



# Wisconsin Elections Commission

201 West Washington Avenue | Second Floor | P.O. Box 7984 | Madison, WI 53707-7984  
(608) 266-8005 | elections@wi.gov | elections.wi.gov

## MEMORANDUM

**TO:** Candidates, Challengers, and Other Interested Parties – 2024 General Election

**FROM:** WEC Staff

**DATE:** July 1, 2024

**SUBJECT:** New Emergency Rules for Ballot Access Challenges in Effect July 1, 2024

**ATTACHMENTS:** Final Emergency Rule Language: Wis. Admin. Code §§ 2.05, 2.06, 2.07, 2.08

### Introduction

This memorandum provides information relating to new emergency administrative rules for ballot access challenges. These emergency rules are now in effect, and will impact the circulation, filing, and challenging of nomination papers and declarations of candidacy for independent candidates for president and vice president of the United States. The emergency rules will expire on November 28, 2024, unless the Commission requests and receives an extension from the Legislature’s Joint Committee for the Review of Administrative Rules (JCRAR). Wis. Stat. § 227.24(2)(a).

The new emergency rules revise the existing nomination paper sufficiency administrative rule (EL § 2.05) and nomination paper challenge procedure rule (EL § 2.07). Separate new emergency rules also create a new administrative rule process for the sufficiency of declarations of candidacy (EL § 2.06) and challenges to declarations of candidacy (EL § 2.08).

The drafts of the emergency rules were prepared by staff and discussed in depth by the Commission during public meetings on February 8, 2024<sup>1</sup>, May 14, 2024<sup>2</sup>, and May 16, 2024.<sup>3</sup>

**All individuals interested in circulating and filing nomination papers to seek ballot access as an independent candidate for president or vice-president of the United States for the 2024 General Election on November 5, 2024, should read the entirety of this memo, including the final emergency rule text provided in the attachments.**

**Unfamiliarity with the new emergency rules will not constitute a defense to challenges.**

<sup>1</sup> Commission materials for February 8, 2024 available at: <https://elections.wi.gov/event/february-2024-quarterly-meeting>.

<sup>2</sup> Commission materials for May 14, 2024 available at: <https://elections.wi.gov/event/special-meeting-5142024>.

<sup>3</sup> Commission materials for May 16, 2024 meeting available at: <https://elections.wi.gov/event/special-meeting-5162024>.

*Wisconsin Elections Commissioners*

Ann S. Jacobs, chair | Marge Bostelmann | Don M. Millis | Carrie Riepl | Robert Spindell | Mark L. Thomsen

Administrator  
Meagan Wolfe

### **Where to Find the Emergency Rule Language**

For convenience, copies of the emergency rule language for new EL §§ 2.05, 2.06, 2.07, and 2.08 have been provided as attachments to this memo. **Please note that the emergency rule language supersedes the published rule language on the Wisconsin State Legislature website for as long as the emergency rule is active and in effect.** The Legislative Reference Bureau has added a flag to the administrative code website that will direct to the emergency rule webpage.

The EL Chapter 2 website can be located at this link, and the orange flag in the top left of the screen will link to the emergency rule pages: [https://docs.legis.wisconsin.gov/code/admin\\_code/el/2](https://docs.legis.wisconsin.gov/code/admin_code/el/2).

### **Nomination Paper Challenge Rule Revisions**

The revisions to EL §§ 2.05 and 2.07 were implemented to resolve ambiguity, create a clear, consistent process for candidates and challengers, and codify existing Commission practice.

Some features of the newly revised rule include:

- **Separate Complaint Process:** Creation of a dedicated, separate administrative complaint process solely for ballot access challenges.
- **More Detail, Fewer Questions:** Much more detailed rule that won't leave candidates and challengers guessing on substance and procedure.
- **Implementation of Existing Guidance:** Integration of the Commission's Common Nomination Paper Challenges Manual and existing Commission guidance regarding the treatment and sufficiency of nomination papers.
- **Clearer Deadlines:** The new rule instructs that "calendar days" include weekends and legal holidays, removing challenge deadline ambiguities.
- **Expanded Definition Section:** An expansive definition section that includes important terms: address; affidavit; certification; calendar day; clear, satisfactory, and convincing evidence; correcting affidavit; elector; facially sufficient; filing officer; header; local filing officer; nickname; nomination paper; printed name; qualified circulator; signature; signer, substantial compliance; voting municipality.
- **New Challenge and Response Format:** The revised rules require challengers to file a short, plain statement explaining the basis of the challenge, with an option to also submit a brief or summary of applicable legal standards. Candidates will then file a response that also consists of a short and plain statement and/or a legal brief.
- **Addition of Challenger Rebuttal:** The challenger now has the ability to submit a rebuttal to the candidate's response within 24 hours of receipt to refute any legal arguments.
- **Decision and Appeal Provisions:** The new rule requires a filing officer to issue a written decision and signed order, and provides detail for how challengers or candidates can use existing statutory procedures to appeal the decision.

### **Declaration of Candidacy Challenge Rule Creation**

New provisions of Chapter EL 2 were created to provide for a separate challenge process for declarations of candidacy. Previously, no administrative rules addressed how declarations of

candidacy could be challenged. Challengers most often ended up attempting to shoehorn their challenges into the nomination paper process, which caused confusion and lacked a clear administrative rule process.

The rules for declaration of candidacy challenges mirror the new rules for nomination papers, except for aspects specific to declarations of candidacy:

- **Specific Grounds for Challenges:** Declaration of candidacy challenges can only be brought to one or more specific, enumerated grounds in EL § 2.08(4). The challenge must allege with specificity the ground or grounds of each challenge.
- **No Correcting Affidavits:** Corrections to declarations of candidacy can only be resolved by filing an amended declaration of candidacy, which may be done at any time, including after the filing deadline.
- **No Substantial Compliance:** Declarations of candidacy are either sufficient or insufficient; there are no standards for substantial compliance, and no presumption of validity.
- **Challenge Process, Deadlines, and Appeal are the Same:** The processing for bringing a challenge, and associated deadlines and timeframes, are the same as nomination paper challenges.

**Deadlines for Independent Presidential and Vice-Presidential Candidates  
Filing and Challenges to Nomination Papers & Declarations of Candidacy**

1. **July 1, 2024 – August 6, 2024** – Nomination paper circulation period for independent presidential and vice-presidential candidates who are not nominated from parties that have ballot status. Wis. Stat. § 8.20(8)(am).
2. **Tuesday, August 6, 2024, at 5 p.m.** – Statutory filing deadline for nomination papers for independent presidential and vice-presidential candidates. Wis. Stat. § 8.20(8)(am).
3. **Friday, August 9, 2024, at 5 p.m.** – Deadline for challenges to nomination papers and declarations of candidacy.
4. **Response Deadline: Three Calendar Days after Challenge Filed** – Responses must be filed not later than 3 calendar days, including Saturday and Sunday, after the challenge has been filed. Specific response deadlines will be confirmed by Commission staff when and if a challenge is filed.
5. **Rebuttal Deadline: 24 Hours after Response Filed** – Rebuttals must be filed not later than 24 hours after the transmission of the response. Specific rebuttal deadlines will be confirmed by Commission staff when and if a response to a challenge is filed.
6. **August 27, 2024, at 11 a.m.** – Commission virtual meeting to consider and grant ballot access to all candidates for president and vice president of the United States. The Commission will also hear and decide any challenges filed to independent presidential and vice-presidential candidates.

If you have additional questions, please contact [elections@wi.gov](mailto:elections@wi.gov) or call 608-266-8005.