

State of Wisconsin \ Government Accountability Board

212 East Washington Avenue, 3rd Floor
Post Office Box 7984
Madison, WI 53707-7984
Voice (608) 266-8005
Fax (608) 267-0500
E-mail: gab@wisconsin.gov
<http://gab.wi.gov>



JUDGE THOMAS H. BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: April 10, 2014

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

FROM: Michael Haas
Elections Division Administrator

David Buerger
Elections Specialist

SUBJECT: Nomination Paper Standards and Review

Background

2013 Wisconsin Act 160, formerly Assembly Bill 420, has been signed into law and is now effective for all petitions and nomination papers whose initial circulation date is on or after March 29, 2014. Act 160 requires all nomination papers and other petitions to contain a space for the signer to legibly print his or her name. In order for a signature to be considered valid, the signer must legibly print his or her name in addition to the other requirements of Wisconsin law.

This new law required the addition of a new column to the standard nomination paper and petition templates (GAB-166 to GAB-174). As these forms required updating, Board staff also took the opportunity to update them to reflect existing case law as it pertains to the qualifications of circulators and the circulator's certification. Please note that the changes to these GAB forms are significant and filing officers should cease distributing the old forms immediately and advise any candidates seeking review of nomination paper forms of the changes. As explained below, however, G.A.B. staff is recommending that signatures should not be struck as invalid on nomination papers that do not contain the updated circulator certification language, given that the new nomination paper form was only recently posted to the G.A.B. website, after many candidates may have already received approval of their nomination paper forms.

As new information is now required on nomination papers and other election-related petitions, the process for reviewing these documents must also be changed to ensure that candidates and petitioners are submitting sufficient signatures. This memorandum provides guidance on how to evaluate the legibility of printed names, as well as responding to questions or potential

challenges related to a circulator's qualifications or certification. G.A.B. staff is issuing this guidance now because the circulation period begins April 15, 2014 for candidates for the fall elections, and staff will seek formal approval of this guidance at the Board's teleconference on April 17, 2014.

I. Printed Name Requirement

A. Standard of Review

Wisconsin Administrative Code GAB 2.05(3) requires a "facial" review of nomination papers and petitions by the filing officer. This means that the filing officer is only required to review the information presented on the face of the petition, without further investigation into the information provided. GAB 2.05(4) provides a presumption of validity to any information which appears on a nomination paper. GAB 2.05(5) also provides that where any required item of information is incomplete, the filing officer shall accept the information as complete if there has been "substantial compliance" with the law.

Articulating an exact standard for legibility is a challenging process given that determining the legibility of information inherently requires subjective judgments which may vary from person to person depending on their ability to decipher handwriting or printing with varying degrees of clarity. What is considered "legible" to one filing officer may not be "legible" to another. Given that inherent difficulty, the G.A.B. is attempting to ensure that election officials are comfortable applying this standard and that it is implemented uniformly.

The central issue is when does a printed name become so illegible that a review should determine that there is no legible printed name, and that therefore the presumption of validity is overcome and the signature is not counted. Based on reviewing and discussing numerous examples during the G.A.B. staff's review of nomination papers, as well as our experience with reviewing recall petitions in 2011 and 2012, Board staff believes the standard for reviewing the legibility of printed names can best be stated as follows:

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 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).

B. Corrections by Affidavit

Wis. Admin. Code GAB 2.05(4) provides for correction of any errors in information contained on the petition, committed by either the signer or the circulator, upon an affidavit of the circulator, the candidate, or the person who signed the petition. The person giving the correcting affidavit shall have personal knowledge of the correct information.

Where a filing officer has determined that a printed name is illegible, the candidate should be afforded the opportunity to file correcting affidavits to provide legibly printed names which must be printed by the signer, unless assistance is provided as described below. Any correcting affidavits should be filed with the filing officer no later than three calendar days after the applicable due date for the petition.

C. Assisting Electors

Eligible electors may not always be physically capable of independently signing a petition or legibly printing their name or other information on the petition page. To facilitate access to the petitioning process, and pursuant to Section GAB 2.05(8), Board staff has determined that an elector who is unable to sign because of a physical disability may request and receive assistance in signing a nomination paper or petition. In the opinion of G.A.B. staff, the option of receiving such assistance extends to the ability to provide a legible printed name.

However, like the right to vote, the right to support a candidate or petition the government is not a transferrable right. As such the elector must be physically present where the petition is being signed and must affirmatively direct the assistant to sign on their behalf. The requirement that the elector be present and direct someone to complete the action applies to legibly printing the elector's name as well as signing the elector's name. Powers of attorney and guardians may assist a principal or ward, but may not independently sign or print a name on a nomination paper or petition on their behalf. Circulators may assist electors in signing or printing a name, but again, this assistance may only be provided at the affirmative direction of the elector. Circulators are encouraged to find a third party to serve as the assistant where possible to avoid the appearance of impropriety.

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.

II. Certification of Circulator

It has recently come to the attention of G.A.B. staff that the language in the Circulator Certification at the bottom of the Board's sample nomination paper form does not mirror the language required in the Statutes. The circulator's certification was missing a statement regarding the circulator's residency. The statutory certification language states that the circulator is a qualified elector of Wisconsin, or if not a qualified elector of Wisconsin, the circulator is a U.S. citizen age 18 or older who, if he or she were a resident of the state, would not be disqualified from voting for other reasons such as a felony conviction or incapacity. This language was required by a federal court decision holding that non-residents may circulate election petitions if they would otherwise be qualified to vote in Wisconsin. *Frami v. Ponto*, 255 F. Supp. 2d 962 (2003). 2005 Wisconsin Act 451 subsequently removed the residency requirement for circulators, resulting in new certification language.

G.A.B. staff recently posted new sample nomination paper forms on the agency website to include the updated circulator certification language, and has advised candidates to incorporate the language into their nomination papers. Local filing officers should also encourage candidates to use the revised form. However, given that many candidates have already sought and received approval of their nomination paper forms from both the G.A.B. and local filing officers, it is the opinion of Board staff that signatures that are otherwise valid should not be struck because a nomination paper does not contain the updated certification language. Any challenges to the certification of a circulator should be based upon the facts of whether the circulator is either a qualified elector of Wisconsin or would be a qualified elector of Wisconsin if they were a resident of the State.

Please note that the guidance contained in this memorandum reflects the consensus of G.A.B. staff. The Government Accountability Board will review this memorandum at its teleconference meeting of April 17, 2014, and will be asked to approve the staff's guidance. Any questions regarding this information may be directed to the G.A.B. Help Desk at **GAB@wi.gov** or (608) 261-2028.