the candidate's nomination papers containing 357 signatures and alleges that those pages do not contain a complete residence or mailing address for the candidate. The complainant seeks to have all 357 signatures on these 53 pages declared invalid. Wis. Stat. § 8.15 governs "Nominations for partisan primary" and Wis. Stat. § 8.15(5)(a) provides that each nomination paper shall have substantially the following words, among others, printed at the top: the candidate's residential street address. In addition, Wis. Stat. § 8.15(5)(b) requires each candidate include his or her mailing address on the nomination papers. However, Wis. Adm. 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.”

In the instant matter, the candidate lists “4414 Mount Pleasant Wi. 53405” as both his residence address and mailing address on pages 2-22, 25-42, 44-54, 56, and 58-59 of his nomination papers. The remainder of his nomination papers list “4414 Northwestern Ave” as his street address. This street address is consistent with the street address provided on the candidate’s Declaration of Candidacy (GAB-162.) Staff has identified this irregularity with the heading of the candidate’s nomination papers; however, staff found substantial compliance with the law in that all address requirements were met on the challenged pages except for the street name. The staff recommends that the Board deny these challenges.

The complaint also challenges the following: staff’s initial determination that there were 6 valid signatures on p. 7 of the nomination papers, 2 signatures for improper dates, 3 signatures for missing or improper addresses, and 2 signatures of electors residing outside the 21st State Senate District. Staff reviewed p. 7 and did note that there were only 5 valid signatures on the page; however, upon review of the challenge, staff also discovered that they had undercounted p. 17 by one and thus the total number of signatures initially verified by staff remains at 401.

Pursuant to Wis. Stat. § 8.15(6)(d), candidates for representatives to the assembly must obtain nomination paper signatures from not less than 200 nor more than 400 electors. In addition, Wis. Stat. § 8.40(1) and Wis. Adm. Code GAB § 2.05(15)(a) require a date that each elector signed the nomination papers, “unless the date can be determined by reference to the dates of other signatures on the paper.” Furthermore, Wis. Stat. § 8.15(2) and Wis. Adm. Code GAB § 2.05(12) require a complete address and street number (or postal address if it is located in the district that the candidate seeks to represent) for each signature on a nomination paper. Finally, pursuant to Wis. Stat. § 8.15(3), each signer on each separate nomination paper for a particular office shall reside in the district which the candidate named on the paper will represent, if elected.

Staff reviewed the specific challenges to the 2 signatures at p. 50, line 9 and p. 54, line 8 for improper or missing dates. As documented in the Challenge Worksheet that follows this Memorandum, staff rejected these two challenges because the dates of these specific signatures “may be determined by reference to the dates of other signatures on the paper.”

Staff reviewed the specific challenges to the 3 signatures at p. 15, line 10, p. 22, line 4, and p. 48, line 6 for illegible or missing address or municipality, two of which list post office boxes only. As documented in the Challenge Worksheet that follows this Memorandum, staff sustained these three challenges because the addresses were missing or reference post office boxes that do not permit a determination of whether the signer is a resident of the 21st State Senate District.

Staff researched the addresses for challenged signatures at p. 59, lines 9-10 by entering the information in MyVote (SVRS application.) If the address was not found in MyVote, staff next entered the information directly into SVRS. Finally, if the address was not found in SVRS, staff entered the information into WhitePages.com. At each step, staff performed a minimum of 3 separate searches. As documented in the Challenge Worksheet that follows this Memorandum, staff sustained the out-of-district challenges to 2 challenged signatures.

Response of Candidate Thompkins: As discussed above, on June 5, 2014, G.A.B. staff learned that the candidate did not personally circulate and witness all the nomination papers upon which he signed the certificate of circulation. The candidate admitted this to G.A.B. staff; however, upon follow up questioning to identify the specific pages that could have been invalidated, the candidate could not state specifics. The candidate filed a response on June 6, 2014, but it still did not provide any additional details regarding which specific nomination papers he may not have personally circulated. On June 9, 2014, the candidate emailed G.A.B. staff and stated that his June 6, 2014 response would be the only one he would provide.

Recommended Motion: Deny challenges to pages 2-22, 25-42, 44-54, 56, and 58-59 containing 357 signatures because the candidate substantially complied with the address requirements of Wis. Stat. §8.15(a) and (b); sustain challenge to the total signature count for p. 7 and affirm that page only contains 5 valid signatures but offset this with the one additional signature from p. 17 leaving the initial determination of verified signatures at 401; deny challenges to signatures on p. 50, line 9 and p. 54 line 9 because the signature date may be determined by other dates on the page pursuant to Wis. Adm. Code GAB § 2.05(15)(a); sustain challenges to 3 signatures at p. 15, line 10, p. 22, line 4 and p. 48, line 6 because the signatory address or municipality cannot be determined in violation of Wis. Stat. § 8.15(2) and Wis. Adm. Code GAB § 2.05(12); sustain challenges to 2 signatures at p. 59, lines 9-10 because the electors reside outside the 21st State Senate District in violation of Wis. Stat. § 8.15(3); verify a total of 396 valid signatures; deny ballot access; and direct staff to prepare and issue a Findings and Order consistent with this motion.

6. **Jennifer Toftness Complaint against Mandela Barnes, Democratic Candidate for the 11th Assembly District**
G.A.B. Case No. EL 14-11

Signatures required for office: 200

Signatures challenged: 179

Signatures initially approved: 209; however this number did not include additional supplemental pages bringing the candidate up to 234.

Staff assigned: Pauline Shoemaker

The complaint alleges that the headers of the nomination papers contain two different addresses for the candidate, one of which is outside AD 11, and that several pages circulated by the candidate himself are inconsistent between the address listed in the header and the address listed in the circulation statement, for a total of 26 pages and 166 signatures, plus all of the candidate's supplemental pages for a total of 25 signatures. The complaint also alleges various deficiencies of individual signatures including illegible signatures, signers who do not reside in the district, and signatures by individuals with felony convictions, making an additional 13 signatures invalid on the initial set of papers and an additional 2 on the supplemental papers.

Candidate Barnes filed a written verified response on June 9, 2014. In his response, Candidate Barnes addresses the allegations that his residence is outside the 11th State Assembly district and provides an affidavit from the Glendale City Clerk to affirm that his address is inside the district.

The complaint challenges 6 pages of the candidate’s nomination papers plus 1 supplemental page containing 20 signatures and alleges that those pages do not contain an accurate residence or mailing address for the candidate. The complainant seeks to have all 20 signatures on these pages declared invalid. Wis. Stat. § 8.15 governs “Nominations for partisan primary” and Wis. Stat. § 8.15(5)(a) provides that each nomination paper shall have substantially the following words, among others, printed at the top: the candidate’s residential street address. In addition, Wis. Stat. § 8.15(5)(b) requires each candidate include his or her mailing address on the nomination papers.

The complaint alleges that Candidate Barnes circulated papers with two different residential addresses, one on Presidio Drive and one on Port Washington Road. Candidate Barnes’ affidavit states that he moved early in the calendar year, and in a media report regarding the challenge, Candidate Barnes stated that he had moved in January 2014; thus, the address on Presidio Drive was not correct at any time during the circulation period. Pages 1-6 and page 1 of the supplemental papers list Candidate Barnes’ prior address, and therefore staff recommends sustaining the challenge to these pages, striking 20 signatures.

The complaint challenges 25 of the candidate’s nomination papers and all of the supplemental nomination papers containing 181 signatures on the original pages and 25 on the supplemental pages because the circulator’s address is incomplete. The complaint alleges that pages 2-10, 15-19, 21-31, and all the supplemental nomination papers are not valid because the circulator’s address lacks a municipality in violation of Wis. Stat. § 8.15(4)(a). However, the circulator of this page was the candidate himself. His municipality for voting purposes is provided at the top of the page. In the past, the Board has found substantial compliance where the missing information is supplied by reference to other information found on the same page. Staff had already recommended striking pages 2-6 and page 1 of the supplemental papers due to insufficiencies in the candidate’s address; staff recommends denying the challenge to the remaining pages.

The complaint challenges 7 signatures, alleging that the signers do not reside in the 11th Assembly District. Wis. Stat. § 8.15(2) and Wis. Adm. Code GAB § 2.05(12) require a complete address and street number (or postal address if it is located in the district that the candidate seeks to represent) for each signature on a nomination paper. Staff researched the addresses for 6 challenged signatures at p. 13, lines 5-6, p. 14, line 5, and p. 21, line 6-8, by entering the information in MyVote (SVRS application.) As documented in the Challenge Worksheet that follows this Memorandum, staff sustained the out-of-district challenges to 6 challenged signatures.

The complaint also alleges that Candidate Barnes’ Port Washington Road address is outside the 11th State Assembly District, and that therefore the candidate’s personal signature should not be counted. Staff verified that the candidate’s building is on the boundary between Glendale and Milwaukee, with some units in Glendale (and the 11th District) and some units in Milwaukee (and the 10th District). Candidate Barnes’ response includes an affidavit from the Glendale City Clerk affirming that his unit, #205, is in Glendale, and therefore in the 11th District. However, Candidate Barnes’ address is on page 1 of the supplemental papers, which list his prior address in the header, and staff had already recommended striking this page on those grounds.

The complaint challenges 7 signatures for illegible printed names of signers, a new requirement effective on March 29, 2014 pursuant to 2013 Wisconsin Act 160. At its April 17, 2014 meeting, the

Board 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 Board also adopted guidance that was provided to all Wisconsin County and Municipal Clerks and the Milwaukee County and City Election Commissions and posted publicly on the Board’s website. See GAB Memorandum, Nomination Paper Standards and Review, dated April 10, 2014 from Michael Haas, Elections Division Administrator and David Buerger, Elections Specialist (hereinafter guidance memorandum). The guidance memorandum outlines at page 2 the adopted standard for reviewing the legibility of printed names:

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 memorandum at pages 2-3 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. Admin. Code GAB 2.07(4).

As documented in the Challenge Worksheet that follows this Memorandum, staff reviewed each of the 7 challenged signatures (several times) for compliance with 2013 Wisconsin Act 160. Staff recommends rejecting 4 challenges at page 14, line 4, page 15, line 2, page 17, line 1, and page 29, line 10, because all signatures meet the standard for a legible printed name as articulated in the above guidance (able to discern a possible name even if cannot determine spelling with certainty); however, staff recommends sustaining the challenge to 3 signatures at p. 19, line 1, p. 21, line 9, and p. 28, line 2 on the basis that the second name entry is not legibly printed.

The complaint challenges 1 signature on the basis that the signer is not a qualified elector due to a felony conviction. Staff verified with the Department of Corrections that this

individual is on active supervision, and recommends striking the signature on line 1 of the last supplemental page.

Recommended Motion: Sustain the challenge to Candidate Barnes' address on pages 1-6 and page 1 of the supplemental papers, striking 20 signatures, including the candidate's personal signature, deny challenge of missing circulator municipality, sustain challenge to 6 out-of-district signatures on p. 13, lines 5-6, p. 14, line 5, and p. 21, line 6-8; sustain legibility challenge of 3 signatures at p. 19, line 1, p.21, line 9, and p. 28, line 2, deny 4 legibility challenges at page 14, line 4, page 15, line 2, page 17, line 1, and page 29, line 10, sustain challenge of signer with felony conviction; verify 204 signatures, grant ballot access for Candidate Barnes, and direct staff to prepare and issue a Findings and Order consistent with this motion.

7. **Thad Nation Complaint against Sara Lee Johann, Democratic Candidate for the 10th Assembly District**
G.A.B. Case No. EL 14-12

Signatures required for office: 200
Signatures challenged: 45
Signatures initially approved: 238

Staff assigned: Nathan W. Judnic

The complaint alleges that signatures were obtained from individuals that did not reside in the 10th State Assembly District, various insufficiencies regarding individual signatures including incomplete information and that individuals listed a P.O. Box as their residential address. The complaint requests the Board take prompt action to eliminate from the nomination papers filed all signatures that are insufficient pursuant to Wis. Admin. Code GAB §§ 2.05 and 2.07.

In total, the complaint alleges that 45 signatures were obtained from individuals that did not reside in the 10th State Assembly District, the signature information is incomplete or that individuals listed a P.O. Box as their residential address. Candidate Johann provided a written response to the complaint on June 9, 2014.

Board staff on initial review determined that Candidate Johann submitted nomination papers containing 221 signatures. Upon recalculation of the total number of signatures contained on the papers submitted, Board staff approved 238 signatures. State law requires a minimum of 200 signatures for the office of Representative to the Assembly.

As documented in the Challenge Worksheet that follows this Memorandum, staff sustained the out-of-district challenges to 33 signatures, 2 challenges to missing, incomplete or illegible addresses and 2 signatures with P.O. Box numbers. 5 signatures were added as they were determined to be legibly printed, 4 signatures were added as the date could be determined by other signatures on the page and 1 signer's address could be determined by other signatures on the page. This left Candidate Johann with 211 valid signatures.

Challenge to signatures from individuals outside of district: Upon reviewing the complaint, and after conducting a verification via the My Vote Wisconsin function of SVRS, Board staff

determined 38 signatures are of individuals residing outside of the 10th State Assembly District. Staff had previously struck or did not count 5 of the challenged signatures (Page 16, Line 1; Page 8, Line 1; Page 8 Line 2; Page 8, Line 4; Page 1, Line 2). Staff determined that 2 challenged signature were within the 10th Assembly District (Page 4, Line 8 and Page 12, Line 5). For a signature to be counted, a signer of the nomination papers for the office of Representative to the Assembly, must reside in the jurisdiction or district which the candidate named on the paper will represent, if elected. Wis. Stat. § 8.15(3). Staff recommends accepting the challenge of 33 signatures and rejecting the challenge of 2 signatures of individuals residing outside of the 10th State Assembly District.

Challenge to incomplete, illegible or missing addresses: Wis. Stat. § 8.15(2) states that for a signature to be valid, “each signer of a nomination paper 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. The complaint alleges in total 3 signatures that contained either incomplete or illegible information or was missing. Board staff had previously struck 1 of these challenged signatures. Upon reviewing the challenged signatures, 1 signature contained a legible street number of “3163N” but an illegible street name. The municipality type of “city” was checked and “Mil.” was provided, reasonably believed to mean Milwaukee. Board staff recommends accepting the challenge and striking this signature as the street name of where the signer resides unable to be determined. Upon reviewing the challenged signatures, 1 signature contains no house number or street name. The municipality type of “city” was checked and “Milw” was provided, reasonably believed to mean Milwaukee. Board staff recommends accepting the challenge and striking this signature as no street number or street name of where the signer resides is contained on the nomination paper.

Challenge to P.O. Box used as signer’s address: Past Board policy has been to accept signatures that only contain a P.O. Box if the entire municipality in which the P.O. Box is located is within the District. The complaint alleges that 2 signatures contain only a P.O. Box. Upon verification via the My Vote Wisconsin function of SVRS, Board staff determined that the 2 signatures were from municipalities (Milwaukee, WI and Shorewood, WI) that contain multiple State Assembly Districts. Board staff recommends accepting the challenge and striking these 2 signatures as the municipalities listed for these signers contain multiple State Assembly Districts.

Legibility of printed name: The complaint did not challenge signatures for failure to provide a legibly printed name next to the signature. However, upon review of Candidate Johann’s nomination papers, 5 signatures were struck by Board staff during the 1st and 2nd review that arguably meet the review standard set forth in the policy memorandum approved by the Board. *See* GAB Memorandum, Nomination Paper Standards and Review, dated April 10, 2014 from Michael Haas, Elections Division Administrator and David Buerger, Elections Specialist (hereinafter guidance memorandum). The guidance memorandum outlines at page 2 the adopted standard for reviewing the legibility of printed names:

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 memorandum at pages 2-3 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. Admin. Code GAB 2.07(4).

Board staff therefore recommends the following 5 signatures be deemed valid and be added to Candidate Johann's verified signature total: Page 13, Line 9; Page 20, Line 10; Page 25, Line 3; Page 26, Line 5; Page 28, Line 2. The printed name in each case was legible and able to be discerned, even though Board staff was not certain as to the exact spelling of the name.

Candidate Johann's provided a verified response to address signatures that were subject of the complaint as well as signatures not subject to the complaint but were originally struck or not counted by the Board staff. Her response is addressed below:

- The challenge to the signature on page 3, line 9 is accepted as the address of the signer is not contained in the 10th State Assembly District.
- The challenge to the signature on page 4, line 8 is rejected as the address of the signer is contained in the 10th State Assembly District.
- The challenge to the signature on page 12, line 5 is rejected as the address of the signer is contained in the 10th State Assembly District.
- The challenge to the signature on page 11, line 9 is accepted as the address of the signer is not legible.
- The signature on page 2, line 5 is invalid. The signer failed to provide a signature and a legibly printed name in a space next to the signature.
- The signature on page 7, line 9 is invalid. The signer failed to provide a legibly printed name in a space next to the signature.
- The signature on page 13, line 9 contains a legibly printed name and is therefore valid. See discussion above: Legibility of printed name.
- The signatures on page 14, lines 4-7 are valid. The date of signing can be determined on this page by reference to the dates of other signatures on the page.
- Page 19 has the correct number of valid signatures written in the upper right hand corner, 9.

- The signature on page 20, line 10 contains a legibly printed name and is therefore valid. See discussion above: Legibility of printed name.
- The signature on page 22, line 8 is valid. The residence of the signer can be determined for this signer based on the unique zip code that is provided.
- The signature on page 25, line 3 is valid. See discussion above: Legibility of printed name.
- Page 25 contains 10 valid signatures, see previous bullet point.
- The signature on page 26, line 5 is valid. See discussion above: Legibility of printed name.
- The signature on page 28, line 2 is valid. See discussion above: Legibility of printed name.

Candidate Johann's verified response added 5 signatures to Board staff's total number of signatures after their review of the complaint. Board staff recommends granting ballot status to Candidate Johann.

Recommend Motion: The Board verifies a total of 211 signatures (238 original signatures plus 5 signatures that should have been deemed legibly printed by Board staff during 1st and 2nd review, plus 4 signatures that the date can be determined by other signatures on the page, plus 1 signature that the address can be determined by other signatures on the page, minus 37 signature challenges accepted: 33 signatures outside of district, 2 missing, incomplete or illegible addresses, and 2 signatures with P.O. Box numbers), dismisses the remainder of the complaint, and grant ballot status to Candidate Johann.

8. Joel Gratz Complaint against Kathy Bernier, Republican Candidate for the 68th Assembly District
G.A.B. Case No. EL 14-13

Signatures required for office: 200
Signatures challenged: 114
Signatures initially approved: 290

Staff assigned: Shane W. Falk

The complaint alleges various insufficiencies regarding 114 individual signatures including 4 signers who appear to have signed after the date of circulation, incomplete information by 3 signers who did not provide an address, legibility or cursive nature of 92 printed names, and that 4 individuals listed a P.O. Box as their residential address and thus unable to determine whether the signer resided within the 68th State Assembly District. In addition, the complaint alleges that the name of the circulator on page 20 cannot be discerned which affects 6 signatures and that the circulator date on page 34 was tampered with which affects 5 signatures.

The complaint alleges various insufficiencies regarding 114 individual signatures including 4 signers who appear to have signed after the date of circulation, incomplete information by 3 signers who did not provide an address, legibility or cursive nature of 92 printed names, and that 4 individuals listed a P.O. Box as their residential address and thus unable to determine whether the signer resided within the 68th State Assembly District. In addition, the complaint alleges that

the name of the circulator on page 20 cannot be discerned which affects 6 signatures and that the circulator date on page 34 was tampered with which affects 5 signatures.

The complaint challenges 2 pages of the candidate’s nomination papers containing a total of 11 signatures. Pursuant to Wis. Stat. § 8.15(4)(a), a circulator must execute the certification of circulator and include, among other things, his or her name and the date upon which the circulator made the certification. In addition, Wis. Adm. Code GAB § 2.05(14) states that no signature on a nomination paper shall be counted unless the circulator “completes and signs the certificate of circulator and does so after, not before, the paper is circulated.” “No signature may be counted when the residency of the circulator cannot be determined by the information given on the nomination paper.” Wis. Adm. Code GAB § 2.05(14). Note however that the residence requirement for nomination paper circulators as applied to Wisconsin residents who circulate papers outside the political subdivision in which they reside and to nonresidents violates the First Amendment right of free speech. *Frami v. Ponto*, 255 F.Supp.2d 962 (2003). Finally, any information which appears on a nomination paper is entitled to a presumption of validity, which may only be overcome when a challenger presents evidence that meets the clear and convincing evidence burden of proof. Wis. Adm. Code GAB §§ 2.05(4) and 2.07(3)(a) and (4).

As documented in the Challenge Worksheet that follows this Memorandum, staff rejected the challenges to page 20 and page 34 due to alleged circulator insufficiencies; however, staff sustained the challenges to 4 signatures at p. 7, lines 7-10 that were clearly dated after the date of certification by the circulator. The two challenged pages are entitled to a presumption of validity and the challenger has presented no evidence to rebut that presumption, let alone evidence that meets a clear and convincing burden of proof. Specifically, the circulator’s printed name, Diane Cornell, is legible on page 20 and a search on WhitePages.com identifies several people in the state with this name, even if staff was unable to confirm a Diane Cornell lived at the given address. Staff also rejects the challenge to page 34, noting only that the circulator may have simply attempted to correct the date. Without more, the presumption of validity applies and staff recommends that the Board deny these two challenges.

The complaint challenges 3 signatures for which the address or municipality is missing or illegible. Pursuant to Wis. Stat. § 8.15(2) and Wis. Adm. Code GAB § 2.05(12), a complete address and street number (or postal address if it is located in the district that the candidate seeks to represent) is required for each signature on a nomination paper. As documented in the Challenge Worksheet that follows this Memorandum, staff sustained the challenges to 3 signatures at p. 6, lines 7-9 that had missing or illegible addresses or municipalities.

The complaint challenges 4 signatures, alleging that the signers listed a P.O. box as their address and thus it cannot be determined whether the signers are residents of the 68th State Assembly District. Wis. Stat. § 8.15(2) and Wis. Adm. Code GAB § 2.05(12) require a complete address and street number (or postal address if it is located in the district that the candidate seeks to represent) for each signature on a nomination paper. Staff reviewed the specific challenges to the 4 signatures and as documented in the Challenge Worksheet that follows this Memorandum. Staff rejected the challenge to the 3 signatures at p. 2, line 8, p. 5, line 6, and p. 5, line 8 because the signer had also provided a street address within the 68th State Assembly District. Staff rejected the challenge to the signature at p. 5, line 9 because the entire municipality for this specific P.O. Box lies within the 68th State Assembly District, as permitted by Wis. Adm. Code GAB § 2.05(12).

Finally, the complaint challenges 92 signatures for illegible printed names of signers, a new requirement effective on March 29, 2014 pursuant to 2013 Wisconsin Act 160. At its April 17, 2014 meeting, the Board 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 Board also adopted guidance that was provided to all Wisconsin County and Municipal Clerks and the Milwaukee County and City Election Commissions and posted publicly on the Board’s website. *See* GAB Memorandum, Nomination Paper Standards and Review, dated April 10, 2014 from Michael Haas, Elections Division Administrator and David Buerger, Elections Specialist (hereinafter guidance memorandum). The guidance memorandum outlines at page 2 the adopted standard for reviewing the legibility of printed names:

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 memorandum at pages 2-3 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. Admin. Code GAB 2.07(4).

As documented in the Challenge Worksheet that follows this Memorandum, staff reviewed each of the 92 challenged signatures (several times) for compliance with 2013 Wisconsin Act 160. Staff recommends rejecting 91 challenges because all signatures meet the standard for a legible printed name as articulated in the above guidance (able to discern a possible name even if cannot determine spelling with certainty); however, staff recommends sustaining the challenge to 1 signature at p. 14, line 10 on the basis that the second name entry is not legibly printed.

Response of Candidate Bernier: Candidate Bernier’s response primarily focuses upon the legibility of the printed names contained on her nomination papers and actually closely follows staff’s recommendations above, save allegations of frivolousness. There is one notable exception and that is

with respect to staff's recommendation to sustain a legibility challenge to the printed name at p. 14, line 10. Four separate staff have reviewed this signature and printed name, none of whom even came up with the name identified in paragraph 8 of Candidate Bernier's response, "Mike Wheeler."

Recommended Motion: Deny challenges to pages 20 and 34 containing 11 total signatures because the challenger did not present evidence to meet the clear and convincing burden of proof pursuant to Wis. Adm. Code GAB § 2.07(3)(a) and (4); sustain challenges to the 4 signatures at p. 7, lines 7-10 because they are dated after the date of the circulator's certification in violation of Wis. Adm. Code GAB § 2.05(14); sustain challenges to 3 signatures at p. 6, lines 7-9 because the signatory address or municipality cannot be determined in violation of Wis. Stat. § 8.15(2) and Wis. Adm. Code GAB § 2.05(12); deny challenges to 4 signatures at p. 2, line 8, p. 5, lines 6 and 8 because an address is present and p. 5, line 9 because the P.O. Box is fully within the district as permitted by Wis. Adm. Code GAB §2.05(12); deny the challenges to 91 signatures because a legibly printed name is present and sustain the challenge to 1 signature at p. 14, line 10 because the second name entry is not legibly printed in violation of 2013 Wisconsin Act 160; verify a total of 282 valid signatures; grant ballot access; and direct staff to prepare and issue a Findings and Order consistent with this motion.

9. **Sheila Cochran Complaint against Gary George, Democratic Candidate for the 4th Congressional District**
G.A.B. Case No. EL 14-14

Signatures required for office: 1000
Signatures challenged: 1158
Signatures initially approved: 1391

Staff assigned: Pauline Shoemaker

The complaint alleges that 106 pages of the nomination papers were circulated by individuals with felony convictions, 23 pages had a correcting affidavit with an incorrect date in the notary's stamp, 3 pages contained a circulation date prior to the dates of the signatures, and 3 did not include the circulator's municipality, for a total of 1158 invalid signatures.

Candidate George provided a verified written response to the complaint on June 6, 2014. The response stated that the complaint fails to allege that the candidate's circulators are disqualified under Wis. Stat. § 6.03. Additionally, Candidate George provided correcting affidavits from his circulators and the notary in error to rehabilitate the original correcting affidavits that had been incorrectly dated by the notary to read "May 3, 2014" instead of "June 3, 2014. The new affidavits stated that upon information and belief from the Department of Financial Institutions, an error in the affidavit of the notary such as an incorrectly entered date is correctable, and affirmed that the circulators had presented their affidavits on June 3, 2014, not May 3, 2014. Because the original correcting affidavits were timely filed, staff recommends accepting the corrections to the corrections and denying the notary date challenge to circulator Tyrone Daniels' pages 58-59, 64-87, 89 and circulator Anthony Carter's pages 60-63, 88, and 90-97.

The complaint challenges 106 pages containing 955 signature on the basis that the circulators of these pages are individuals with felony convictions. Wis. Stat. § 8.15(4)(a)

requires a circulator to attest “that he or she, the circulator, is a qualified elector of this state.” Wis. Stat. § 304.078(3) provides that an individual disqualified for voting as a result of a felony conviction has his or her right to vote restored when he or she completes the term of imprisonment or probation for the crime that led to the disqualification. Staff believes that this permits an individual with a felony conviction to circulate nomination papers, so long as his or her right to vote has been restored. Of the 7 circulators alleged to have felony convictions, staff verified with the Department of Corrections that all of the circulators have completed their probation and are qualified electors. Staff thus recommends denying the challenge to these 7 circulators.

The complaint challenges 9 pages containing 77 signatures, alleging insufficiencies in the dates of circulation and circulators’ addresses. Pursuant to Wis. Stat. § 8.15(4)(a), a circulator must execute the certification of circulator and include, among other things, his or her name and the date upon which the circulator made the certification. In addition, Wis. Adm. Code GAB § 2.05(14) states that no signature on a nomination paper shall be counted unless the circulator “completes and signs the certificate of circulator and does so after, not before, the paper is circulated.” “No signature may be counted when the residency of the circulator cannot be determined by the information given on the nomination paper.” Wis. Adm. Code GAB § 2.05(14). Of these 3 pages, page 139 contained a circulation certification dated the same day as the signatures. The circulator timely filed a correcting affidavit stating that she had inadvertently entered the date she began circulating on pages 140-141. Staff recommends denying the challenge to these 3 pages.

The complaint alleges that 6 pages omitted the circulator’s municipality. The circulators timely filed a correcting affidavit to provide the missing municipality information for pages 142-143, 146, and 150-152. Staff recommends denying these challenges.

Recommended Motion: Deny challenges to 7 circulators with felony convictions, deny challenges to incorrect notary dates, deny challenges to circulator insufficiencies on pages 139-143, 146, and 150-152, verify 1391 signatures, grant ballot access for Candidate George, and direct staff to prepare and issue a Findings and Order consistent with this motion.

10. RPW/Joe Fadness Complaint against Jeremy Ryan, Republican Candidate for the 1st Congressional District
G.A.B. Case No. EL 14-15

Signatures required for office: 1000
Signatures challenged: 1113
Signatures initially approved: 1113

Staff assigned: Shane W. Falk

The complaint alleges that the candidate knowingly and intentionally circulated his nomination papers and obtained signatures under false pretenses and that the candidate knowingly and intentionally falsified the circulator certification, such election fraud in violation of Wis. Stats. §12.13(3)(a) invalidating all signatures on all pages.

The complaint also alleges various insufficiencies regarding 130 individual signatures including 4 pages containing 38 signatures as result of the inability to discern the circulator's residency or an incomplete nomination paper page heading, 5 signatures appearing to have been signed by only two individuals, 3 missing signatures, 30 signatures with missing or incomplete dates, 32 signatures missing information such as address or municipality of residence, 2 signatures of individuals who signed more than once, 3 signatures of individuals who signed nomination papers for a separate candidate for the 1st Congressional District, 17 names that are not legible.

The challenger alleges that the candidate knowingly and intentionally circulated his nomination papers and obtained signatures under false pretenses, thus falsifying the circulator certification. The candidate used the Board's prescribed Nomination Paper for Partisan Office (GAB-168), which clearly states that this candidate is seeking election to the office of Representative for the 1st Congressional District.

The Board may recall the significant debate before the Board during the 2011 Recall Petition Circulation, where several Democratic State Senators alleged that the Republican Party of Wisconsin hired a company by the name of Kennedy Enterprises out of Colorado who in turn hired paid circulators that misrepresented the purposes of recall petitions, fraudulently inducing hundreds of individuals to sign recall petitions. Pursuant to the recall statute, Wis. Stat. § 9.10(2)(m), there is a statutory basis for invalidating recall petition signatures if an elector was not aware of the purpose of the petition, but only if the purpose was misrepresented by the circulator. Still, the Board in 2011 could find little basis or consensus to strike recall petition pages based upon a misrepresentation argument. There is no similar provision in Wis. Stat. § 8.15 regarding nomination papers for partisan office, nor in Wis. Adm. Code GAB §2.05 regarding the treatment and sufficiency of nomination papers.

The candidate objects to the characterization of his nomination paper circulation process and challenges the credibility of witnesses put forth by the challenger. Based upon what has been presented by the challenger thus far, this disputed record, and the clearly stated written purpose of the Nomination Paper for Partisan Office, staff recommends that the Board deny this challenge because the challenger has not presented sufficient evidence to meet a clear and convincing burden of proof to rebut the presumption of validity of these signatures. Wis. Adm. Code GAB §§ 2.05(4) and 2.07(3)(a) and (4).

The challenger alleges that the residency of the circulator cannot be discerned on pages 48, 49, 59 and 134. "No signature may be counted when the residency of the circulator cannot be determined by the information given on the nomination paper." Wis. Adm. Code GAB § 2.05(14). Wis. Adm. 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." Staff recommends that the Board deny the challenges to pages 48-49, and 59 because the candidate himself signed as circulator and his complete address is legible. Staff also recommends that the Board deny the challenge to page 134 even though the circulator only listed his street address but not his apartment number or municipality, because the municipality of residence for the circulator, the candidate himself, can be found in the heading of the nomination paper.

The challenger alleges that the signatures on p. 22, lines 7-8 were signed by the same person, as well as the signatures on p. 91, lines 8-10. In support, the challenger only alleges that "the handwriting style on the face of the paper" indicates that a single person signed and provides no other evidence. Staff recommends that the Board deny these challenges as the challenger has not presented evidence to

meet the clear and convincing burden of proof to rebut the presumption of validity of these signatures. Wis. Adm. Code GAB §§ 2.05(4) and 2.07(3)(a) and (4).

The challenger alleges that 2 signers signed the candidate’s nomination papers more than once and 3 signers had already signed nomination papers for a separate candidate for the 1st Congressional District. Only one signature per person for the same office is valid. Wis. Adm. Code GAB § 2.05(11). Staff recommends that the Board deny the challenge for duplicate signatures at p. 65, line 10 and p. 110, line 10 because they are not identical and sustain the challenge at p. 2, line 1, invalidating the duplicate signature at p. 36, line 10. Staff also recommends that the Board sustain the challenges to the signatures at p. 26, line 6, p. 59, line 9, and p. 92, line 4 because the challenger has met the burden of proof and there is no rebuttal.

The challenger alleges that 3 signatures are missing, 30 signatures have missing or incomplete dates, 32 signatures are missing information such as an address or municipality of residence, and 17 printed names are illegible. Wis. Stat. § 8.40(1) and Wis. Adm. Code GAB § 2.05(15)(a) require a date that each elector signed the nomination papers, “unless the date can be determined by reference to the dates of other signatures on the paper.” Furthermore, Wis. Stat. § 8.15(2) and Wis. Adm. Code GAB § 2.05(12) require a complete address and street number (or postal address if it is located in the district that the candidate seeks to represent) for each signature on a nomination paper.

Staff thoroughly reviewed all of these specific challenges. As documented in the Challenge Worksheet that follows this Memorandum, staff rejected all but 9 challenges at p. 22, line 4, p. 36, line 3, p. 47, line 5, p. 56, line 1, p. 67, line 5, p. 71, lines 4-5, p. 77, line 6, p. 79, line 1.

Staff recommends that the Board deny all other challenges and verify that the candidate has 1,100 valid nomination paper signatures.

Response of Candidate Ryan: On June 6, 2014, Candidate Ryan filed a verified response fully explaining his process for obtaining nomination paper signatures and swearing that there was no misrepresentation or fraud involved. The remainder of his response essentially asserts defenses that follow what staff has already recommended regarding the vast majority of the signature challenges.

Recommended Motion: Deny challenges to all pages for alleged misrepresentation and fraud because the challenger has not presented sufficient evidence to meet the clear and convincing burden of proof; sustain challenges to the signatures found at p. 2, line 1 (invalidating the duplicate signature at p. 36, line 10), p. 22, line 4, 26, line 6, p. 36, line 3, p. 47, line 5, p. 56, line 1, p. 59, line 9, p. 67, line 5, p. 71, lines 4-5, p. 77, line 6, p. 79, line 1 for the reasons stated above; deny all other challenges; verify a total of 1,100 valid signatures; grant ballot access; and direct staff to prepare and issue a Findings and Order consistent with this motion.

11. Jim Macken Complaint against Frank Lasec, Republican Candidate for the 1st Senate District
G.A.B. Case No. EL 14-16

Signatures required for office: 400
Signatures challenged: 581
Signatures initially approved: 581

Staff assigned: Nathan W. Judnic

The complaint alleges that the Declaration of Candidacy (GAB-162) filed by the candidate does not contain his valid, legal residence as defined by Wisconsin law and therefore the nomination papers submitted by the candidate do not contain his legal address of residence as the address on all nomination papers is the same address contained on his GAB-162.

Candidate Lasee filed a verified response with the Board on June 9, 2014, in the form of a letter addressed to the Board and a sworn affidavit.

The Wisconsin Constitution provides that no person shall be eligible to hold office in the legislature unless they have resided one year within the state and are a qualified elector in the district which they are chosen. Wis. Const. art. IV, § 6. A qualified elector in Wisconsin is a U.S. Citizen, age 18 or older who has resided in an election district for 28 consecutive days before any election where the citizen offers to vote and is not otherwise disqualified. Wis. Stats. §§ 6.02(1)-(2) and 6.03(1)-(3). Residence requires a physical presence along with the intent to make that presence the elector's residence for the purpose of voting. See generally, Wis. Stat. § 6.10(1) and 60 Op. Atty. Gen. 214 (1971). A person does not lose residence by leaving for a temporary purpose with an intent to return to their prior residence. Wis. Stat. § 6.10(5).

The declaration of candidacy signed by candidates for the legislature includes the sworn statement that they meet, or will meet at the time they assume office, the applicable age, citizenship, residency and voting qualification requirements, if any, prescribed by the constitutions and laws of the United States and the State of Wisconsin, and that they will otherwise qualify for office, if nominated and elected. See form GAB-162-Declaration of Candidacy.

The complaint relies heavily on the following alleged facts to establish that Candidate Lasee does not presently maintain a residence at 1645 Swan Road, PO Box 5403, De Pere, WI – the address Candidate Lasee provided on his declaration of candidacy and nomination papers:

- Candidate Lasee owns a home at 1003 Orchard Street in Racine, Wisconsin.
- Candidate Lasee's wife and children reside at 1003 Orchard Street in Racine, Wisconsin.
- In addition to the 1003 Orchard Street property in Racine, Candidate Lasee owns other properties in Racine, Wisconsin.

Candidate Lasee's Response. Candidate Lasee's response affidavit asserts, and an exhibit attached by the complainant (Complainant Exhibit, A-3) supports the statement, that he does not own the house at 1003 Orchard Street. The property records show the owner of the property as "Amy J. Larsen" which according to the affidavit, is Candidate Lasee's wife. Candidate Lasee's response affidavit admits that his wife currently lives in Racine in a house that predates their marriage at 1003 Orchard Street. Candidate Lasee's response affidavit asserts that his children do not live in Racine and only his wife's children in fact live in Racine and therefore the allegations set forth in the complaint to that effect are untrue. Candidate Lasee's response affidavit states that he and his wife own three income properties in Racine, Wisconsin and the business records and mailings related to these properties are sent to and maintained at his wife's address, 1003 Orchard Street in Racine. Candidate Lasee's response affidavit states that he nor his wife have ever resided at any of the Racine rental properties and that he does not, nor does he intend to make Racine, Wisconsin his place of residence.

In addition to the information provided above, Candidate Lasee provided the following evidence supporting his sworn assertion that he is a current resident of the Town of Ledgeview, with an address of 1645 Swan Road, De Pere, Wisconsin:

- Sworn statement indicating that 1645 Swan Road, De Pere, Wisconsin is his primary, address is and has been his permanent residence since August 2011.
- Sworn statement indicating that he has no intention to move from this address.
- Sworn statement indicating that he has shared custody of his three children and that when his children stay with him, they do so at his primary residence at this address.
- Sworn statement that his children either formerly or currently attend school in the East De Pere or West De Pere School Districts.
- Sworn statement that because of child custody arrangements, Candidate Lasee and his wife maintain their respective residences so that they can spend as much time with their children as possible.
- Sworn statement that Candidate Lasee and his wife make time to see each other and each other's children, through all too brief temporary stays in both Racine and De Pere.
- True and correct copy of Candidate Lasee's voting history (Lasee Affidavit, Exhibit A) showing his residence to be the Town of Ledgeview since September 14, 2010.
- True and correct copies of past lease agreements and a proposed lease agreement with Toonen Companies, Inc. for his residence (Lasee Affidavit, Exhibits B-D).
- Sworn statement that Candidate Lasee intends to renew his current lease.
- True and correct bank statements showing monthly rent payments to Toonen Companies, Inc. (Lasee Affidavit, Exhibit E).
- True and correct copies of Certificates of Vehicle Registration in the name of Candidate Lasee or his wife in the address of 1745 Swan Road, De Pere, Wisconsin. Candidate Lasee indicates the address on these certificates (1745 vs. 1645) is due to a data entry error (Lasee Affidavit, Exhibit F).
- True and correct copy of Candidate Lasee's Wisconsin-issued Concealed Carry License listing his De Pere address.

Candidate Lasee provided his 1645 Swan Road, #7, De Pere, WI address on his nomination papers, as well as his declaration of candidacy. The complaint concludes that because Candidate Lasee's declaration of candidate is void for failure to list his legal residency, all nomination papers submitted are then also invalid because the addresses are the same on both documents.

In addition to the analysis and evidence discussed above, the information a candidate provides on a nomination paper is presumed to be valid. "Any information which appears on a nomination paper is entitled to a presumption of validity." Wis. Admin. Code GAB § 2.05(4). "The burden is on the challenger to establish any insufficiency." Wis. Admin. Code GAB § 2.05(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. Admin. Code GAB § 2.07(4).

Board staff does not believe the challenger has met the burden of clear and convincing evidence to establish that Candidate Lasee's declaration of candidacy and nomination papers contain an address for which he does not live. To the contrary, Candidate Lasee has provided sworn statements and documentary evidence that indicates he does in fact reside at 1645 Swan Road,

De Pere, Wisconsin. Therefore, Board staff recommends the Board grant ballot status to Candidate Lasee.

Recommend Motion: The Board accepts the declaration of candidacy filed by Candidate Lasee as valid, verifies a total of 581 signatures, dismisses the complaint in its entirety and grants ballot status to Candidate Lasee.

12. Joel Gratz Complaint against Isaac Weix, Republican Candidate for the 92nd Assembly District
G.A.B. Case No. EL 14-17

Signatures required for office: 200
Signatures challenged: 285
Signatures initially approved: 285

Staff assigned: Nathan W. Judnic

The complaint alleges that the candidate listed an address within the 92nd State Assembly District on his nomination papers but then voted on April 1, 2014 from a different address. The complaint also alleges that the nomination papers of the candidate contained an address of a bed and breakfast for which the complainant has reason to believe the candidate does not live. Based on these irregularities, the complaint alleges the candidate falsified his nomination papers and the circulator certification and therefore all nomination papers submitted with this information should be rejected. Candidate Weix filed a verified response to the complaint on June 9, 2014.

Wis. Stats. §§ 8.15(5)(a) and (b), outline the information required on the caption 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.

(b) Each candidate shall include his or her mailing address on the candidate’s nomination papers.

Relevant to this complaint, the nomination paper caption must contain the address provide by the candidate on their declaration of candidacy in which they swear to the accuracy of their present address and that they meet or will meet all applicable ballot access requirements. Candidate Weix provided the Lovely Rd. address on both documents.

Candidate Weix’s verified response contains a sworn affidavit from Jennifer Toftness on behalf of Candidate Weix. The response asserts that Candidate Weix does in fact live at S 683 Lovely

Road, Mondovi, WI which is the address that appears in the caption of his nomination papers. As attachments to his response, Candidate Weix provides a copy of his current lease, dated April 1, 2014, as well a copy of a check written to his landlord and the corresponding bank statement which shows the check being cashed by his bank. The residential lease is between the parties of “It’s Our Properties” and “Isaac Weix” at the address of “S 683 Lovely Rd Mondovi, WI 54755.” The lease contains a signature for both the landlord and the tenant, dated April 1, 2014. The check copy shows a check being written to “It’s Our Properties” on April 1, 2014 for \$200.00 with a notation of “APR RENT” in the memo lines of the check. The bank statement shows a \$200.00 check, #1523 being drawn from the account on April 22, 2014.

Candidate Weix provided a response to the challenger’s allegation that he voted from an address different than the address provided on his nomination papers. Wis. Stats. §§ 6.02(1) and (2) generally describe the qualifications to vote – U.S. Citizen, 18 years or older, resides in an election district or ward for 28 consecutive days before any election. Wis. Stat. § 6.02(2) specifically relates to individuals that move into a district but are unable to meet the 28 consecutive day requirement of s. 6.02(1) and states in relevant part, “Any U.S. citizen age 18 or older who moves within this state late than 28 days before an election shall vote at his or her previous ward or election district if the person is otherwise qualified.” In his response, Candidate Weix indicated that at the time of the April 1, 2014 election, he had not resided at the Mondovi address (Lovely Rd.) for the required 28 days. Therefore he voted from an address, different than the address contained on his nomination papers and declaration of candidacy filed for this office.

The complaint also alleges that the address used by Candidate Weix is that of a bed and breakfast and that based on that information, he does not believe Candidate Weix lives at that address. The complaint provides no other evidence to support this allegation. Board staff does not believe the challenger meets the requisite burden of proof for this allegation.

In addition to the analysis above, the information a candidate provides on a nomination paper is presumed to be valid. “Any information which appears on a nomination paper is entitled to a presumption of validity.” Wis. Admin. Code GAB § 2.05(4). “The burden is on the challenger to establish any insufficiency.” Wis. Admin. Code GAB § 2.05(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. Admin. Code GAB § 2.07(4).

Board staff does not believe the challenger has met the burden of clear and convincing evidence to establish that Candidate Weix’s nomination papers contain an address for which he does not live. To the contrary, Candidate Weix’s verified response provides evidence (lease, copy of check to landlord and bank statement showing check was cashed by landlord) that he does in fact live at the address that was contained on his nomination papers. Additionally, the difference in the addresses between his nomination papers and where he voted at the April 1, 2014 election is reasonable and supported by the statutes.

Recommended Motion: The Board verifies a total of 285 signatures, dismisses the complaint in its entirety and grants ballot status to Candidate Weix.

13. Joel Gratz Complaint against Michael LaForest, Green Party Candidate for the 47th Assembly District
G.A.B. Case No. EL 14-18

Signatures required for office: 200
Signatures challenged: 284
Signatures initially approved: 284

Staff assigned: Shane W. Falk

The complaint alleges that the Campaign Finance Registration Statement (GAB-1) filed by the candidate identifies him as an “independent” while the heading of his nomination papers identify him as a representative of the “Green Party” and that the candidate identifies his residency in Madison when it actually is the Town of Blooming Grove, therefore all 284 signatures on the nomination papers submitted by the candidate are invalid.

The complaint also alleges that 10 pages of nomination papers containing 100 signatures do not properly contain “Nomination Paper for Partisan Office” in the heading and also do not contain a complete Certification of Circulator, therefore those 100 signatures are also invalid for these additional reasons.

In addition, the complaint alleges various insufficiencies regarding certain individual signatures including 11 signatures obtained from individuals that do not reside in the 47th State Assembly District, 1 signature that appears to have been signed by someone other than the named signer, and a missing municipality of residence for a circulator on page 9, affecting 10 signatures.

The complaint challenges all 29 pages of the candidate’s nomination papers containing 284 signatures and alleges that those pages put electors on notice that the candidate a representative of the “Green Party,” when the candidate’s Campaign Finance Registration Statement (GAB-1) identifies the candidate as an “Independent.” 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).” In addition to filing sufficient nomination papers, Wis. Stat. § 8.15(4)(b) requires each candidate to file a Declaration of Candidacy (GAB-162) under Wis. Stat. § 8.21 and a Campaign Finance Registration Statement (GAB-1) under Wis. Stat. § 11.05. Wis. Stat. § 8.30(2) provides that if a candidate does not file a GAB-1 (and GAB-162) by the applicable deadline for filing nomination papers, the name of the candidate may not appear on the ballot. Staff reviewed the candidate’s Declaration of Candidacy, which identifies him as a representative of the Green Party. Every nomination paper clearly designates the candidate as a representative of the Green Party. The Declaration of Candidacy and Campaign Finance Registration Statement were both filed on January 14, 2014. Assuming the candidate has a sufficient number of valid nomination paper signatures, he has filed the necessary documents for ballot access pursuant to Wis. Stat. § 8.30(2). While the Board has discretion to deny ballot access for failure to timely file a Campaign Finance Registration Statement, this candidate has properly and timely done so. While the candidate’s GAB-162 is consistent with this nomination papers, he should amend his GAB-1 to properly reflect the designated party as the “Green Party.” Staff recommends that the Board deny this challenge.

The complaint challenges 10 pages of the candidate’s nomination papers because the copied form does not include “Nomination Paper for Partisan Office” and several letters on the left margin of the circulator’s certification are missing. Wis. Stat. § 8.15 governs “Nominations for partisan primary” and Wis. Stat. § 8.15(5)(a) provides that each nomination paper shall have substantially the following words, among others, printed at the top: “be placed on the ballot at the (general or special) election.” Furthermore, Wis. Stat. § 8.40(1) provides that in addition to any other requirements provided by law, each separate sheet of each petition for an election, including a referendum, shall have on the face at the top in boldface print the word “PETITION.” In addition, Wis. Stat. § 8.15(4)(a) and Wis. Adm. Code GAB § 2.05(14) requires a completed certification of circulator on each nomination paper, otherwise no signature shall be counted.

Pursuant to Wis. Stats. §§ 5.05(1) and (1)(f), 8.07, and 8.40(3), the G.A.B. has in place administrative rules found in the Wis. Adm. Code GAB ch. 2 regarding the form and treatment of election related petitions. The G.A.B. has also adopted a form entitled “Nomination Paper for Partisan Office” (GAB-168), which should be prescribed by administrative rule in Wis. Adm. Code GAB ch. 25. The required form for nominations for partisan office, GAB-168, includes “Nomination Paper for Partisan Office” in bold at the very top, such that signers clearly know what they are being asked to sign. In addition, the GAB-168 includes a full certification of circulator at the bottom. Wis. Adm. 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.”

In its initial and second review of the candidate’s nomination papers, staff identified the irregularities concerning the title and certification of circulator on the 10 pages that have now been challenged (pp. 6, 13-17, and 19-22 containing 100 signatures.) (Staff notes that the other 19 pages of the candidate’s nomination papers have fully visible headings and certification of circulators.) Staff initially determined that the nomination papers substantially complied with the statutory and rule requirements for the heading and certification of circulator and counted the 100 signatures contained thereon as valid.

Upon review of the challenge, staff believes that the Board could find that substantial compliance has been met with respect to the header because all other information in the header is present and adequately identifies the November 4, 2014 General Election for Assembly District 47, which clearly is a partisan election. Furthermore, the statement of the signing electors specifically states that they “request that the candidate, whose name and address are listed above, be placed on the ballot at the election described above” . . . “so that voters will have the opportunity to vote for him for the office listed” and the electors must also attest that they “have not signed the nomination paper of any other candidate for the same office at this election.” This information adequately provided in the heading provides the signing elector with due notice that this is a nomination paper for a partisan election.

Upon review of the challenge, staff believes that the Board could find that substantial compliance has been met with respect to the certification of circulators. As noted above, only 10 pages have a partially missing certification of circulator on the left margin. A full 19 pages have the complete certification. In addition, the candidate himself circulated all 29 pages of his nomination papers and signed all 29 certifications of circulator. The candidate, as circulator, should be on adequate notice of the attestations and consequences found in the circulator certification.

The complaint challenges 11 signatures (one is a duplicate challenge however) because the signers reside outside the 47th State Assembly District, 1 signature because it appears the same person signed for another, and 10 signatures because the circulator did not list their municipality of residence in the certification of circulator. Pursuant to Wis. Stat. § 8.15(3), each signer on each separate nomination paper for a particular office shall reside in the district which the candidate named on the paper will represent, if elected. An elector shall sign his or her own name to a nomination paper. Wis. Adm. Code § 2.05(8). “No signature may be counted when the residency of the circulator cannot be determined by the information given on the nomination paper.” Wis. Adm. Code GAB § 2.05(14). Note however that the residence requirement for nomination paper circulators as applied to Wisconsin residents who circulate papers outside the political subdivision in which they reside and to nonresidents violates the First Amendment right of free speech. *Frami v. Ponto*, 255 F.Supp.2d 962 (2003). Finally, any information which appears on a nomination paper is entitled to a presumption of validity, which may only be overcome when a challenger presents evidence that meets the clear and convincing evidence burden of proof. Wis. Adm. Code GAB §§ 2.05(4) and 2.07(3)(a) and (4).

Staff researched the addresses for each of the 21 signatures for which the challenge alleges the address is outside the 47th State Assembly District by entering the information in MyVote (SVRS application.) If the address was not found in MyVote, staff next entered the information directly into SVRS. Finally, if the address was not found in SVRS, staff entered the information into WhitePages.com. At each step, staff performed a minimum of 3 separate searches. As documented in the Challenge Worksheet that follows this Memorandum, staff denied the out-of-district challenges to 2 signatures and sustained the out-of-district challenges to 9 signatures, leaving the candidate with only 156 valid signatures.

Staff recommends denying the challenge to the signature at p. 10, line 3 because the challenger has presented no evidence to rebut the presumption of validity, let alone clear and convincing evidence that a person signed for another. Staff also recommends that the Board deny the challenge to the p. 9, lines 1-10 because the municipality of residence for the circulator, the candidate himself, can be found in the heading of the nomination paper.

Response of Candidate LaForest: None received.

The Board has at least two separate options regarding resolution of this complaint. Staff proposes the following motions, all three of which assume a denial of the challenge to all nomination papers based upon the “Green Party” designation in the headers. Motion number 1 also assumes a denial of the challenge to 10 nomination paper pages based upon an incomplete heading and circulator certification. Motion number 2 sustains the challenge to 10 nomination paper pages and invalidating 100 signatures based upon an incomplete heading and circulator certification.

Recommended Motion #1: Deny challenges to the signatures on all 29 pages (containing 284 signatures) due to the designation of “Green Party” in the heading; deny challenges to pp. 6, 13-17, and 19-22 (containing 100 signatures) because the candidate substantially complied with the heading and certification of circulator legal requirements; sustain challenges to 9 signatures at p. 1, lines 8 and 10, p. 4, lines 1, 3, 5, p. 12, line 3, p. 15, lines 1-2, p. 29, line 7 because the address is outside the 47th State Assembly District but deny challenges to the signature at p. 11, line 10 because the address falls within the district; deny the duplicate challenge to the signature at p. 29,

line 7; deny the challenge to the signature at p. 3, line 10 because the challenger has not met the clear and convincing burden of proof; deny the challenges to the 10 signatures at p. 9, lines 1-10 because the circulator's municipality of residence is known from the heading; verify a total of 275 valid signatures, approve ballot access, and direct staff to prepare and issue a Findings and Order consistent with this motion.

Recommended Motion #2: Deny challenges to the signatures on all 29 pages (containing 284 signatures) due to the designation of "Green Party" in the heading; sustain challenges to pp. 6, 13-17, and 19-22 (containing 100 signatures) because the candidate did not substantially comply with the heading and certification of circulator legal requirements; sustain challenges to 9 signatures at p. 1, lines 8 and 10, p. 4, lines 1, 3, 5, p. 12, line 3, p. 15, lines 1-2, p. 29, line 7 because the address is outside the 47th State Assembly District but deny challenges to the signature at p. 11, line 10 because the address falls within the district; deny the duplicate challenge to the signature at p. 29, line 7; deny the challenge to the signature at p. 3, line 10 because the challenger has not met the clear and convincing burden of proof; deny the challenges to the 10 signatures at p. 9, lines 1-10 because the circulator's municipality of residence is known from the heading; verify a total of 175 valid signatures, deny ballot access, and direct staff to prepare and issue a Findings and Order consistent with this motion.

14. Michael Basford Complaint against Brett Hulsey, Democratic Candidate for Governor
G.A.B. Case No. EL 14-19

Signatures required for office: 2000
Signatures challenged: 404
Signatures initially approved: 2131

Staff assigned: Pauline Shoemaker

The complaint alleges that 16 pages totaling 85 signatures were circulated by individuals with felony convictions and that an additional 319 signatures are invalid because the signer's municipality appears to have been written by someone other than the signatory.

Candidate Hulsey filed a verified written response on June 9, 2014. The response questioned the constitutionality of the printed legible name requirement.

The complaint challenges 16 pages containing 85 signature on the basis that the circulators of these pages are individuals with felony convictions. Wis. Stat. § 8.15(4)(a) requires a circulator to attest "that he or she, the circulator, is a qualified elector of this state." Wis. Stat. § 304.078(3) provides that an individual disqualified for voting as a result of a felony conviction has his or her right to vote restored when he or she completes the term of imprisonment or probation for the crime that led to the disqualification. Staff believes that this permits an individual with a felony conviction to circulate nomination papers, so long as his or her right to vote has been restored. Of the 4 circulators alleged to have felony convictions, staff verified with the Department of Corrections that 3 have completed their probation and are qualified electors. 1 circulator remains on active supervision. Staff thus recommends denying the challenge as to the 3 circulators who have completed their probations and sustaining the

challenge as to the 1 circulator who remains on supervision, invalidating 57 signatures collected by this circulator.

The complaint challenges 319 signatures on 37 pages, alleging that the signer’s municipality appears to have been written by someone other than the signatory. In guidance issued to clerks on April 11, 2014, staff noted that in applying the statutes and administrative rules, the Board and staff has previously required that the individual signing a nomination paper must be the one to make the signature, but that other information such as the street address and date of signing could be completed by the circulator as well as the signer. Staff recommends denying this challenge.

Recommended Motion: Sustain the challenge as to 57 signatures collected by 1 circulator with a felony conviction, dismiss the challenge to 3 other circulators with felony convictions, dismiss the challenge to the signers’ municipality entries, verify 2074 signatures, grant ballot access for Candidate Hulsey, and direct staff to prepare and issue a Findings and Order consistent with this motion.

15. Shae Sortwell Complaint against Eric Wimberger, Republican Candidate for the 90th Assembly District
G.A.B. Case No. EL 14-19

Signatures required for office: 200
Signatures challenged: 236
Signatures initially approved: 236

Staff assigned: Pauline Shoemaker

The complaint alleges that the nomination papers are missing office title and candidate residence information in the header, making all the nomination papers invalid. In addition, the complaint alleges that the circulator’s address is incorrect on all 25 pages and that the date of certification is incomplete on one page. The complaint also alleges various deficiencies of individual signatures including signers who had previously signed papers for another candidate for the same office, signers with an invalid address, signers who do not reside in the district, signatures by individuals with felony convictions, and signatures with an incomplete date, for an additional 36 invalid or incomplete signatures.

Candidate Wimberger filed a verified written response on June 9, 2014. Candidate Wimberger noted that his zip code, as listed on his nomination papers in both the header and circulator statement for the pages he personally circulated, is 54301, not 54201 as stated in the complaint. In addition, Candidate Wimberger stated that circulator Rachel Rose, who provided the address of the Brown County Human Services Building, is homeless, and uses this address as her mailing address. Candidate Wimberger also provided an affidavit from the circulator to this effect.

The complaint challenges all 25 pages of the candidate’s nomination papers containing 236 signatures and alleges that those pages do not contain a complete residence or mailing address for the candidate. The complaint also challenges 18 pages circulated by the candidate on the same basis. The complainant seeks to have all 236 signatures on these 25 pages declared invalid because the candidate’s address does not contain an apartment number.

Wis. Stat. § 8.15 governs “Nominations for partisan primary” and Wis. Stat. § 8.15(5)(a) provides that each nomination paper shall have substantially the following words, among others, printed at the top: the candidate’s residential street address. In addition, Wis. Stat. § 8.15(5)(b) requires each candidate include his or her mailing address on the nomination papers. The zip code noted in the complaint is not the zip code in the header of the papers. Candidate Wimberger provided evidence that the address in the header is his actual address. Staff recommends denying this challenge.

The complaint challenges all 25 pages of the candidate’s nomination papers containing 236 signatures and alleges that those pages do not contain the correct title of the office sought. Where title of office is sought, Candidate Wimberger listed “Assembly 90th” instead of “Representative to the State Assembly” and the complaint alleges that all signatures on the pages with this “error” should not be counted. Board staff disagrees with this assessment, concluding that “Assembly” is interchangeable with and commonly understood to mean “Representative to the State Assembly.” This constitutes substantial compliance pursuant to GAB § 2.05, and Candidate Wimberger’s papers are sufficient with regards to the title of the office sought.

The complaint challenges all 25 pages of the candidate’s nomination papers because the candidate hole-punched the pages, alleging that the language at the top of the pages contains gaps such that signers would be not be fully informed as to what they were signing. The gaps appear in the captions of the candidate’s name and address boxes; however, the candidate’s name, address, and municipality are not obscured, and the signer’s statement requesting the candidate to be placed on the ballot is fully present. Board staff believes that this constitutes substantial compliance pursuant to Wis. Adm. Code GAB § 2.05.

The complaint challenges 4 pages containing 34 signatures, alleging that the circulator’s address is not a residential address. Wis. Stat. § 8.15(4)(a) states in relevant part, “The certification of a qualified circulator stating his or her residence with street and number, if any, shall appear at the bottom of each nomination paper.” Upon reviewing the complaint, staff determined that the address provided by the circulator is the Brown County Human Services Building. The complaint also alleges that the circulator’s personal signature on the nomination papers is invalid for the same reason. However, Candidate Wimberger’s response indicates that the circulator is homeless and uses this address as her mailing address. Candidate Wimberger also provided a sworn affidavit from the circulator to this effect. Staff therefore recommends denying the challenge to the circulator’s address on pages 16-18 and 25 and the circulator’s personal signature on page 11, line 8.

The complaint challenges 1 page containing 10 signatures, alleging that the page does not include a valid circulation date as required by Wis. Stat. § 8.15(4)(a). Staff believes that the date on page 7 is “30 May 2014,” although the second zero is very small, and that this constitutes substantial compliance with the statutory requirements.

The complaint challenges 6 signatures as duplicates, 8 signatures as signers who reside out of the 90th Assembly District, 3 signatures as containing invalid addresses, and 1 signature as omitting the date of signing. Wis. Stat. § 8.15(2) and Wis. Admin. Code GAB § 2.05(11) in relevant part both state that “only one signature per person for the same office is valid.” The complaint provided evidence that 6 individuals signed papers for the complainant prior to signing Candidate Wimberger’s papers. As documented in the Challenge Worksheet that follows this Memorandum, staff reviewed the complainant’s nomination papers and recommends

striking the 6 signatures at page 14, lines 5 and 8, page 21, line 9, and page 24, lines 3-4 and 6 from Candidate Wimberger's papers.

Upon reviewing the complaint, and after conducting a verification via the My Vote Wisconsin function of SVRS, Board staff determined that 7 challenged signatures at page 4, lines 2, 6, and 7, page 16, line 6, page 19, lines 4 and 6, and page 22, line 4 are of individuals residing outside the 90th Assembly District and that 1 signature challenged as out-of-district, at page 21, line 1, does not exist. For a signature to be counted, a signer of the nomination papers for the office of Representative to the Assembly must reside in the jurisdiction or district which the candidate named on the paper will represent, if elected. Wis. Stat. § 8.15(3). As documented in the Challenge Worksheet that follows this Memorandum, board staff recommends sustaining the challenges as to these 8 signatures.

The complaint also alleges that three signers' addresses are invalid. Candidate Wimberger states in his response that "Uni Ave," as provided at page 17, line 7, is a common abbreviation for "University Ave." This address is valid and within the 90th Assembly District. The complainant provides evidence that the other two addresses, at page 9, line 3, and page 11, line 10 do not exist. Staff recommends rejecting the challenge as to the University Ave address and sustaining the challenge as to the other 2 addresses.

The complaint alleges that one signature, on page 8, line 10, omitted the date; however, this signature is bracketed by signatures with the correct date. GAB § 2.05(15)(a) allows for a signature to survive an incomplete date challenge if "the date can be determined by reference to the dates of other signatures on the paper."

The complaint challenges 17 signature on the basis that the signer is not a qualified elector due to a felony conviction. The complaint alleges that 17 signatures are from individuals with felony convictions. Wis. Stat. § 304.078(3) provides that an individual disqualified for voting as a result of a felony conviction has his or her right to vote restored when he or she completes the term of imprisonment or probation for the crime that led to the disqualification. Of the 17 circulators alleged to have felony convictions, staff verified with the Department of Corrections that 13 have completed their probation. Of these, staff had already recommended striking one signature on other grounds. Staff verified that 4 signers remain on active or extended supervision. Staff thus recommends sustaining the challenge as to 4 signatures at page 2, line 2, page 3, line 8, page 20, line 4, and page 25, line 4 and rejecting the challenge as to the 12 remaining valid signatures.

Recommended Motion: Deny the challenges to the candidate's address, office title, and circulated pages; deny the circulation sufficiency challenge to pages 16-18 and 25 and the circulator's signature at page 11, line 8, sustain challenge to 6 duplicate signatures at page 14, lines 5 and 8, page 21, line 9, and page 24, lines 3-4 and 6, sustain challenge to 7 addresses outside the district at page 4, lines 2, 6, and 7, page 16, line 6, page 19, lines 4 and 6, and page 22, line 4, sustain the challenge to 3 addresses that appear not to exist at page 9, line 3, page 11, line 10, and page 21, line 1, sustain 4 challenges to signers with felony convictions, deny challenge to 12 remaining individuals with felony convictions, verify 216 signatures, grant ballot access, and direct staff to prepare and issue a Findings and Order consistent with this motion.

16. Joel Gratz Complaint against David Scott Espeseth, Republican Candidate for the 7th Assembly District
G.A.B. Case No. EL 14-21

Signatures required for office: 200
Signatures challenged: 400
Signatures initially approved: 400

Staff assigned: Nathan W. Judnic

The complaint alleges that the candidate’s nomination papers were circulated prior to the candidate filing a Campaign Registration Statement (GAB-1) with the Board on May 30, 2014. The complaint further alleges that the candidate had formed the intent to be a candidate on March 20, 2014 and did not register at that time. The complaint also alleges that the candidate distributed campaign literature in “mid-April” which demonstrated his intent to be a candidate in addition to the spending of money prior to registration. Additionally, the complaint alleges that a “paid for by” disclaimer contained on a piece of campaign literature was fraudulent as no such committee or campaign was registered or existed at the time the literature was distributed and obtained. The complaint requests the Board investigate to determine if the candidate’s actions were intentional violations of campaign finance law and subject to criminal prosecution. Candidate Espeseth filed a verified response to the complaint on June 9, 2014.

Upon reviewing the complaint, Board staff does not believe any of the allegations raised against Candidate Espeseth are a bar to achieving ballot status if all other ballot access requirements have been met. While the complaint alleges, and provides some evidence of potential campaign finance law violations under Wis. Stats. chs. 11 and 12, the ballot access statutes do not provide for ballot status denial as a consequence of such violations. Candidate Espeseth’s verified response makes a similar argument in that the complaint does not allege any violations of statute or the administrative code that governs ballot access. In the past, the Board has consistently accepted this analysis presented by the Board staff. In Candidate Espeseth’s verified response, he provides the same recollection of the Board’s prior actions on this topic, stating, “To the best of the knowledge of the Respondent, denying ballot access to a candidate based on his/her failure to file a campaign registration statement, GAB-1, before circulating nomination papers would be an unprecedented step by the Board.” Candidate Espeseth’s response goes on to provide an example of nomination papers accepted by the Board staff on June 2, 2014 for candidate Gary L. Stene, Democratic Candidate for the 67th Assembly District. Mr. Stene’s campaign registration statement was filed on June 2, 2014 (the same day he filed his nomination papers). A review of Mr. Stene’s nomination papers reveal that signatures were obtained prior to the date on which he filed his GAB-1. While no allegation that Mr. Stene expended any campaign funds prior to his GAB-1 being filed, the point is well taken that the Board, for purposes of ruling on a ballot access challenge, permits a candidate to circulate nomination papers prior to filing a GAB-1.

Wis. Stat. § 8.15(4)(b) provides that if a candidate has not filed a campaign registration statement prior to the time of filing nomination papers, “the candidate shall file the statement with the papers.” Wis. Stat. § 8.21(1) provides that each candidate shall file a declaration of candidacy “no later than the latest time provided for filing nomination papers.” The candidate “shall also file a statement of economic interests with the board under s. 19.43(4) no later than 4:30 p.m. on the 3rd day following the last day for filing nomination papers under sub. (1)...” Wis. Stat. §

8.15(4)(b). The deadlines for each of these ballot access documents and the date upon which Candidate Espeseth complied with each deadline is contained below.

Upon review of the ballot access filings made by Candidate Espeseth, Board staff found the following:

- Declaration of Candidacy was filed on March 24, 2014 (due date: June 2, 2014)
- Campaign Registration Statement was filed on May 30, 2014 (due date: June 2, 2014)
- Nomination Papers with 400 valid signatures were filed on May 30, 2014 (due date: June 2, 2014)
- Statement of Economic Interests was filed on June 4, 2014 (due date: June 5, 2014).

Candidate Espeseth filed all required ballot access documents for the 2014 Partisan Primary/General Election by the applicable statutory deadlines and therefore, despite the alleged campaign finance violations raised, Board staff recommends granting Candidate Espeseth ballot access.

Recommended Motion: The Board verifies a total of 400 signatures and grants ballot status to Candidate Espeseth. The Board further directs the staff of the Ethics and Accountability Division to review the alleged campaign finance violations raised by this complaint as well as the response, and follow standard Board policy and Wisconsin statutes governing the resolution of these types of allegations.

17. Laura Manriquez Complaint against JoCasta Zamarripa, Democratic Candidate for the 8th Assembly District
G.A.B. Case No. EL 14-22

Signatures required for office: 200
Signatures challenged: 148
Signatures initially approved: 307

Staff assigned: Shane W. Falk

The complaint alleges various insufficiencies regarding 149 individual signatures including incomplete address information. The candidate also timely submitted approximately 77 supplemental nomination paper signatures on June 2, 2014.

The complaint alleges various deficiencies of 149 individual signatures all dealing with signers who did not provide a complete address. Wis. Stat. § 8.15(2) and Wis. Adm. Code GAB § 2.05(12) require a complete address and street number (or postal address if it is located in the district that the candidate seeks to represent) for each signature on a nomination paper. However, Wis. Adm. 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.”

Staff reviewed and researched the addresses for each of the 149 signatures for which the challenge alleges the address is incomplete by entering the information in MyVote (SVRS application.) If the address was not found in MyVote, staff next entered the information directly

into SVRS. Finally, if the address was not found in SVRS, staff entered the information into WhitePages.com. At each step, staff performed a minimum of 3 separate searches. As documented in the Challenge Worksheet that follows this Memorandum, staff denied the incomplete address challenges to 135 signatures and sustained the incomplete address challenges (some of which ended up out-of-district) to 14 signatures, leaving the candidate with only 293 valid signatures.

Response of Candidate Zamarripa: On June 9, 2014, Candidate Zamarripa filed a verified response, challenging the timeliness of the challenger's complaint. Candidate Zamarripa seeks dismissal of the complaint upon that basis, in addition to having provided specific arguments against the specific individual challenges. Candidate Zamarripa's arguments closely follow the recommendations made by staff above.

On June 5, 2014, G.A.B. staff received an email complaint from the challenger. G.A.B. staff had arranged to accept electronic filings from any challenger; however, the electronically filed challenges still had to be verified (sworn.) In this case, the challenger had spoken to HelpDesk staff regarding submission of correcting affidavits for her own nomination papers and was told by G.A.B. staff that she could fax them in as long as she mailed them with a post mark by the deadline on 4:30 p.m. June 5, 2015. At the same time, the challenger was talking with another G.A.B. staffer about filing a complaint. Between the two conversations, the challenger believed that she could file the verified challenge in the same fashion. Immediately when staff received the unverified email challenge on June 5, 2014, the challenger was told she needed to submit a verified challenge. On June 6, 2014, staff was informed of the confusion from the day prior and Elections Division Administrator Michael Haas directed staff to forward the challenge to Candidate Zamarripa. As the challenger had stated on June 6, 2014, the G.A.B. received a verified challenge in the mail on Monday, June 9, 2014 (along with her original correcting affidavits for her nomination papers.)

Recommended Motion: Deny the incomplete address challenges to 135 signatures and sustain the incomplete address challenges (some of which ended up out-of-district) to 14 signatures found at p. 5, line 1, p. 13, lines 2, 6, and 8, p. 17, lines 4-5, p. 19, line 2, p. 22, lines 1-2, and 4, p. 24, line 8, p. 34, line 6, p. 37, line 6, p. 41, line 8; verify a total of 293 valid signatures; approve ballot access; and direct staff to prepare and issue a Findings and Order consistent with this motion.