



Wisconsin Elections Commission

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MEMORANDUM

TO: Challengers to Nomination Papers and Other Interested Parties -
2024 Special Elections and General Election

FROM: WEC Staff

DATE: May 31, 2024

SUBJECT: Filing Challenges to Nomination Papers

This memorandum provides information to persons who are considering filing a challenge to the nomination papers of a candidate whose papers are required to be filed with the Wisconsin Elections Commission (“Commission”).

Challenges to nomination papers filed for the 2024 Special Elections and the 2024 General Election will be considered and determined by the Commission at its June 10, 2024, meeting. The Commission’s virtual teleconference **meeting will begin at 10:00 a.m. on June 10, 2024.**

Challengers should familiarize themselves with the requirements of Wisconsin Statutes Chapter 8, the statutory chapter governing nomination papers and nominations. Nomination papers and the challenge procedure are further governed by administrative rules which can be found in the Wisconsin Administrative Code EL §§ 2.05 – 2.07.

Wisconsin Administrative Code EL § 2.05 sets forth the standards for determining whether nomination papers comply with Wis. Stat. Ch.8, and Wis. Adm. Code EL § 2.07 sets forth the bases for challenges to those nomination papers. Because Wis. Adm. Code EL § 2.05(4) provides that “[a]ny information on a nomination paper is entitled to a presumption of validity,” any challenge to that information bears the burden of rebutting that presumption.

Sworn complaints challenging nomination papers are filed by complying with Wis. Admin. Code EL § 2.07(2)(a) of the Wisconsin Administrative Code.

2024 DEADLINES

For the **2024 SPECIAL ELECTION FOR CONGRESSIONAL DISTRICT 8 AND GENERAL ELECTION**,¹ the schedule for filing nomination papers and determining their validity and the validity of a challenge to them is as follows:

1. **June 3, 2024**² - Nomination papers must be filed not later than 5:00 p.m., (Wis. Stat. §§ 8.15(1)).
2. **June 6, 2024** - Challenges to nomination papers must be filed not later than 4:30 p.m. (Wis. Adm. Code EL § 2.07). The verified complaint must be delivered to the Commission at its offices at 201 W. Washington Avenue, 2nd Floor, Madison, Wisconsin, 53703, or, preferably, emailed to: elections@wi.gov not later than the prescribed time.
 - a. Challenges must be made by verified complaint and must establish probable cause to believe that the paper or signature challenged does not comply with Wisconsin Statutes or the rules of the Wisconsin Elections Commission. (See discussion below.)
 - b. The challenge should be accompanied by affidavits or other relevant documentation. Any challenge which is not established by the materials submitted as of the deadline for challenges will be denied.
3. **3 Days After Challenge Filed (June 9, 2024, is the Response Deadline if the Challenge is filed on June 6, 2024. The Commission office will be open to accept filings on June 8 and 9, 2024.)** – A challenged candidate may file a written, verified response not later than 3 days after the challenge has been filed. Candidates may also appear before the Commission in person to respond to the challenge. A written response should be verified and should also be accompanied by affidavits or other documentation. Just as the burden of establishing a challenge is placed upon the challenger, the burden of rebutting an established challenge is placed upon the candidate whose papers are challenged.
5. **June 10, 2024** - All challenger rebuttals to a response being considered at the June 10, 2024, Commission meeting **must be filed not later than 9:00 a.m.** Rebuttals should be verified and should also be accompanied by affidavits and other documentation.
6. **June 10, 2024** - The Commission will meet **at 10:00 a.m.** to consider the challenges, responses, and rebuttals, and to hear oral presentations by the Commission staff, challengers, and candidates.

¹ Please be aware that, under Wis. Stat. § 8.15(1), for any office for which the incumbent has failed to file a Notification of Non-candidacy and has also failed to file nomination papers and a declaration of candidacy, a 72-hour extension of the time in which to file nomination papers and a declaration of candidacy for that office will be granted to any person other than the incumbent. Therefore, the deadlines set forth in this Memorandum do not apply in such circumstances, and any challenges to nomination papers filed pursuant to that extension will be resolved on a case-by-case basis unless all materials are received with sufficient time before the June 10, 2024, Commission meeting.

² In 2024, the nomination paper deadline for the general election falls on a weekend day and is therefore extended to the next day on which the Commission's offices are open, which is Monday, June 3, 2024. Wis. Stat. 900.001(4)(c). The nomination paper deadline for the special election for Congressional District 8 set by 2024 Executive Order No. 226 also falls on a weekend day and is therefore also extended to the next day on which the Commission's offices are open, which is Monday, June 3, 2024. *Id.*

Instructions for appearing before the Commission via Zoom at its meeting will be provided separately. Both the challenger (or by representation) and the candidate (or by representation) may appear before the Commission.

The challenger and the candidate will each receive 5 minutes for his or her presentation to the Commission.

For the **2024 SPECIAL ELECTION FOR SENATE DISTRICT 4**, the schedule for filing nomination papers and determining their validity and the validity of a challenge to them is as follows:

1. **June 4, 2024** - Nomination papers must be filed not later than 5:00 p.m. for nominations for the special election for Senate District 4. WI Exec. Order No. 225 (May 14, 2024).

2. **June 7, 2024** - Challenges to nomination papers must be filed not later than 4:30 p.m. (Wis. Adm. Code EL § 2.07). The verified complaint must be delivered to the Commission at its offices at 201 W. Washington Avenue, 2nd Floor, Madison, Wisconsin, 53703, or, preferably, emailed to: elections@wi.gov not later than the prescribed time.

- a. Challenges must be made by verified complaint and must establish probable cause to believe that the paper or signature challenged does not comply with Wisconsin Statutes or the rules of the Wisconsin Elections Commission. (See discussion below.)
- b. The challenge should be accompanied by affidavits or other relevant documentation. Any challenge which is not established by the materials submitted as of the deadline for challenges will be denied.

3. **3 Days After Challenge Filed (June 10, 2024, at 9:00 a.m. is the Response Deadline if the Challenge is filed on June 7, 2024. The Commission office will be open to accept filings on June 8 and 9, 2024)** – A challenged candidate may file a written, verified response not later than 3 days after the challenge has been filed. Candidates may also appear before the Commission in person to respond to the challenge. A written response should be verified and should also be accompanied by affidavits or other documentation. Just as the burden of establishing a challenge is placed upon the challenger, the burden of rebutting an established challenge is placed upon the candidate whose papers are challenged.

5. **June 10, 2024** - All challenger rebuttals to a response being considered at the June 10, 2024, Commission meeting **must be filed not later than 2:00 p.m.** Rebuttals should be verified and should also be accompanied by affidavits and other documentation.

6. **June 10, 2024** - The Commission will meet at 10 a.m. to consider the challenges, responses, and rebuttals, and to hear oral presentations by the Commission staff, challengers, and candidates.

Instructions for appearing before the Commission via Zoom at its meeting will be provided separately. Both the challenger (or by representation) and the candidate (or by representation) may appear before the Commission.

The challenger and the candidate will each receive 5 minutes for his or her presentation to the Commission.

DISCUSSION

All challenges to nomination papers must be in the form of a verified complaint. Any challenge which is not in the form of a verified complaint will not be considered by the Commission and will be returned to the complainant by the Commission's staff. A verified complaint is a complaint that the complainant swears, under oath, is true based on the personal knowledge or information and belief of the complainant. The oath must be sworn to before a notary or other person authorized to administer oaths.

Note that candidacy for the special elections for Senate District 4 or Congressional district 8 is treated as a completely separate candidacy from the full-term offices that are on the November General Election ballot. As a result, **challenges to nomination papers filed for a special election will not affect the nomination papers filed for the general election, and vice versa.** Individual challenges must be filed against each set of nomination papers.

Nomination paper challenge complaints should also follow the methodology provided below:

All challenges must refer to the nomination paper page number as shown on the nomination papers filed with the WEC for each nomination paper, any part of which is challenged. If a nomination paper page does not have a page number, contact the Commission's staff to establish a number for that page. *(For instance: John Smith. Page 1 or Tom Jones Pages 3-12 and 15-23, etc.)*

Challenges to nomination papers must allege a violation of Wis. Stats. ch. 8, the statutory chapter governing nominations for the General Election ballot. In order to succeed, a challenger must establish a violation through "**clear and convincing evidence.**" Wis. Admin. Code EL 2.07(4). This is a medium burden of proof that requires more than a "preponderance of the evidence," but does not require proof "beyond a reasonable doubt."

According to Wis. Admin. Code EL §§ 2.05(4) and 2.07(3)(a): "Any information which appears on a nomination paper is entitled to a presumption of validity," and "[t]he burden is on the challenger to establish any insufficiency. If the challenger establishes that the information on the nomination paper is insufficient, the burden is on the challenged candidate to establish its sufficiency by clear and convincing evidence. The invalidity or disqualification of one or more signatures on a nomination paper shall not affect the validity of any other signatures on that paper."

Challengers will have the opportunity to rebut responses made by challenged candidates. However, the Commission may, at its discretion, decline to consider any new grounds for a challenge which were not raised before the deadline for filing a challenge. The Commission may also decline to consider grounds which were alleged in a timely manner, but which are based on information and sworn statements to be provided after the deadline.

Challengers should be aware that signatures which have been questioned and not counted by the Commission staff may be the subject of "rehabilitation." Rehabilitation means that the candidate may have subsequently corrected the deficiency and thereby added the "rehabilitated" signature(s) to the candidate's total number of qualifying signatures. Consequently, challengers cannot rely on staff disqualification of signatures as a final determination and must raise any challenges to such signatures in the same time period in which all other challenges are required to be raised.

Challengers should also be aware that nomination paper challenges are political activity

and may not be researched and/or prepared by State employees on State time.

Challenges may be made to an entire page or series of pages of a nomination paper, and challenges may also be made to individual signatures on a nomination paper page.

The Commission has published a manual titled “Common Nomination Paper Challenges,” which generally outlines the challenge process, but also includes prior Commission decisions on common challenges. This manual can be found here:

<https://elections.wi.gov/resources/manuals/common-nomination-paper-challenges-manual>.

I. Challenges to a whole page (or series of pages)

The first part of any challenge to nomination papers should consist of challenges (if any) to a whole page, or a group of pages that have the same deficiency in the composition of the paper. Challenges to a whole page consist of two categories: (A.) Challenges to the heading of the nomination paper and (B.) challenges to the certification of the circulator.

Challenges to an entire page or to a group of pages, because of a deficiency (or deficiencies) in the heading or in the certificate of the circulator, should include a copy of at least one of the pages with the deficiency (or deficiencies) circled and, again, must refer, by page number, to the page or pages challenged. (*For instance: John Smith pages 1 through 27 fail to name the candidate or Tom Jones pages 2,3,6-11 & 15-19 fail to identify the office sought, and pages 5-23 fail to contain the signature of the circulator, etc.*)

A. Challenges to the heading of the nomination paper

Wis. Stat. § 8.15(5)(a) and (b) requires that the heading of a nomination paper contain the following:

(a) Each 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 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.

The heading must be substantially complete before the nomination paper is circulated. Otherwise, the signers would have no knowledge of what they were signing and that would render their signatures meaningless. Therefore, 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. A challenge to the heading of a nomination paper should identify the page or pages (by number)

and the defect or deficiency in the heading. The Commission ultimately decides whether the header of a nomination paper substantially complied with the requirements set forth in the statute.

B. Challenges to the certification of the circulator

In most, if not all cases, defects in the certificate of the circulator may be "repaired" by a correcting affidavit of the circulator -- because the defect has no effect on the validity of the signatures or on the information presented to the signatories when they signed.

II. Challenges to Individual Signatures

The second part of any challenge to nomination papers consists of challenges (if any) to individual signatures. Challenges to individual signatures on various pages should include a copy of **each and every page** on which one or more signatures are challenged. Each page should be numbered as described above and the challenge should refer to the signature(s) challenged, by page and line number. (*For instance: John Smith Page 3, Line 6 - the address of the signatory is outside the XX Assembly District.*)

Challenges to individual signatures, like any other challenge, must be based on the personal knowledge of the complainant or that of a person whose affidavit or sworn statement accompanies the challenge. Therefore, as an example, a challenge to the eligibility to sign of various signers of a nomination paper, based on the non-residency of those signers, must be accompanied by a map of the district showing their address to be outside the district or other similar evidence. The allegation by the complainant—that the signers are not residents of the district—without the attached map or other corroborating forensic evidence, is not sufficient.

If you have any questions about the Commission's meeting to consider the challenges to nomination papers, please contact James C. Witecha at 608-266-0136 (james.witecha@wisconsin.gov).

Relevant Wisconsin Statutes and Administrative Code Provisions:

Wis. Stat. Ch. 8: <http://docs.legis.wisconsin.gov/statutes/statutes/8>

Wis. Adm. Code EL Ch. 2: https://docs.legis.wisconsin.gov/code/admin_code/el/2