

State of Wisconsin \ Government Accountability Board

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MEMORANDUM

DATE: For the Meeting of June 10, 2014

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy
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Prepared and Presented by:
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SUBJECT: Common Challenges to Nomination Papers

INTRODUCTION

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 the Board, as well as candidates and challengers, regarding the legal analyses and resolutions previously adopted by the Board and its staff.

Pursuant to Wis. Adm. Code GAB § 2.05(5), “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. Wis. Adm. Code GAB § 2.05(4).

COMMON 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 is illegible or in the incorrect boxes, staff has found these pages to substantially comply when the required information could be determined elsewhere in the nomination paper heading. In the past, 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 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. In the past, the Board has approved these recommendations.

c. Candidate Address

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

Analysis: In the past, the Board has rejected challenges to petitions where the candidate has not specified a municipality for voting purposes and as a result, in reviewing nomination papers, staff does not invalidate signatures on this basis alone. 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 regard 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 (Gender Identification)

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. In the past, 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.” While such a failure to file a campaign registration statement may be a campaign finance violation of Wis. Stat. §11.05(2g), the ballot access statutes do not provide for ballot status denial as a consequence of a potential campaign finance violation. In the past, 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 statutory requirement that the circulator indicate the type of municipality of residence. In the past, 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, but only when the circulator is the candidate and when the missing information is supplied by reference to other information on the same nomination paper page (e.g., the candidate’s address in the nomination paper heading). In the past, 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 upheld and the signatures on those pages invalidated. In the past, 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, at 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, only the earliest signature is valid and the later signatures should be invalidated. In the past, 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. Wis. Adm. Code 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." At its meeting of April 17, 2014, the Board also accepted a staff recommendation that signatures be permitted where both the "printed name" and "signature" have been printed. Because this is the first nomination cycle involving the printed name requirement described below, this is an issue of first impression in any fact-finding situation presented to the Board.

Challenge: The elector's signature is illegible.

Analysis: Staff has recommended denying challenges alleging 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"). Furthermore, any information on a nomination paper is entitled to a presumption of validity. Wis. Adm. Code GAB § 2.05(4). In the past, 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 have not yet been decided by the Board. Consistent with the G.A.B. guidance issued to clerks on April 11, 2014 and approved by the Board, staff checks to see if the letters are printed and the name is legible. "Printed" names that are made in cursive handwriting do not meet this standard, are not entitled to a presumption of validity, and thus are invalid.

At the April 17, 2014 Board meeting, the Board approved the following 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 elector may correct a printed name error in a correcting affidavit filed by the correction deadline; however, the elector must provide a handwritten legible printed name and otherwise complete the correcting affidavit. The circulator may not "correct" electors' signatures or printed names.

Board staff has attempted to apply the legislative mandate and intent of 2013 Wisconsin Act 160, which amended Wis. Stat. §8.15(2) to read as follows:

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. (Amended language underlined).

Staff relied on the dictionary definition of "print" which states "to write in letters shaped like those of ordinary roman text type," and on the distinguishing feature of cursive in which individual letters are connected to one another. If the printed name was written in cursive, staff struck the signature as not complying with the additional requirement to "print" as imposed by Act 160.

The sufficiency of the printed name and whether it complies with Act 160 is a matter of first impression for the Board. Board staff experienced challenges in implementing this standard

across all petitions due to the many variables caused by this new requirement. Given the infinite ways in which a signer may write letters as “printed” or using cursive, it necessarily requires the exercise of subjective judgment on the part of the individual reviewer as to whether a name is both printed and legible. The process of having each nomination paper reviewed by two staff members helped to lend some consistency to the final staff determinations.

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 solely a missing apartment number. In the past, 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 is required to be in a specific electoral district, but the signatory’s street address places the address in a municipality outside the proper district. The signatory’s error or omission in checking a box on a form is not sufficient evidence in itself to uphold a challenge. In the past, the Board has approved this recommendation.

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

Analysis: In the past, 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 Wis. Adm. Code 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.” In the past, the Board has approved this recommendation.

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

Analysis: In the past, Board policy has been to accept signatures with a P.O. Box rather than a residential address, but only if the entire municipality in which the P.O. Box is located is within the candidate’s District. Staff has consistently applied this policy over the years.

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. Staff recommends that challengers relying exclusively on "Who is My Legislator?" to determine elector eligibility, cross-reference with the more accurate data contained at MyVote Wisconsin before filing a challenge to any particular signature. Without such supporting factual evidence, the complainant challenger's bare assertion of the signer's non-residency is not sufficient in itself to meet the challenger's initial burden of proof. Time permitting, Board staff may attempt to verify the location of the address via MyVote Wisconsin and SVRS. In the past, 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: Wis. Adm. Code 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 did not allow 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 Wis. Adm. Code GAB § 2.05(15)(a), 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. In the past, 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. Wis. Adm. Code GAB § 2.05(15)(b). In the past, the Board has approved this recommendation. This error may be corrected by an affidavit of the signer stating that the nomination paper included an incorrect date for their signature, and stating the correct date, or an affidavit of the circulator stating that the certification contained the wrong date and stating the correct date.