

State of Wisconsin\Government Accountability Board

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MEMORANDUM

DATE: January 4, 2016

TO: Wisconsin County Clerks
Wisconsin Municipal Clerks
Milwaukee County Election Commission
City of Milwaukee Election Commission

FROM: Michael Haas
Elections Division Administrator

SUBJECT: Challenges to Nomination Papers

With tomorrow's deadline for the filing of nomination papers, the Government Accountability Board (G.A.B.) and local election officials may be required to review and process challenges to nomination papers. While challenges may be rare at the local level, the short timeline to process and resolve challenges requires timely attention and accurate resources. This memorandum highlights the key deadlines related to challenges and provides helpful resources you may consult in processing challenges.

DEADLINES AND GENERAL INFORMATION

The challenge process is governed by provisions of the Administrative Code, specifically GAB §2.07, Wis. Adm. Code. Please consult those rules if you receive any challenge documents or questions regarding challenges (http://docs.legis.wisconsin.gov/code/admin_code/gab/).

In 2016, the deadline for filing challenges to nomination papers is Friday, January 8, 2016. The deadline for a candidate to file a response to a challenge is three calendar days after the challenge is filed. Because of the weekend, any challenge filed after Tuesday, January 5, 2016 will result in a response deadline of Monday, January 11, 2016. Challenges must be resolved promptly as the following day, Tuesday, January 12, 2016, is the deadline for filing officers to draw names of candidates by lot for placement on the Spring Primary ballot and on the Spring Election ballot where no primary is required.

Pursuant to GAB §2.05(5), Wis. Adm. Code, "where a 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." Furthermore, any information on a nomination paper is entitled to a presumption of validity. GAB 2.05(4), Wis. Adm. Code. Both challenges and responses must be established by sworn affidavit, which may include supporting documentation. The burden is on the challenger to establish, by clear and convincing evidence, any insufficiency of the nomination papers and if the challenger does so, the burden

then shifts to the challenged candidate to establish that the nomination papers or any challenged signatures are sufficient. GAB 2.07(2) and (3).

While challenges are not limited to those described in the administrative rules, there are two general categories of challenges – challenges to the header of the nomination papers which would result in declaring all nomination papers using that header to be insufficient, and challenges to individual signatures which do not affect the validity of other signatures on the nomination papers.

COMMON CHALLENGES

Parties wishing to challenge nomination papers of state and federal candidates file such challenges with the G.A.B. Parties wishing to appeal a decision of a local election official regarding nomination papers or challenges related to local candidates may also file a complaint with the G.A.B. In either case, parties are reminded that the Board may, if it finds, by a preponderance of the evidence, that a challenge or complaint is frivolous, order the complainant to forfeit up to the greater of \$500 or the expenses incurred by the G.A.B. in investigating the complaint.

Over the years, G.A.B. staff and the Board have analyzed numerous types of challenges and developed a consistent methodology for resolving the most common challenges that have been filed. The remainder of this memorandum outlines common and anticipated challenges to nomination papers and the analysis the Board has applied in the past to evaluate and rule on challenges to nomination papers. The Board may certainly adopt different analyses and decisions in specific cases, but this memorandum is intended to inform local election officials, candidates and challengers regarding the legal reasoning previously approved by the Board and its staff, with the hope that parties can concentrate their efforts on challenges with a solid legal basis and to reduce the filing of frivolous challenges.

1. Candidate Information

None of the information in the heading of the nomination paper, (i.e., candidate's name, candidate's address, political party represented, date of election, office sought, name of jurisdiction or district in which candidate seeks office), may be altered, amended, or added after circulation of the nomination paper. This is the nomination information that each signatory saw and relied upon in deciding to sign the paper.

a. Office Title and District Designation

Challenge: Irregularities in the title of the office or the district number as required by Wis. Stat. §8.15(a).

Analysis: Staff has typically allowed for variances in listing the office title, such as “Assembly,” “Representative,” “State Assembly.” In the past, staff determined that the papers were sufficient as long as the electors could determine the office and district the candidate was pursuing by other information provided in the nomination paper heading. Additionally, where the title or district designation are illegible or in the incorrect boxes, staff have found these pages to substantially comply when the required information could be determined elsewhere in the nomination paper heading. The Board has approved these recommendations.

b. Election Date

Challenge: Incomplete date of election as required by Wis. Stat. §8.15(5)(a).

Analysis: When a date of election is completely missing from a petition, staff has recommended approving the challenge and striking the signatures on those pages. 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 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. The Board has approved these recommendations.

c. Candidate Address

Challenge: The candidate has not specified a municipality for voting purposes.

Analysis: The Board has rejected challenges to petitions where the candidate has not specified a municipality for voting purposes. Wis. Stat. §8.15(5)(b) provides that “[e]ach candidate shall include his or her mailing address on the candidate’s nomination papers,” but is silent with regards to inclusion of municipality for voting purposes. The established policy of the Board in reviewing nomination papers has been to find substantial compliance with Wis. Stat. §8.15 by presuming the validity of the information listed unless evidence to the contrary is presented. Absent such evidence, the municipality listed for voting purposes is presumed to be the same as the municipality listed for mailing purposes.

d. Candidate Certification

Challenge: The candidate has not completed the gender identification checkbox in the candidate certification statement.

Analysis: Staff has considered such an omission to be an oversight of a technical requirement and have considered papers that are otherwise correct to be in substantial compliance with statutory requirements. The Board has approved this recommendation.

e. Candidate Dates of Circulation

Challenge: The candidate circulated nomination papers prior to the date he or she filed a campaign registration statement or declaration of candidacy.

Analysis: Staff has recommended dismissing these challenges. 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 Board has approved these recommendations.

2. Circulator Information

a. Circulator Address

Challenge: The circulator's address, required by Wis. Stat. §8.15(4)(a), is insufficient because the circulator has not indicated type of municipality of residence (e.g., "Town of" or "City of").

Analysis: Staff has recommended dismissing these challenges. Wis. Stat. §8.15(4)(a) states in the relevant portion that "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, stating he or she personally circulated the nomination paper and personally obtained each of the signatures." There is no separate requirement that the circulator indicate the type of municipality of residence. The Board has approved these recommendations.

Challenge: The circulator's address, required by Wis. Stat. §8.15(4)(a), is insufficient because the circulator has not indicated the municipality of residence.

Analysis: Staff has recommended finding substantial compliance for papers missing the municipality in the circulator's address where the circulator is the candidate and where the missing information is supplied by reference to other information on the same page (e.g., the candidate's address in the nomination paper heading). The Board has approved this recommendation.

b. Circulator Date and Signature

Challenge: The date of certification is incomplete or incorrect, as required by Wis. Stat. §8.15(4)(a).

Analysis: The circulator may correct errors in the certificate of the circulator, such as the circulator failed to sign or otherwise complete the certificate, or entered inadvertently erroneous data (for instance: the circulator dated the certificate before circulation, not after). If the circulator has not corrected these errors by affidavit by the correction deadline, the challenge must be approved and the signatures on those pages struck. The Board has approved staff recommendations to this effect.

3. Elector Signatures

Only one signature per person for the same office is valid. In addition to his or her signature, in order for the signature to be valid, each signer of a nomination paper shall legibly print his or her name in a space provided next to his or her signature and shall list his or her municipality of residence for voting purposes, the street and number, if any, on which the signer resides, and the date of signing. Wis. Stat. §8.15(2).

a. Multiple Signatures

Challenge: The elector has signed nomination papers for more than one candidate for the same office.

Analysis: Where the elector has signed another candidate's papers prior to the signature on the challenged papers, the later signatures should be struck. The Board has approved this recommendation.

b. Signature

Challenge: The elector has "signed" with a printed name.

Analysis: Staff has typically allowed signatures where the name has been printed. Section GAB 2.05(8) requires that the elector "sign his or her own name;" the rule does not require that the signature be made in cursive. The dictionary definition of "signature" simply states that it is "the name of a person written with his own hand." The Board has also accepted a staff recommendation that signatures be permitted where both the "printed name" and "signature" have been printed.

Challenge: The elector's signature is illegible.

Analysis: Staff has recommended denying challenges that alleged that signatures are illegible. Wis. Stat. §8.15(2) requires each signer of a nomination paper to provide a signature and address. There is no requirement that a signature must be legible, and individual signers mark their signatures in a wide variety of ways (e.g., by marking an "X"). The Board has approved this recommendation.

c. Printed Name

Challenge: The elector's printed name is illegible or in cursive.

Analysis: Challenges to printed names were first considered and decided by the Board in 2014. The statutory requirement is that ". . . in order for the signature to be valid, each signer of a nomination paper shall legibly print his or her name in a space provided next to his or her signature . . ." Wis. Stat. §§8.10(4)(b) and 8.15(2).

There are some practical difficulties in determining an objective standard for a legibly printed name. For example, some signatures are clearly legible but the "printed name" may have been written in cursive, or included some letters that were not separated, as a dictionary definition of "printed" might require.

Based upon the G.A.B.'s experience in evaluating printed names on nomination papers, as well as the stated legislative intent of 2013 Act 160 and related administrative rules, the G.A.B. has developed standards and guidance for local election officials charged with reviewing nomination papers and other election petitions. The legislative record emphasized that the purpose of Act 160 was to preserve the ability of opposing candidates to identify petition signers in order to consider filing challenges, and not to reject signatures that were legible. At its meeting of October 28, 2014, the Board directed its staff and local filing officers to apply the following standards to determine the sufficiency of signatures and printed names on nomination papers and other election petitions:

1. The filing officer shall confirm that the signer has completed information in both the "Signature" box and the "Printed Name" box of the nomination paper

or other election petition. The signature may be marked as the signer customarily marks his or her signature, including by using an “X” or by using either traditional printed letters or a handwritten signature. Similarly, the signer’s printed name is not required to include only letters that are separated from one another.

2. If the filing officer can discern no part of the signer’s name, after reviewing both the signature and the printed name, it should be deemed illegible and the signature should not be counted.
3. After reviewing both the signature and printed name of a signer, 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 shall be counted if otherwise valid.
4. 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.
5. The signer must print his or her name, and the signer must execute a correcting affidavit if the printed name is missing or insufficient for the signature to be counted. However, a circulator may print the name of a signer with a disability who requests such assistance.

While requiring some subjective judgment by filing officers, these standards accurately capture the intent of 2013 Act 160 and do not require a hyper-technical application of the phrase “legibly print.” In reviewing nomination papers and other election petitions, G.A.B. staff and local filing officers will be able to apply a common sense approach which does not eliminate legible names simply because letters in a printed name are connected or cross over one another. In essence, the printed name requirement is used to clarify or complete a signature which may not be legible or readable, not to invalidate signatures on the basis of a name failing to meet a literal definition of “printed.”

d. Signature Address

Wis. Stat. §8.15(2) requires that a 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.” Errors in which the elector used an address or listed a municipality which does not reflect his or her actual residence or wrote an incomplete address may be corrected by the elector or by the circulator in a correcting affidavit filed by the correction deadline.

Challenge: The elector’s address is missing an apartment number.

Analysis: Staff has recommended that signatures be found in substantial compliance where the insufficiency is a missing apartment number. The Board has approved this recommendation.

Challenge: The elector’s address is missing the municipality designation or the elector has checked a box in error.

Analysis: The Board and its staff have advised candidates and challengers that a signatory's failure to check the correct box to indicate "Town, Village or City" is not a basis for disqualifying a signature unless a challenger can show that the given address is outside the subject jurisdiction or district. For instance, the challenger needs to show that a given address has to be in the Village of X, not in the Town of X and, therefore is outside the Y District. The signatory's error or omission in checking a box on a form is not a sufficient evidence for a challenge.

Challenge: The elector's address is incomplete because the elector has abbreviated the name of the municipality.

Analysis: The Board has rejected challenges to signatures alleged not to include the proper municipality of residence, where the municipality can be determined by other information contained on the nomination papers, pursuant to GAB 2.05(15)(c). For instance, the municipality of "WFB" was determined by the mailing address to indicate "Whitefish Bay," or "Gtown" was determined by the zip code to indicate "Germantown."

Challenge: The elector has used a P.O. Box as his or her address.

Analysis: Board policy has been to accept signatures with a P.O. Box rather than a residential address if the entire municipality in which the P.O. Box is located is within the candidate's District.

Challenge: The elector lives outside the district.

Analysis: A complaint challenging the eligibility of a signatory to a nomination paper based on the signer's non-residency must be accompanied by reference to MyVote Wisconsin or "Who is My Legislator?" web searches, by a map of the district demonstrating that the address is outside the district, or by a signed statement from the election official, (municipal clerk or deputy clerk), whose responsibility it is to determine the residency of electors of the district. Without such references, the complainant challenger's bare assertion of the signer's non-residency is not sufficient to sustain the challenger's burden of proof. Time permitting, Board staff may attempt to verify the location of the address via MyVote Wisconsin and SVRS. The Board has approved this policy.

e. Signature Date

Challenge: The elector's signature, as required by Wis. Stat. §8.15(2), is incomplete or missing.

Analysis: 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." In the past, the Board policy has required that signatures on the first and last line of a nomination paper contain the complete date information, and not allowed missing date information on those lines to be determined by reference to the dates of other signatures on the page. However, in the context of a court case challenging the Board's application of GAB 2.05(15)(a), Wis. Adm. Code, the Department of Justice has advised that the Board's interpretation of that rule was too restrictive in that it required incomplete dates to be "bracketed" by complete dates. The DOJ recommended that the Board equally apply the principle of determining missing date information

by reference to other information on the page, even if the incomplete date appeared on the first or last signature line. The Board has approved this recommendation.

Challenge: The elector's signature is dated after the date of the circulator's certification.

Analysis: Staff has struck these signatures pursuant to the Board's administrative rules that provide that a signature may not be counted if it is dated after the date of the certificate of the circulator. GAB 2.05(15)(b).

We hope that this information is useful as a guide in reviewing nomination papers and any challenges to nomination papers or other election petitions. If you have any further questions regarding the above information or other issues that arise, please contact the G.A.B. Help Desk at (608) 261-2028, or gabhhelpdesk@wi.gov.