

NOTICE OF OPEN AND CLOSED MEETING

Wisconsin Elections Commission

Special Meeting

Tuesday, August 27, 2024

11:00 A.M.

This meeting is being held by Zoom with audio only. Members of the public and media may attend by the means provided below. Please visit, <https://elections.wi.gov/event/special-meeting-8272024>, to view materials for the meeting. All public participants' phones will be muted during the meeting. Members of the public wishing to communicate to the Commissioners should email electioncomments@wi.gov with "Message to Commissioners" in the subject line.

Zoom information:

When: Aug 27, 2024 11:00 AM Central Time (US and Canada)

Topic: Meeting of the Wisconsin Elections Commission

Please click the link below to join the webinar:

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NOTICE OF OPEN AND CLOSED MEETING

OPEN AND CLOSED SESSION AGENDA

- A. Call to Order**
 - B. Administrator’s Report of Appropriate Meeting Notice**
 - C. Approval of Previous Meeting Minutes**
 - 1. June 27, 2024** 1
 - 2. July 11, 2024** 12
 - 3. July 26, 2024** 18
 - 4. July 30, 2024** 21
 - 5. August 8, 2024** 26
 - D. Ballot Access Challenges and Issues for Challenges Timely Received by 4:30 p.m. on Friday, August 9, 2024** 28
 - 1. EL 24-80 – David Strange v. Cornel West & Melina Abdullah** 35
 - 2. EL 24-81 – Michael Hoffman v. Shiva Ayyadurai** 145
- Applicable for Each Challenge:**
- 1. Staff Presentation on Challenge or Ballot Access Issues**
 - 2. Challenger Presentation**
 - 3. Candidate Response**
 - 4. Commission Action**
- E. Ballot Access Report and Certification for Presidential and Vice-Presidential Candidates for the General Election** 173
 - F. Discussion, Review, and Possible Action Pertaining to Ballot Proofing Best Practices** 177
 - G. Closed Session****
 - 1. Litigation Updates and Consideration of Potential Litigation**
 - 2. Closed Session Minutes Approval**

NOTICE OF OPEN AND CLOSED MEETING

§ 19.85(1)(g) – The Commission may confer in closed session with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.

H. Adjourn

***The Wisconsin Elections Commission will convene in open session but may move to closed session under Wis. Stat. § 19.85(1)(g) and then reconvene into open session prior to adjournment of this meeting. This notice is intended to inform the public that this meeting will convene in open session, may move to closed session, and then may reconvene in open session. Wis. Stat. § 19.85(2).*



Wisconsin Elections Commission

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Wisconsin Elections Commission

Quarterly Meeting

Wisconsin Capitol Building, Room 412E

Madison, Wisconsin

10:00 a.m. June 27, 2024

Open Session Minutes

Present: Commissioner Marge Bostelmann, Commissioner Ann Jacobs, Commissioner Don M. Millis, Commissioner Carrie Riepl, Commissioner Robert Spindell Jr., and Commissioner Mark Thomsen, all in person.

Staff present: Ahna Barreau, Sharrie Hauge, Brandon Hunzicker, Matthew Kabbash, Robert Kehoe, Anna Langdon, Benji Pierson, Angela Sharpe, Riley Vetterkind, Riley Willman, Jim Witecha, and Meagan Wolfe, all in person.

A. Call to Order

Commission Chair Jacobs called the meeting to order at 10:06 a.m. and called the roll. All Commissioners were present.

B. Administrator's Report of Appropriate Meeting Notice

Administrator Meagan Wolfe informed the Commission that the meeting was noticed in accordance with Wisconsin's open meetings laws.

C. Public Comment

Chair Jacobs announced that the Commission would hear from in-person speakers first, then move on to speakers appearing via Zoom. She also noted that speakers would get three minutes to speak.

Bianca Shaw

Bianca Shaw, representing All Voting is Local, appeared in person and called for Commissioner Spindell to resign.

Discussion.

Nick Ramos

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

Nick Ramos, the executive director of the Wisconsin Democracy Campaign, appeared in person and called for Commissioner Spindell to resign.

Rebecca Alwin

Rebecca Alwin of Middleton appeared in person and expressed dissatisfaction with the partisan nature of the Commission.

Rev. Greg Lewis

Rev. Greg Lewis, Executive Director of Souls to the Polls, appeared in person and called on Commissioner Spindell to resign.

Vaun Mayes

Vaun Mayes, representing Community Task Force Milwaukee, appeared in person and called for accountability from individuals in positions of power.

Barbara Beckert

Barbara Beckert appeared via Zoom and expressed support for the emergency rule pertaining to election observers.

Discussion.

Delany Zimmer

Delany Zimmer appeared on behalf of the League of Women Voters Wisconsin via Zoom and encouraged the Commission to provide sample ballots translated into Spanish on the MyVote Wisconsin website.

Discussion.

Lane Ruhland

Lane Ruhland appeared via Zoom and encouraged the Commission to appeal the DRW v. WEC circuit court order.

Vicki Aro-Shackmuth

Vicki Aro-Shackmuth appeared via Zoom and questioned Commissioner Spindell's fitness to serve on the Commission.

Kathryn Bartelli

Kathryn Bartelli of Waukesha County appeared via Zoom and provided comments regarding a temporary injunction in Oldenburg v. WEC.

Debra Morin

Debra Morin appeared via telephone and encouraged the Commission to act with decorum. She expressed concern regarding 17-year-olds’ potential to register to vote under current DMV and WEC policies.

Ms. Klinge

Ms. Klinge appeared in person and questioned Commissioner Spindell’s fitness to serve on the Commission.

D. Written Comments

Chair Jacobs noted the significant number of written comments submitted to the Commission.

E. Approval of Previous Meeting Minutes

- a. May 14, 2024**
- b. May 16, 2024**
- c. June 10, 2024**

MOTION: Approve the May 14, 2024, May 16, 2024, and June 10, 2024, open session minutes.

Moved by Commissioner Thomsen. Seconded by Commissioner Riepl.

Roll call vote:	Bostelmann:	Aye	Riepl:	Aye
	Jacobs:	Aye	Spindell:	Aye
	Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

F. Discussion and Potential Action Related to the Recall Petition Pertaining to Assembly Representative Robin Vos, and Any Related Recall Policy Considerations and Action.

Staff Attorney Brandon Hunzicker presented the agenda item following the sequence of the corresponding memo.

Discussion.

Matthew Fernholz presented arguments on behalf of Rep. Vos. Five minutes were allowed for each side’s initial presentation.

The Commissioners followed up with questions.

Kevin Scott presented arguments on behalf of the Racine Recall Committee.

The Commissioners followed up with questions.

Discussion.

MOTION: After careful examination of all signatures submitted on the petition to recall Representative Vos, and after reviewing the challenge, rebuttal, and reply as described in this memo and within the Appendices, the Commission finds that, the petition contains no more than 6,678 valid signatures from 2022 AD 63 and no more than 3,807 valid signatures from 2024 AD 33. Because the signatures collected on May 27, 2024, and May 28, 2024 were not collected in a manner consistent with law, the Commission finds that the petition is insufficient regarding 2022 AD 63 because fewer than 25 percent of the number of electors who cast a vote for governor at the last election within that territory signed the petition. The Commission finds that the petition is insufficient regarding 2024 AD 33 because fewer than 25 percent of the number of electors who cast a vote for governor at the last election within that territory signed the petition. The Commission accepts the challenges agreed to by staff but does not address the challenges not accepted by the staff except for the challenges to those signatures collected on May 27, 2024, and May 28, 2024.

Moved by Commissioner Millis. Seconded by Commissioner Spindell.

Discussion.

Roll call vote:	Bostelmann:	Aye	Riepl:	Aye
	Jacobs:	No	Spindell:	Aye
	Millis:	Aye	Thomsen:	No

Motion carried 4-2.

After returning from closed session, Chair Jacobs alerted the parties to the recall matter to Wis. Stat. § 9.10, which allows the petitioners to file an amended petition within five days of certification, and laid out a likely timeline for the coming deadlines.

G. Closed Session

a. Closed Session Minutes Approval

i. May 14, 2024

ii. May 16, 2024

b. Litigation Update and Consideration of Potential Litigation

c. Advisory Opinion Consideration and Potential Action

d. Wis. Stat. § 5.05 Complaints

e. ERIC Processes and Referrals

MOTION: Move into closed session pursuant to Wis. Stat. § 19.85(1)(g), 19.85(1)(h), and 19.851.

Moved by Commissioner Millis. Seconded by Commissioner Bostelmann.

Roll call vote:	Bostelmann:	Aye	Riepl:	Aye
	Jacobs:	Aye	Spindell:	Aye
	Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

The Commission moved into closed session at 1:06 p.m. and returned to open session at 3:01 p.m.

H. Review and Potential Action Relating to Election Manuals

- a. Election Day Manual**
- b. Election Administration Manual**

This item was not addressed at this meeting.

I. External Use of Agency Materials, Logos, and Branding: Consideration and Possible Action

This item was not addressed at this meeting.

J. Discussion, Review, and Possible Action Pertaining to Administrative Rulemaking
a. Authorization for Emergency Rulemaking concerning Election Observers

Attorney Hunzicker presented the agenda item.

MOTION: The Wisconsin Elections Commission authorizes staff to submit the scope statement for emergency rulemaking concerning election observers to the Department of Administration and Office of Governor Evers for approval. Staff are directed to proceed with all necessary rulemaking processes preceding the next necessary review or approval from the Commission.

Moved by Commissioner Spindell. Seconded by Commissioner Thomsen.

Roll call vote:	Bostelmann:	Aye	Riepl:	Aye
	Jacobs:	Aye	Spindell:	Aye
	Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

Discussion.

Attorney Hunzicker clarified that though the emergency rule would expedite implementation of the observer rule, the rules would likely not be in place for the August primary election.

b. EL § 6.05 (Uniform Instruction) Rule Order, Economic Impact Analysis, and Draft Public Hearing Notice

Staff Attorney Angela Sharpe presented the agenda item.

MOTION: Staff shall update the draft Rule Order and finalize the EIA as directed by the Commission during this meeting, if necessary. Staff shall finalize the draft notice for the hearing and comment period and the draft notice of submission to the rules clearinghouse as directed by the Commission during this meeting, and take all necessary steps to publish those notices in the administrative register and as needed to provide the public with notice of the hearing as directed during this meeting. Staff shall send the notice of hearing to the secretary of administration. Staff shall submit the EIA to the Department of

Administration, the governor, and to the chief clerks of each house of the Legislature. Staff shall submit the Draft Rule Order and EIA and Fiscal Estimate to the Legislative Council’s Rules Clearinghouse.

Moved by Commissioner Riepl. Seconded by Commissioner Thomsen.

Roll call vote:	Bostelmann:	Aye	Riepl:	Aye
	Jacobs:	Aye	Spindell:	Aye
	Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

c. Approval & Security of Electronic Voting Equipment

Attorney Sharpe presented the agenda item.

Discussion.

MOTION: The Wisconsin Elections Commission approves the proposed rulemaking draft for SS 029-22 for permanent rulemaking relating to the approval and security of electronic voting equipment and ballot security. Finally, the Commission directs staff to proceed with all necessary permanent rulemaking steps to submit the scope statement to the Legislature pursuant to § 227.19(2).

Moved by Commissioner Thomsen. Seconded by Commissioner Spindell.

Roll call vote:	Bostelmann:	Aye	Riepl:	Aye
	Jacobs:	Aye	Spindell:	Aye
	Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

d. EL Chapter 12 Amendments (Certification And Training Of Municipal Clerks)

Attorney Hunzicker presented the agenda item.

Discussion.

Attorney Hunzicker explained the process to add and change a note to an admin rule, within the context of staff’s third recommendation in the memo: “The third option would not fall under rulemaking at all, but would rather create a note directly under EL 12.01(5) clarifying that the generic term “Statewide Voter Registration System” is currently known as “WisVote.” Staff recommend this option because it would likely meet the Commission’s objectives without making any future name change more difficult. Instead of amending the rule text, staff could simply ask the Legislative Reference Bureau to add a note stating that “Since 2016, the statewide voter registration system has been called “WisVote.” Staff do not believe that the statement “and the name may change in the future” would be necessary in a note because the note could easily be updated if the name ever were to change. Staff also do not believe that there would be a benefit to giving the specific name “WisVote” the force of law when the term is already what clerks and the public use to refer to the Statewide Voter Registration System. The

Legislative Council staff provided an example of a similar use of a note in Wis. Admin. Code PSC 160.02(21)(a)4.”

MOTION: Staff shall finalize the rule order and text in Appendix 3 and finalize the report to the legislature in Appendix 4 according to the discussion during today’s meeting. Staff shall then submit the proposed rule to the governor for approval and notify the JCRAR of the submission. If the rule is approved, staff shall submit the rule and all necessary documents to the Legislature, the Rules Clearinghouse, and with a notice of submission to the LRB for publication. Upon completion of the legislative review process under § 227.19, staff shall file the final rule with LRB under § 227.20. Staff shall adopt the third option recommended in this memo pertaining to EL 12.01(5).

Moved by Commissioner Thomsen. Seconded by Commissioner Bostelmann.

Roll call vote: Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

e. Authorization for New Emergency/Permanent Rulemaking Judicial Privacy Protections Effectuated by 2023 Wisconsin Act 235

Attorney Sharpe presented the agenda item.

Discussion.

MOTION: The Wisconsin Elections Commission authorizes staff to begin the concurrent emergency and permanent rulemaking processes for rules to effectuate the certification of residency provisions of 2023 Wisconsin Act 235 for judicial officers. Staff shall submit the statements of scope, hereby approved in this motion, to the Department of Administration and Office of Governor Evers for approval. Staff are directed to proceed with all necessary rulemaking processes preceding the next necessary review or approval from the Commission.

Moved by Commissioner Millis. Seconded by Commissioner Riepl.

Roll call vote: Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

f. Draft Rule for EL Chapter 13 on Training of Election Officials

Chief Legal Counsel Jim Witecha presented the agenda item.

MOTION: The Commission hereby approves the draft rule language for Wis. Admin. Code EL Chapter 13 relating to Training of Election Officials. The Commission directs staff to proceed with the necessary permanent rulemaking steps for this rule.

Moved by Commissioner Thomsen. Seconded by Commissioner Millis.

Roll call vote: Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

g. Draft Rule for EL Chapter 15 on Polling Place Emergency Planning

Attorney Witecha presented the agenda item.

Discussion.

MOTION: The Commission hereby directs that EL Chapter 15 shall no longer be pursued, and the scope statement will be left to expire. The Commission acknowledges that Wis. Stat. § 5.25(3) now sufficiently encompasses the processes contemplated by the Commission.

The Commission hereby directs that staff shall draft guidance advising municipal clerks how to comply with new legislation concerning polling place closures found in Wis. Stat. § 5.25(3). This will include information on emergency planning provisions. Staff shall bring a draft of the new guidance for the Commission's consideration at the next scheduled meeting for which the agenda can accommodate review.

Moved by Commissioner Millis. Seconded by Commissioner Thomsen.

Roll call vote: Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

K. Processing NMVR Forms Received by Commission since September 2023

Attorney Sharpe presented the agenda item.

Discussion.

MOTION: The Wisconsin Elections Commission directs staff to forward NMVR Forms received between September 5, 2023 and November 2, 2023 to the appropriate municipal clerk along with a copy of the form letter in Attachment A. The Commission directs staff to forward NMVR Forms received after November 2, 2023 to the appropriate municipal clerk along with a copy of the form letter in Attachment B. Staff are directed to continue forwarding NMVR Forms to municipal clerks along with a copy of the form letter in Attachment B. Staff and the Chair shall consult as to modifications to Exhibits A and B and shall create a sample communication to the voters for clerks to use.

Moved by Commissioner Thomsen. Seconded by Commissioner Millis.

Roll call vote: Bostelmann:	Aye	Riepl:	Aye
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Jacobs: Aye Spindell: Aye
Millis: Aye Thomsen: Aye

Motion carried 6-0.

L. Review and Potential Action Relating to Administrative Complaint Forms

This item was not addressed at this meeting.

M. Review and Potential Action on a Wis. Stat. § 5.061 Complaint: Heuer v. UW-Parkside (EL 24-01)

Attorney Witecha presented the agenda item.

MOTION: The Commission hereby adopts the decision and order on motion for summary judgment proposed by Administrative Law Judge Eric Défort. The matter of Ronald Heuer et al. v. University of Wisconsin-Parkside shall be considered closed, with respondent UW-Parkside’s motion for summary judgment being granted. Commission staff are directed to take all final measures necessary to convey this decision to each party to the complaint.

Moved by Commissioner Thomsen. Seconded by Commissioner Millis.

Discussion.

Roll call vote: Bostelmann: Aye Riepl: Aye
Jacobs: Aye Spindell: Aye
Millis: Aye Thomsen: Aye

Motion carried 6-0.

N. 2025-2027 Biennial Budget Update/Request

This item was not addressed at this meeting.

O. Accessible Voting Equipment Subgrant Renewal

Elections Supervisor Riley Willman presented the agenda item.

MOTION: The Commission directs staff to extend availability of the Accessible Voting Equipment Subgrant through June 30, 2025, or until such time as all allocated funds are expended, whichever comes first.

Moved by Commissioner Millis. Seconded by Commissioner Thomsen.

Roll call vote: Bostelmann: Aye Riepl: Aye
Jacobs: Aye Spindell: Aye
Millis: Aye Thomsen: Aye

Motion carried 6-0.

P. Commission Staff Updates

This item was not addressed at this meeting.

Q. Discussion, Review, and Possible Action Pertaining to Temporary Injunction Issued June 25, 2024, in the Disability Rights Wisconsin et al. v. Wisconsin Elections Commission et al. matter.

Attorney Witecha presented the agenda item.

Discussion.

MOTION: Staff is directed to work with the Department of Justice regarding next best steps to implement the temporary injunction and to return to the Commission with suggested next steps for the Commission's consideration.

Moved by Commissioner Thomsen. Seconded by Commissioner Riepl.

Roll call vote:	Bostelmann:	Aye	Riepl:	Aye
	Jacobs:	Aye	Spindell:	Aye
	Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

R. Discussion of Scheduling and Content for Upcoming Commission Meetings

Chair Jacobs noted that the Commission would have to meet some time before the August 27, 2024, Commission meeting to address matters not considered at the current meeting. She directed the Commissioners to work with Administrator Wolfe to schedule two 2-hour meetings before August 27.

Chair Jacobs noted the previous motion pertaining to the Badger Book item included a deadline of June 30, but would have to be delayed again.

Discussion.

MOTION: Rescind the June 30 deadline and allow the Badger Book report to come before the Commission no later than January 30 of 2025.

Moved by Commissioner Thomsen. Seconded by Commissioner Spindell.

Roll call vote:	Bostelmann:	Aye	Riepl:	Aye
	Jacobs:	Aye	Spindell:	Aye
	Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

Chair Jacobs noted that the Attorney General’s opinion regarding the constitutional amendments must be discussed at a future meeting and suggested that the Commission provide guidance to staff regarding what they should prepare for the discussion.

Discussion.

MOTION: Rescind the previous directive and direct staff to come back with guidance to clerks regarding the Attorney General’s opinion on the constitutional amendment.

Moved by Commissioner Thomsen. Seconded by Commissioner Bostelmann.

Roll call vote: Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

S. Adjourn

MOTION: To adjourn.

Moved by Commissioner Thomsen. Seconded by Commissioner Spindell.

Roll call vote: Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

The Commission adjourned at 4:42 p.m.

####

June 27, 2024, Wisconsin Election Commission meeting minutes prepared by:

Anna Langdon, Help Desk Staff

August 27, 2024

June 27, 2024, Wisconsin Election Commission meeting minutes certified by:

Marge Bostelmann, Commission Secretary

August 27, 2024



Wisconsin Elections Commission

201 West Washington Avenue | Second Floor | P.O. Box 7984 | Madison, WI 53707-7984
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Wisconsin Elections Commission
Special Teleconference Meeting
201 W. Washington Avenue, Second Floor
Madison, Wisconsin
8:00 a.m. July 11, 2024

Open Session Minutes

Present: Commissioner Ann Jacobs, Commissioner Marge Bostelmann, Commissioner Carrie Riepl, Commissioner Don Millis, Commissioner Robert Spindell, and Commissioner Mark Thomsen, all by teleconference.

Staff present: Megan Wolfe, Robert Kehoe, Matthew Kabbash, Ahna Barreau, Angela O'Brien Sharpe, Brandon Hunzicker, Riley Vetterkind, Riley Willman, and Jacob Walters, all by teleconference

A. Call to Order

Commission Chair Ann Jacobs called the meeting to order at 8:00 a.m. and called the roll. All Commissioners were present, save for Commissioner Thomsen who indicated to Chair Jacobs and Administrator Wolfe that he was slightly delayed.

B. Administrator's Report of Appropriate Meeting Notice

Administrator Megan Wolfe informed the Commission that this meeting was noticed in accordance with Wisconsin's open meetings laws.

C. Closed Session

Chair Jacobs stated she would entertain a motion to move to closed session pursuant to Wis. Stat. § 19.85(1)(g).

MOTION: To move to closed session pursuant to Wis. Stat. § 19.85(1)(g).

Moved by Commissioner Bostelmann. Seconded by Commissioner Riepl.

Roll call vote: Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	

Motion carried 5-0.

Wisconsin Elections Commissioners

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

Administrator
Megan Wolfe

The Commission went into closed session at 8:04 a.m.

D. Discussion and Possible Action Related to the Wisconsin Supreme Court Ruling in *Priorities USA v. Wisconsin Elections Commission*.

The Commission reconvened in open session at 8:54 a.m.

Commissioner Thomsen was present after having joined during closed session.

Staff Attorney Angela O'Brien Sharpe appeared and presented to the Commission a draft memorandum and a Frequently Asked Questions document containing potential guidance to clerks concerning the recent Wisconsin Supreme Court decision in *Priorities USA v. Wisconsin Elections Commission*, which held that unstaffed, secure drop boxes are a legal method of absentee ballot return under state law.

Discussion.

MOTION: To delete question number 13 from the staff's draft.

Moved by Commissioner Millis. Seconded by Commissioner Thomsen.

Roll call vote:	Bostelmann:	Aye	Riepl:	Aye
	Jacobs:	Aye	Spindell:	Aye
	Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

Discussion.

MOTION: That the answer to question eight, "Do drop boxes need to be secure? What should clerks consider when examining drop box security?" Read as follows:

Yes. The decision held that state law permits clerks to lawfully utilize secure drop boxes in an exercise of their statutorily conferred discretion. The decision did not provide guidance on what it means for a drop box to be "secure." The Commission recommends that clerks keep the following non-exhaustive security considerations in mind when planning to utilize drop boxes, which are consistent with guidance from the U.S. Election Assistance Commission (EAC) and the U.S. Cybersecurity and Infrastructure Security Agency (CISA). These considerations are merely a starting point—the Commission recommends that clerks thoroughly complete a security assessment for each intended drop box location prior to deployment. The Commission recommends the following best practices:

- **Best Practices: Physical Security of the Drop Box Itself**
 - The drop box be securely affixed to the ground or the side of the building, or secured such that the drop box cannot be removed or tampered with.
 - If located outside, the drop box be sturdy enough to withstand the elements so the ballots inside will remain unspoiled.

- The drop box be secured against unlawful access or emptying.
 - The slot of the drop box be appropriately sized so that only an absentee ballot can be deposited and not other objects or liquids.
 - Any damage to or tampering with the drop box be documented and the drop box be inspected to ensure that it remains secure for the purpose of depositing absentee ballot envelopes.
 - The drop box be clearly marked or labeled that the drop box is for the purpose of collecting absentee ballots in return envelopes.
 - The time of final retrieval of ballot return envelopes be clearly marked on or near the drop box. After the time of final retrieval, the drop box be secured to prevent the submission of absentee ballot return envelopes.
- **Best Practices: Security of the Drop Box Surroundings**
 - The drop box be located in a safe location with adequate parking and safe access for pedestrians.
 - The drop box be located in a well-lit area.
 - The drop box be clearly visible, and the path to the drop box accessible with clear and level ground space in front.
- **Best Practices: Security of Ballot Retrieval/Emptying**
 - The drop box be emptied, often enough to avoid the box from being filled with ballots and a record of the times and dates of retrieval, number of ballots retrieved and the person or persons participating in the retrieval be maintained.
 - Ballots retrieved from a drop box be securely transported to the office of the clerk.
 - The drop box be equipped with unique locks or seals to secure ballots.
 - Absentee ballots that are returned via drop box be secured and transported in the same manner as all other absentee ballots received by clerks. Please refer to page 104 of the Election Administration Manual for guidance on how to secure and transport voted absentee ballots.

Moved by Commissioner Thomsen. Seconded by Commissioner Millis.

Roll call vote:	Bostelmann:	Aye	Riepl:	Aye
	Jacobs:	Aye	Spindell:	Aye
	Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

MOTION: That the following be sentence be added to the answer for question 11:

Clerks are encouraged to communicate to voters as to the dates, times, and locations of drop boxes, as well as final retrieval dates and times.

Moved by Commissioner Bostelmann. Seconded by Commissioner Riepl.

Roll call vote: Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

MOTION: That the word “successfully” be added before “sued” in question five, so that question reads, “Can a clerk be successfully sued if he or she chooses not to utilize drop boxes?”

Moved by Commissioner Thomsen. Seconded by Commissioner Riepl.

Roll call vote: Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

MOTION: To delete in the second sentence of question nine the phrase, “... but need not designate drop box locations.” And to add a sentence to the end of that section which reads, “The municipal clerk has the authority to designate drop box locations.”

Moved by Commissioner Thomsen. Seconded by Commissioner Riepl.

Roll call vote: Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

MOTION: That the last sentence of the answer to question 15 read as follows:

Clerks immediately contact law enforcement if anyone tampers with, defaces, destroys, unlawfully empties, or interrupts, impedes, or prevents the use of a drop box.

Moved by Commissioner Thomsen. Seconded by Commissioner Bostelmann.

Roll call vote: Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

Discussion.

MOTION: That the following additional question and answer be added to the Frequently Asked Questions document:

Question: May a clerk place an insert informing voters of the availability of drop boxes?

Answer: Yes, clerks may place an insert informing voters of the availability of drop boxes for the return of absentee ballot envelopes. Those inserts are recommended to include the locations of the drop boxes, dates and times of availability, and date and time of final retrieval of absentee ballot envelopes. Such an insert would be considered additional administrative or logistical instructions pursuant to administrative rule EL 6.05(2).

Moved by Commissioner Thomsen. Seconded by Commissioner Riepl.

Roll call vote: Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

Discussion.

MOTION: The Wisconsin Elections Commission approves and issues the Clerk Communication and FAQ in Attachment A as amended by the Commission. The Commission directs staff to make edits to the *Election Administration* and *Election Day* manuals consistent with its discussion, and to bring revised pages back for Commission approval at a future meeting.

Moved by Commissioner Millis. Seconded by Commissioner Bostelmann.

Roll call vote: Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

Discussion.

E. Discussion and Possible Approval of a Notice for a Preliminary Public Hearing and Comment Period for the Commission’s Emergency Scope Statement Concerning Election Observers, SS 074-24

Staff Attorney Brandon Hunzicker appeared before the Commission and briefed Commissioners on where matters stand with respect to an emergency scope statement concerning election observers, namely that the next step would be for the Commission to authorize staff to hold a preliminary public hearing.

MOTION: That the notice of a preliminary public hearing and comment period and possible quorum is approved for publication in the Administrative Register, and staff is directed to conduct the preliminary hearing on the emergency scope statement concerning the conduct, regulation, and accommodation of election observers. The hearing shall be held via Zoom on July 19, 2024, from 1-3 p.m. with comments accepted until 4:30 p.m. that same day.

Moved by Commissioner Thomsen. Seconded by Commissioner Bostelmann.

Roll call vote: Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

F. Adjourn

MOTION: To adjourn.

Moved by Commissioner Bostelmann. Seconded by Commissioner Riepl.

Roll call vote: Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

The Commission adjourned at 10:25 a.m.

####

July 11, 2024, Wisconsin Election Commission meeting minutes prepared by:

Jacob Walters, Elections Specialist

July 12, 2024

July 11, 2024, Wisconsin Election Commission meeting minutes certified by:

Marge Bostelmann, Commission Secretary

August 27, 2024



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

Wisconsin Elections Commission
Special Teleconference Meeting
201 W. Washington Avenue, Second Floor
Madison, Wisconsin
8:00 a.m. July 26, 2024

Open Session Minutes

Present: Commissioner Marge Bostelmann, Commissioner Ann Jacobs, Commissioner Don M. Millis, Commissioner Carrie Riepl, Commissioner Robert Spindell Jr., and Commissioner Mark Thomsen, all by teleconference.

Staff present: Ahna Barreau, Sharrie Hauge, Robert Kehoe, Anna Langdon, Angela Sharpe, Riley Vetterkind, Riley Willman, Jim Witecha, and Meagan Wolfe, all by teleconference.

A. Call to Order

Commission Chair Jacobs called the meeting to order at 8:01 a.m. and called the roll. All Commissioners were present.

B. Administrator's Report of Appropriate Meeting Notice

Administrator Meagan Wolfe informed the Commission that the meeting was noticed in accordance with Wisconsin's open meetings laws.

C. Discussion of Recent Attorney General Opinion/Discussion and Possible Adoption of a Commission Communication Relating to Wisconsin Constitution art. III, § 7 (1) & (2)

Chair Jacobs noted that the Commission would cover the open session items, move into closed session, and would not return to open session.

Chief Legal Counsel Jim Witecha provided an overview of the clerk communication regarding the Attorney General's opinion relating to Wisconsin Constitution art. III, § 7 (1) & (2).

Discussion.

The Commission directed staff to revise the last section of the communication to draw a clearer line between permissible and impermissible examples of election officials.

Discussion.

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

The Commission scheduled a meeting for July 30, 2024 at 5:00 p.m. and indicated this agenda item would come back at that meeting.

D. 2025-2027 Biennial Budget Update/Request

Chief Administration Officer Sharrie Hauge reviewed the first eight possible decision items for the Commission’s consideration.

Discussion.

MOTION: The Commission directs staff to renew Acquia website hosting services through September 2025 at a cost not to exceed \$156,018.

Moved by Commissioner Thomsen. Seconded by Commissioner Millis.

Roll call vote:	Bostelmann:	Aye	Riepl:	Aye
	Jacobs:	Aye	Spindell:	Aye
	Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

Ms. Hauge reviewed the remaining decision items.

Discussion.

MOTION: Approve the overall approach for submitting a budget request for 2025-27. Pursue the approved fourteen decision items in the 2025-2027 Biennial Budget Prep memo and bring it back to the Commission for final approval prior to submittal. Regarding Item 14, staff are directed to investigate the Administrator’s salary status and classification.

Moved by Commissioner Thomsen. Seconded by Commissioner Millis.

FRIENDLY AMENDMENT: Approve decision items 1-12 and decision item 14. Exclude item 13: “2023-2025, Office of Election Transparency and Compliance.”

Proposed by Commissioner Spindell. Rejected by Commissioner Thomsen.

Roll call vote:	Bostelmann:	Aye	Riepl:	Aye
	Jacobs:	Aye	Spindell:	No
	Millis:	Aye	Thomsen:	Aye

Motion carried 5-1.

E. Review and Potential Action Relating to Administrative Complaint Forms

Chair Jacobs moved this item to the July 30, 2024, meeting agenda.

F. External Use of Agency Materials, Logos, and Branding: Consideration and Possible Action

Chair Jacobs moved this item to the July 30, 2024, meeting agenda.

G. Closed Session

a. Litigation Update and Consideration of Potential Litigation

MOTION: Move into closed session pursuant to Wis. Stat. § 19.85(1)(g).

Moved by Commissioner Thomsen. Seconded by Commissioner Bostelmann.

Roll call vote: Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

The Commission moved into closed session at 9:09 a.m.

H. Adjourn

The Commission adjourned in closed session at 10:33 a.m.

####

July 26, 2024, Wisconsin Election Commission meeting minutes prepared by:

Anna Langdon, Help Desk Staff

August 27, 2024

July 26, 2024, Wisconsin Election Commission meeting minutes certified by:

Marge Bostelmann, Commission Secretary

August 27, 2024



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

Wisconsin Elections Commission
Special Teleconference Meeting
201 W. Washington Avenue, Second Floor
Madison, Wisconsin
5:00 p.m. July 30, 2024

Open Session Minutes

Present: Commissioner Marge Bostelmann, Commissioner Ann Jacobs, Commissioner Don M. Millis, Commissioner Carrie Riepl, Commissioner Robert Spindell Jr., and Commissioner Mark Thomsen, all by teleconference.

Staff present: Ahna Barreau, Joel DeSpain, Sharrie Hauge, Brandon Hunzicker, Robert Kehoe, Anna Langdon, Angela Sharpe, Riley Vetterkind, Riley Willman, Jim Witecha, and Meagan Wolfe, all by teleconference.

A. Call to Order

Commission Chair Jacobs called the meeting to order at 5:05 p.m. and called the roll. All Commissioners were present.

B. Administrator's Report of Appropriate Meeting Notice

Administrator Meagan Wolfe informed the Commission that the meeting was noticed in accordance with Wisconsin's open meetings laws.

Chair Jacobs noted that agenda items would be taken in order of urgency rather than the order they appeared in the agenda. She added that the Commission would likely skip closed session as there were no action items.

C. Discussion, Review, and Possible Action Pertaining to the Commission Manuals for County/Municipal Clerks.

a. Revisions to the Election Administration and Election Day Manuals Related to Recent Litigation Activity

Staff Attorney Angela Sharpe detailed the redline revisions to the Election Administration Manual consistent with decisions issued in *Priorities USA v. WEC* and *Rise, Inc. et al. v. WEC et al.*

Discussion.

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

Administrator
Meagan Wolfe

MOTION: Adopt the four categories of amendments to the Election Administration Manual set forth on page 2 of the Commission’s materials. On page 13, replace “address” in the second line of 1a. with “witness address.”

Moved by Commissioner Thomsen. Seconded by Commissioner Riepl.

Roll call vote: Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

Attorney Sharpe detailed the redline revisions to the Election Day Manual consistent with decisions issued in *Priorities USA v. WEC* and *Rise, Inc. et al. v. WEC et al.*

Discussion.

MOTION: Approve the proposed changes to the Election Day Manual.

Moved by Commissioner Bostelmann. Seconded by Commissioner Riepl.

Roll call vote: Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

D. Discussion of Recent Attorney General Opinion/Discussion and Possible Adoption of a Commission Communication Relating to Wisconsin Constitution art. III, 7 (1) & (2)

Chief Legal Counsel Jim Witecha reviewed the revisions made to the draft clerk communication since it was last before the Commission on July 26.

Discussion.

Commissioner Bostelmann suggested deleting “Registration” from the header, “Registration and Balloting Activities” on page 42 and adding language directing readers with questions on registration to a link with more detailed information. Commissioners Thomsen and Millis indicated approval of this suggestion.

MOTION: Approve the memo on pages 41 and 42 of the Commission’s materials with the modifications set forth in our discussion today. Chair Jacobs and Commissioner Millis will review and approve the final language.

Moved by Commissioner Thomsen. Seconded by Commissioner Bostelmann.

Roll call vote: Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye

Millis: Aye Thomsen: Aye

Motion carried 6-0.

E. External Use of Agency Materials, Logos, and Branding: Consideration and Possible Action

Public Information Officer Riley Vetterkind presented the agenda item to the Commission and noted that the date in the recommended motion should be updated to July 30.

Discussion.

MOTION: The Commission directs staff to conduct further research and create a draft policy for the use of the agency’s logos and media by external organizations based upon the guidelines provided by the Commission. The Commission directs staff to bring the draft policy back to the Commission at a future meeting for further consideration and/or approval.

Moved by Commissioner Thomsen. Seconded by Commissioner Millis.

Roll call vote:	Bostelmann:	Aye	Riepl:	Aye
	Jacobs:	Aye	Spindell:	Aye
	Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

F. Review and Potential Action Relating to Administrative Complaint Forms

Staff Attorney Brandon Hunzicker presented the agenda item and outlined the main questions before the Commission: whether the complaints form should be redesigned at all, and if so whether there should be separate forms for 5.05, 5.06, and 5.061 complaints.

Discussion.

Commissioner Riepl suggested adding a note under Step 3 of the proposed redesign, “Respondent,” that if it is a 5.06 complaint, the respondent must be an election official. Attorney Hunzicker clarified with Commissioner Riepl that this note could be either a separate note or directly in the explanatory sentence under the header. Commissioner Millis expressed preference for expanding the note under Step 3.

Discussion.

Commissioner Millis suggested emphasizing in Step 6 that the complainant may choose to either utilize a notary or submit a declaration pursuant to Wis. Stat. § 887.015.

Discussion.

Chair Jacobs directed Attorney Hunzicker to implement the Commission’s suggestions and bring the draft form back at a future meeting.

G. Possible Consideration and Action Related to Wisconsin Municipalities that Vote to Remove Electronic Voting Equipment, Particularly Accessible Voting Equipment

Attorney Witecha noted that the WEC’s meeting with the United States Department of Justice and relevant municipalities had been rescheduled. It was recommended this topic be postponed until that meeting has occurred.

Chair Jacobs stated the Commission would discuss this item at a later date. There were no objections.

H. Discussion, Review, and Possible Action Pertaining to Recent Ruling in the Matter of Thomas Oldenburg v. WEC et al. (24-CV-0043)

Attorney Sharpe summarized the oral ruling in Oldenburg v. WEC and presented the corresponding draft memo to clerks.

Discussion.

MOTION: Approve the memo on pages 65-67 of the Commission's materials with the following changes:

- The paragraph beginning, "Oral Ruling Issued..." on page 65 will be struck,
- 1, 2, and 3 on page 66 will be struck, and
- 8 on page 67 will be struck.

The memo will be renumbered accordingly.

Moved by Commissioner Millis. Seconded by Commissioner Riepl.

Roll call vote:	Bostelmann:	Aye	Riepl:	Aye
	Jacobs:	Aye	Spindell:	Aye
	Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

I. Discussion and Potential Action Pertaining to WEC’s Receipt of ERIC’s “Eligible but Unregistered” Reports

Administrator Wolfe presented the agenda item. She noted that “2024” should be removed from the recommended motion, as this would not be a one-time decision.

Discussion.

MOTION: The Wisconsin Elections Commission approves staff to seek exemption from the Eligible by Unregistered (EBU) mailing. The Commission directs staff to provide the approved Exemption from the Eligible but Unregistered Requirement letter to ERIC.

Moved by Commissioner Thomsen. Seconded by Commissioner Bostelmann.

Roll call vote: Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

J. Closed Session

a. Litigation Update and Consideration of Potential Litigation

Chair Jacobs reiterated that there were no action items for closed session. She confirmed with the Commission that no members wished to move into closed session.

K. Adjourn

MOTION: To adjourn.

Moved by Commissioner Millis. Seconded by Commissioner Thomsen.

Roll call vote: Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

The Commission adjourned at 7:02 p.m.

####

July 30, 2024, Wisconsin Election Commission meeting minutes prepared by:

Anna Langdon, Help Desk Staff

August 27, 2024

July 30, 2024, Wisconsin Election Commission meeting minutes certified by:

Marge Bostelmann, Commission Secretary

August 27, 2024



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

Wisconsin Elections Commission
Special Teleconference Meeting
201 W. Washington Avenue, Second Floor
Madison, Wisconsin
6:00 p.m. August 8, 2024

Open Session Minutes

Present: Commissioner Marge Bostelmann, Commissioner Ann Jacobs, Commissioner Don M. Millis, Commissioner Carrie Riepl, Commissioner Robert Spindell Jr., and Commissioner Mark Thomsen, all by teleconference.

Staff present: Sharrie Hauge, Brandon Hunzicker, Robert Kehoe, Anna Langdon, Angela Sharpe, Riley Vetterkind, Riley Willman, Jim Witecha, and Meagan Wolfe, all by teleconference.

A. Call to Order

Commission Chair Jacobs called the meeting to order at 6:00 p.m. and called the roll. All Commissioners were present.

B. Administrator's Report of Appropriate Meeting Notice

Administrator Meagan Wolfe informed the Commission that the meeting was noticed in accordance with Wisconsin's open meetings laws.

C. Discussion and Approval of Discretionary Rebuttal Filing for Ballot Access Challenges to Independent Presidential Candidates

Staff Attorney Angela Sharpe reviewed the timeline for challenging ballot access to independent presidential candidates. She noted that the process up for approval by the Commission was based on the ballot access challenge process laid out in the emergency rule language struck down by the Legislature.

Discussion.

MOTION: Any filing submitted in rebuttal to a response for the August 27, 2024 ballot access meeting shall be provided to the Commission no later than Wednesday, August 14, 2024 at 4:30 p.m. Staff are directed to immediately forward any submitted documents to the Commissioners. If someone offers to provide factual testimony with a limit of three minutes during the August 27 meeting, Chair Jacobs will swear that person in under oath. Parties filing a rebuttal shall explain to the Commission the steps they took to serve a copy of the rebuttal on the candidate. A challenger shall serve the rebuttal on a candidate electronically, and if unable to do so, shall explain to the Commission why they could not do so.

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

Commission staff are instructed to communicate with candidates the instructions listed in this motion. Staff will notify and provide a copy of any rebuttal to the candidate. Staff will notify the challenger that any rebuttal must rebut those facts or law raised in the response to the challenge by the candidate.

Moved by Commissioner Millis. Seconded by Commissioner Thomsen.

Discussion.

Roll call vote: Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	No
Millis:	Aye	Thomsen:	Aye

Motion carried 5-1.

D. Adjourn

MOTION: To adjourn.

Moved by Commissioner Thomsen. Seconded by Commissioner Bostelmann.

Roll call vote: Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

The Commission adjourned at 6:18 p.m.

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August 8, 2024, Wisconsin Election Commission meeting minutes prepared by:

Anna Langdon, Help Desk Staff

August 27, 2024

August 8, 2024, Wisconsin Election Commission meeting minutes certified by:

Marge Bostelmann, Commission Secretary

August 27, 2024



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

DATE: For the August 27, 2024, Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: WEC Staff

SUBJECT: Ballot Access Challenges to Independent Presidential Candidates

APPENDICES: **Appendix 1 – David Strange v. Cornel West & Melina Abdullah (EL 24-80)**
Challenge, Candidate Response, Challenger Rebuttal

Appendix 2 – Michael Hoffman v. Shiva Ayyadurai (EL 24-81)
Challenge, Candidate Response, Challenger Rebuttal

Introduction

The Wisconsin Elections Commission (“the Commission”) accepted nomination papers from July 1 through August 6, 2024, for independent presidential candidates seeking ballot access pursuant to Wis. Stat. 8.20(8)(am). Independent presidential candidates must submit not less than 2,000 nor more than 4,000 signatures. Wis. Stat. § 8.20(4). Two properly-filed challenges to two independent presidential candidates were received by the deadline of 4:30 p.m. on Friday, August 9, 2024.

Neither of the two challenges filed are challenges to nomination papers. One is a challenge to declarations’ of candidacy, and one is a challenge to candidate qualifications for office. Considering that the emergency rule that would have created procedure for these types of challenges has been suspended by the Joint Committee for the Review of Administrative Rules (JCRAR), staff recommend that the Commission utilize the procedures and standards in Wis. Admin. Code EL §§ 2.05 and 2.07 as if these were nomination paper challenges.

Wisconsin Statute 8.07 states that “the commission shall promulgate rules under this chapter for use by election officials in determining the validity of nomination papers and signatures thereon.” The Commission has carried out this duty within Wis. Admin. Code Chapter EL 2. Nomination papers for independent presidential candidates must comply with Wis. Stat. § 8.20, and all declarations of candidacy must comply with Wis. Stat. § 8.21. Challenges to nomination papers are evaluated under Wis. Stat. § 8.20 using the standards of Wis. Admin. Code Chapter EL 2, and a recommendation to approve signatures is a recommendation that the signature complies with the requirements of Wis. Stat. § 8.20. A recommendation to approve ballot access is a recommendation that enough valid signatures were submitted for the office under Wis. Stat. § 8.20(8)(am).

Challenges to the sufficiency of nomination papers are brought pursuant to Wis. Admin. Code EL § 2.07(2)(a). The Commission applies the standards in EL § 2.05 to determine sufficiency. Wis. Admin. Code EL § 2.07(1). Any information which appears on a nomination paper is entitled to a presumption of validity. Wis. Admin. Code EL § 2.05(4). When any required item of information on a nomination paper is incomplete, the Commission will

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

accept the information as complete if there has been substantial compliance with the law. Wis. Admin. Code EL § 2.05(5). The burden of proof applicable to establishing or rebutting a challenge is clear and convincing evidence. Wis. Admin. Code EL § 2.07(4).

EL 24-80 – David Strange v. Cornel West & Melina Abdullah

Challenger Name: David Strange

Candidate Name: Cornel West & Melina Abdullah

Office Sought: President and Vice President of the United States

Signatures Required: 2,000-4,000

Signatures Filed (After Facial Review): 6,062

Signatures Challenged: None – Challenge to Declarations of Candidacy

Supplemental Signatures: None

Correcting Affidavits: No

Final Staff Recommendation: 6,062 - Grant Ballot Access

Commission staff verified that Candidates West and Abdullah had 6,062 signatures. Based on the analysis below, staff assert that Challenger Strange has not met his burden to show by clear and convincing evidence that the Declarations of Candidacy of Candidates West and Abdullah are insufficient. *See* Wis. Admin. Code EL § 2.07(4). Accordingly, staff recommend that the Commission reject the challenge and approve ballot access for Candidates West and Abdullah.

Challenger Strange is not challenging the sufficiency of anything on the nomination papers of Candidates West and Abdullah. Instead, he is challenging the sufficiency of their declarations of candidacy. Specifically, he argues that the declarations of candidacy for both candidates contain defective notary jurats. He alleges that both declarations of candidacy were notarized in California, and that California law requires specific language to be included in every jurat.¹ He alleges that Wisconsin law requires the notarial act to be part of, or securely attached to, a physical record.

Challenger Strange alleges that the declaration of candidacy of Candidate West is missing some of the language required by California law. He argues that this omission makes the notarization ineffective under California law, which therefore makes it ineffective under Wisconsin law.

Challenger Strange alleges that the declaration of candidacy of Candidate Abdullah is insufficient for other reasons. He alleges her declaration of candidacy contains two notary stamps, each of which are deficient for different reasons. He alleges the first stamp is insufficient because Candidate Abdullah's name appears printed on the line reserved for the notary's signature. He alleges the second stamp is insufficient because it appears on a separate, second page with no indication that it is or was attached to the physical declaration of candidacy.

Accordingly, Challenger Strange argues that Candidates West and Abdullah should be excluded from the ballot pursuant to Wis. Stat. § 8.30(4) because they failed to file sufficient declarations of candidacy within the time prescribed under Wis. Stat. § 8.21. He argues that the will of the electors and substantial compliance are standards that are not applicable to the mandatory requirements of what must appear on a sufficient declaration of candidacy.

In their response, Candidates West and Abdullah cite Wis. Stat. § 140.26 to argue that the failure of a notary officer to perform a duty or meet a requirement does not invalidate the notarial act. They also assert that the correct standard of review is substantial compliance. They argue that any errors or oversights in their paperwork have not resulted in undue prejudice, and that there is no compelling state interest in requiring perfect execution of documents for candidates seeking ballot access.

¹ The specific language is: "A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document."

In Challenger Strange’s rebuttal filing, he argues that Candidates West and Abdullah conceded to many of his arguments through their failure to address them in the response. He also asserts that the decision in *Hess v. WEC* requires a standard of strict compliance, rather than substantial compliance, and includes a copy of that decision with his rebuttal. 2023 WI App 1350 (July 30, 2024). He argues that Wis. Stat. § 140.26 does not apply to California notaries and rejects Candidate West’s and Candidate Abdullah’s interpretations of the full faith and credit clause. He also argues that § 140.26 cannot be read to forgive all noncompliance with the notary statutes as such an interpretation would render the notary statutes meaningless. Instead, Challenger Strange asserts that the proper application of § 140.26 is to protect a person who relies on a notary and the notarization is defective for a reason the signer could not have foreseen — such as the notary failing to provide written notice of their change of address.

Discussion

A declaration of candidacy “shall be sworn before any officer authorized to administer oaths.” Wis. Stat. § 8.21(2). A declaration of candidacy “is valid with or without the seal of the officer who administers the oath.” Wis. Stat. § 8.21(5).

During the rule promulgation process for the administrative rule that would have created a challenge procedure for challenges to declarations of candidacy, staff advised the Commission that the substantial compliance standard derives from the nomination paper statutes. Wis. Stat. §§ 8.10, 8.15, 8.20. Accordingly, staff recommended that the Commission not include substantial compliance as a standard for challenges to declarations of candidacy, and the Commission approved of that interpretation when it finalized the rule language. Although the emergency rule for declaration of candidacy challenge procedure was suspended by the Joint Committee for the Review of Administrative Rules (JCRAR) on July 22, 2024, staff’s interpretation of these statutes remains the same.

However, it is not necessary in this case for the Commission to decide whether to apply the substantial compliance standard used for nomination papers to challenges to declarations of candidacy because Wisconsin’s notary law contains a similar provision whose effect is largely the same. Wisconsin law provides that a notarial act performed in another state “has the same effect under the law of this state as if performed by a notarial officer” of Wisconsin. Wis. Stat. § 140.11(1). This is consistent with the established constitutional principle that states give full faith and credit to the public acts, records, and judicial proceedings of other states. U.S. Const. Art. IV, Sec. 1. Wisconsin law also provides that “the failure of a notarial officer to perform a duty or meet a requirement specified in [chapter 140] does not invalidate a notarial act performed by the notarial officer.” Wis. Stat. § 140.26.

Wis. Stat. § 140.26 includes all authorized notaries within Chapter 140, including out of state notaries. Accordingly, the failure of a California notarial officer to perform a duty or meet a requirement does not invalidate a notarial act performed by the California notarial officer. It does not appear as though courts have had extensive opportunity to examine Wis. Stat. § 140.26, but one persuasive case from a Wisconsin Court of Appeals concluded a judge’s failure to include the date with his signature in the jurat to an affidavit did not invalidate the search warrant that was based on that affidavit. *State v. Hietpas*, 2023 Wis. App. LEXIS 1034, 2023 WL 6290514.

That persuasive case is consistent with how staff interpret § 140.26, which is to say that a notarial act is not invalidated when the notary, including an out of state notary, fails to meet all of the technical requirements of the notary stamp or jurat. In this case, the deficiencies in the jurats were technical in nature, and the names and signatures of the notaries still appear as part of the declarations of candidacy. The Commission need not take a broad read of § 140.26 to conclude that all errors and omissions in a notary act do not invalidate the act, as Challenger Strange warns against in his rebuttal, just that the specific errors and omissions in this challenge do not invalidate the requirement under § 8.21(2) that the declaration of candidacy be sworn before any officer authorized to administer oaths.

Finally, § 8.21(5), a provision of the declaration of candidacy statute, is consistent with an interpretation that the Legislature did not intend to take the strictest possible view of notary requirements when requiring that declarations of candidacy be sworn before an official authorized to give oaths. Sec. 8.21(5) states that the

declaration of candidacy is valid with or without the seal of the officer administering the oath. Accordingly, if the Legislature intended a declaration of candidacy to be valid even if a notary seal were missing, it must have also intended a declaration of candidacy to be valid even if there are other minor errors or omissions in the jurat that do not affect the ability to confirm that the declaration was sworn before an official authorized to give oaths.

Recommended Motion:

The Commission does not sustain the challenge of David Strange to the declarations of candidacy of Cornel West and Melina Abdullah and will not exercise its authority under Wis. Stat. § 8.30(4) to exclude them from the ballot for failure to timely file a declaration of candidacy. The Commission adds Cornel West and his running mate Melina Abdualah to the list of candidates to be approved for ballot access. Commission staff shall issue a closure letter to the parties consistent with this motion.

EL 24-81 – Michael Hoffman v. Shiva Ayyadurai & Crystal Ellis

Challenger Name: Michael Hoffman

Candidate Name: Shiva Ayyadurai & Crystal Ellis

Office Sought: President and Vice President of the United States

Signatures Required: 2,000-4,000

Signatures Filed (After Facial Review): 3,014

Signatures Challenged: None – Challenge to Natural Born Citizenship Status as Required by Art. II, Section 1, Clause 5 of the U.S. Constitution

Supplemental Signatures: 0

Correcting Affidavits: 0

Final Staff Recommendation: 3,014 - But Deny Ballot Access on Eligibility Grounds

Commission staff verified that Candidates Ayyadurai and Ellis had 3,014 signatures. Based on the analysis below, staff assert that Challenger Hoffman has met his burden to show by clear and convincing evidence that Candidate Shiva Ayyadurai does not meet the legal requirements for the office he seeks because he is not a natural born citizen of the United States. *See* Wis. Admin. Code EL § 2.07(4). Accordingly, staff recommend that the Commission sustain the challenge and deny ballot access for Candidates Ayyadurai and Ellis.

Challenger Hoffman is not challenging the sufficiency of anything on the nomination papers of Candidates Ayyadurai and Ellis, per se, although a candidate does attest to their qualifications for the office sought. Instead, he is challenging whether Candidate Ayyadurai is a “natural born citizen” as required of presidential candidates by Art. II, Section 1, Clause 5 of the U.S. Constitution (“Constitutional Citizenship”). Challenger Hoffman brings this challenge under the provisions found in Wis. Admin. Code § EL 2.07 and Wis. Stat. § 8.20. Specifically, Challenger Hoffman concedes that Candidate Ayyadurai has been a lawfully naturalized citizen since 1983 but argues that Constitutional Citizenship requires that only “...those individuals who are a ‘natural born citizen,’ at least ‘thirty five years’ of age, and a resident of the United States for at least 14 years qualify to be ‘eligible to the Office of President.’” In essence, Challenger Hoffman asserts that there is a difference between being a “natural born” citizen and an individual who has gained citizenship through naturalization under 8 U.S.C. § 1427.

Challenger Hoffman provided exhibits supporting this contention, including a Certificate of Nomination of Unaffiliated Candidate filed by, or caused to be filed by, Candidate Ayyadurai in the State of Utah. This filing expressly states that Candidate Ayyadurai "attest[s]" that he "was 'naturally born' in Bombay, India, on December 2, 1963." Additionally, Challenger Hoffman filed another exhibit in support of these claims — a recent decision of the United States District Court for the District of Columbia in which the court found that "Dr. Ayyadurai was born in Mumbai, India, and became a naturalized American citizen in November 1983."

In the response, Candidate Ayyadurai does not address or refute claims that he is not a natural born U.S. citizen and does not admit or deny that he was born outside the United States and gained citizenship through naturalization. Instead, he argued the Commission lacks subject matter and personal jurisdiction over the

nomination papers, and also contends there is a lack of standing related to Challenger Hoffman and his ability to bring the matter. The cited authority for those defenses was Wis. Stat. Chapter 801, which relates specifically to civil procedure in a court of law. However, Candidate Ayyadurai further elaborates that "...the Challenger's petition has not provided any evidence challenging the Electors' nomination papers pursuant to *Wis. Admin. Code EL § 2.07* and *Wisconsin Legislature: 8.20* or pursuant to the kind of challenges identified in the publication entitled *Wisconsin Nomination Paper Challenges*." Candidate Ayyadurai then further argues that it would be an overreach of the jurisdiction of the Commission, a state entity, to impede the processes of the Electoral College.

The Commission also received a sworn declaration from Elector Frank Marshall, one of the designated presidential electors for the challenged candidates. Primarily, Elector Marshall contends that he and the other electors were not named as respondents and were never served with notice of this challenge filing. The implication appears to be that Elector Marshall is supporting the arguments of Candidates Ayyadurai and Ellis that the Commission is improperly impeding the Electoral College process and that Commissioners lack jurisdiction over those procedures and parties.

The verified rebuttal of Challenger Hoffman notes that Candidates Ayyadurai and Ellis do not respond to the only challenge actually raised against the nomination papers — that he [Candidate Ayyadurai] was born in Bombay, India, and, therefore, does not meet the qualification of being a "natural born citizen," as required by the U.S. Constitution. Challenger Hoffman further argues that, "A failure to contest an argument is deemed as a concession." *Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.*, 90 Wis. 2d 97, 109,279 N.W.2d 493 (Ct. App. 1979) (Unrefuted arguments are deemed admitted.)

Challenger Hoffman, thus, posits that it is undisputed in the record that Candidate Ayyadurai was not born in the United States. Additionally, Challenger Hoffman argues that Candidates Ayyadurai and Ellis instead chose to argue "inapplicable and irrelevant aspects of the Electoral College" instead of addressing the merits. The challenger cites further case law which he believes supports the Commission's authority and duty to determine presidential candidate qualifications for state ballot access.

Discussion

As a preliminary matter, there are a few ways an individual can gain U.S. citizenship under federal law, though only two are pertinent to this challenge. First, all individuals born in the U.S. gain citizenship immediately upon birth and are not required to qualify for and apply for it. U.S. CONST. AMEND. 14. This is commonly known as "birthright citizenship." Second, qualifying individuals may apply for U.S. citizenship through a process called naturalization, usually after holding a green card for a certain number of years and meeting other legal requirements. 8 U.S.C. § 1427.

The Supreme Court has upheld the distinction between natural-born and naturalized citizens' eligibility to be President. *Schneider v. Rusk*, 377 U.S. 163 (1964) ("...the rights of citizenship of the native born and of the naturalized person are of the same dignity and are coextensive. The only difference drawn by the Constitution is that only the 'natural born' citizen is eligible to be President."); *see also Hassan v. Federal Election Com'n*, 893 F.Supp.2d 248, 256-57 (D.D.C. 2012) (holding that the Fifth and Fourteenth Amendments did not implicitly repeal the natural-born citizen requirement). Thus, Commission staff recommend that the Commission conclude that a naturalized citizen does not meet the constitutional requirement to be a "natural born citizen." A naturalized citizen would not meet the requirements of Constitutional Citizenship, and subsequently, would not be qualified to run for the Office of President of the United States.

Commission staff agree with Challenger Hoffman's argument that it is uncontested within the administrative record that Candidate Ayyadurai was born in India, and that the "natural born citizen" arguments were essentially unaddressed in the candidates' response filings. The challenger also submitted sufficient exhibits to create a record of Candidate Ayyadurai's country of birth and subsequent naturalization as a United States citizen. Commission staff also agree with Challenger Hoffman that the Electoral College arguments were vague and irrelevant. Regardless, Commission staff provide analysis below to refute the argument that the Commission cannot consider

this matter. This leaves the Commission to answer only two questions pertaining to the challenge — whether naturalization as a citizen fails to meet the Constitutional requirements for presidential ballot access, and whether the Commission has the authority to consider constitutional questions in this context.

Challenger Hoffman provided, as Exhibit B, a Westlaw case file for *Shiva Ayyadurai v. Merrick Garland et al.*, Civil Action No. 23-2079 (D.D.C. 2024). The challenger’s purpose appears to have been establishing a record of Candidate Ayyadurai’s own admission, and a court record, that Candidate Ayyadurai was born in India and subsequently naturalized as a United States citizen in 1983. Commission staff independently reviewed the case and believe that Candidate Ayyadurai’s birth location and naturalized citizenship status has been sufficiently established and undisputed in the administrative record. It is thus recommended that the Commission conclude the same.

The *Garland* case also raises an important point. Candidate Ayyadurai’s own arguments in that case centered on a belief that his "campaign will be hampered by a variety of state and federal officials who will refuse to permit ballot access to [him] on the basis of his place of birth." This evidences Candidate Ayyadurai’s own, though premature, concern that his Constitutional qualification for office would be called into question. The *Garland* Court found that these arguments were premature and granted motions to dismiss in favor of the defendants. The matter was dismissed without prejudice. The *Garland* Court’s decision was largely based on its assessment that certain states had only sought further clarification of Candidate Ayyadurai’s citizenship status, but none had made an affirmative denial of his ballot access at that time.

A staff search of LexisNexis on August 15, 2024, at 8:05 a.m., yielded no results to evidence that Candidate Ayyadurai had appealed that decision or subsequently filed a timelier lawsuit on these questions of law on a country-wide basis. Further, the consistent interpretation of Art. II, Section 1, Clause 5 of the U.S. Constitution has been that it precludes a naturalized citizen from running for the Office of President of the United States.

This leaves only the second question, that being whether the Commission has the authority to consider Constitutional Citizenship questions in the context of ballot access decisions at the state level. This question is not without precedent, even in the instant matter. While there may be circumstances where the Commission cannot, or chooses not to, answer a constitutional question, in the context of candidate qualifications and ballot access, staff believe that the Commission has an obligation under Wis. Stat. § 8.30 to examine candidate qualifications, especially in the context of a sworn challenge. Likewise, while the Supreme Court has concluded that it would be undesirable to leave certain constitutional questions of candidate eligibility up to the states out of fears of a patchwork of inconsistent ballot access results, this challenge presents a much more direct question that staff believe the Commission is directed by statute to answer. *Trump v. Anderson*, 601 U.S. 100 (2024). Here, the Constitution prescribes a “yes” or “no” requirement — is the candidate for president a natural born citizen? The parties in this matter appear to agree that he is not.

The Commission is authorized by statute to consider this very type of qualification in determining ballot access. Wisconsin Statute § 8.30, “Candidates ineligible for ballot placement,” provides:

- (1) Except as otherwise provided in this section, the official or agency with whom declarations of candidacy are required to be filed may refuse to place the candidate's name on the ballot if any of the following apply:
 - (a) The nomination papers are not prepared, signed, and executed as required under this chapter.
 - (b) It conclusively appears, either on the face of the nomination papers offered for filing, or by admission of the candidate or otherwise, that the candidate is ineligible to be nominated or elected.
 - (c) The candidate, if elected, could not qualify for the office sought within the time allowed by law for qualification because of age, residence, or other impediment. (Emphasis added)

This provision allows the Commission to consider all types of nomination papers and all facets of candidate qualification and eligibility, which Commission staff believe includes Constitutional Citizenship as required by the U.S. Constitution for the Office of President of the United States. The statute also authorizes the Commission to refuse ballot placement under those circumstances in its discretion. This argument is supported by additional statutory requirements pertaining to the very documents Candidate Ayyadurai filed. For instance, Wis. Stat. § 8.21(2)(b) requires the signer of a declaration of candidacy to attest that they will meet the requirements of the office sought, including citizenship. As such, Commission staff contend that the Commission does have the authority to consider Constitutional Citizenship and deny ballot access if it so chooses.

Recommended Motion:

The Commission sustains the challenge of Michael Hoffman against Candidate Shiva Ayyadurai and Candidate Crystal Ellis, and the Commission exercises its authority under Wis. Stat. § 8.30(4) to exclude them from the ballot because Candidate Ayyadurai does not meet the constitutional requirements for the Office of President of the United States. The Commission directs staff not to add Shiva Ayyadurai and his running mate Crystal Ellis to the list of candidates to be approved for ballot access. Commission staff shall issue a closure letter to the parties consistent with this motion.

STATE OF WISCONSIN
WISCONSIN ELECTIONS COMMISSION

IN THE MATTER OF:
DECLARATION OF CANDIDACY FILED BY
CORNEL WEST AND MELINA ABDULLAH WITH RESPECT TO
THE NOVEMBER 5, 2024 ELECTION FOR
PRESIDENT AND VICE PRESIDENT OF THE UNITED STATES

DAVID STRANGE, INDIVIDUALLY AND AS
DEPUTY OPERATIONS DIRECTOR – WISCONSIN
FOR THE DEMOCRATIC NATIONAL COMMITTEE,
1437 N. Jefferson Street, Unit 308
Milwaukee, WI 53202

Complainant,

v.

Case No. _____

CORNEL WEST,
17242 Citron
Irvine, CA 92612

and

MELINA ABDULLAH,
2108 Wellington Rd.,
Los Angeles, CA, 90016

Respondents.

VERIFIED COMPLAINT

INTRODUCTION

1. This Verified Complaint is brought by David Strange (“Complainant”), in his individual capacity and in his capacity as Deputy Operations Director – Wisconsin for the Democratic National Committee, against Cornel West (“West”) and Melina Abdullah (“Abdullah”) pursuant to Wis. Stat. § 5.06(8), Wis. Admin. Code § EL 2.07, and other Wisconsin laws governing elections and election campaigns.

2. West and Abdullah seek to be candidates for the office of President and Vice President of the United States, respectively, in the November 5, 2024 election. West and Abdullah seek to be placed on the ballot representing the “Justice for All” party of statement of principle (West and Abdullah are collectively referred to as “JFA”).

3. To do so, West and Abdullah each filed a Declaration of Candidacy (“Declaration”) with the Wisconsin Elections Commission (“Commission”). A true and correct copy of West’s Declaration is attached to this Complaint as **Exhibit A**. A true and correct copy of Abdullah’s Declaration is attached to this Complaint as **Exhibit B**.

4. Under Wisconsin law, the “declaration of candidacy *shall be* sworn to before any officer authorized to administer oaths.” Wis. Stat. § 8.21(2) (emphasis added). Indeed, the “Instructions for Completing the Declaration of Candidacy,” which is attached to the Declaration form itself (Commission form “EL-162”), warns all candidates submitting the form—including JFA—of this requirement, stating “[t]his form must be sworn to and signed in the presence of a notary public or other person authorized to administer oaths, such as a county or municipal clerk. Wis. Stat. §§ 8.21(2), 887.01(1).” A true and correct copy of a blank Wisconsin Elections Commission Form EL-162 is attached to this Complaint as **Exhibit C**.

5. Despite this clear requirement, both West and Abdullah’s Declarations contain defective notary jurats, and therefore must be excluded from the ballot. As our Supreme Court has recognized, it may be an “unfortunate and regrettable” result to exclude a candidate from the ballot, but “nevertheless, the burden was on the [candidate] to properly file.” *State ex rel. Ahlgrimm v. State Elections Bd.*, 82 Wis. 2d 585, 597, 263 N.W.2d 152 (1978).

FACTUAL BACKGROUND

Parties

6. David Strange (“Complainant”) is a qualified Wisconsin elector, residing at 1437 North Jefferson Street, Unit 308, Milwaukee, Wisconsin 53202.

7. Under the Charter and Bylaws of the Democratic Party of the United States, the “Democratic National Committee shall have general responsibility for the affairs of the Democratic Party between National Conventions,” including, *inter alia*, “conducting the Party’s Presidential campaign[.]” *Id.*, Art. III, § (1)(b).¹

8. Complainant is an employee of the Democratic National Committee and is working to elect Kamala Harris and Timothy Walz as President and Vice President of the United States, respectively.

9. Complainant has contributed his time and money to electing Kamala Harris

10. Cornel West (“West”) is a California resident with an address of 17242 Citron, Irvine, CA 92612.

11. Melina Abdullah (“Abdullah”) is a California resident with an address of 2108 Wellington Rd., Los Angeles, CA 90016.

¹ See <https://democrats.org/wp-content/uploads/2022/09/DNC-Charter-Bylaws-09.10.1022-1.pdf> (last accessed August 8, 2024)

12. West and Abdullah seek to be candidates for the office of President and Vice President of the United States, respectively, in the November 5, 2024 election.

13. On August 6, 2024, West and Abdullah filed their Declarations of Candidacy to appear on the November 5, 2024 ballot in Wisconsin with the Commission.

The Declaration of Candidacy Requirement

14. “Each candidate, except a candidate for presidential elector under s. 8.20 (2) (d), shall file a declaration of candidacy” by the statutory deadline. Wis. Stat. § 8.21(1). The declaration of candidacy for independent candidates was required to be filed no later than Tuesday, August 6. Wis. Stat. §§ 8.21(1); 8.20(8)(am). The Commission “*may not* place a candidate’s name on the ballot if the candidate fails to file a declaration of candidacy within the time prescribed under s. 8.21.” Wis. Stat. § 8.30(4) (emphasis added).

15. “The declaration of candidacy *shall be* sworn to before any officer authorized to administer oaths.” Wis. Stat. § 8.21(2) (emphasis added).

16. Here, both candidates’ Declarations of Candidacy are improperly notarized, for the reasons detailed below.

17. If even one of the JFA candidates is excluded, however, then both must be excluded: “When voting for president and vice president, the ballot shall permit an elector to vote only for the candidates on one ticket jointly or to write in the names of persons in both spaces.” Wis. Stat. § 5.64(1)(ar)1m; *see also* Wis. Stat. § 5.10 (“Although the names of the electors do not appear on the ballot and no reference is made to them, a vote for the president and vice president named on the ballot is a vote for the electors of the candidates for whom an elector's vote is cast.”); Wis. Stat. § 8.25(1) (A “vote for the president and vice president nominations of any party is a vote for the electors of the nominees.”).

West's Defective Notary Jurat

18. Under Wisconsin law, a “notarial act performed in another state has the same effect under the law of this state as if performed by a notarial officer of this state[.]” Wis. Stat. § 140.11(1). Here, both Declarations of Candidacy were notarized in California.

19. California law requires specific language to be included in every jurat:

To any affidavit subscribed and sworn to before a notary, there **shall be attached a jurat** that includes a notice at the top, in an enclosed box, stating: “A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.” This notice **shall** be legible.

Cal. Gov’t Code § 8202(b) (emphasis added).²

20. Like in Wisconsin, California recognizes that “the presumption is that the word ‘shall’ in a statute is ordinarily deemed mandatory and ‘may’ permissive.” *People v. Standish*, 38 Cal. 4th 858, 869, 135 P.3d 32 (2006), *as modified* (Aug. 23, 2006) (cleaned up).

21. California’s notary statute provides an example of the required boxed jurat, explaining that the “jurat executed pursuant to this section **shall** be in the following form”:

<p>A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.</p>
State of California County of _____
Subscribed and sworn to (or affirmed) before me on this ____ day of _____, 20__, by _____, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.
Seal Signature

Cal. Gov’t Code § 8202(d) (emphasis added).

² The physical format of the boxed notice shown in Cal. Gov’t Code § 8202(d) is merely “an example, for purposes of illustration and not limitation, of the physical format of a boxed notice fulfilling the requirements of subdivision (b).” *Id.*, § 8202(c). However, the boxed notice must contain the specific language required by subdivision (b), even if it is in a different physical form.

22. Indeed, even Abdullah’s jurat—while defective for different reasons—includes the required box:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of LOS ANGELES

Subscribed and sworn to (or affirmed) before me on this 24
day of July, 2024, by
Melina Abdullah
proved to me on the basis of satisfactory evidence to be the
person(s) who appeared before me.



(Seal) Signature [Handwritten Signature]

Exhibit B.

23. Here, the jurat affixed to West’s Declaration of Candidacy contains no such boxed notice:

My name as I wish it to appear on the official ballot is as follows:
Cornel West
(Any combination of first name, middle name or initials with surname. A nickname may replace a legal name.)

STATE OF ~~WISCONSIN~~ California } ss. [Handwritten Signature]
County of Orange } (County where oath administered) (Signature of candidate)

Subscribed and sworn to before me this 26th day of July, 2024.
[Handwritten Signature] (Signature of person authorized to administer oaths)

Notary Public or other official (Official title, if not a notary)

If Notary Public: My commission expires Sept. 22, 2026 or is permanent.

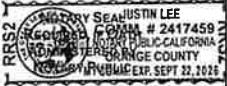



Exhibit A. It is therefore ineffective under California law and is not a valid jurat.

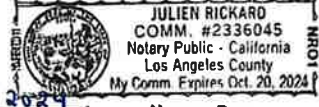
Abdullah’s Defective Notary

24. Abdullah’s Declaration of Candidacy contains two notary stamps. The first is affixed to the Declaration of Candidacy itself:

My name as I wish it to appear on the official ballot is as follows:

Melina Abdullah
(Any combination of first name, middle name or initials with surname. A nickname may replace a legal name.)

STATE OF ~~MISSISSIPPI~~ ^{California} } ^{JR} SS. 
(County where oath administered) (Signature of candidate)

County of Los Angeles } 
(County where oath administered) NOTARY SEAL REQUIRED, IF OATH ADMINISTERED BY NOTARY PUBLIC

Subscribed and sworn to before me this 24 day of July, 2024.

Melina Abdullah
(Signature of person authorized to administer oaths)

Notary Public or other official _____
(Official title, if not a notary)

If Notary Public: My commission expires 10-20-2024 or is permanent.

Exhibit B at 1.

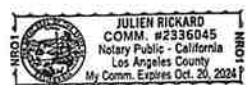
25. That notary stamp, however, contains no corresponding signature. *Id.* Instead, “Melina Abdullah” appears in the space reserved for the “Signature of person authorized to administer oaths.” *Id.* But no signature of a “person authorized to administer oaths” appears in that space, or anywhere on that page.

26. Instead of properly completing the jurat on the Declaration of Candidacy itself, a second, separate page contains a jurat bearing the boxed notice required by California law and the notary’s signature:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
 County of LOS ANGELES

Subscribed and sworn to (or affirmed) before me on this 24 day of July, 2024, by Melina Abdullah
 proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

 (Seal)


Signature 

Exhibit B.

27. The fatal defect in this second, separate jurat, however, is that the jurat appears on a page that is not tied in any way to the signature it purports to witness. The jurat does not contain Abdullah's signature, or reference in any way the document to which it is purportedly attached.

28. Under Wisconsin law governing "a notarial act is performed regarding an *electronic* record, the certificate must be affixed to, or logically associated with, the electronic record." Wis. Stat. § 140.15(6) (emphasis added).

29. With regard to a tangible record, however, the certificate cannot merely be "logically associated with" the record. Instead, "[i]f a notarial act is performed regarding a tangible record, a certificate *must be part of, or securely attached to*, the record." *Id.* (emphasis added).

30. The "logically associate" rule applies to electronic notaries in California too: "A notary public *shall attach or logically associate* the notary public's electronic signature and electronic *seal to an electronic online notarial certificate* of an electronic record in a manner that is capable of independent verification and makes evident any tampering or subsequent change or modification to the electronic record that has occurred." Cal. Gov't Code § 8231.7(e) (emphasis added).

31. But, when not using electronic means, California law, like Wisconsin law, provides that the jurat "shall be attached[.]" Cal. Gov't Code § 8202(b).

32. On August 8, 2024, Rebecca LeDonne ("LeDonne") of Stafford Rosenbaum LLP went to the Offices of the Wisconsin Election Commission, and asked to view the original, paper copy of Abdullah's declaration.

33. A true and correct copy of LeDonne's affidavit is attached hereto as **Exhibit D**.

34. LeDonne confirms that the declaration and the purportedly attached jurat contain no staple marks, and the two pages of Exhibit B do not bear any physical marks suggesting that they were previously physically attached to one another. **Exhibit D, ¶¶6-9.**

35. A true and correct copy of the Wisconsin Department of Financial Institutions Notary Public Handbook (“DFI Handbook”) is attached hereto as **Exhibit E.** The handbook is available on DFI’s website at:

<https://dfi.wi.gov/Documents/ConsumerServices/NotaryPublic/NotaryHandbook.pdf>

(last accessed August 8, 2024).

36. The DFI Handbook advises that a jurat should, if possible, be placed on the same piece of paper as the affiant’s signature. *Id.* at 10. “When the jurat is not written on the document it applies to, it is advisable to include a statement on the document indicating that the jurat is attached, as well as a statement on the page with the jurat identifying the document to which it is attached.” *Id.*

ARGUMENT

I. Statutory regulation of ballot access presents no constitutional questions.

37. At the outset, it bears emphasizing that this Complaint presents solely the question of whether JFA complied with the legal requirement governing declarations of candidacy.

38. Wis. Stat. § 5.01(1), which provides that election statutes should be “construed to give effect to the will of the electors,” *id.*, has no bearing here. That provision “applies only after the holding of the election and the will of the electors has been manifested.” *State ex rel. Oaks v. Brown*, 211 Wis. 571, 249 N.W. 50, 53 (1933).

39. Likewise, “[w]hile the right to vote is an inherent or constitutional right, the right to be a candidate is not of that character. It is a political privilege which depends upon the favor

of the people and this favor may be coupled with reasonable conditions for the public good.” *State ex rel. Frederick v. Zimmerman*, 254 Wis. 600, 617, 37 N.W.2d 473, 482 (1949).

40. Consistent with *Frederick*, courts routinely hold that “[i]t is a prerequisite to the right of a candidate to have his or her name printed on the official ballot that the governing legal requirements be complied with.” 29 C.J.S. Elections § 279. “[L]imiting the choice of candidates to those who have complied with state election law requirements is the prototypical example of a regulation that, while it affects the right to vote, is eminently reasonable.” *Burdick v. Takushi*, 504 U.S. 428, 440 n.10 (1992); *Beller v. Kirk*, 328 F. Supp. 485, 486 (S.D. Fla. 1970), *aff’d sub nom. Beller v. Askew*, 403 U.S. 925 (1971) (“The State has the right and duty to establish reasonable regulations for the conduct of elections for state offices. There is no constitutional right to have one’s name printed on the ballot.”); *Greene v. Raffensperger*, No. 22-CV-1294-AT, 2022 WL 1136729, at *21 (N.D. Ga. Apr. 18, 2022) (recognizing state’s “legitimate interest in proceeding with the specific statutory process it has established to ensure that only qualified candidates appear on the ballot”).

41. Thus, the sole question before the Commission is whether JFA complied with the governing statutory procedures. They did not.

II. A proper notary is a mandatory requirement, with which candidates must strictly comply.

42. “The declaration of candidacy *shall be* sworn to before any officer authorized to administer oaths.” Wis. Stat. § 8.21(2) (emphasis added). That language is dispositive, as “the word ‘shall’ is presumed mandatory when it appears in a statute.” *Bank of New York Mellon v. Carson*, 2015 WI 15, ¶21, 361 Wis. 2d 23, 859 N.W.2d 422 (internal quotations omitted); *State v. Cox*, 2018 WI 67, ¶11, 382 Wis. 2d 338, 913 N.W.2d 780 (“Whenever we encounter a dispute over the meaning of ‘shall,’ we presume it is introducing a mandate.”).

43. Moreover, Chapter 8 provides that: “[t]he official or agency with whom a declaration of candidacy is required to be filed **may not** place a candidate’s name on the ballot if the candidate fails to file a declaration of candidacy within the time prescribed under s. 8.21.” Wis. Stat. § 8.30(4) (emphasis added). “[W]here a legislative provision is accompanied by a penalty for failure to observe it, the provision is held to be mandatory and substantial compliance will not suffice.” *Pritchard v. Mead*, 155 Wis. 2d 431, 439, 455 N.W.2d 263 (Ct. App. 1990).

44. As to West, the governing requirement provides that the boxed language “**shall** be attached” and that “[t]his notice **shall** be legible. Cal. Gov’t Code § 8202(d) (emphasis added). As to Abdullah, the jurat “**shall** be attached[.]” Cal. Gov’t Code § 8202(b) (emphasis added); Wis. Stat. § 140.15(6) (providing that “a certificate **must** be part of, or securely attached to, the record.” (emphasis added)).

45. These are mandatory requirements, requiring strict compliance. *See, e.g., Doskocz v. ALS Lien Servs.*, 102 Cal. App. 5th 107, 115, 321 Cal. Rptr. 3d 476 (2024) (recognizing the “presumption that the word ‘shall’ in a statute is ordinarily deemed mandatory” (quoting *California Corr. Peace Officers Assn. v. State Pers. Bd.*, 10 Cal. 4th 1133, 1143, 899 P.2d 79 (1995)); *Adoption of Michael H.*, 10 Cal. 4th 1043, 1055, 898 P.2d 891 (1995) (cautioning against a construction that “destroys the mandatory force of the word ‘must’”); *Pries v. McMillon*, 2010 WI 63, ¶29, 326 Wis. 2d 37, 784 N.W.2d 648 (Distinguishing permissive language from “a mandatory ‘must’ or ‘shall’”).

46. It does not matter whether West and Abdullah knew their notarial acts or jurats were defective, as “strict compliance requires exactly following the words of the statute.” *Sorenson v. Batchelder*, 2016 WI 34, ¶27, 368 Wis. 2d 140, 885 N.W.2d 362. Thus, even if the result of non-compliance is “harsh,” adjudicative bodies must “enforce[e] strict compliance because [they] are

not free to ignore the import of a statute's plain meaning even where [even] do not enthusiastically endorse the result that enforcement causes[.]” *Sorenson*, 2016 WI 34, ¶45 (internal citation omitted).

47. As our Supreme Court has recognized, it may be an “unfortunate and regrettable” result to exclude a candidate from the ballot, but “nevertheless, the burden was on the petitioner to properly file.” *Ahlgrimm*, 82 Wis. 2d at 597. Regarding nomination papers, the Commission has concluded that “[a] candidate who does not vet their nomination papers prior to filing assumes the risks and mistakes resulting from circulators who are unaware of or do not comply with the regulations governing the circulation of nomination papers.” **Exhibit F** (Decision and Order in *Lipscomb v. Sullivan*) at 7. Here too, the JFA candidates could have vetted their declarations of candidacy through easily accessible, public information and records—just as Complainant did in bringing this challenge.

48. Indeed, the Illinois courts have resolved a complaint substantially similar to this one, concluding that a defective notarial act on a Statement of Candidacy precludes the candidacy. *Knobeloch v. Elec. Bd. for City of Granite City*, 337 Ill. App. 3d 1137, 1141, 788 N.E.2d 130 (2003).

49. Under Illinois law, a statement of candidacy must be notarized by an Illinois notary. *Id.* at 1138. In *Knobeloch*, a candidate submitted a statement of candidacy that was notarized by a Missouri notary, who had previously “contacted the Illinois State Board of Elections to ascertain whether she, a Missouri notary, had the authority to notarize Illinois election documents [and] was told that she could.” *Id.* The court acknowledged that the candidate “fully believed that he was certifying said papers before an authorized notary and therefore subjecting himself to the laws of

perjury,” *id.*, at 1140, and explained that there was “no allegation of fraud, corruption, or dishonesty pertaining to the notarial act,” *id.* at 1138–39.

50. But the court concluded that the notary requirement was mandatory, and explained that the “failure to follow a mandatory provision renders the proceeding to which it relates illegal and void.” *Id.* at 1139. As a result, the court concluded that the statement was “not sworn to before an appropriate officer [and] must be ruled invalid.” *Id.* at 1140–41. The court further “direct[ed] that [the candidate’s] name be removed from the ballot.” *Id.*; *see also Jackson-Hicks v. E. St. Louis Bd. of Election Comm’rs*, 2015 IL 118929, ¶23, 28 N.E.3d 170 (*citing, inter alia, Knobloch* for the proposition that “a candidate’s failure to comply with mandatory provisions of the Election Code governing nomination papers will therefore render the nomination papers invalid [...] and require that the candidate’s name be removed from the ballot[.]”).

51. As explained above, both West’s and Abdullah’s Declarations of Candidacy contain deficient jurats, and West and Abdullah are therefore ineligible to be placed on the ballot.

III. Even if strict compliance did not apply, JFA failed to substantially comply with the applicable statute.

52. Even if substantial compliance applied—and it does not—the defects here do not constitute substantial compliance. “[S]ubstantial compliance contemplates actual compliance in respect to the substance essential to every reasonable objective of the statute.” *Sorenson*, 2016 WI 34, ¶27 (internal quotations omitted).

53. According to the comments to the Revised Uniform Law on Notarial Acts, the attachment requirement “seeks to assure the unified integrity of the record and the related certificate of notarial act.” Unif. L. On Notarial Acts § 15 cm. at 49 (Unif. L. Comm’n 2021). “If the certificate is not a part of the record itself, the means of attaching the certificate to the record are not specified. However, stapling is a common means.” *Id.*; *see also Dawsey v. Kirven*, 203 Ala.

446, 449, 83 So. 338 (1919) (“the purpose of the notary to affix his seal must appear in his certificate; otherwise the scroll or impression purporting to be a seal may have been placed on the document by another, and without the knowledge or official act of the notary.”).

CONCLUSION

The forgoing reasons, the Commission should sustain David Strange’s Complaint and exclude both JFA candidates from the ballot for the November 5, 2024 election.

Dated August 9, 2024.

Complaint prepared by:

STAFFORD ROSENBAUM LLP

Douglas M. Poland, SBN 1055189

David P. Hollander, SBN 1107233

Carly Gerads, SBN 1106808

222 W. Washington Ave., Ste. 900

Madison, Wisconsin 53703

dpoland@staffordlaw.com

dhollander@staffordlaw.com

cgerads@staffordlaw.com

608.256.0226

Attorneys for Complainant

VERIFICATION

David Strange, being duly sworn, on oath, deposes and says:

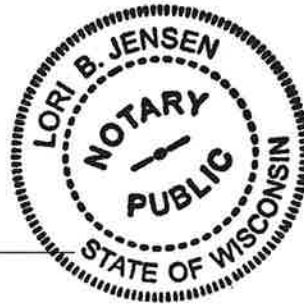
1. That David Strange is a qualified elector and resident of the State of Wisconsin.
2. That David Strange has read the foregoing Verified Complaint and avers that the facts alleged therein are true and correct to the best of his knowledge, except as to those matters therein stated upon information and belief or based upon exhibits filed in support of his Verified Complaint, as to which matters he believes them to be true.


Signed in Milwaukee, Wisconsin this 9th day of August, 2024.



David Strange

Subscribed and sworn to before me
this 9th day of August, 2024.





Printed Name: Lori Jensen
Notary Public, State of Wisconsin

My commission expires: 9/10/2027

EXHIBIT A

Declaration of Candidacy

(See instructions for preparation on back)

FOR OFFICE USE ONLY

HAND DELIVERED

Is this an amendment?

Yes (if you have already filed a DOC for this election)

No (if this is the first DOC you have filed for this election)

I, Cornel West, being duly sworn, state that
Candidate's name

I am a candidate for the office of President of the United States
Official name of office - Include district, branch or seat number

representing Justice For All
If partisan election, name of political party or statement of principle - five words or less (Candidates for nonpartisan office may leave blank.)

and I meet or will meet at the time I assume office the applicable age, citizenship, residency and voting qualification requirements, if any, prescribed by the constitutions and laws of the United States and the State of Wisconsin, and that I will otherwise qualify for office, if nominated and elected.

I have not been convicted of a felony in any court within the United States for which I have not been pardoned.¹

My present address, including my municipality of residence for voting purposes is:

17242	Citron	Irvine, California	92612	Town of <input type="checkbox"/>	Irvine, CA
				Village of <input type="checkbox"/>	
				City of <input type="checkbox"/>	
House or fire no.	Street Name	Mailing Municipality and State	Zip code	Municipality of Residence for Voting	

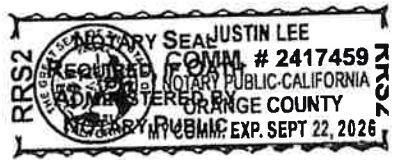
My name as I wish it to appear on the official ballot is as follows:

Cornel West
(Any combination of first name, middle name or initials with surname. A nickname may replace a legal name.)

[Signature]
(Signature of candidate)

J.L.
STATE OF ~~WISCONSIN~~ California }
County of Orange } ss.
(County where oath administered)

Subscribed and sworn to before me this 26th day of July, 2024.
[Signature]
(Signature of person authorized to administer oaths)



Notary Public or other official _____
(Official title, if not a notary)

If Notary Public: My commission expires Sept. 22, 2026 or is permanent.

The information on this form is required by Wis. Stat. § 8.21, Art. XIII, Sec. 3, Wis. Const., and must be filed with the filing officer in order to have a candidate's name placed on the ballot. Wis. Stats. §§ 8.05 (1)(j), 8.10 (5), 8.15 (4)(b), 8.20 (6), 120.06 (6)(b), 887.01.

¹ A 1996 constitutional amendment bars any candidate convicted of a misdemeanor which violates the public trust from running for or holding a public office. However, the legislature has not defined which misdemeanors violate the public trust. A candidate convicted of any misdemeanor is not barred from running for or holding a public office until the legislature defines which misdemeanors apply.

EXHIBIT B

Declaration of Candidacy

(See instructions for preparation on back)

FOR OFFICE USE ONLY
HAND DELIVERED

Is this an amendment?

Yes (if you have already filed a DOC for this election)

No (if this is the first DOC you have filed for this election)

I, Melina Abdullah, being duly sworn, state that

Candidate's name

I am a candidate for the office of Vice President of the United States

Official name of office - Include district, branch or seat number

representing Justice For All

If partisan election, name of political party or statement of principle - five words or less (Candidates for nonpartisan office may leave blank.)

and I meet or will meet at the time I assume office the applicable age, citizenship, residency and voting qualification requirements, if any, prescribed by the constitutions and laws of the United States and the State of Wisconsin, and that I will otherwise qualify for office, if nominated and elected.

I have not been convicted of a felony in any court within the United States for which I have not been pardoned.¹

My present address, including my municipality of residence for voting purposes is:

2108	Wellington Rd.	Los Angeles, California	90016	Town of <input type="checkbox"/> Village of <input type="checkbox"/> City of <input checked="" type="checkbox"/>	Los Angeles, CA
<small>House or fire no.</small>	<small>Street Name</small>	<small>Mailing Municipality and State</small>	<small>Zip code</small>	<small>Municipality of Residence for Voting</small>	

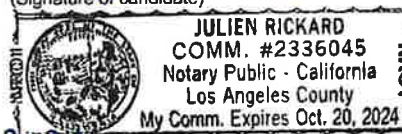
My name as I wish it to appear on the official ballot is as follows:

Melina Abdullah

(Any combination of first name, middle name or initials with surname. A nickname may replace a legal name.)

STATE OF ~~WISCONSIN~~ ^{California} }
County of Los Angeles } ss.
(County where oath administered)

[Handwritten Signature]
(Signature of candidate)



Subscribed and sworn to before me this 24 day of July, 2024.

Melina Abdullah

(Signature of person authorized to administer oaths)

**NOTARY SEAL
REQUIRED, IF OATH
ADMINISTERED BY
NOTARY PUBLIC**

Notary Public or other official _____
(Official title, if not a notary)

If Notary Public: My commission expires 10-20-2024 or is permanent.

The information on this form is required by Wis. Stat. § 8.21, Art. XIII, Sec. 3, Wis. Const., and must be filed with the filing officer in order to have a candidate's name placed on the ballot. Wis. Stats. §§ 8.05 (1)(j), 8.10 (5), 8.15 (4)(b), 8.20 (6), 120.06 (6)(b), 887.01.

¹ A 1996 constitutional amendment bars any candidate convicted of a misdemeanor which violates the public trust from running for or holding a public office. However, the legislature has not defined which misdemeanors violate the public trust. A candidate convicted of any misdemeanor is not barred from running for or holding a public office until the legislature defines which misdemeanors apply.

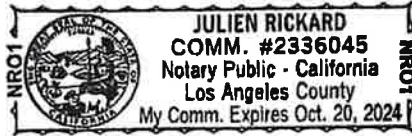
HAND DELIVERED

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of LOS ANGELES

Subscribed and sworn to (or affirmed) before me on this 24
day of July, 2024, by _____
Melina Abdullah

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.



(Seal)

Signature 

EXHIBIT C

Declaration of Candidacy

(See instructions for preparation on back)

FOR OFFICE USE ONLY

Is this an amendment?

Yes (if you have already filed a DOC for this election)

No (if this is the first DOC you have filed for this election)

I, _____, being duly sworn, state that
Candidate's name

I am a candidate for the office of _____
Official name of office - Include district, branch or seat number

representing _____
If partisan election, name of political party or statement of principle - five words or less (Candidates for nonpartisan office may leave blank.)

and I meet or will meet at the time I assume office the applicable age, citizenship, residency and voting qualification requirements, if any, prescribed by the constitutions and laws of the United States and the State of Wisconsin, and that I will otherwise qualify for office, if nominated and elected.

I have not been convicted of a felony in any court within the United States for which I have not been pardoned.¹

My present address, including my municipality of residence for voting purposes is:

House or fire no.	Street Name	Mailing Municipality and State	Zip code	Town of <input type="checkbox"/> Village of <input type="checkbox"/> City of <input type="checkbox"/>	Municipality of Residence for Voting
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My name as I wish it to appear on the official ballot is as follows:

(Any combination of first name, middle name or initials with surname. A nickname may replace a legal name.)

STATE OF WISCONSIN } _____ (Signature of candidate)
County of _____ } ss.
(County where oath administered)

Subscribed and sworn to before me this _____ day of _____, _____.

(Signature of person authorized to administer oaths)

**NOTARY SEAL
REQUIRED, IF OATH
ADMINISTERED BY
NOTARY PUBLIC**

Notary Public or other official _____
(Official title, if not a notary)

If Notary Public: My commission expires _____ or is permanent.

The information on this form is required by Wis. Stat. § 8.21, Art. XIII, Sec. 3, Wis. Const., and must be filed with the filing officer in order to have a candidate's name placed on the ballot. Wis. Stats. §§ 8.05 (1)(j), 8.10 (5), 8.15 (4)(b), 8.20 (6), 120.06 (6)(b), 887.01.

EL-162 | Rev. 2019-08 | Wisconsin Elections Commission, P.O. Box 7984, Madison, WI 53707-7984
608-266-8005 | web: elections.wi.gov | email: elections@wi.gov

¹ A 1996 constitutional amendment bars any candidate convicted of a misdemeanor which violates the public trust from running for or holding a public office. However, the legislature has not defined which misdemeanors violate the public trust. A candidate convicted of any misdemeanor is not barred from running for or holding a public office until the legislature defines which misdemeanors apply.

Instructions for Completing the Declaration of Candidacy

All candidates seeking ballot status for election to any office in the State of Wisconsin must properly complete and file a **Declaration of Candidacy**. This form must be **ON FILE** with the proper filing officer no later than the deadline for filing nomination papers or the candidate's name will not appear on the ballot. A facsimile will be accepted if the FAX copy is received by the filing officer no later than the filing deadline and the signed original declaration is received by the filing officer with a postmark no later than the filing deadline.

Information to be provided by the candidate:

- Type or print your name on the first line
- The title of the office and **any district, branch, or seat number** for which you are seeking election must be inserted on the second line. *For legislative offices insert the title and district number, for district attorneys insert the title and the county, for circuit court offices insert the title, county and branch number, and for municipal and school board offices insert the title and any district or seat number.*
- Type or print the political party affiliation or principle supported by you in five words or less on the third line. *Nonpartisan candidates may leave this line blank.*
- **Felony convictions: Your name cannot appear on the ballot if you have been convicted of a felony in any court in the United States for which you have not been pardoned. Please see footnote on page 1 for further information with respect to convictions for misdemeanors involving a violation of public trust. These restrictions only apply to candidates for state and local office.**
- Your current address, including your municipality of residence for voting purposes, must be inserted on the fourth line. This must include your entire mailing address (**street and number, municipality where you receive mail**) *and the name of the municipality in which you reside and vote* (town, village, or city of ___). If your address changes before the election, an amended Declaration of Candidacy must be filed with the filing officer. Wis. Stat. § 8.21. *Federal candidates are not required to provide this information, however an address for contact purposes is helpful.*
- Type or print your name on the fifth line as you want it to be printed on the official ballot. You may use your full legal name, former legal surname, or any combination of first name, middle name, and initials, surname or nickname with last name.

Note: The Wisconsin Elections Commission has determined that, absent any evidence of an attempt to manipulate the electoral process, candidates are permitted to choose any form of their name, including nicknames, by which they want to appear on the ballot.

No titles are permitted. In addition, names such as "Red" or "Skip" are permitted, but names which have an apparent electoral purpose or benefit, such as "Lower taxes," "None of the above" or "Lower Spending" are not permitted. It is also not permissible to add nicknames in quotes or parentheses. For example, John "Jack" Jones or John (Jack) Jones are not acceptable, but John Jones, Jack Jones or John Jack Jones are acceptable.

This form must be sworn to and signed in the presence of a notary public or other person authorized to administer oaths, such as a county or municipal clerk. Wis. Stat. §§ 8.21(2), 887.01(1).

Information to be provided by the person administering the oath:

- The county where the oath was administered.
- The date the Declaration of Candidacy was signed and the oath administered.
- The signature and title of the person administering the oath. If signed by a notary public, the notary seal is required and the date the notary's commission expires must be listed.

All candidates for offices using the nomination paper process must file this form (*and all school district candidates must file the EL-162sd*) with the appropriate filing officer no later than the deadline for filing nomination papers. Wis. Stats. §§ 8.10 (5), 8.15 (4)(b), 8.20 (6), 8.21, 8.50 (3)(a), 120.06 (6)(b). Candidates nominated for local office at a caucus must file this form with their municipal clerk within 5 days of receiving notice of nomination. Wis. Stat. § 8.05 (l)(j).

EXHIBIT D

STATE OF WISCONSIN
WISCONSIN ELECTIONS COMMISSION

IN THE MATTER OF:
DECLARATION OF CANDIDACY FILED BY
CORNEL WEST AND MELINA ABDULLAH WITH RESPECT TO
THE NOVEMBER 5, 2024 ELECTION FOR
PRESIDENT AND VICE PRESIDENT OF THE UNITED STATES

DAVID STRANGE, INDIVIDUALLY AND AS
DEPUTY OPERATIONS DIRECTOR – WISCONSIN
FOR THE DEMOCRATIC NATIONAL COMMITTEE,
1437 N. Jefferson Street, Unit 308
Milwaukee, WI 53202

Complainant,

v.

Case No. _____

CORNEL WEST,
17242 Citron
Irvine, CA 92612

and

MELINA ABDULLAH,
2108 Wellington Rd.
Los Angeles, CA, 90016

Respondents.

AFFIDAVIT OF REBECCA LEDONNE

STATE OF WISCONSIN)
) SS
COUNTY OF DANE)

I, Rebecca (Becky) LeDonne, being first duly sworn under oath, state as follows:

1. I am an adult resident of the state of Wisconsin, County of Dane. I am employed as a legal assistant/paralegal with Stafford Rosenbaum LLP.

2. I make this Affidavit on personal knowledge of the facts and circumstances set forth herein.

3. Attached to the Verified Complaint as Exhibit B is a true and correct copy of two pages downloaded from the Wisconsin Elections Commission database, Badger Voters. Specifically, Exhibit B includes: (1) the Declaration of Candidacy (“Declaration”) of Melina Abdullah (“Abdullah”); and (2) a jurat page (“Jurat”) that was the page after the Declaration in the file downloaded from Badger Voters.

4. On August 8, 2024 at approximately 2:40 p.m., I went to the office of the Wisconsin Election Commission (“Commission”) at 201 West Washington Avenue, Second Floor, Madison, Wisconsin 53703.

5. I received permission from the Commission to review the original, paper copy of Abdullah’s Declaration and the original, paper copy of Abdullah’s Jurat.


6. The Declaration and the Jurat were on separate pieces of paper which were not attached to one another.

7. I closely examined and held in my hand the original, paper copy of the Declaration and the original, paper copy of Abdullah’s Jurat.

8. The original, paper copy of the Declaration did not contain any holes or marks that would be made by a staple. I could not identify any markings that would suggest that the Declaration had been physically attached to a different piece of paper.

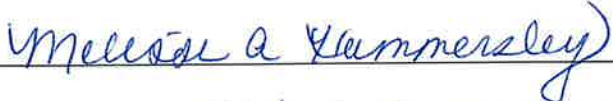
9. The original, paper copy of the Jurat did not contain any holes or marks that would be made by a staple. I could not identify any markings that would suggest that the Jurat had been physically attached to a different piece of paper.

FURTHER AFFIANT SAYETH NOT.



Rebecca L. LeDonne

Subscribed and sworn to before me
this 9th day of August, 2024.



Printed Name: Melissa A. Hammersley
Notary Public, State of Wisconsin

My commission expires: 12/14/27



EXHIBIT E



Department of Financial Institutions
State of Wisconsin

Notary Public Handbook

Dear Notary Public:

This notary public handbook will help you become familiar with the duties and responsibilities of a notary public. It includes requirements and directions for the commission application, sample jurats and answers to common questions about the role of the notary.

We would also like to recommend that you take the free online notary public educational tutorial course. The tutorial includes specific instructions for and examples of the proper execution of notarial acts, knowledge quizzes and a final assessment exam. These aids are designed to enable you to feel confident in your performance of your duties as a notary public. The tutorial is available online at: dfi.wi.gov

Although the brochure and tutorial discuss in detail your duties as a notary, we encourage you to contact Wisconsin Department of Financial Institutions (WDFI) if you have additional questions concerning your responsibilities as a public officer. We are here to assist you in any way that we can.

Mail Address:

Notary Section
WI Department of Financial Institutions
PO Box 7847
Madison WI 53707

Phone: 608-266-8915
Fax: 608-264-7965

[Email: DFINotary@wisconsin.gov](mailto:DFINotary@wisconsin.gov)

TTY: 711

Website: dfi.wi.gov

Street Address:

Notary Section
WI Department of Financial Institutions
4822 Madison Yards Way, North Tower
Madison WI 53705

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Notarial Ceremonies	Pages 12 – 17
Maintenance	Pages 18 – 19
Statutory References	Pages 20

GENERAL INFORMATION

WHAT IS A NOTARY PUBLIC?

A notary public is an individual issued an appointment by the Secretary of the Wisconsin Department of Financial Institutions to serve the public as an impartial witness, performing notarial acts as are allowed or required by law.

WHO MAY BECOME A NOTARY PUBLIC IN WISCONSIN?

Any United States resident who is at least 18 years of age may apply to become a notary public. "Resident" means a person who maintains a permanent dwelling place in the United States and is in fact living in the United States. Your eligibility does not depend on immigration status, but rather on whether you maintain your permanent residence within the United States and meet the other eligibility requirements for a notary commission. The notary applicant must have at least the equivalent of an 8th grade education and pass the WDFI notary exam with a score of 90% or better.

A criminal record showing felonies and crimes involving fraud, dishonesty, or violations of public trust may be admissible evidence for purposes of impeaching a witness's character for truthfulness in a court proceeding. Because a notary public must be a credible witness, an applicant's criminal record must be free from offenses that could be used to impeach the notary public's character for truthfulness. A person convicted of such offenses may only be commissioned as a notary public if the applicant is pardoned of the conviction.

HOW DO I BECOME A NOTARY PUBLIC IN THIS STATE?

You must study and understand the duties and expectations of being a notary public, which are set forth in [Chapter 140 of the Wisconsin Statutes](#) and [chapter DFI-CCS 25 of the Wisconsin Administrative Code](#). Then, you must complete an application, secure a notary bond for a minimum of \$500 coverage, complete the oath, print the notary exam certificate and submit all forms to the WDFI with the required \$20 fee. You may initiate the application and pay online <https://dfi.wi.gov/Pages/ConsumerServices/NotaryPublic/NotaryFileOnline.aspx> or download the applications that are available from <https://dfi.wi.gov/Pages/ConsumerServices/NotaryPublic/NotaryForms.aspx>.

DOES AN ATTORNEY BECOME A NOTARY PUBLIC AUTOMATICALLY UPON QUALIFYING TO PRACTICE LAW?

No, attorneys do not become notaries public upon qualifying to practice law in Wisconsin. A United States resident who is an attorney licensed to practice law in Wisconsin who wishes to be a notary must provide a certificate of good standing from

the Wisconsin Supreme Court and submit an application to WDFI. In addition to being eligible for a four-year commission, an attorney may qualify for a "permanent" commission under §140.02(2), Wis.

Stats. for which no bond is required. A permanent commission is valid as long as the attorney remains a United States resident licensed to practice law in Wisconsin. Attorneys seeking a permanent notary commission should so specify when requesting an application. The completed permanent application and \$50 filing fee should be submitted to the WDFI. An individual may NOT perform a notarial act until the applicant receives notice that the WDFI has issued the applicant a notary commission.

WHO SUPPLIES NOTARY SEAL OR STAMP?

It is your responsibility to provide an engraved official seal or official rubber stamp prior to completing the application form. For suppliers, conduct an internet search or check with your local office supply store. The seal or stamp may be of any size or shape, but must state the words "Notary Public," "State of Wisconsin," and your name which must include your legal last name. You may use initials, or a shortened first name if you wish, but you must use your current legal last name in full.

WHAT IS REQUIRED IF I HAVE AN ARREST OR CONVICTION RECORD?

Under current law, persons convicted in state or federal court of any felony, or of a misdemeanor involving fraud, forgery, or similar violation, may not be commissioned as Notaries Public for the State of Wisconsin unless they have been pardoned of the conviction(s). If you have a misdemeanor arrest or conviction record, you are required to answer "yes" on the notary application and give a brief explanation when you apply to become a Notary. Your papers will be reviewed to determine if you are eligible to be granted a Notary commission. If you wish, you may submit your court papers for an eligibility review prior to submitting your application forms. That would save you the cost of buying a bond and seal if you are later found to be ineligible to become a notary public.

HOW LONG WILL MY COMMISSION LAST?

Your notary commission is valid for a period of four years, unless (1) you are licensed to practice law in Wisconsin and obtain a permanent commission, or (2) your commission is revoked prior to the expiration date of the commission.

DO I NEED TO BE BONDED?

A \$500 surety bond is **required for all applicants applying or reapplying for a four-year notary public commission**. The surety bond is an insurance agreement making the surety legally liable to the party who is harmed, for up to \$500 in damages caused by a notary's misconduct or neglect in executing notarial acts.

A “blanket bond” issued for employment purposes does not fulfill this obligation. A separate, specific bond in the amount of \$500 is required by Wisconsin statutes. Once filed with the Wisconsin Department of Financial Institutions, your bond cannot be cancelled and will expire in four years with your notary commission. **If you are sued for misconduct or neglect in your notarial duties, any damages beyond \$500 are your personal responsibility.**

No bond is required for permanent commissions.

HOW MAY I BE BONDED?

The surety bond must be provided by an insurance/surety company licensed to write surety bonds in the State of Wisconsin. The Wisconsin Department of Financial Institutions cannot provide bonding and cannot recommend companies who sell bonds. You may search the internet or find a local bonding company or check with your local insurance provider to see if they provide the service.

WHAT IS A NOTARY BONDING AGENCY?

A notary bonding agency is an insurance company or division of any insurance company, licensed to write fidelity insurance in the State of Wisconsin, which specializes in selling notary bonds.

WHAT IS THE TOTAL COST INVOLVED IN BECOMING A NOTARY PUBLIC?

The costs of becoming a notary depends on the type of official notarial seal or stamp you purchase and the cost of the surety bond you obtain. Additionally, you must pay a \$20 application filing fee to the Wisconsin Department of Financial Institutions.

WHEN MAY I BEGIN TO PERFORM IN-PERSON NOTARIAL ACTS?

You may begin to perform in-person notarial acts after you have been notified by the Wisconsin Department of Financial Institutions via email or USPS that your commission has been issued. A certificate will be forwarded to the mailing address you list on the application form or emailed. It is very important to indicate a complete and current address on your application to ensure delivery of your certificate.

A notary who is applying for the first time or renewal will usually receive a certificate within two weeks of sending the forms and fee to the Wisconsin Department of Financial Institutions.

WHEN MAY I BEGIN TO PERFORM NOTARIAL ACTS FOR REMOTELY LOCATED INDIVIDUALS?

You may begin to perform notarial acts for remotely located individuals **only after** you have done the following:

(1) Obtained your certificate authorizing you to perform in-person notarial acts.

(2) Reviewed the [WDFI's Guidance for Notaries Seeking to Perform Notarial Acts for Remotely Located Individuals](#). The Guidance describes the types of documents that may be notarized remotely, the technology providers that may be used in performing remote notarial acts, and the different requirements applicable to notarization of estate-planning documents for remotely located individuals.

(3) Taken the necessary steps to comply with Wisconsin law governing notarization for remotely located individuals, which vary depending on the type of notarial act performed:

a. For most notarial acts performed for remotely located individuals (other than the notarization of estate planning documents), you must follow the remote online notarization procedures set forth in [section 140.145 of the Wisconsin Statutes](#) and [section DFI-CCS 25.03](#) of the Wisconsin Administrative Code, which are summarized in Part 2 of the [WDFI's Guidance for Notaries Seeking to Perform Notarial Acts for Remotely Located Individuals](#). Among other requirements, a notary must obtain authorization from an approved communication technology provider to use its system for remote online notarization and become knowledgeable about that provider's system and processes, including completion of any relevant training or

instruction modules prepared by the provider. Communication technology providers are approved by WDFI and the Remote Notary Council if they meet security, recordkeeping and other standards to ensure the integrity of the notarial process. A list of approved providers is available on the WDFI website.

b. For notarization of **estate planning** documents for remotely located individuals, you must follow the procedures set forth in section 140.147 of the Wisconsin Statutes, which are summarized in Part 3 of the [WDFI's Guidance for Notaries Seeking to Perform Notarial Acts for Remotely Located Individuals](#). Among other requirements, remote notarization of estate-planning documents must be performed via two-way real-time audiovisual communication and supervised by a Wisconsin-licensed attorney in good standing, who must complete and attach a special affidavit of compliance to the estate-planning document.

WHERE MAY I NOTARIZE?

You may perform notarial acts in all counties of the State of Wisconsin, but you must be physically present in the State. This is true regardless of whether the notarization is in-person or remote. A Wisconsin notary public commission is valid in and for the State of Wisconsin only – you may not use your Wisconsin commission to act as a notary public in any other state.

POWERS & LIABILITIES

WHAT EXACTLY IS A NOTARIZATION?

A “notarization” is more precisely called a “notarial act.” “Notarial act” means any act that a notary public is authorized to perform, and includes taking an acknowledgement, administering an oath or affirmation, taking a verification upon oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy of and noting a protest of a negotiable instrument. (Further information and definitions of some important terms are provided in the next section of this manual, entitled “Notarial Acts.”)

WHAT ARE SOME IMPORTANT STEPS IN PERFORMING ALL NOTARIAL ACTS?

Check identification if you don’t know the signer; use the proper ceremony and written certificate language; sign and affix a legible impression of your seal/stamp; and indicate your commission expiration date. It is always advisable to check the document to be sure there are no blanks or incomplete statements. If, for instance, the document has blanks for two persons to sign, but you are witnessing only one signature, cross out and initial the blank line. This could prevent another person from signing it later.

IF THE NOTARIAL ACT CONCERNS A TANGIBLE RECORD, MUST I ALWAYS AFFIX MY OFFICIAL SEAL/STAMP?

Yes. Wisconsin Statutes require all notaries public, including attorneys, to affix their official notarial seal or stamp every time a notarial act regarding a tangible record is performed. This includes records that are transmitted and signed electronically.

MAY I PERFORM NOTARIAL ACTS IN ALL COUNTIES OF WISCONSIN?

Yes. Your notary commission allows you to act as a Notary Public in all counties in the state of Wisconsin.

WHAT DOES ‘COUNTY OF VENUE’ MEAN?

“Venue” is the place where an act is performed. On a notarized document, it shows **the notary’s location when the notarial act took place**, not the county where the notary resides. The venue is usually indicated near the top of a document, as “State of Wisconsin, County of Dane.”

MAY I PERFORM NOTARIAL ACTS IN ANOTHER STATE?

No. As a Wisconsin Notary Public, you may perform notarial acts only when located in the State of Wisconsin.

MAY I PERFORM NOTARIAL ACTS ON A SUNDAY OR HOLIDAY?

Yes. There is no section of the Wisconsin Statutes that makes it unlawful for a notary to act on a Sunday or holiday.

MAY I HELP MY CUSTOMERS PREPARE THE PAPERS THEY NEED NOTARIZED?

No, unless you are an attorney licensed to practice law in Wisconsin. A Notary Public, who is not an attorney, may not engage in the practice of law – which includes the preparation of legal papers, such as wills, contracts, deeds, powers of attorney, etc.

SHOULD I NOTARIZE A DOCUMENT IN WHICH I OR MY SPOUSE HAS A DIRECT FINANCIAL INTEREST?

No. A notary public may not perform a notarial act with respect to a record in which the notary or their spouse or domestic partner is a party or has direct beneficial interest. If you do, then the document may be voided.

SHOULD I WITNESS MY OWN SIGNATURE? THAT OF MY SPOUSE?

No. The notarial process is designed to provide an impartial third-party witness to signatures. You are not an impartial third-party witness your own signature, and you'll generally have a direct beneficial interest in documents signed by your spouse

SHOULD I NOTARIZE A DOCUMENT THAT IS WRITTEN IN A FOREIGN LANGUAGE?

There is no reference in the Wisconsin Statutes that prohibit you from notarizing a document written in a foreign language. However, if you do not understand the contents of the documents, you are encouraged to find another notary who does understand it, or refer the requestor to a language department, foreign students' office, or a consulate.

MAY I MAKE A CERTIFIED COPY OF A BIRTH CERTIFICATE?

No. You are strictly prohibited from making copies, certified or uncertified, of "vital records," which include certificates of birth, death, divorce, annulments, marriage, etc. Never notarize photocopies of vital records that a person may bring you. Preparing or issuing anything that carries the appearance of an original or copy of a vital record could cause you to be fined not more than \$10,000, imprisoned not more than 3 years, or both. Copies of vital records are appropriately obtained from their official custodian: a state or county office of vital records, or similar government records office.

HOW MUCH MONEY CAN I CHARGE?

You may charge no more than \$5 for performing most in-person notarial acts. (Refer to §140.02(9) of the Wisconsin Statutes for further information.)

NOTARIAL ACTS

There are several specific types of notarial acts; you must know and use the proper ceremony and written certificate for the type of act you are requested to perform.

WHAT IS AN AFFIDAVIT? AN AFFIANT?

An affidavit is a written document made by a person who swears, under oath or affirmation, that the statements in the document are the truth. The person who makes and swears to the affidavit is an affiant.

WHAT IS A JURAT?

“Jurat” is the traditional name used to refer to the notary’s written certificate, which should appear after the signature of a person who has given an oath or has made a sworn statement. The jurat must be signed and dated contemporaneously when the performance of the notarial act occurs, identify the jurisdiction in which the notarial act is performed, indicate that it is signed by a notarial officer of this State, and include the date of expiration, if any, of the officer’s commission

SHOULD MY JURAT BE ON THE SAME PIECE OF PAPER AS THE AFFIANT’S SIGNATURE?

If possible, yes. If there is not enough room at the end of a document to insert a jurat, you may place it on a separate page and attach it to the sworn statement. When the jurat is not written on the document it applies to, it is advisable to include a statement on the document indicating that the jurat is attached, as well as a statement on the page with the jurat identifying the document to which it is attached.

IS THERE A DIFFERENCE BETWEEN AN OATH AND AN AFFIRMATION?

As a practical matter, no. Both oaths and affirmations are solemn pledges attesting to the truth of given statements. The difference is that an oath requires swearing (and may be understood to call upon a Supreme Being as witness), while an affirmation does not. Both oaths and affirmations are subject to penalties of perjury.

WHAT IS AN ACKNOWLEDGMENT?

An acknowledgement is a formal declaration that a person is signing a document voluntarily and with an understanding of its nature and purpose.

WHAT IS THE DIFFERENCE BETWEEN AN ACKNOWLEDGMENT AND AN OATH?

In an oath or affirmation, a person swears to the truth of statements made. In an acknowledgment, a person is merely confirming that she or he is signing a document voluntarily and with an understanding of its nature and purpose—not whether the statements in the document are true.

MUST I SEE THE PERSON SIGN THE DOCUMENT I'M NOTARIZING?

If the document is an affidavit or other document requiring an oath, you MUST witness them signing it in real time. Check the wording on the jurat (certificate). If the words say “Signed before me...” or “Subscribed and sworn to before me...” then you must witness the person signing the document in real time, either in-person or remotely via an approved communication technology provider. You can't notarize a signature you didn't witness. If the document is already signed, have the person sign again in your presence, above or below the other signature.

If the document is an acknowledgment, the person need not sign in front of you, BUT MUST appear before you and acknowledge execution of the document. The appearance may be in person or remotely via an approved communication technology provider.

NOTARIAL CEREMONIES

TAKING AN ACKNOWLEDGMENT

When a notary completes a certificate of acknowledgement, it will be assumed that the notary has done all of the following:

1. Required that the acknowledging party be in the notary's presence, either in-person or via an approved communication technology provider;
2. Confirmed the party's identity;
3. Determined that the party was competent or capable of executing the record;
4. Determined that the party signed the document knowingly and voluntarily; and
5. Witnessed the acknowledging party actually signing the document, or, if the document was signed previously, has shown the signature to the party, and asked the party to confirm having made the signature knowingly and voluntarily.

There is no specific required language for performing the notary "ceremony" of taking an acknowledgment, but whatever language you use should satisfy the items numbered 1 through 5 listed just above. The following script is an example of ceremonial language which satisfies those requirements:

Notary:

Do you have a form of government ID showing your name and address, and with a picture and signature, that I could use to verify your identity?

Acknowledging Party:

Yes, here's my driver's license.

Notary:

(Examines and returns identification.) Thank you. Please don't put your ID away. I'll need to look at it later. Would you please show me the document you need to have notarized?

Acknowledging Party:

Here.

Notary:

Thank you. In order to certify your acknowledgment, I am required to make sure that you know what kind of document you are signing, and that you have signed it for the purpose for which it is intended. I am also required to make sure that you are signing of your own free will.

Acknowledging Party:

O.K.

Notary:

So, what kind of document is this?

Acknowledging Party:

It's a deed. (Notary confirms this.)

Notary:

And are you signing it of your own free will, and for the purpose of deeding?

Acknowledging Party:

Yes.

Notary:

Please sign here. (Notary witnesses the signing.) Now, may I please see your ID again? (Notary verifies that signature on document matches the signatures on the ID.)

The Notary then completes an appropriate certificate of acknowledgement, and signs and seals it. The following text in bold type is an example of the language which could be used in a satisfactory certificate of acknowledgement:

**State of Wisconsin
County of Dane**

This instrument was acknowledged before me on May 8, 2020, by Jane Doe.

**(Signed by) John Smith, Notary Public
My commission expires on November 9, 2021.**

[Seal or stamp is then affixed upon certificate.]

Note: All commissioned notaries public, including attorneys, must affix their notary seal or stamp on the notarial certificates they issue. Other notarial officers specifically authorized by statute to perform notarial acts without a notary public commission – such as judges, court commissioners, and county clerks – should state their title, and use their seals of office if they are required to have one.

NOTARIZING AN UNSWORN STATEMENT

When a notary notarizes an unsworn signature, it will be assumed that the notary has done all of the following:

1. Required that the signing party be in the notary's presence, or by approved remote online notarization procedures;
2. Satisfactorily identified the party; and
3. Witnessed the party actually signing the document.

There is no specific required language for performing the notary "ceremony" of notarizing an unsworn signature, but whatever language you use should satisfy the items numbered 1-3 listed above. The following script is an example of ceremonial language which satisfies those requirements:

Notary:

Do you have one form of picture and signature identification, showing your name and address, that I could use to verify your identity?

Signing Party:

Yes, I have a picture credit card. Here, will this do?

Notary:

(Examines and returns identification.) Yes. Thank you. Please don't put your ID away. I'll need to look at it later. Would you please show me the document you need to have notarized?

Signing Party:

Here it is.

Notary:

Thank you. In order to notarize this document, I will need to have you sign it in front of me. Are you prepared to do that?

Signing Party:

Yes, I am.

Notary:

Please sign here. (Notary witnesses signing) Now, may I please see your ID again? (Notary verifies that signature on document matches the signatures on the ID.)

The Notary then completes an appropriate certificate for witnessing a signature, signs and seals it. The following text is an example of the language which could be used in a satisfactory certificate of witnessing a signature:

**State of Wisconsin
County of Dane**

**This instrument was signed before me in Madison on June 1, 2011 by
Jane Smith.**

**(Signed by) John Doe, Notary Public
My commission expires on November 13, 2014
Seal is then impressed upon certificate.**

(NOTE: All commissioned notaries public, including attorneys, must impress their notary seal on the Notarial certificates they issue. Other Notarial officers specifically authorized by statute to perform Notarial acts without a notary public commission - such as judges, court commissioners and county clerks - should state their title, and use their seals of office if they are required to have one.)

NOTARIZING A STATEMENT SWORN TO, OR TAKEN UNDER OATH OR AFFIRMATION, AND PROVIDING A “JURAT”

When a notary takes sworn a sworn statement, or a statement made under oath or affirmation, it will be assumed that the notary has done all of the following:

1. Required that the signing party making the statement be in the notary's presence, either in-person or via an approved communication technology provider;
2. Confirmed the party's identity;
3. Determined that the party was competent or capable of executing the record;
4. Determined that the party signed the document knowingly and voluntarily; and
5. Required the party to specifically confirm that they swear, or affirm under penalty of perjury, that the statements in the document to be notarized are true; and
6. Witnessed the acknowledging party actually signing the document.

There is no specific required language for performing the notary “ceremony” of notarizing a sworn or affirmed document, but whatever language you use should satisfy the items numbered 1 through 6 listed just above. The following script is an example of ceremonial language which satisfies those requirements:

Notary:

Do you have a form of government ID showing your name and address, and with a picture and signature, that I could use to verify your identity?

Acknowledging Party:

Yes, here's my driver's license.

Notary:

(Examines and returns identification.) Thank you. Please don't put your ID away. I'll need to look at it later. Would you please show me the document you would like to swear/affirm to and have notarized?

Acknowledging Party:

Here.

Notary:

Thank you. In order to notarize this document, I will need to have you specifically swear or affirm to me that the statements made in it are true. Are you willing to do that?

Signing Party:

Yes.

Notary:

Would you please raise your right hand?

[If affirmed]: Do you affirm under penalty of perjury that the statements in the document you have asked me to notarize are the truth, the whole truth, and nothing but the truth?

[If sworn]: Do you solemnly swear that the statements in the document you have asked me to notarize are the truth, the whole truth, and nothing but the truth, so help you God?

Party:

Yes, I do.

Notary:

Please sign here. (Notary witnesses the signing.) Now, may I please see your ID again? (Notary verifies that signature on document matches the signatures on the ID.)

The notary then completes that notarization certificate, and signs and seals it. The certificate used on the statement which is signed and sworn to is sometimes referred to as a jurat. The following text in bold type is an example of appropriate language to use in a jurat, or certificate notarizing a signed and sworn statement:

**State of Wisconsin
County of Dane**

This instrument was signed and sworn to before me on May 8, 2020, by Jane Doe.

**(Signed by) John Smith, Notary Public
My commission expires on November 9, 2021.**

[Seal or stamp is then affixed upon certificate.]

Note: All commissioned notaries public, including attorneys, must affix their notary seal or stamp on the notarial certificates they issue. Other notarial officers specifically authorized by statute to perform notarial acts without a notary public commission – such as judges, court commissioners, and county clerks – should state their title, and use their seals of office if they are required to have one.

WHEN A PARTY IS SIGNING A NOTARIZED DOCUMENT IN A REPRESENTATIVE CAPACITY

If a party is signing a notarized document in a representative capacity for another person or entity – for example, a corporation president signing on behalf of a corporation, or a personal representative or executor signing on behalf of an estate the notary should specifically have the party confirm that he or she is “duly authorized” to sign on behalf of the person or entity being represented:

Notary:
Are you signing on behalf of ABC Corporation?

Party:
Yes.

Notary:
And have you been duly authorized by the ABC Corporation to sign on its behalf as its President?

Party:
Yes.

- Note:**
1. The preceding language confirming that a party is duly authorized to sign in a representative capacity should be added to any of the ceremonies described in this booklet, when appropriate.
 2. When a document is signed in a representative capacity, language indicating that should be included in the notary certificate. Proper language to be added to a notary certificate to indicate a “representative” signature may read like the examples below:

This instrument was [acknowledged/signed/sworn/affirmed/attested] before me on May 8, 2020, by Sarah Smith, as the duly authorized executrix of the estate of John Smith.

This instrument was [acknowledged/signed/sworn/affirmed/attested] before me on May 8, 2020, by Robert Jones, as the duly authorized President of the ABC Corporation.

MAINTENANCE

WHAT SHOULD I DO IF I CHANGE MY CONTACT INFORMATION?

You are required to give written notice of any change of contact information (including email address) to the Wisconsin Department of Financial Institutions within 10 days of the change. Keeping your address current will also ensure delivery of your commission expiration notice. A form to report a change in contact information is available on our DFI website

<https://dfi.wi.gov/Pages/ConsumerServices/NotaryPublic/NotaryForms.aspx>

WHAT IF I CHANGE MY NAME?

If you change your name for any reason, **it is strongly suggested that you purchase a new seal or rubber stamp stating your new name (and the words "State of Wisconsin" and "Notary Public").** Obtain a Address/Name/Seal Change form from the DFI website <https://dfi.wi.gov/Pages/ConsumerServices/NotaryPublic/NotaryForms.aspx>. You are required to complete and submit the Address/Name/Seal change form to the Wisconsin Department of Financial Institutions **PRIOR** to using your new name and seal for notary purposes. For the remainder of your present commission, however, it is permissible to continue to perform notarial acts using a previous name **so long as you continue to sign your name as stated on your seal or rubber stamp.** Do not sign under a new or different name if it does not match the name on your seal or stamp. **For notarization purposes, your signature must always exactly match the name indicated on your official notary seal or stamp.**

Only the name you give and the seal or stamp you provide for filing with Department of Financial Institutions may be used for notarization purposes. No other name, seal, or stamp may be used when performing notarial acts unless the Wisconsin Department of Financial Institutions is notified in writing prior to usage. When you apply for another commission after your current term expires, you may not apply under an old or previous name. Each commission must be applied for and issued in your current legal last name.

I WANT TO USE AN INKED STAMP INSTEAD OF AN ENGRAVED SEAL ON CERTAIN DOCUMENTS. WHAT SHOULD I DO?

You may use both a rubber stamp and an engraved seal (embosser) provided that samples of each are on file in the Wisconsin Department of Financial Institutions prior to use. When you order a second seal/stamp, be sure your name is set forth exactly as it appears on your original seal/stamp. Before using the new seal/stamp, send samples to the Wisconsin Department of Financial Institutions along with your signature, commission expiration date, and future date of intended use.

WHAT IF MY NOTARY SEAL IS LOST OR STOLEN?

Notify the Wisconsin Department of Financial Institutions in writing immediately. Then, order a new seal or stamp that has a different appearance than your previous one. When the new seal/stamp is received, send samples to the Wisconsin Department of Financial Institutions before using it. The WDFI will notify you when the new stamp/seal may be used.

CAN MY COMMISSION CERTIFICATE BE REPLACED?

A new certificate may be ordered by submitting a written request and \$10 fee to the Department of Financial Institutions.

MAY THE INFORMATION ON MY FILED APPLICATION AND BOND FORMS BE GIVEN OUT TO THE PUBLIC?

All forms and documents submitted to the Department of Financial Institutions regarding your Notary Public commission are public records and are subject to Wisconsin's Open Records Law. Any person may have the right to inspect and copy your file upon request. Bonding companies will often obtain the names and addresses of notaries whose commissions are about to expire so they can mail out bond solicitations.

WHAT IS AN "ERRORS AND OMISSIONS" POLICY?

An Errors and Omissions policy is optional insurance that could help you pay legal fees and damages if you are sued for acts taken as a notary public. It's different than your bond, which protects the public (not you). Most companies that sell notary bonds will have Errors and Omissions policies available. Errors and Omissions policies are not filed with the Wisconsin Department of Financial Institutions. Keep them in your own personal records.

AM I REQUIRED TO KEEP A NOTARIAL LOG BOOK?

Keeping a notarial logbook, or journal, is not required in Wisconsin, although you are encouraged to do so. Depending on the amount and types of documents you are

handling, recording your notarial acts in a journal may prove useful later if you need to recall specifics of a particular case. If you decide to keep a notarial log book, include items such as date and type of notarial act, names and signatures of persons involved, and numbers from identification cards and driver's licenses presented.

IS A NOTARY COMMISSION RENEWED AUTOMATICALLY?

No, but notaries may be reappointed. The Wisconsin Department of Financial Institutions will send notice of an upcoming commission expiration by email or mail. The reappointment procedure is the same as the initial appointment.

LEGAL REFERENCES

- [Chapter 140 of the Wisconsin Statutes](#) and [chapter DFI-CCS 25 of the Wisconsin Administrative Code](#) govern notaries and notarial acts

EXHIBIT F

**STATE OF WISCONSIN
WISCONSIN ELECTIONS COMMISSION**

In the Matter of:)	
)	
Nomination Papers Filed by Jim Sullivan Theodore A. Lipscomb, Sr.,)	Decision and Order
)	
Petitioner,)	WEC Case No. EL 20-05
)	
and)	
)	
Milwaukee County Election Commission,)	
)	
Respondent.)	
)	

Pursuant to Wis. Stat. §§ 5.05(1)(e) and 5.06(6), the Wisconsin Elections Commission (“Commission”) is provided with the inherent, general, and specific authority to consider the submissions of parties to a complaint, and to issue findings and orders. Theodore Lipscomb, Sr. has filed a verified complaint with the Commission appealing the decision of the Milwaukee County Election Commission (“MCEC”) to approve ballot access for Candidate Jim Sullivan for the 2020 Spring Election as a candidate for County Executive. The Commission has reviewed the complaint and supporting documentation as well as the response of the MCEC filed by Milwaukee County Clerk George Christenson and Elections Director Julietta Henry. The Commission issues the following Decision and Order.

Procedural Background

Candidate Jim Sullivan filed nomination papers for the Office of Milwaukee County Executive containing 2,690 signatures with the Milwaukee County Election Commission on January 7, 2020. Following a review of these signatures, MCEC staff determined that Candidate Sullivan had submitted 2,450 valid signatures¹, which exceeds the total of 2,000 valid signatures required to qualify for ballot access for the Office of Milwaukee County Executive.

On January 10, 2020, Theodore Lipscomb, Sr. filed a challenge to the nomination papers of Candidate Sullivan. The challenge asserted that 1,001 signatures should be struck as invalid because the circulators who collected those signatures had previously circulated nomination papers for another candidate for the same office, in violation of Wis. Stat. § 8.04.

¹ Paragraph 13 of the complaint alleges that MCEC staff determined that 2,397 signatures were valid, but page 7 of the MCEC hearing transcript indicates that its staff accepted 2,450 signatures as valid. For purposes of this decision, the Commission uses the figure cited by MCEC staff in the hearing transcript.

Candidate Sullivan's response to the challenge argued that Wis. Stat. § 8.04's prohibition regarding the same circulator collecting signatures for multiple candidates is directory rather than mandatory, there was no evidence of fraud on the part of the circulator or Candidate Sullivan, and that counting the signatures as valid gives effect to the will of the electors as required by Wis. Stat. § 5.01(1).

Based on the complaint filed with the Commission as well as the challenge and response filed with the MCEC, the relevant facts are not in dispute. Following its review, MCEC staff determined that Candidate Sullivan had filed nomination papers containing 2,450 valid signatures and qualified for ballot status. Mr. Lipscomb challenged 1,001 of the 2,450 signatures. The basis of the challenge was that four individuals who circulated nomination papers for Candidate Sullivan (Alisha Pettis, Lesa Trotter, Keith Pettis and Dominique Thomas) also circulated and submitted nomination papers for David Crowley, another candidate for Milwaukee County Executive. Striking the challenged signatures would disqualify Mr. Sullivan from having his name on the Spring Election ballot.

The four individuals first circulated nomination papers for Candidate Crowley and subsequently circulated nomination papers for Candidate Sullivan. Candidate Sullivan's response to the challenge stated that the three circulators were hired by a vendor, Simon Warrant, who was retained by Sullivan's campaign to assist with the circulation of nomination papers. Candidate Sullivan asserts that his campaign was assured by Simon Warren that its employees would not circulate nomination papers for any other candidates for County Executive.

On January 14, 2020, the Milwaukee County Election Commission conducted a hearing regarding the challenge filed by Mr. Lipscomb, Sr. After considering arguments of both parties, the MCEC considered a motion to approve the challenge and strike 1,001 signatures. The motion failed on a vote of 1-1, with one member of the MCEC being absent. As a result, the decision of MCEC staff to approve Candidate Sullivan for ballot status stood.

On January 17, 2020, the Commission received a timely, verified complaint from Mr. Lipscomb, Sr. appealing the MCEC's decision. The complaint asserts that Wis. Stat. § 8.04 requires striking the 1,001 signatures which were challenged before the MCEC, and that the MCEC abused its discretion by determining that § 8.04 was discretionary and permitting Candidate Sullivan's name to be placed on the Spring Election ballot. The complaint requests that the Commission strike signatures collected in violation of § 8.04 and determine that Candidate Sullivan does not qualify for ballot access.

On January 17, 2020, MCEC staff submitted a letter in response to the complaint. The letter states that, in light of the MCEC's tie vote regarding the challenge to Candidate Sullivan's nomination papers, the MCEC's response is limited to submitting the filings of the parties and the record of the proceedings. The Commission also notes that, while Candidate Sullivan is not a party to the appeal, the Commission has reviewed and considered his response to Mr. Lipscomb's challenge that was filed with the MCEC as well as the arguments made at the MCEC's January 14, 2020 hearing.

Candidate Sullivan chose not to file a reply to the MCEC's response to the complaint.

The Commission's role in resolving verified complaints filed under Wis. Stat. § 5.06, which challenge the decisions or actions of local election officials, is determining whether a local official acted contrary to applicable election laws or abused their discretion in administering applicable election laws.

Commission Findings

The Commission makes the following findings:

Wis. Stat. § 8.04 states as follows:

Nomination paper signatures. If any person signs nomination papers for two candidates for the same office in the same election at different times, the earlier signature is valid, and the later signature is invalid. *If any person circulates a nomination paper for two candidates for the same office in the same election at different times, the earlier paper is valid, and the later paper is invalid.*

Emphasis added.

There is no dispute that four individuals circulated nomination papers for two candidates for the same office at the same election at different times. The affidavits of each of the circulators state that they first circulated nomination papers for Candidate Crowley and subsequently circulated nomination papers for Candidate Sullivan. Based upon the plain language of Wis. Stat. § 8.04, these circumstances appear to require that the earlier papers circulated for Candidate Crowley are valid, and the later papers circulated for Candidate Sullivan are invalid and the signatures on those pages should be struck as invalid.

In his response to the challenge filed with the MCEC, Candidate Sullivan argued that the circulators' actions constituted a "good faith error" on the part of the vendor and circulators, and in the absence of any fraudulent intent, Candidate Sullivan should not be penalized. Candidate Sullivan noted that he was assured by Simon Warren that the circulators he retained would not circulate nomination papers on behalf of any other candidate for Milwaukee County Executive. Candidate Sullivan's response to the challenge argued that Wis. Stat. § 8.04 should be construed as directory, not mandatory, and that counting the challenged signatures as valid would give effect to the will of the electors as required by Wis. Stat. § 5.01(1) which states as follows:

CONSTRUCTION OF CHS. 5 TO 12. Except as otherwise provided, chs. 5 to 12 shall be construed to give effect to the will of the electors, if that can be ascertained from the proceedings, notwithstanding informality or failure to fully comply with some of their provisions.

Candidate Sullivan cited several court decisions to attempt to support his assertion that Wis. Stat. § 8.04 should be construed as directory rather than mandatory and that counting the

challenged signatures as valid would give effect to the will of the electors pursuant to Wis. Stat. § 5.01(1). The Commission concludes that the cases cited do not support this conclusion for several reasons.

Candidate Sullivan is correct that Wisconsin courts have long recognized that some election statutes should be construed as directory rather than mandatory, and that in such cases, the term “shall” is construed to mean “may.” For example, in 1867 the Wisconsin Supreme Court found that

the statutory regulations for conducting an election are directory and not jurisdictional in their character, the main object of such laws being to afford all persons entitled to vote an opportunity to exercise the elective franchise, to prevent illegal votes, and to ascertain with certainty the true number of votes cast, and for whom. *State ex rel. Bancroft v. Stumpf*, 21 Wis. 586 (1867).

In 1966, the Wisconsin Supreme Court summarized the effect of determining whether an election statute is mandatory or directory:

An act done in violation of a mandatory provision is void, whereas an act done in violation of a directory provision, while improper, may nevertheless be valid. Deviations from directory provisions of election statutes are usually termed “irregularities,” and as has been shown in the preceding subdivision, such irregularities do not vitiate an election. *Gradinjan v. Boho*, 29 Wis. 2d 674, 682, 139 N.W.2d 557 (1966).

And in 1968, the Wisconsin Supreme Court described the type of election statutes which should be construed as directory instead of mandatory:

Statutes giving directions as to the mode and manner of conducting elections will be construed by the courts as directory, unless a noncompliance with their terms is expressly declared to be fatal, or will change or render doubtful the result, as where the statute merely provides that certain things shall be done in a given manner and time without declaring that conformity to such provisions is essential to the validity of the election. *Lanser v. Kaconis*, 62 Wis. 2d 86, 91, 214 N.W.2d 425 (1974).

Candidate Sullivan cited other court decisions which have construed election statutes as directory. In each case, however, the statute at issue involved the mode or manner of conducting an election, such as processing and counting ballots, not the requirements or procedures for circulating and completing nomination papers and qualifying for ballot access. In 1978, the Wisconsin Supreme Court held that the deadline for filing nomination papers and the place of filing are mandatory requirements, and failing to satisfy those requirements disqualified a judicial candidate from ballot access. *Ahlgrimm v. State Elections Bd.*, 82 Wis.2d 585, 263 N.W.2d 152 (1978). In *Ahlgrimm*, the Court noted that the statute regarding the place of filing was not ambiguous, and also stated:

We view the requirements of sec. 8.10(2), Stats., and sec. 8.10(6), Stats., as being reasonable regulations of the right to be a candidate for public office. These regulations governing the time and place of filing nomination papers must be strictly enforced in order to insure the orderly exercise of such right. . . . Because the petitioner did not timely file with the State Elections Board his nomination papers for the office of circuit judge, his name cannot appear on the ballot. As unfortunate and regrettable as this result might be, especially in this situation where there will be no candidate for circuit judge in the 21st Judicial Circuit on the ballot, nevertheless, the burden was on the petitioner to properly file. He did not do so. *Ahlgrimm*, 82 Wis. 2d at 597. (Citation omitted).

The Court of Appeals subsequently summarized how the “will of the electors” phrase in Wis. Stat. § 5.01(1) should be interpreted in determining whether an election statute is directory or mandatory:

However, our supreme court has interpreted this statute as applying only after an election has been held and the will of the electors manifested. See *State ex rel. Oaks v. Brown*, 211 Wis. 571, 579, 249 N.W. 50, 53 (1933). This holding remained undisturbed by our supreme court’s decision in *State ex rel. Ahlgrimm v. State Elections Bd.*, 82 Wis.2d 585, 263 N.W.2d 152 (1978). Accordingly, § 5.01(1) is inapplicable to the instant case, as there was no election from which the will of the electors had manifested. *City of Chippewa Falls v. Town of Hallie*, 231 Wis. 2d 85, 604 N.W.2d 300 (Ct. App. 1999).

In short, Wisconsin courts have determined that assessing the will of the electors is relevant to the determination of whether an election statute is directory or mandatory only in the context of conducting an election or when the will of the electors can be observed at an election or through examining ballots cast. The courts have not extended that analysis to the processes for circulating and reviewing nomination papers. To the contrary, regulations regarding nomination papers have been construed as mandatory, as in the *Ahlgrimm* decision, and regulations pertaining to the qualifications of circulators of a referendum petition have also been construed as mandatory, as in the *City of Chippewa Falls* decision.

Viewed in the framework established by the court cases cited above, it seems apparent that the prohibition on serial circulation of nomination papers in Wis. Stat. § 8.04 does not fit in the category of a directory statute. It is not related to the actual conduct of an election, the exercise of the right to vote, or the interpretation of a vote on a ballot. Rather, it is a regulation regarding the conduct of nomination paper circulators. It must be construed as mandatory and “must be strictly enforced in order to insure the orderly exercise” of the nomination process and ballot access decisions. *Ahlgrimm*, 82 Wis. 2d at 597.

In addition, because § 8.04 governs the process of circulating nomination papers and not the content of the papers, the challenged signatures cannot be counted as valid by virtue of EL § 2.05(5), Wis. Adm. Code, which states that “[w]here any *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.” (Emphasis added). “Substantial

compliance with the law” applies to the completeness of information on a nomination paper, not the process of circulating nomination papers.

The Commission recognizes that ruling the Sullivan nomination papers at issue are invalid may seem a harsh result when the candidate was assured by the vendor that its circulators would not collect signatures for other candidates for the same office, and where there is no evidence of fraudulent intent on the part of either the candidate or the circulators. However, as in *Ahlgrimm*, the statutory prohibition is unambiguous and it is a reasonable regulation regarding of the right to be a candidate for office, which the Legislature has created and the Commission is required to administer and enforce. As part of Chapter 260, Laws of 1979, the Legislature amended Wis. Stat. 8.04 as follows:

SECTION 55m. 8.04 of the statutes is amended to read:

8.04 Nomination paper signatures. If any person signs nomination papers for 2 candidates for the same office in the same election at different times, the earlier signature is valid and the later signature shall be stricken. ~~Any person who signs or circulates nomination papers for one candidate may later circulate nomination papers for another candidate for the same in the same election if he changes his mind and intends to support the latter candidate is invalid. If any person circulates a nomination paper for 2 candidates for the same office in the same election at different times, the earlier paper is valid and the later paper is invalid.~~

This amendment specifically eliminated the ability of a circulator to collect signatures for multiple candidates for the same office at the same election, even if they changed their mind and intended to support the latter candidate. Instead, the Legislature created a strict prohibition against counting signatures as valid on the second set of nomination papers submitted. It is also instructive to note that even the earlier version of § 8.04 did not permit counting signatures as valid for both candidates involved.

Candidate Sullivan’s response to the challenge argues that § 8,04 should be construed as directory because the Legislature has not “included an express and clear command,” citing a 1981 decision of the Court of Appeals, *Matter of Hayden*, 105 Wis. 2d 468, 483, 313 N.W.2d 869 (Ct. App. 1981). In the Commission’s opinion, however, § 8.04 itself is the “express and clear command.” Rather than using the terms “shall” or “may,” the statute plainly states that “the earlier paper *is* valid and the later paper *is* invalid.” It leaves no room for the filing officer to guess as to whether the prohibition is mandatory or directory.

In addition, the first clause of Wis. Stat. § 8.04 invalidates signatures of individuals who have signed the nomination papers of another candidate for the same office at the same election. This is consistent with Wis. Stat. § 8.10(4)(b) which states that “[o]nly one signature per person for the same office is valid.” Candidates would be hard pressed to argue that signatures of the same individual can be counted on nomination papers of two candidates, and yet that would be the logical result of treating the serial circulator provision of Wis. Stat. § 8,04 as directory.

Declining to enforce the prohibitions in Wis. Stat. § 8.04 would put other candidates that comply with the rules at a disadvantage. Also, if § 8.04 is construed as directory rather than

mandatory, applying the same logic to other procedural requirements would effectively eliminate all rules governing the nomination paper process. Such an interpretation would also eliminate any certainty regarding what, if any, rules apply to the circulation process and govern review by filing officers.

Ultimately, it is the candidate's responsibility to ensure that the nomination papers they file have the minimum number of required signatures. "Each candidate for public office has the responsibility to assure that his or her nomination papers are prepared, circulated, signed and filed in compliance with statutory and other legal requirements." *EL § 2.05(1), Wis. Adm. Code*. The circulation period affords candidates the opportunity to screen their nomination papers and to proactively strike signatures that are invalid prior to filing. "After a nomination paper has been signed, but before it has been filed, a signature may be removed by the circulator. . . ." *EL § 2.05(16), Wis. Adm. Code*.

A candidate who does not vet their nomination papers prior to filing assumes the risks and mistakes resulting from circulators who are unaware of or do not comply with the regulations governing the circulation of nomination papers. It is true that a violation of Wis. Stat. § 8.04 cannot be detected by simply reviewing the candidate's own nomination papers. But given the number of candidates circulating nomination papers for the Office of County Executive, the apparently common practice of relying on paid circulators rather than circulators who support a single candidacy, and the filing of nomination papers late in the circulation period, candidates are responsible for ensuring that procedural requirements such as § 8.04 are satisfied,

Noncompliance with the requirements of nomination paper circulation cannot be excused simply because circulators acted based upon their mistaken understanding of or disregard for the laws. Furthermore, the consistent evaluation of nomination papers by filing officers cannot be based upon the knowledge or expertise of individual circulators.

Conclusion

For the reasons stated above, the Wisconsin Elections Commission finds that the Milwaukee County Election Commission did not comply with the election laws when it accepted signatures on nomination papers for Candidate Jim Sullivan which were collected by circulators who had previously collected signatures for Candidate Crowley in violation of Wis. Stat. § 8.04. The Commission finds that § 8.04 is unambiguous and is to be construed as a mandatory regulation of the circulation process.

The Commission finds that 1,001 signatures submitted by Candidate Sullivan shall be stricken as invalid, resulting in a total of 1,449 valid signatures, which is less than the 2,000 valid signatures required to obtain ballot status.² The Commission orders that Jim Sullivan's name

² Based upon the record in the companion appeal regarding nomination papers of Candidate Bryan Kennedy, the actual number of invalid signatures may be greater because circulators collected signatures for both Candidate Kennedy and Candidate Sullivan, and the dates of circulation appear to overlap. The record does not reflect a calculation of these additional signatures by the complainant, Candidate Sullivan or the MCEC. The Commission's calculation of invalid signatures is therefore the minimum number that should be stricken.

shall not appear on the ballot for the Office of County Executive at the 2020 Spring Primary or Spring Election.

Right to Appeal – Circuit Court

This letter constitutes the Commission's resolution of this complaint. Wis. Stat. § 5.06(2). Pursuant to Wis. Stat. § 5.06(8), any aggrieved party may appeal this decision to circuit court no later than 30 days after the issuance of this decision.

Dated this 21st day of January, 2020.

WISCONSIN ELECTIONS COMMISSION

A handwritten signature in black ink that reads "Meagan L.M. Wolfe". The signature is written in a cursive style with a large initial "M".

Meagan Wolfe
Administrator

STATE OF WISCONSIN
WISCONSIN ELECTIONS COMMISSION

IN THE MATTER OF:
DECLARATION OF CANDIDACY FILED BY
CORNEL WEST AND MELINA ABDULLAH
WITH RESPECT TO THE NOVEMBER 5, 2024
ELECTION FOR PRESIDENT AND
VICE PRESIDENT OF THE UNITED STATES

DAVID STRANGE, INDIVIDUALLY AND AS
DEPUTY OPERATIONS DIRECTOR – WISCONSIN FOR
THE DEMOCRATIC NATIONAL COMMITTEE,
1437 N. Jefferson St., Unit 308
Milwaukee, WI 53202

Complainant,

v.

Case No.

CORNEL WEST,
17242 Citron
Irvine, CA 92612

and

MELINA ABDULLAH,
2108 Wellington Rd.
Los Angeles, CA 90016

Respondents.

VERIFIED RESPONSE

COME NOW the Respondents, stating as follows:

1. Wis. Admin. Code § EL 2.05(4) provides that "[a]ny information on a nomination paper is entitled to a presumption of validity".
2. WI Stat § 140.26 provides that, with exceptions not relevant to these circumstances, "the failure of a notarial officer to perform a duty or meet a requirement specified in this chapter does not invalidate a notarial act performed by the notarial officer."

3. The notarial acts described in the Complaint are subject to regulation by and in the state for which the notary is a public officer, and have not been subject to any challenge in that state that would justify the WEC in failing to give full faith and credit to those acts, in accordance with U.S. Const., art. IV, §1.
4. Contrary to complainant's assertions, the applicable standard for these matters in Wisconsin law is substantial compliance, as the courts in Wisconsin have recently reiterated in *Hess v. WEC* (Wisc. App., July 30, 2024) (by the plain language of the statute, strict compliance is not required), the opinion in which has been appended to this document for reference due to its very recent provenance.
5. Any errors or oversights alleged by Complainant have not resulted in any undue prejudice of the interests of any party or of the State of Wisconsin or the WEC.
6. Wisconsin does not have, and does not in its statutes assert, a compelling state interest to require perfect execution of documents as a sufficient interest to justify the severe burden on voting rights and other constitutional rights that would be occasioned by the strict and unreasonable compliance that Complainants call for the WEC to impose.
7. Given the foregoing, the WEC should reject the Complaint and honor the wishes of the Wisconsin voters who indisputably expressed their wish to have the option of voting for their preferred candidate this November by circulating and signing the petitions Complainant asks to have thrown away.

WHEREFORE the Respondents assert that the Complaint has failed to state adequate grounds for rejection of the Respondents petitions, and the Complaint must, therefore, be rejected.

Respectfully submitted this 12th day of August, 2024.

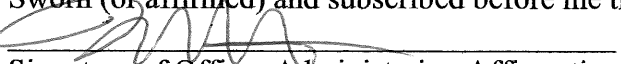
The undersigned swears, under oath, that the foregoing Response is true based on the personal knowledge or information and belief of the Respondent.

FOR THE RESPONDENTS:



DESIGNATED REPRESENTATIVE
Ceyanna Dent, Campaign Manager
Cornel West for President

Sworn (or affirmed) and subscribed before me this 12 day of August, 2024


Signature of Officer Administering Affirmation
Notary Public, State of Ohio
Official Title

My commission expires June 1, 2025



JORDON HAYES
Notary Public, State of Ohio
My Commission Expires
June 1, 2025

STATE OF WISCONSIN
WISCONSIN ELECTIONS COMMISSION

IN THE MATTER OF:
DECLARATION OF CANDIDACY FILED BY
CORNEL WEST AND MELINA ABDULLAH WITH RESPECT TO
THE NOVEMBER 5, 2024 ELECTION FOR
PRESIDENT AND VICE PRESIDENT OF THE UNITED STATES

DAVID STRANGE, INDIVIDUALLY AND AS
DEPUTY OPERATIONS DIRECTOR – WISCONSIN
FOR THE DEMOCRATIC NATIONAL COMMITTEE,
1437 N. Jefferson Street, Unit 308
Milwaukee, WI 53202

Complainant,

v.

Case No. EL 24-80

CORNEL WEST,
17242 Citron
Irvine, CA 92612

and

MELINA ABDULLAH,
2108 Wellington Rd.,
Los Angeles, CA, 90016

Respondents.

REBUTTAL IN SUPPORT OF VERIFIED COMPLAINT

INTRODUCTION¹

1. JFA’s Response to Strange’s Verified Complaint is notable not for what it says, but for what it fails to say. *See State v. Bergquist*, 2002 WI App 39, ¶14, 250 Wis. 2d 792, 641 N.W.2d 179 (“Arguments that are not refuted are deemed admitted.”). For example:

- JFA does not dispute that “must” and “shall” are presumptively mandatory language, requiring strict compliance under both Wisconsin and California law. (Complaint, ¶¶42-47)
- JFA does not dispute that West’s Declaration failed to strictly comply with the express requirements of California’s notary laws. (Complaint, ¶¶18-23)
- JFA does not dispute that Abdullah’s Declaration failed to strictly comply with the express requirements of *both* California and Wisconsin’s notary laws. (Complaint, ¶¶24-36)
- JFA does not produce a properly notarized affidavit—from either West or Abdullah—to cure the earlier deficiencies and to re-affirm under oath that their Declarations were true, accurate, and properly attested to.
- JFA does not produce an affidavit from either of the purported notaries, attesting to the fact that they confirmed the identity of the signers of the respective Declarations.
- JFA does not respond to the case directly on point, *Knobeloch v. Elec. Bd. for City of Granite City*, 337 Ill. App. 3d 1137, 788 N.E.2d 130 (2003), where the court excluded a candidate based on a defective notarial act, even where notary “contacted the Illinois State Board of Elections to ascertain whether she [...] had the authority to notarize [...] [and] was told that she could.” *Id.* at 1138.

2. The arguments that JFA *does* make are each unavailing.

3. *First*, JFA asserts that “the applicable standard for these matters in Wisconsin law is substantial compliance,” (Response, ¶¶4-6), relying on *Hess v. WEC*, 2023 WI App 1350,

¹ Unless otherwise specified, capitalized terms used herein bear the same meaning as defined in Strange’s Verified Complaint. For ease, this Rebuttal refers to the Response as having been filed by “JFA,” but it was in fact verified and filed by “Ceyanna Dent, Campaign Manager,” rather than by West or Abdullah.

2024 WL 3579641 (July 30, 2024) (hereinafter “*Hess*”). But strict compliance applies in the instant matter and *Hess* does not undermine that position—*Hess* indeed bolsters it.

4. In *Hess*, the Court of Appeals affirmed the Commission’s use of substantial compliance. The Court explained: “while there are content requirements for nomination papers under both § 8.15(4)(a) and § 8.15(5), how that content appears and is formatted on the nomination paper is not specified.” *Id.*, ¶31. The Court concluded that there was “no issue here related to required information missing from a form and nonetheless being accepted by WEC under the rationale that it substantially complied despite the absence of required information.” *Id.*, ¶34 n.6.

5. But, the Court did not impose a substantial compliance standard by operation of statute or common law. Instead, the Court of Appeals affirmed that the Commission properly promulgated a rule applying substantial compliance to information missing from “a nomination paper[.]” *Id.*, ¶¶27, 29 (citing Wis. Admin Code § EL 2.05(5)). And, the Court made clear that it was deferring to the Commission’s discretionary decision to apply that standard. *See, e.g., id.*, ¶30 (“WEC has discretion to accept a candidate’s nomination papers in the case that the information substantially complies with the requirements of § 8.15 and has discretion to refuse to place a candidate’s name on the ballot in the case that nomination papers are not properly prepared, signed, and executed with the requirements of § 8.15.”).

6. Most importantly, the Court of Appeals reaffirmed that “the use of ‘shall’ generally signals a mandatory requirement[.]” *Id.*, ¶31. Specifically, under binding authority, “[s]hall’ is considered presumptively mandatory unless there is something in the context or the character of the legislation which requires it to be looked at differently.” *Bank of New York Mellon v. Carson*, 2015 WI 15, ¶21, 361 Wis. 2d 23, 859 N.W.2d 422 (quotations omitted).

7. In *Hess*, section 8.30(1)—which grants WEC discretion using the word “may”—was the *only* textual authority the Court relied upon to overcome the presumption that “shall” is mandatory. The *Hess* Court looked to Wisconsin Statute section 8.30(1)(a) as the source of textual authority to overcome the presumption that “shall” is mandatory: “WEC has discretion to refuse to place a candidate’s name on a ballot if nomination papers are not ‘prepared, signed, and executed’ in compliance with the statutory requirements.” *Id.*, ¶29 (citing Wis. Stat. § 8.30(1)(a)). In the absence of the discretionary authority granted to WEC by Wis. Stat. § 8.30(1), there is *nothing* that the Court (or WEC) could have relied upon to overcome the presumption that shall indicates a mandatory requirement, requiring strict compliance.

8. Here, Complainant does not raise a challenge to “nomination papers,” under which the Commission “may refuse to place the candidate’s name on the ballot[.]” Wis. Stat. § 8.30(1)(a). Instead, this is a challenge to two declarations of candidacy, which “*shall be* sworn to before any officer authorized to administer oaths.” Wis. Stat. § 8.21(2) (emphasis added).

9. If anything, section 8.30 bolsters the mandatory language governing declarations of candidacy, as the Commission “*may not place* a candidate’s name on the ballot if the candidate fails to file a declaration of candidacy within the time prescribed under s. 8.21.” Wis. Stat. § 8.30(4) (emphasis added). Indeed, in *Hess*, the Commission itself drew a distinction between nomination papers (requiring only substantial compliance) and declarations of candidacy (requiring strict compliance), and acknowledged that it has *no discretion* when it comes to declarations:

Wis. Stat. § 8.30 establishes circumstances under which the Commission or local election bodies have discretion to refuse to place a candidate’s name on a ballot. It states that the Commission “may refuse to place the candidate’s name on the ballot” in several situations, including when “[t]he nomination papers are not prepared, signed, and executed as required under this chapter.” Wis. Stat. § 8.30(1)(a).

In contrast, Wis. Stat. § 8.30 identifies other situations in which the Commission “may not” or “shall not” place a candidate’s name on a ballot, none of which apply

here—for example, if the candidate does not timely file a registration statement or declaration of candidacy, or the candidate is unqualified for office for conflict-of-interest-related reasons. Wis. Stat. § 8.30(2)–(4). Section 8.30 is a surrounding and related provision that makes plain when an alleged error is an absolute bar to ballot access—it states that the Commission must refuse a candidate ballot access in certain situations, but not this one.

(Exhibit A (WEC Brief in *Hess*) at 26)

10. Here, West and Abdullah each filed *something* before the statutory deadline—but it was not a declaration of candidacy because it was not properly notarized. Thus, the failure here is “an absolute bar to ballot access” and the “Commission must refuse [the] candidate[s] ballot access[.]” (Exhibit A at 26)² And, certainly, nothing in *Hess* or section 8.30 provides a basis to overcome the presumption that “shall” is mandatory. *Bank of New York Mellon*, 2015 WI 15, ¶21.

11. *Second*, JFA says that, under the Full Faith and Credit Clause, only a California court applying California law could adjudicate the notarial acts. (Response, ¶3) This is not so—as an initial matter, JFA cites no authority to support its assertion, (*id.*), and which can and should be rejected on that basis alone should be rejected. *See, e.g., Salfinger v. Fairfax Media Ltd.*, 367 Wis. 2d 311, 334, 876 N.W.2d 160 (Ct. App. 2016) (“Again, we will not address undeveloped arguments.”).

12. Moreover, the Full Faith and Credit Clause does not dictate that a state must blindly adhere to the acts performed in another state, no matter how lawless they may be. Rather, the official act of a different state has “the same binding force that it has in the state in which it was

² Relatedly, JFA argues that the Declarations are entitled to a presumption of validity, citing Wis. Admin. Code EL § 2.05(4). But, that applies only to “nomination paper[s]” and it applies only to “information on” those papers. Here, the deficiencies are to the Declarations, not the nomination papers, as the Commission has acknowledged. (Exhibit A at 26) Indeed, if this is a challenge to “nomination papers”—and it is not—then JFA’s entire Response should be stricken and disregarded. “The response to a challenge to nomination papers shall be filed, *by the candidate challenged*, within 3 calendar days of the filing of the challenge and *shall be verified*.” Wis. Admin. EL § 2.07(2)(b) (emphasis added). The Complaint is brought against West and Abdullah (Complaint, ¶1), but the Response is verified by Ceyanna Dent.

originally given.” *Mallette v. Scheerer*, 164 Wis. 415, 160 N.W. 182, 184 (1916) (internal quotations omitted)); *see also, e.g., Ford v. Ford*, 371 U.S. 187, 192 (1962) (“The Full Faith and Credit Clause, if applicable to a custody decree, would require South Carolina to recognize the Virginia order as binding only if a Virginia court would be bound by it.”); *People of State of N.Y. ex rel. Halvey v. Halvey*, 330 U.S. 610, 614 (1947) (“a judgment has no constitutional claim to a more conclusive or final effect in the State of the forum than it has in the State where rendered.”). Thus, “*if a notarial act is lawful* in a state or United States territory where it is performed, that notarization must be recognized by other states and territories.” Michael L. Closen, *The Public Official Role of the Notary*, 31 J. Marshall L. Rev. 651, 695 (1998).

13. Likewise, it is absurd to say that the lawfulness of a California notarial act can only be adjudicated *in* California. *See, e.g., Burns v. Geres*, 140 Wis. 2d 197, 202, 409 N.W.2d 428, 431 (Ct. App. 1987) (“Different criteria are applicable when deciding jurisdictional issues rather than conflict of laws issues.”). Wisconsin courts routinely apply the law of other states.³

14. JFA does not make any argument that the two notarial acts were valid under California law—indeed, the Response does not cite a single California case, statute, regulation, or authority. (Response, *generally*) As a result, JFA concedes that West’s and Abdullah’s Declarations are unlawful. *Bergquist*, 2002 WI App 39, ¶14.

15. ***Fifth***, JFA cites Wisconsin Statutes section 140.26. (Response, ¶3) By its terms, section 140.26 applies only to the failure to meet “a requirement specified in this chapter” and does not apply to claims asserting defects arising in sources “other than this chapter[.]” Wis. Stat.

³ *See, e.g., Kender v. Auto-Owners-Ins. Co.*, 2010 WI App 121, ¶14, 329 Wis. 2d 378, 793 N.W.2d 88 (applying Minnesota law); *Grice Eng’g, Inc. v. Innovations Eng’g, Inc.*, 2010 WI App 145, ¶21, 330 Wis. 2d 99, 791 N.W.2d 405 (applying Illinois law); *State v. Dyleski*, 154 Wis. 2d 306, 311, 452 N.W.2d 794, 797 (Ct. App. 1990) (applying Texas law); *Burns v. Geres*, 140 Wis. 2d 197, 201–02, 409 N.W.2d 428 (Ct. App. 1987) (applying Arizona law).

§ 140.26. So, that Wisconsin statute does not apply to the California notaries, and, by raising Full Faith and Credit, JFA admits that California law governs. (Response, ¶3) Yet, JFA identifies no analogous provision in California’s notary statutes. (*See, generally*, Response)

16. But, even if Section 140.02 applied, it could not possibly bear the meaning JFA claims. To read Chapter 140 to excuse *any* non-compliance with Chapter 140 would render all of the detailed provisions of the Chapter meaningless. *State ex rel. Kalal v. Cir. Ct. for Dane Cnty.*, 2004 WI 58, ¶46, 271 Wis. 2d 633, 681 N.W.2d 110 (“Statutory language is read where possible to give reasonable effect to every word, in order to avoid surplusage.”).

17. That cannot be the case, particularly when measured against the common law principle that “every person is presumed to know the law and cannot claim ignorance of the law as a defense.” *Friendly Vill. Nursing & Rehab, LLC v. Dep’t of Workforce Dev.*, 2022 WI 4, ¶ 28, 400 Wis. 2d 277, 969 N.W.2d 245 (internal quotations omitted). A “statute in derogation of the common law must be strictly construed so as to have minimal effect on the common law rule.” *Augsburger v. Homestead Mut. Ins. Co.*, 2014 WI 133, ¶17, 359 Wis. 2d 385, 856 N.W.2d 874; *see also Kranzush v. Badger State Mut. Cas. Co.*, 103 Wis. 2d 56, 74, 307 N.W.2d 256 (1981) (“to be construed as changing the common law” the “language of the statute must be clear, unambiguous and preemptory.”).

18. To be sure, Section 140.02 reflects that a person who relies on a notary should not be prejudiced where the notarial act performed, on its face, correctly—but is defective for a reason the signer could not possibly have foreseen. Thus, for example, the notarial act will still be valid if the notary, unbeknownst to the candidate, fails to “keep confidential all documents and information provided to the notary public,” or fails to provide “[w]ritten notice of any change of address [...] to the department within 10 days of the change.” Wis. Stat. § 140.02(5m), (6m).

19. But, here, West and Abdullah could have easily seen, on the face of their Declarations, that the notarial acts were not lawful. West *could have* asked his notary to include the required jurat language. (See Complaint, ¶¶18-23) Abdullah *could have* stapled the jurat to her Declaration. (See Complaint, ¶¶ 24-36) Indeed, they had an obligation to do so, and “cannot claim ignorance of the law as a defense.” *Friendly Vill. Nursing & Rehab*, 2022 WI 4, ¶28.

20. *Finally*, JFA’s claim that Wisconsin voters “expressed their wish” to place JFA on the ballot, (Response, ¶7), both: (1) presumes the papers are lawful, and (2) misapprehends the “will of the electors” argument, which, as set forth in the Complaint, “applies only after the holding of the election and the will of the electors has been manifested.” *State ex rel. Oaks v. Brown*, 211 Wis. 571, 249 N.W. 50, 53 (1933). Wisconsin law is clear: “[w]hile the right to vote is an inherent or constitutional right, the right to be a candidate is not of that character.” *State ex rel. Frederick v. Zimmerman*, 254 Wis. 600, 617, 37 N.W.2d 473 (1949).

CONCLUSION

The forgoing reasons, the Commission should sustain David Strange’s Verified Complaint and exclude Cornel West and Melina Abdullah from the ballot for the November 5, 2024 election.

Dated August 14, 2024.

Prepared by:

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Attorneys for Complainant

VERIFICATION

David Strange, being duly sworn, on oath, deposes and says:

1. That David Strange is a qualified elector and resident of the State of Wisconsin.
2. That David Strange has read the foregoing Rebuttal in Support of Verified Complaint and avers that the facts alleged therein are true and correct to the best of his knowledge, except as to those matters therein stated upon information and belief or based upon exhibits filed in support of his Rebuttal in Support of Verified Complaint, as to which matters he believes them to be true.

Signed in Milwaukee, Wisconsin this 14th day of August, 2024.



David Strange

Subscribed and sworn to before me
this 14th day of August, 2024.



Printed Name: Lori Jensen
Notary Public, State of Wisconsin

My commission expires: 9/10/2027



**FILED
11-21-2023
CLERK OF WISCONSIN
COURT OF APPEALS**

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT I

Case No. 2023AP1350

MORGAN HESS, as
Executive Director, Assembly
Democratic Campaign
Committee,

Petitioner-Appellant,

v.

WISCONSIN ELECTIONS
COMMISSION,

Defendant-Respondent,

PAUL MELOTIK,

Intervenor-Respondent

APPEAL FROM A FINAL ORDER OF THE DANE
COUNTY CIRCUIT COURT, THE HONORABLE
STEPHEN E. EHLKE, PRESIDING

BRIEF OF WISCONSIN ELECTIONS COMMISSION

JOSHUA L. KAUL
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Exhibit A, Page 1 of 42

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INTRODUCTION

The Wisconsin Elections Commission rejected Morgan Hess's challenge to the sufficiency of the nomination papers submitted by Paul Melotik, a candidate for the July 18, 2023, special election in the 24th Assembly District. Hess argued that a sufficient number of signatures was invalid to drop Melotik below the required minimum number of signatures needed for ballot access under Wis. Stat. § 8.15. Hess appealed the Commission's decision under Wis. Stat. § 5.06 to the Dane County Circuit Court, which promptly affirmed the Commission's decision. As a result, Melotik's name appeared on the ballot, and he eventually won the election.

Hess raises two grounds to reverse the Commission's decision. The first is the standard the Commission should use to determine the sufficiency of the information on Melotik's nomination papers: strict compliance, as Hess desires, or substantial compliance, the standard used for nomination papers under Wis. Admin. Code EL § 2.05(5). The second issue is whether Melotik's circulators effectively nullified their statutory certifications by subsequently submitting affidavits for the Commission hearing that used different language about their knowledge than in the original nomination papers.

Hess's appeal fails, for three reasons: (1) it does not satisfy the criteria for the exception to the mootness doctrine she invokes; (2) the Commission applied the proper standard, substantial compliance, and appropriately exercised its discretion in considering the nomination papers; and (3) Hess lacked standing to bring an appeal under Wis. Stat. § 5.06(8).

First, as to mootness, neither the substantial compliance nor the circulator certification issue meets the capable and likely of repetition yet evading review mootness exception, the only mootness exception she raises. As for the substantial compliance issue, a plaintiff who believes the

substantial compliance rule fails to comply with statute can seek review by bringing a declaratory judgment suit under Wis. Stat. § 227.40. An appeal under section 5.06 is not required to obtain review. As to the circulator certification issue, Hess has not shown that this scenario is likely to be repeated.

Second, looking past mootness to the merits, the Commission applied the proper standard in reviewing the sufficiency of nomination papers, and the circulators' affidavits did not effectively nullify the nomination papers they submitted.

Third, Hess lacked standing to file an appeal of the Commission's decision under section 5.06(8). Because she was not a candidate for the special election, she was not "aggrieved" by the Commission's decision that resulted in Melotik's ballot access. Although the Commission did not raise this issue in the very expedited proceedings before the circuit court, this Court can address the issue if it so chooses.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Should this appeal be dismissed because the issues are moot and no mootness exception applies?

The circuit court did not address the issue.

This Court should answer yes.

Assuming a mootness exception applies, did the Commission apply the correct standard, substantial compliance, in its review of whether enough signatures were valid on Melotik's nomination papers to allow him access to the ballot for the special election?

The circuit court answered yes.

This Court should answer yes.

Assuming a mootness exception applies, did the Commission correctly conclude that three of Melotik's circulators, who filed affidavits with the Commission, did not nullify or withdraw their previous nomination papers certifications?

The circuit court answered yes.

This Court should answer yes.

Did Hess lack standing to file an appeal of the Commission's decision under Wis. Stat. § 5.06 because she was not aggrieved by it?

The circuit court did not address the issue.

This Court should answer yes.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The Commission does not believe that oral argument is necessary, as the briefs filed will fully address the issues presented.

The Commission does not request that the Court's opinion be published because the requirements of Wis. Stat. § 809.23(1)(a) are not met. The issues presented by Hess concerning nomination papers of candidates are moot, and no exceptions apply. That is because the question of whether the substantial compliance standard should have applied to the Commission's review of Paul Melotik's nomination papers is properly reviewable though a Wis. Stat. § 227.40 declaratory judgment rule challenge. Hess has not commenced one. And the issue whether Melotik's circulators' certifications are affected by subsequent affidavits in a way to void signatures is unique to this case. Lastly, these issues are not proper for publication because Hess lacks standing to appeal the

Commission's decision addressing these two issues under Wis. Stat. § 5.06 in the first instance.

STATEMENT OF THE CASE

I. Nature of the proceeding.

This is an appeal of a circuit court decision affirming the Commission's decision rejecting a challenge to a candidate's ballot access for the July 18, 2024, special election for Assembly District 24. The circuit court summarily heard and determined all contested issues under the applicable standards for review under Wis. Stat. § 227.57. *See* Wis. Stat. § 5.06(8)–(9).

II. Relevant law regarding nomination papers.

Wisconsin Stat. § 8.15 establishes the process for a candidate to be placed on a ballot in an election for partisan office, including a special election. An assembly candidate must file nomination papers with 200 to 400 valid elector signatures. Wis. Stat. § 8.15(6)(d).

The nomination papers must meet certain formatting and content requirements. The bottom of each nominating paper must contain a certification completed by the paper's circulator. Wis. Stat. § 8.15(4)(a). The certification must state, among other things, that the circulator meets certain eligibility criteria, personally circulated the paper and obtained its signatures, and knows that each signatory is an elector of the jurisdiction and correctly dated his or her signature. *Id.*

The required heading of each nomination paper must include the candidate's mailing address. Wis. Stat. § 8.15(5)(b). And each nomination paper must "substantially" include a statement that includes the candidate's name and address, type and date of election, name of office, a request that the candidate be placed on the ballot, and a statement

that each signatory has only signed the nomination paper of that candidate in the same race. Wis. Stat. § 8.15(5)(a).

Wisconsin Admin. Code EL § 2.05(1) provides that “[e]ach candidate for public office has the responsibility to assure that his or her nomination papers are prepared, circulated, signed, and filed in compliance with statutory and other legal requirements.”

When nomination papers are submitted, the filing officer determines whether the papers’ information is accurate and sufficient. Wis. Admin. Code EL § 2.05(3). Information appearing on a nomination paper is “entitled to a presumption of validity.” Wis. Admin. Code EL § 2.05(4).

Under the Commission’s administrative rule, the substantial compliance standard applies to that review: “Where any 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.” Wis. Admin. Code EL § 2.05(5).

Nomination papers for state office may be promptly challenged by filing a verified complaint with the Commission under Wis. Stat. §§ 5.05 or 5.06. *See* Wis. Admin. Code EL § 2.07(1), (2)(a). The Commission may decide the challenge with or without a hearing. Wis. Admin. Code EL § 2.07(2)(b); Wis. Stat. 5.06(1). The challenger has the burden to establish insufficient papers by clear and convincing evidence. Wis. Admin. Code EL § 2.07(3)(a). If insufficiency is established, the burden then shifts to the challenged candidate to show that the papers are adequate. Wis. Admin. Code EL § 2.07(3)(a).

The substantial compliance standard in EL § 2.05(5) is applied in determining “the sufficiency of nomination papers.” Wis. Admin. Code EL § 2.07(1).

III. Procedural history and relevant facts.

Candidates for the July 18, 2023, special election in the 24th Assembly District circulated nomination papers from May 5 to 23, 2023. (R. 4:2.)

Two candidates approved for ballot access filed the required paperwork, including nomination papers: Paul Melotik (Republican Party) and Bob Tatterson (Democratic Party). (R. 4:2.) Commission staff reviewed the papers and determined that Melotik's nomination papers had 369 signatures. (R. 4:4.)

Morgan Hess, the Executive Director of the Assembly Democratic Campaign Committee, filed a verified complaint with the Commission to challenge 294 of Melotik's signatures, under Wis. Admin. Code EL § 2.07(1). (R. 4:5–6, 7–127 (verified complaint and exhibits).) Melotik filed a verified response. (R. 4:128–53.) The response included three affidavits of circulators of his nomination papers. (R. 4:154–56 (Affidavit of Paul Melotik), 157–59 (Affidavit of Paul Marti), 160–62 (Affidavit of Tom Grabow).)

Pursuant to Wis. Admin. Code EL § 2.07(4), Commission staff conducted an initial review of the Melotik's challenged nomination papers and submitted two recommendations to the Commission.

First, staff recommended that 9 signatures were invalid because the signatories lived outside the district. (R. 4:176.)

Second, as to the challenge to 260 signatures related to the form of the nomination paper itself, (R. 4:176), Commission staff acknowledged that the nomination papers were not in pristine condition; some had missing letters and words due to poor photocopying. (R. 4:176–78). Staff recommended sustaining Hess's challenge to 8 signatures on one page because information about the election was entirely missing from that page. (R. 4:176–77.) But for all other

circulator certifications and headers, staff determined that no essential information was missing. (R. 4:176.) As to the 252 signatures on those pages, staff explained that the individuals signing the papers would have understood what they were signing and would have seen every statutorily required piece of information. (R. 4:176.)

In sum, Commission staff recommended sustaining Hess's challenge to 17 signatures and rejecting the remaining 277 challenges, leaving Melotik with 352 valid signatures. (R. 4:3, 163.)

The Commission held an open meeting on June 1, 2023, to hear Hess's complaint. (R. 4:175.) During the first part of the hearing, Commission staff presented their findings and two recommendations. (R. 4:176–79.) The Commission also identified an additional page with 10 more signatures that lacked Melotik's first name, as required by Wis. Stat. § 8.15(5)(a). (R. 4:177–78.)

In the second part of the hearing, the Commission heard arguments from counsel for Hess and Melotik. (R. 4:175–87.)

Hess argued that strict compliance, not substantial compliance, was required for review of nomination papers. (R. 4:180.) Hess also noted that the circulators filed affidavits as part of Melotik's response to the verified complaint. (R. 4:154–56 (Affidavit of Paul Melotik), 157–50 (Affidavit of Paul Marti), 160–62 (Affidavit of Tom Grabow), 180.) These affidavits stated that these circulators “knew (to the best of my knowledge) that each circulator signing the nomination form was an elector of the district, that each elector signed the paper with full knowledge of its content, that each elector knew their respective residences given, and that each signer signed on the date stated opposite his or her name.” (R. 4:155, 158, 161.) Hess argued that these affidavits, including the term “to the best of my knowledge,” “reneged” on the

circulators' statutory certifications. (R. 4:180.) Thus, Hess contended, 265 signatures on the papers of those circulators were invalid, taking Melotik below the 200 minimum required amount for ballot access. (R. 4:181–82.)

Melotik argued next, agreeing with the Commission staff recommendation. (R. 4:182.) He pointed out that the circulators' affidavits did not purport to state that the contents were upon information and belief. Rather, the affiants based the affidavits on their knowledge. Melotik argued that the affidavits did not effectively nullify the circulators' certifications. Melotik also argued that substantial compliance was the proper standard for review of nomination papers, consistent with the administrative code. He further pointed out that Hess did not argue that the missing letters and words on the nomination papers were material under a substantial compliance standard. (R. 4:183.)

The Commission voted to adopt the Commission staff recommendation to and to exclude the additional 10 signatures it identified as lacking Melotik's name. (R. 4:184–5.) Having concluded that Melotik's papers contained 342 valid signatures, the Commission voted in favor of Melotik's ballot access. (R. 4:186–87.)

On June 2, the Commission administrator signed the Findings and Order that reflected the Commission's vote from the previous day. (R. 4:206–07.)

Hess appealed the Commission's decision pursuant to Wis. Stat. § 5.06(8), via summons and complaint in circuit court on June 8, 2023. (R. 2.) He filed several exhibits that all parties, including Melotik (after stipulated intervention), later stipulated to represent the administrative record. (R. 4, 12, 18, 24, 27.) The court issued a written decision on June 15, 2023. (R. 25.)

On July 25, 2023, Hess filed a timely notice of appeal. (R. 28.)

STANDARD OF REVIEW

Commission standard

A challenger to nomination papers filed has the burden to establish insufficient papers by clear and convincing evidence. Wis. Admin. Code EL § 2.07(3)(a). The burden then shifts to the challenged candidate to show that the papers are adequate. Wis. Admin. Code EL § 2.07(3)(a). The substantial compliance standard is applied by the Commission in determining “the sufficiency of nomination papers.” Wis. Admin. Code EL §§ 2.07(1), § 2.05(5).

Upon a challenge to the filing officer’s initial review, the Commission may decide the challenge with or without a hearing. Wis. Admin. Code EL § 2.07(2)(b); Wis. Stat. § 5.06(1).

Circuit court standard

Under Wis. Stat. § 5.06(9), “The court shall summarily hear and determine all contested issues of law and shall affirm, reverse or modify the determination of the commission, according due weight to the experience, technical competence and specialized knowledge of the commission, pursuant to the applicable standards for review of agency decisions under s. 227.57.”

In a Wis. Stat. ch. 227 judicial review, “[u]nless the court finds a ground for setting aside, modifying, remanding or ordering agency action or ancillary relief under a specified provision of this section, it shall affirm the agency’s action.” Wis. Stat. § 227.57(2). The burden is upon the petitioner to show that the agency decision should be overturned. *City of La Crosse v. DNR*, 120 Wis. 2d 168, 178, 353 N.W.2d 68 (Ct. App. 1984).

The agency’s finding of fact must be “supported by substantial evidence in the record.” Wis. Stat. § 227.57(6). As

to an agency's interpretation of statutes, judicial review is de novo. *Tetra Tech EC, Inc. v. DOR*, 2018 WI 75, ¶¶ 83–84, 382 Wis. 2d 496, 924 N.W.2d 21 (lead op.); *Citation Partners, LLC v. DOR*, 2023 WI 16, ¶ 32, 406 Wis. 2d 36, 985 N.W.2d 761.

Appellate court standard

In a chapter 227 appeal, the court of appeals reviews the agency's decision, not the circuit court's decision. *Wingra Redi-Mix Inc. v. LIRC*, 2023 WI. App. 34, ¶ 40, 408 Wis. 2d 563, 993 N.W.2d 715.

ARGUMENT

I. This case is moot and none of the exceptions save it from dismissal.

This case is moot. Melotik's name was placed on the ballot, the special election took place, and he won. A ruling on the propriety of the Commission's review of his nomination papers would have no legal effect on any live controversy.

Moreover, no mootness exceptions apply. First, the issue presented—whether substantial compliance is the proper standard to review nomination papers—does not evade court review. That standard is set forth in the Commission's administrative rule, and a rule may be challenged in a Wis. Stat. s. 227.40 declaratory judgment action. And whether circulators effectively nullified their nomination papers' certifications by submitting affidavits about their knowledge is not an issue likely to recur. Hess's arguments for other mootness exceptions are unspecific and unavailing.

A. Courts decline to decide cases where the resolution of the question presented will have no practical effect on the underlying controversy.

Courts generally decline to address moot issues. *Matter of Commitment of J.W.K.*, 2019 WI 54, ¶ 11, 386 Wis. 2d 672, 927 N.W.2d 509. This rule is grounded in the recognition that courts “act only to determine actual controversies—not to announce principles of law or to render purely advisory opinions.” *State v. Robertson*, 2003 WI App 84, ¶ 32, 263 Wis. 2d 349, 661 N.W.2d 105. The rule conserves public resources, promotes judicial efficiency, and avoids courts opining on issues where no live controversy exists. *Matter of G.S.*, 118 Wis. 2d 803, 805, 348 N.W.2d 181 (1984). The supreme court recently recognized that where no live controversy exists, courts should decline to address “interesting” legal questions, even where some uncertainty might exist. *State ex rel. Collison v. City of Milwaukee Board of Review*, 2021 WI 48, ¶ 46, 397 Wis. 2d 246, 960 N.W.2d 1.

An issue is moot “when its resolution will have no practical effect on the underlying controversy.” *PRN Assocs. LLC v. DOA*, 2009 WI 53, ¶ 25, 317 Wis. 2d 656, 766 N.W.2d 559. An entire case is moot when the claimant seeks “judgment upon some matter which when rendered for any cause cannot have any practical legal effect upon the existing controversy.” *Matter of Commitment of J.W.K.*, 386 Wis. 2d 672, ¶ 11 (quoting *Fort Howard Paper Co. v. Fort Howard Corp.*, 273 Wis. 356, 360, 77 N.W.2d 733 (1956)). If an issue is moot, courts will decline to address that issue, and if all issues in a case are moot, the case “should be dismissed.” *Id.* ¶ 12.

There are limited circumstances in which courts may address moot issues. These include when (1) “the issues are of great public importance;” (2) “the constitutionality of a statute is involved;” (3) the situation arises so often “a definitive

decision is essential to guide the trial courts;” (4) “the issue is likely to arise again and should be resolved by the court to avoid uncertainty;” or (5) the issue is “capable and likely of repetition and yet evades review.” *Id.* ¶ 12 (quoting *Matter of G.S.*, 118 Wis. 2d 803, 805, 348 N.W.2d 181 (1984)). The rule remains that “[m]oot cases will be decided on the merits only in the most exceptional or compelling circumstances.” *City of Racine v. J-T Enterprises of Am., Inc.*, 64 Wis. 2d 691, 702, 221 N.W.2d 869 (1974).

B. The issues in this case are moot and no exceptions apply; the appeal should be dismissed.

Hess implicitly concedes that this case is moot because she focuses only on exceptions. (Hess Br. 26–32.) There are no exceptional or compelling circumstances here to warrant a merits decision from this Court. Hess’s arguments to the contrary are unpersuasive.

1. The issues in this case are not capable and likely of repetition yet evading review.

While Hess contends that four mootness exceptions apply, her main focus is on one—capable and likely of repetition and yet evading review. But neither of her issues qualifies for this exception to the mootness doctrine.

Hess’s first issue does not evade review because it really is about the validity of an administrative rule. A rule may be tested through a declaratory judgment challenge under Wis. Stat. § 227.40. Hess disagrees with the Commission’s application of the substantial compliance standard for review of nomination papers. (Hess Br. 32–44.) The Commission uses this standard because its rules require it. The rule states that “[w]here any 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.” Wis. Admin. Code EL § 2.05(5) (emphasis added).

The Legislature has created a cause of action to allow for challenges to the validity of administrative rules: a declaratory judgment action pursuant to Wis. Stat. § 227.40. A plaintiff who has standing to challenge the validity of EL § 2.05(5) can thus obtain court review of the substantial compliance standard without being concerned about an election mooting the issue. In sum, this substantial compliance issue may be capable and likely of repetition, but it does not evade court review.

Hess’s second issue does not qualify for a mootness exception for a separate reason. The question whether circulators effectively nullify their nomination papers’ certifications by submitting affidavits about their knowledge is not likely to recur. Hess has failed to show that the circumstances here are likely to be repeated.

2. The remaining mootness exceptions do not apply here.

As to the remaining mootness exceptions, Hess argues in generalities rather than specifics.

Hess contends that three additional mootness exceptions apply because the issues in this appeal are “important, arise regularly, will arise again, and should be resolved to avoid uncertainty.” (Hess. Br. 31.) But Hess only points to the importance of elections and fails to explain how her specific issues, the substantial compliance standard and circulator certification issues, meet the criteria. (Hess Br. 31–32.) This failure to develop argument forfeits the issue. *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (court may decline to review issues inadequately briefed).

Even if not forfeited, Hess's blanket argument that election issues are, by definition, greatly important fails. Hess cites *Hawkins v. WEC*, 2020 WI 75, 393 Wis. 2d 629, 630, 948 N.W.2d 877, in support of her argument that ballot access cases are of prime importance. (Hess Br. 31.) But *Hawkins* does not help her meet any mootness exception. That case concerned ballot access for the 2020 presidential election. Yet, the Wisconsin Supreme Court still denied the petition for original action and declined to take the case. *Hawkins v. WEC*, 2020 WI 75, ¶¶ 1, 5, 393 Wis. 2d 629, 948 N.W.2d 877. So, ballot access cases are not automatically so important to warrant court review.

On a more precise level, the specific issues presented in this case also do not fall within other mootness exceptions. First, it does not matter whether substantial compliance under Wis. Admin. Code EL § 2.05(5) and 2.07(1) is the proper standard for reviewing nominating papers is an issue of great public importance, because that issue can be raised in a Wis. Stat. § 227.40 declaratory judgment rule challenge. And Hess provides no reason why additional mootness exceptions would apply to the circulator certification issue. A situation where circulators file subsequent affidavits that raise questions about the certification's knowledge requirement does not arise regularly—and involves such a narrow legal question, that general guidance from the court is unnecessary.

This Court should dismiss this appeal because the issues are moot and no exceptions apply. There is no need for this Court to address legal issues where no live controversy exists.

II. The Commission correctly determined that a substantial compliance standard applied in determining that Hess did not prove by clear and convincing evidence that enough signatures were invalid to keep Melotik off the ballot.

Assuming a mootness exception exists, the Commission applied the correct standard to Hess's challenge to Melotik's ballot access. Under applicable administrative rules and statutes, a candidate's nomination papers need only substantially comply with the statutory requirements. The law does not require strict compliance, as Hess incorrectly asserts.

A. The Commission correctly determined that substantial compliance applied to its review of the nominating papers.

The Commission correctly determined that substantial compliance is the correct standard here. It simply followed the standard set forth in Wis. Admin. Code EL §§ 2.05 and 2.07, which are consistent with Wis. Stat. § 8.15(5)(a).

Wisconsin's election statutes direct the Commission to "prescribe standards" to determine the validity of petitions, including nomination papers, and their signatures.¹ Wis. Stat. § 8.40(3). Further, Wis. Stat. § 8.07 directs the Commission to "promulgate rules . . . for use by election officials in determining the validity of nomination papers and signatures thereon."

¹ Wisconsin Stat. § 8.40(3) applies to petitions and signatures, which are similar to nomination papers and signatures. Courts have applied Wis. Stat. § 8.40 to both petitions and nomination papers, treating nominating papers as petitions. *Frami v. Ponto*, 255 F. Supp. 2d 962, 964 (W.D. Wis. 2003).

The Commission did so here, promulgating two relevant rules to guide determinations as to the validity of a candidate's nomination papers and signatures.

First, Wis. Admin. Code EL § 2.05 provides instructions to the Commission and filing officers for determining whether nomination papers are sufficient when they are initially submitted. The rule states that any information on a nomination paper is entitled to a presumption of validity. Wis. Admin. Code EL § 2.05(4). More importantly, it states that “[w]here any 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.” Wis. Admin. Code EL § 2.05(5) (emphasis added).

Second, Wis. Admin. Code EL § 2.07 establishes procedures for challenging the sufficiency of a candidate's nomination papers before the Commission. That rule states that filing officers must apply the same standards in EL § 2.05. Wis. Admin. Code EL § 2.07(1). Again, that standard is “substantial compliance.” Wis. Admin. Code EL § 2.05(5).

The plain language of the two rules makes it clear that substantial compliance is the proper standard for reviewing the sufficiency of a candidate's nomination papers.

That standard is consistent with Wis. Stat. § 8.15(5)(a), which requires substantial compliance with respect to the elector certification requirement. Wisconsin Stat. § 8.15(5)(a) states that each nomination paper for a candidate “shall have *substantially* the following words printed at the top” and then

provides an example elector certification statement.² This provision describes a proper nomination paper. It does not direct any person to do anything. And it establishes that a candidate's nomination papers must have an elector certification statement, but not one that exactly matches the statutory example or includes every word. A candidate's elector certification must only be "substantially" similar to the statutory example. Wis. Stat. § 8.15(5)(a).

No other language in Wis. Stat. § 8.15 even hints that any nomination paper requirement must be strictly complied with, and there are no consequences for noncompliance. If the Legislature had intended to require strict compliance to rules for nomination papers, it would have done so in the statute. But it did not. Requiring a candidate to use the statutory example verbatim or otherwise strict compliance would disregard the statute's clear and plain words, which court are "not at liberty" to do. *State v. Pratt*, 36 Wis. 2d 312, 317, 153 N.W.2d 18 (1967).

In addition to Wis. Admin. Code EL §§ 2.05 and 2.07 and Wis. Stat. § 8.15(5)(a)'s solid support for substantial

² That statement reads:

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.

Wis. Stat. § 8.15(5)(a).

compliance review of nomination papers, Wis. Stat. § 8.30 bolsters the Commission's position. In interpreting statutes, "language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes." *State ex rel. Kalal v. Cir. Ct. for Dane Cnty.*, 2004 WI 58, 271 Wis. 2d 663, ¶ 46, 681 N.W.2d 110.

Specifically, Wis. Stat. § 8.30 establishes circumstances under which the Commission or local election bodies have discretion to refuse to place a candidate's name on a ballot. It states that the Commission "may refuse to place the candidate's name on the ballot" in several situations, including when "[t]he nomination papers are not prepared, signed, and executed as required under this chapter." Wis. Stat. § 8.30(1)(a). The word "may" generally indicates that the provision is permissive and allows discretion. *Kotecki & Radtke, S.C. v. Johnson*, 192 Wis. 2d 429, 447–48, 531 N.W.2d 606 (Ct. App. 1995).

In contrast, Wis. Stat. § 8.30 identifies other situations in which the Commission "may not" or "shall not" place a candidate's name on a ballot, none of which apply here—for example, if the candidate does not timely file a registration statement or declaration of candidacy, or the candidate is unqualified for office for conflict-of-interest-related reasons. Wis. Stat. § 8.30(2)–(4). Section 8.30 is a surrounding and related provision that makes plain when an alleged error is an absolute bar to ballot access—it states that the Commission must refuse a candidate ballot access in certain situations, but not this one. Rather, when a candidate submits nominating papers that are "not prepared, signed, and executed as required," the Commission has the option, but is not required, to refuse ballot access. *Id.* at (1)(a).

B. Hess's arguments in favor of a strict compliance standard are unpersuasive.

Hess puts forth several arguments that the Commission's application of the substantial compliance standard is wrong and the strict compliance standard is correct, but none is persuasive.

First, Hess argues that the word "shall" is used in Wis. Stat. §§ 8.15(5)(a), (b), and 8.15(4)(a) and there is a presumption that the word is mandatory. (Hess Br. 33.) But "shall" is presumptively mandatory "unless there is something in the context or the character of the legislation which requires it to be looked at differently." *Bank of New York Mellon v. Carson*, 2015 WI 15, ¶ 21, 361 Wis. 2d 23, 859 N.W.2d 422 (citation omitted). The supreme court has held that "the legislature's use of the word 'shall' is not governed by a per se rule." *Id.* ¶ 22. Other factors to consider in whether "shall" is mandatory include "the statute's nature, the legislative objective for the statute, and the potential consequences to the parties, such as injuries or wrongs." *Id.* (citation omitted).

Here, although section 8.15(5)(a), concerning the certification language for the elector, contains "shall," it is followed by "substantially": "Each nomination paper shall have substantially the following words printed at the top[.]" In this context, the use of "shall" works against Hess as it actually *requires* substantial compliance.

Hess also raises use of the word "shall" in Wis. Stat. §§ 8.15(5)(b) and 8.15(4)(a). In those statutes, "shall" means that a nomination paper must include the candidate's mailing address and circulator's residence, but not that perfection is required. In other words, a requirement that a nomination paper include certain information is not a requirement for strict compliance. Again, under EL § 2.05, which has the same

legal force as a statute,³ “[w]here any 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.” The statutes and rule must be read together. *Perra v. Menomonee Mut. Ins. Co.*, 2000 WI App 215, ¶ 9, 239 Wis. 2d 26, 619 N.W.2d 123 (“Statutes and rules that assist in implementing a chapter’s goals and policies should be read *in pari materia*.”). These addresses qualify as a “required item of information” and, thus, if they appear incomplete on the paper, substantial compliance of these items of information makes them “complete.”

Hess also contends that strict compliance is required because section 8.15 provides that “only those candidates for whom nomination papers containing the necessary signatures acquired within the allotted time and filed before the deadline may have their names appear on the official partisan primary ballot.” Wis. Stat. § 8.15(1). But that provision addresses timing and deadlines; it has nothing to do with formatting and content. None of the format and content-related requirements in section 8.15 state that failure to comply will result in invalid nomination papers. And elections provisions stating that “certain things shall be done in a given manner” may be construed as directory and requiring substantial compliance. *See Matter of Hayden*, 105 Wis. 2d 468, 483, 313 N.W.2d 869 (Ct. App. 1981).

Hess asserts that Commission and supreme court precedent dictate that the strict compliance standard applies. (Hess Br. 33–34.) This argument fails, too.

Hess cites two Commission decisions, *Sullivan* and *Kennedy*, but those are not relevant to this case. (Doc. 4:112

³ Administrative rules have the force of law. *See* Wis. Stat. § 227.01(13).

(*Sullivan*), 120 (*Kennedy*.) Notwithstanding that Commission decisions are not binding on this Court, neither *Sullivan* nor *Kennedy* dealt with Wis. Stat. § 8.15’s formatting and content requirements. Rather, both cases involved circulators who had circulated nomination papers for multiple candidates in violation of Wis. Stat. § 8.04. (Doc. 4:114 (*Sullivan*), 122 (*Kennedy*.) The Commission drew a distinction between the completeness of information, where substantial compliance applied, and following the proper circulation process, where it did not: it stated that “substantial compliance with the law applies to the completeness of information on a nomination paper, not the process of circulating nomination papers.” (Doc. 4:116–118 (*Sullivan*), 122–126 (*Kennedy*.) Hess asserts this case is about the “process of circulating nomination papers,” (Hess Br. 34), but accurately photocopying is not part of the underlying required process. Photocopying instead concerns the “completeness of information on a nomination paper.” (Doc. 4:116–118 (*Sullivan*), 122–126 (*Kennedy*.)

Third, Hess argues that the Commission cannot rely on Wis. Admin. Code EL §§ 2.05 and 2.07 for the substantial compliance standard with the implication that the rules conflict with Wis. Stat. § 8.15. (Hess Br. 36.) This argument goes nowhere. It is an argument that these rules are invalid, but Hess has wholly failed to bring a separate declaratory judgment rule challenge to these two rules as required by Wis. Stat. § 227.40(3).

Regardless, Hess’s argument that the rules produce the same result as Wis. Stat. § 8.15 also fails. (Hess Br. 36.) She uses an example from Wis. Admin. Code EL § 2.05(2), which provides that each nomination paper shall be numbered and that “the absence of a page number will not invalidate the signatures on that page.” She claims that, under the doctrine of *expression unius, exclusion alterius*, other defects in the requirements—the ones she raises—do invalidate the

signatures on that page. (Hess Br. 36.) Hess’s reference to this cannon of statutory construction in *State ex rel. Kaul v. Prehn*, 2022 WI 50, ¶ 25, 402 Wis. 2d 539, 976 N.W.2d 821, is not applicable here. In *Prehn*, the court reviewed a statute that provides a list of events that cause an office vacancy, a detailed list that included a wide range of conditions. *Id.* The statutes also stated that the list was exclusive albeit with two exceptions. *Id.* Here, there is no list in Wis. Stat. § 8.15, let alone one that was specifically called exclusive. This canon of construction provides Hess no help.

Lastly, Hess argues that the Commission “advocates for a lawless result.” (Hess Br. 38.) She picks out a statement from the Commission’s circuit court brief about its discretionary power under Wis. Stat. § 8.30 and proceeds to raise a hypothetical situation with a hypothetical Commission decision that has no application to this case. (Hess Br. 38–40.) She then cites *Teigen v. WEC*, 2022 WI 64, ¶ 53, 403 Wis. 2d 607, 976 N.W.2d 519 (2022), for the proposition that “mandatory election requirements must be strictly adhered to and strictly observed.” This decision has no application here. Hess does not prove the underlying premise: that the Commission failed to follow a mandatory command here.

The Commission correctly applied a substantial compliance standard to determine the sufficiency of Melotik’s nominating papers.

C. The Commission correctly concluded that Melotik’s nomination papers substantially complied with the statutory requirements.

Under the substantial compliance standard, the Commission properly decided that Melotik’s nomination papers substantially complied with the statute. Hess does not directly argue that the Commission erred in its application of

this standard. It has thus abandoned any such argument.⁴ *Reiman Assocs., Inc. v. R/A Advert., Inc.*, 102 Wis. 2d 305, 307, 306 N.W.2d 292 (Ct. App. 1981) (unbriefed issue deemed abandoned). A short argument supporting the Commission's position nevertheless follows.

Before the Commission, Hess challenged the sufficiency of Melotik's nomination papers on grounds that statutorily required words and information were obscured or cut off and not visible to the electors who signed them. She identified defects that she said failed to comply with three of Wis. Stat. § 8.15's formatting and content requirements for nominating papers: the header, the elector certification, and the circulator certification.

The Commission properly adopted the thorough and complete recommendations of the staff who analyzed each challenged header, elector certification, and circulator certification on each challenged nomination paper. Staff determined that although "some letters and words were missing or obscured," "no essential meaning [was] been lost" or the "obscured information could be inferred from other intact fields." (*See. e.g.*, R. 4:164, 166.)

For example, Hess challenged the sufficiency of the elector and circulator certifications on nomination papers 1–6 and 8–10. (R. 4:24–33.) The Commission accurately concluded that on these papers, "some letters and words are missing or obscured, but no essential meaning has been lost." (*See* R. 4:164–65.) The elector certifications on those pages are slightly blurred, and some words and letters are cloudy. (R. 4:164–65.) But with the exception of the word "I" in one

⁴ Nonetheless, in taking her overall position that the Commission erred in not striking Melotik's nomination papers, the Commission assumes Hess relies on her threshold argument that strict compliance is the proper standard, which the Commission admits that it did not apply.

part of the elector certification, all other words are legible. (R. 4:164–65.) And the “I” can be inferred based on the rest of the sentence, which states, “am eligible to vote in the jurisdiction or district in which the named above seeks office.” (R. 4:164–65.) Similarly, some words in the circulator certification on those pages is blurry, but a reader can determine exactly what it says. (R. 4:164–65.)⁵

The Commission correctly determined that the nomination papers substantially complied with statutory provisions for nominating papers, and correctly concluded that Hess had not met her burden of establishing by clear and convincing evidence that the papers were insufficient.

D. The Commission did not invoke the will-of-the voters standard in Wis. Stat. § 5.01(1).

Hess also suggests that the Commission improperly relied on Wis. Stat. § 5.01(1), which states that Wisconsin elections statutes “shall be construed to give effect to the will of the electors, if that can be ascertained from the proceedings, notwithstanding informality or failure to fully comply with some of their provisions.” Hess acknowledges that the Commission’s opinion and order does not cite Wis. Stat. § 5.01(1), but she nonetheless asserts that the

⁵ Hess also challenged the header, elector certification, and circulator certification on nomination pages 12, 13, 20, and 25. (R. 4:35–36, 43, 48.) Commission staff determined that “some letters and words are missing or obscured, but no essential meaning has been lost” and that obscured information was “present or inferred from other intact fields.” (R. 4:166.) The Commission is correct that these nomination papers also have blurry areas, but Melotik’s mailing address is visible in each heading, and even with some missing words in the certification, a reader can decipher and understand the certifications’ overall meanings. (R. 4:35–36, 43, 48.)

commissioners' discussion at the hearing "suggests its determination was rooted in" the statute. Hess errs again.

There is no evidence in the record that the Commission or its staff relied on this concept in its written decision and order. While two commissioners discussed the concept at the hearing (R. 4:181–82), Hess's counsel explained that the "will of the voters issue, that stuff does not matter for purposes of ballot access" (R. 4:182). Nothing in record indicates that Wis. Stat. § 5.01(1) factored into the final decision of the Commission. Even if it was error for those commissioners to mention that standard (and Respondents don't believe it is an error for adjudicators to discuss issues during oral argument), it would have been harmless. *See Martindale v. Ripp*, 2001 WI 113, ¶ 71, 246 Wis. 2d 67, 629 N.W.2d 698 ("The standard for harmless error is whether there is a "reasonable possibility" that the error contributed to the outcome of the action or proceeding at issue.").

III. The Commission correctly concluded that three circulators' affidavits did not effectively nullify their previous certifications.

Hess also attacks the Commission's decision by focusing on the certifications of three circulators of the nomination papers. (Hess Br. 46–54.)

The bottom of each nomination paper must contain a certification completed by the paper's circulator. Wis. Stat § 8.15(4)(a). The certification must state, among other things, that the circulator personally circulated the paper and obtained its signatures, that "he or she knows [the signers] are electors of the ward, aldermanic district, municipality or county . . . ; he or she knows they signed the paper with full knowledge of its content; he or she knows their respective residences given; [and] he or she knows each signer signed on the date stated opposite his or her name." Wis. Stat § 8.15(4)(a).

Three circulators (including Melotik) filed nomination papers with certifications for Melotik that contained a total of 265 signatures. (R. 4:181.) Later, in response to Hess's ballot access challenge complaint filed with the Commission, Melotik filed affidavits of the three circulators. These affidavits, among other things, stated that these circulators "knew (to the best of my knowledge) that each circulator signing the nomination form was an elector of the district, that each elector signed the paper with full knowledge of its content, that each elector knew their respective residences given, and that each signer signed on the date stated opposite his or her name." (R. 4:154–56 (Affidavit of Paul Melotik), 157–50 (Affidavit of Paul Marti), 160–62 (Affidavit of Tom Grabow),180.)

Hess argues that these affidavits, which contain the phrase "to the best of my knowledge," "renege" on the circulators' statutory certifications and, thus, all elector signatures on those circulators' nomination papers are invalid. (R. 2 ¶¶ 87–88.) As a consequence, she contends, the Commission erred in not striking these papers and should not have allowed Melotik ballot access due to an insufficient number of signatures. (R. 2 ¶¶ 91, 106.) The Commission properly rejected Hess's argument.

Contrary to Hess's assertion, case law does not support her argument that "to the best of my knowledge" is not the same as "knows" as that verb is used in Wis. Stat. § 8.15(4)(a). Hess cites *McChain v. City of Fond Du Lac*, 7 Wis. 2d 286, 96 N.W.2d 607 (1959), but that decision is unhelpful. (Hess Br. 48.) It states: "An affidavit on information and belief is an anomaly. It is not an affirmance on knowledge." *Id.* at 290. As the Commission Chair pointed out during the hearing, the circulators' affidavits do not contain the word "belief" at all; it contains the phrase "knew (to the best of my knowledge)." (Doc. 4:184.) The circulators' affidavits are not at all similar to the affidavits in *McChain* "on information and belief."

Notably, *McChain* is the only Wisconsin decision Hess cites and it is not on point.

Hess also cites *America's Best Inns v. Best Inns of Abilene*, 980 F.2d 1072, 1074 (7th Cir. 1992), for the proposition that for an affidavit to have “any value,” “to the best of my knowledge and belief is insufficient.” (Hess Br. 48.) Again, this decision concerns an affidavit with the phrase that includes the word “belief,” but the circulators’ affidavits do not.

Hess relatedly claims that the circulators’ affidavits containing the phrase “to the best of my knowledge” means that the circulators were no longer willing to attest to the truth of their prior certifications. And she argues that the affidavits negatively impact their previous certifications. (Hess Br. 49–50.) This argument is unpersuasive. Hess did not supply the Commission or this Court with any binding case law that the phrase “to the best of my knowledge” contained in a circulator’s subsequent affidavit retroactively weakens a previous certification that uses the word “knows.” And Hess’s citation to non-binding case law holding that a certification must contain a statement about personal knowledge to have meaning misses the point. The Commission did not view the circulators’ affidavits as changing their certifications.

Hess argues that the statute’s use of “knows” equates to “actual knowledge” or “actual personal knowledge.” (Hess Br. 48, 52.) But as Commission correctly determined, Hess’s interpretation of Wis. Stat § 8.15(4)(a) is unreasonable. “[S]tatutory language is interpreted . . . reasonably, to avoid absurd or unreasonable results.” *Kalal*, 271 Wis. 2d 633, ¶ 46.

Circulators certify to knowing many things in section 8.15(4)(a), but it is unreasonable to expect that a circulator would have “actual knowledge” or “actual personal knowledge” that the electors “signed the paper with full

knowledge of its content,” for example. Wis. Stat § 8.15(4)(a). Hess’s reading of the statute would require circulators to go inside the mind of the signer. Under Hess’s position, the circulator would need to quiz the elector on the spot about the entire content of the papers to ensure that *the circulator* has “actual personal knowledge” of *the signer elector’s* “full knowledge.” Wis. Stat § 8.15(4)(a). And under Hess’s position, to have “actual personal knowledge,” the circulator would need to demand proof of residence, such as a photo I.D. card or copy of a utility bill, to ensure that he has “actual personal knowledge” of the signer’s “respective residences given.” Wis. Stat § 8.15(4)(a).

But such demanding identification requirements for a circulator are not found in the statute. Nothing in the statute uses the term, “actual knowledge,” or otherwise suggests actual knowledge is needed. Moreover, at the top of each nomination paper there must be substantially the following words printed before the space for the signature of the electors: “I am eligible to vote in (name of jurisdiction or district in which candidate seeks office).” Wis. Stat. § 8.15(5)(a). With that particular certification made by the elector included, it is reasonable for the circulator to believe that the signer is writing down his or her true residence address without further testamentary or documentary proof. Thus, each circulator here properly certified that he “knows” the signers’ respective residences and their subsequent affidavits with “to the best of my knowledge” language do not change that.

Further, Hess’s position that the circulators must have “actual personal knowledge” is unreasonable in that it ignores the fact that, after the candidate submits the nomination papers, Commission staff reviews the signers’ addresses to confirm that they are electors who reside in the district. (R. 4:3.) *See* Wis. Admin. Code EL § 2.05. Indeed, such review happened here (R. 4:176), and upon examining the allegations

in the challenge and consulting extrinsic evidence, staff agreed that nine signatures should be stricken by the Commission because the signers did not reside in the 24th Assembly District (R. 4:3). A circulator for a candidate cannot be expected to confirm a signer's residence through real-time research. It is common for signatures to be stricken through a valid challenge based on a signer elector's listed address being outside the district. (R. 4:176 (Commission staff counsel stating that Hess's challenge to individual signatures based on signers living outside the district "we have seen before").) Merely because a few signatures here were deemed invalid does not mean that Melotik's circulators made "false certifications" and could be prosecuted for perjury, as Hess contends. (Hess Br. 49–50.)

If the statute is interpreted to require "actual knowledge" or "actual personal knowledge," it would not be surprising to believe that candidates of any party would have a hard time finding individuals willing to act as circulators for them. As Hess points out, the circulator's certification in section 8.14(4)(a) subjects him to the possibility of criminal penalties for making a knowingly false statement, per Wis. Stat. § 12.13(3)(a). (Hess Br. 49.) Rare would be the individual who would risk criminal prosecution certifying that they have "actual personal knowledge" of the signer electors' residences, that all the signers are electors of the ward, aldermanic district, municipality or county, and signed the nominating paper with full knowledge of its content, *see* Wis. Stat. § 8.15(4)(a), especially considering Hess's position that circulators make "false" certifications whenever it is later determined a signer elector lists a residence outside the ward, aldermanic district, municipality or county. (Hess Br. 50–51.)

Lastly, Hess contends that because there are many Wisconsin statutes that contemplate a person certifying to the best of their knowledge, but not the circulator in section 8.15(4)(a), this means that this statute requires "actual

knowledge.” (Hess Br. 48 n.9.) But section 8.15(4)(a) does not offer a competing standard, and its silence on that issue cannot be assumed to infer something stricter.

The Commission properly rejected Hess’s unreasonable reading of section § 8.15(4)(a). The Commission correctly concluded that Hess did not prove by clear and convincing evidence that Melotik’s circulators’ affidavits containing the phrase “to the best of my knowledge” effectively nullify their prior certifications of the nomination papers.

The Commission properly rejected Hess’s challenge to Melotik’s ballot access.

IV. Alternatively, Hess lacks standing to file an appeal of a Commission decision under Wis. Stat. § 5.06.

Lastly, this Court may dispose of this appeal on a ground neither raised by the Commission nor addressed by the circuit court: Hess is not “aggrieved” under the relevant statutes that provide for judicial review of Commission decisions, Wis. Stat. §§ 5.06(8) and 227.53(1). Hess therefore lacks standing to bring this action.

An appellate court may exercise its discretion to address an issue raised for the first time on appeal. *Wirth v. Ehly*, 93 Wis. 2d 433, 444, 287 N.W.2d 140 (1980) (superseded by statute on other grounds). And this Court “may affirm the circuit court on an alternative ground as long as the record is adequate and the parties have the opportunity to brief the issue on appeal.” *Glendinning’s Limestone & Ready-Mix Co. v. Reimer*, 2006 WI App 161, ¶ 14, 295 Wis. 2d 556, 721 N.W.2d 704. Here, the Commission has good cause for not previously raising this issue: it was served with Hess’s circuit court complaint on June 9, 2023, and was given only until June 14, 2023, to fully brief the merits. The Commission did not address this argument in the short timeframe required.

Wisconsin law permits individuals to seek review of administrative agency actions. *See* Wis. Stat. §§ 227.52–53. With respect to the Commission, individuals may file verified complaints challenging the conduct of local election officials. Wis. Stat. § 5.06. The Commission is authorized to review and investigate verified complaints and issue decisions and orders resolving them. Wis. Stat. § 5.06(4); (6). “Any election official or complainant who is aggrieved by an order . . . may appeal the decision of the commission to circuit court.” Wis. Stat. § 5.06(8). Wisconsin Stat. § 227.53 similarly limits appeal availability to individuals “aggrieved by a decision.”

Judicial review provisions requiring a party to be “aggrieved” are assessed in terms of standing. *See Friends of Black River Forest v. Kohler Co.*, 2022 WI 52, ¶ 10, 402 Wis. 2d 587, 977 N.W.2d 342. Standing “restricts access to judicial remedy to those who have suffered some injury because of something that someone else has either done or not done.” *Krier v. Vilione*, 2009 WI 45, ¶ 20, 317 Wis. 2d 288, 766 N.W.2d 517 (citation omitted).

Standing requires a two-part analysis. *Friends of Black River Forest*, 402 Wis. 2d 587, ¶ 18. First, the challenged action must cause the petitioner injury in fact. *Id.* Second, the injured interest must fall within the zone of interests protected by the statute in question. *Id.*

Under the first step, the complained of infraction must be one that “directly causes injury to the interest of the petitioner.” *Fox v. DHSS*, 112 Wis. 2d 514, 524, 334 N.W.2d 532 (1983) (citation omitted). “Abstract injury is not enough.” *Id.* at 525. In other words, the plaintiff must “be directly affected” so that he “has sustained, or will sustain, some pecuniary loss or otherwise will sustain a substantial injury to his or her interests.” *Lake Country Racquet & Athletic Club, Inc. v. Vill. of Hartland*, 2002 WI App 301, ¶ 17, 259 Wis. 2d 107, 655 N.W.2d 189.

The second step is to “determine whether the interest asserted is recognized by law.” *Fox*, 112 Wis. 2d at 524 (citation omitted). Specifically, courts look to the “provision on which the claim rests” and ask whether it “properly can be understood as granting persons in the plaintiff’s position a right to judicial relief.” *Foley-Ciccantelli v. Bishop’s Grove Condo. Ass’n, Inc.*, 2011 WI 36, ¶ 46, 333 Wis. 2d 402, 797 N.W.2d 789.

Here, Hess was not directly harmed by the Commission’s decision to sustain Melotik’s ballot access. Hess is the executive director of the Assembly Democratic Campaign Committee. She was not a candidate for the special election and was not running against Melotik on the ballot. It is unclear from the record if she had any relationship to the 24th Assembly District at all. It would be different, for example, if Hess had been a candidate who had not been allowed to appear on the ballot. But she was not involved in the race. The Commission’s decision did not injure her.

Hess also fails on the second standing requirement, an alleged injury that is protected under the statute in question. *Friends of Black River Forest*, 402 Wis. 2d 587, ¶ 18. This requirement examines the statutory “provision on which the claim rests” and asks whether it “properly can be understood as granting persons in the plaintiff’s position a right to judicial relief.” *Foley-Ciccantelli*, 333 Wis. 2d 402, ¶ 46.

Here, the statute in question is Wis. Stat. § 8.15, which governs partisan primaries, and establishes the requirements for a candidate’s nomination papers. No part of this statute protects Hess’s interest, as an employee of a political committee, to limit ballot access for candidates from the Republican party. The statute evinces no intent to protect the interests of anyone who is not a candidate for a partisan primary race. Hess lacks standing to challenge the Commission’s decision.

CONCLUSION

Defendant-Respondent Wisconsin Elections Commission respectfully asks this Court to dismiss this appeal because it is moot, but in the event it determines the matter is not moot, to either affirm the Commission’s decision in its entirety or to conclude that Hess lacked standing to bring the action.

Dated this 21st day of November 2023.

Respectfully submitted,

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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § (Rule) 809.19(8)(b), (bm) and (c) for a brief produced with a proportional serif font. The length of this brief is 9,077 words.

Dated this 21st day of November 2023.

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CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Appellate Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 21st day of November 2023.

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STATE OF WISCONSIN
BEFORE THE WISCONSIN ELECTIONS COMMISSION

MICHAEL HOFFMAN,
2727 Park Place Lane, #201
Janesville, WI 53545

Complainant,

v.

SHIVA AYYADURAI,
69 Snake Hill Road
Belmont, MA 02478

Respondent.

WEC 09AUG2024 PM04:16

VERIFIED COMPLAINT

In the matter of nomination papers filed by Shiva Ayyadurai, with respect to his candidacy for the Office of President of the United States as an Independent, Complainant, Michael Hoffman, bring this Verified Complaint against Respondent, Shiva Ayyadurai, alleging as follows:

THE PARTIES

1. Complainant Michael Hoffman is a U.S. citizen, over the age of 18 years old, and is a registered voter and qualifies as an elector within the meaning of Chapters 5 and 6 of the Wisconsin Statutes.

2. Upon information and belief, Respondent Shiva Ayyadurai, is a resident of Belmont, Massachusetts, who seeks ballot access in Wisconsin for the November 5, 2024 Presidential Election as an Independent candidate.

3. Respondent filed or caused to be filed on his behalf nomination papers and a declaration of candidacy with the Wisconsin Elections Commission (“WEC”) on or before August 6, 2024.

4. Pursuant Art. II, Section 1, Clause 5 of the U.S. Constitution, on those individuals who are a “natural born citizen,” at least “thirty five years” of age, and a resident of the United States for at least 14 years qualify to be “eligible to the Office of President.”

5. Upon information and belief, Respondent was born in Bombay, India on December 2, 1963.

6. Attached as **Exhibit A** to this Verified Complaint is a Certificate of Nomination for Unaffiliated Candidate filed by, or caused to be filed by, Respondent in the State of Utah and which expressly states that Respondent “attest[s]” that he “was ‘naturally born’ in Bombay, India on December 2, 1963.”

7. Additionally, attached as **Exhibit B** to this Verified Complaint is a recent decision from the United States District Court for the District of Columbia, *Ayyadurai v. Garland*, No. CV 23-2079, 2024 WL 2015287 (D.D.C. May 7, 2024)(appeal filed *Ayyadurai v. Garland*, D.C. Cir., June 10, 2024).

8. In *Ayyadurai v. Garland*, the court determined that “Dr. Ayyadurai was born in Mumbai, India, and became a naturalized American citizen in November 1983.” *Ayyadurai v. Garland*, No. CV 23-2079 (LLA), 2024 WL 2015287, at *1 (D.D.C. May 7, 2024).

JURISDICTION

9. This suit is brought against Respondent pursuant to Wis. Admin. Code § EL 2.07 and Wis. Stat. §8.20.

CLAIM FOR RELIEF

10. In order for Respondent to qualify for the Office of President of the United States, he must be a natural born citizen of the United States.

11. As attested to by Respondent in **Exhibit A**, and as reaffirmed in the recent court decision marked as **Exhibit B**, Respondent is not a natural born citizen of the United States.

12. As a result, Respondent does not meet the qualifications for the Office of President of the United States and, therefore, cannot be placed on the ballot for the November 5, 2024 Presidential Election.

PRAYER FOR RELIEF

WHEREFORE, the Complainant requests the following relief:

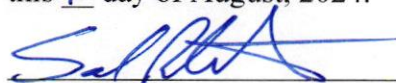
- A. That WEC deny Respondent's request for access to the ballot for the upcoming November 5, 2024 Presidential Election and determine that Respondent is not eligible to be placed on such ballot for the reasons set forth herein; and
- B. Such equitable and other relief as is just and appropriate.

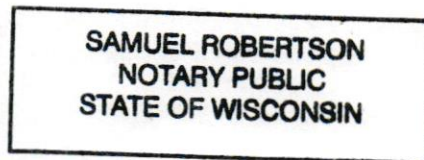
I, Michael Hoffman, being first duly sworn, states that I have personally read the above complaint, and that the above facts and allegations are true and correct to the best of my knowledge and belief.



Michael Hoffman

Subscribed and sworn to before me
this 1st day of August, 2024.


Notary Public, State of Wisconsin
My commission is permanent



STATE OF WISCONSIN
BEFORE THE WISCONSIN ELECTIONS COMMISSION

MICHAEL HOFFMAN,
2727 Park Place Lane, #201
Janesville, WI 53545

Complainant,

v.

SHIVA AYYADURAI,
69 Snake Hill Road
Belmont, MA 02478

Respondent.

AFFIDAVIT OF MICHAEL HOFFMAN

STATE OF WISCONSIN)
)
COUNTY OF MADISON)

Michael Hoffman, being of lawful age and duly sworn upon his oath, deposes and states as follows:

1. I am a Wisconsin qualified elector, who resides in Wisconsin and is over the age of 18, and I have personal knowledge to testify as to the matters set forth herein, which are true and accurate.
2. Based on records obtained through badgervoters.wi.gov, Respondent filed or caused to be filed on his behalf nomination papers and a declaration of candidacy with the Wisconsin Elections Commission (“WEC”) on or before August 6, 2024.

3. Pursuant Art. II, Section 1, Clause 5 of the U.S. Constitution, on those individuals who are a “natural born citizen,” at least “thirty five years” of age, and a resident of the United States for at least 14 years qualify to be “eligible to the Office of President.”

4. Based on publicly available documents, Respondent was born in Bombay, India on December 2, 1963.


5. Attached as **Exhibit A** to this Verified Complaint is a Certificate of Nomination for Unaffiliated Candidate filed by, or caused to be filed by, Respondent in the State of Utah and which expressly states that Respondent “attest[s]” that he “was ‘naturally born’ in Bombay, India on December 2, 1963.”

6. Additionally, attached as **Exhibit B** to this Verified Complaint is a recent decision from the United States District Court for the District of Columbia, *Ayyadurai v. Garland*, No. CV 23-2079, 2024 WL 2015287 (D.D.C. May 7, 2024)(appeal filed *Ayyadurai v. Garland*, D.C. Cir., June 10, 2024).

7. Accordingly, Respondent Shiva Ayyadurai does not qualify for the Presidency of the United States and should not be placed on the ballot for the upcoming November 5, 2024 Presidential Election in Wisconsin.


I, Michael Hoffman, being first duly sworn, states that I have personally read the above, and that the above facts and allegations are true and correct.

Subscribed and sworn before me this 9th day of August, 2024.



Michael Hoffman

Subscribed and sworn to before me
this 9th day of August, 2024.


Notary Public, State of Wisconsin
My commission is permanent

**SAMUEL ROBERTSON
NOTARY PUBLIC
STATE OF WISCONSIN**

2024
CERTIFICATE OF NOMINATION FOR
UNAFFILIATED CANDIDATE

of
(print name exactly as it is to be printed on the official ballot)

Shiva

First Name

Middle Name

Ayyadurai

Last Name

For the office of **President of the United States**

State of Massachusetts } ss.
County of Middlesex

I, Shiva Ayyadurai, declare my intention of becoming an unaffiliated candidate for the office of President of The U.S.A. I do solemnly swear that I can qualify to hold that office both legally and constitutionally if selected, and that I reside at 69 Snake Hill Road Street, in the city of Belmont, county of Middlesex, state of Utah, zip code 02478, phone 857-810-0007, and that I am providing, or have provided, the required number of holographic signatures of registered voters required by law; that as a candidate at the next election I will not knowingly violate any election or campaign law; I will file all campaign disclosure reports as required by law. The mailing that I designate for receiving all official election notices is:


Shiva4President 701 Concord Ave, Cambridge, MA 02178

My email address is: Shiva4President@Shiva4President.com

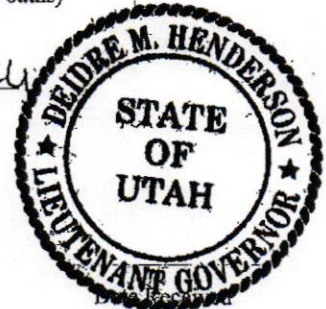
Shiva Ayyadurai
Candidate Signature

(Must be signed in the presence of an officer qualified to administer oaths)

Subscribed and sworn to before me this 02/29/2024
(month/day/year)

 Enrico Domingo
Notary Public, Commonwealth of Massachusetts
My Commission Expires November 3, 2028

[Signature]
Notary Public or an officer qualified to administer oaths



(Seal)

Lieutenant Governor 2024

EXHIBIT A

QUALIFICATIONS FOR THE PRESIDENT OF THE UNITED STATES
(Unaffiliated Candidate)

Before the filing officer accepts a declaration of candidacy, the filing officer must read the constitutional and statutory requirements to the candidate or the candidate's designated agent, and the candidate or the designated agent must state whether the candidate fulfills the requirements. If the candidate or the designated agent indicates that the candidate does not qualify, the filing officer shall decline the declaration of candidacy. Refer to Utah Code Annotated § 20A-9-201 and 20A-9-202.

QUALIFICATIONS FOR OFFICE

United States Constitution, Article II, Section 1

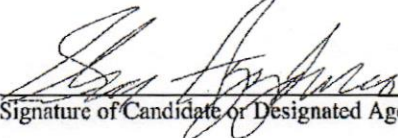
- Natural born citizen of the United States.* *SA*
- 35 years of age upon taking the oath of office
- Resident of the United States for 14 years upon taking the oath of office.

Utah Code Annotated § 20A-9-503

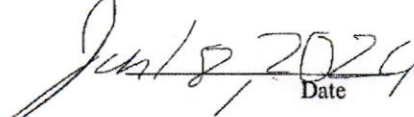
- Pay a filing fee of \$500.
- File a petition containing the signatures of at least 1,000 registered voters in Utah that have been verified by county clerks in accordance with Utah Code Annotated §20A-9-502.

READ AND SIGN BELOW (to be completed when filing the declaration in person)

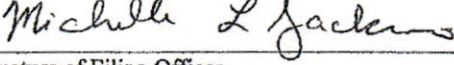
The filing officer read the constitutional and statutory requirements as listed below to me, and I or the candidate meet(s) those qualifications.



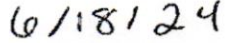
Signature of Candidate or Designated Agent



Date



Signature of Filing Officer



Date

***"Natural Born" is a term not defined in the Constitution as acknowledged by many eminent legal scholars. I attest that I was "naturally born" in Bombay, India on December 2, 1963. Regardless, the FEC in 2011 ruled that ANY citizen of the United States can run for the Office of President. In addition, pursuant to the 5th and 14th Amendments and along with multiple Supreme Court rulings e.g. Bolling v. Sharpe, Schneider v. Rusk, it is illegal and unconstitutional to discriminate between classes of citizens by National Origin. Finally, in Trump v. Anderson, No. 23-719, 601 U.S. 100 (2024), the Supreme Court unanimously ruled in a 9-0 decision that States CANNOT deny ballot access to a Candidate for President and cannot determine eligibility for federal office, and only the Congress of the United States could determine such eligibility, even if a Candidate violates a provision in the Constitution.*



KeyCite Blue Flag – Appeal Notification

Appeal Filed by Shiva Ayyadurai v. Merrick Garland, Et Al,
D.C.Cir., June 10, 2024

2024 WL 2015287

Only the Westlaw citation is currently available.
United States District Court, District of Columbia.

Shiva AYYADURAI, Plaintiff,

v.

Merrick GARLAND, et al., Defendants.

Civil Action No. 23-2079 (LLA)

|

Signed May 7, 2024

Attorneys and Law Firms

Shiva Ayyadurai, Cambridge, MA, Pro Se.

Christina O'Tousa, DOJ-USAO, Washington, DC, for
Defendant Merrick Garland.

David R. Wasserstein, Washington, DC, for Defendant
Gary Thompson.

MEMORANDUM OPINION

LOREN L. ALIKHAN, United States District Judge

*1 This matter is before the court on motions to dismiss pro se Plaintiff Dr. Shiva Ayyadurai's complaint by Defendants Merrick Garland, Attorney General of the United States, and Gary Thompson, Chair of the District of Columbia Board of Elections. ECF Nos. 11 & 14. For the reasons explained below, the court will grant both motions and dismiss the complaint for lack of jurisdiction.

I. Background

Dr. Ayyadurai was born in Mumbai, India, and became a naturalized American citizen in November 1983. ECF No. 1 ¶¶ 5, 8. He resides in Massachusetts, where he has previously run for state-wide office. *Id.* ¶¶ 9, 13-14. In 2023, Dr. Ayyadurai “declared himself to be a candidate for president” in the 2024 election “as

an independent, unaffiliated with any political party.” *Id.* ¶ 15; ECF No. 16 ¶ 11. He has created a website for his campaign, advertised, solicited donations from supporters, engaged volunteers to collect signatures in support of his candidacy, and researched the process to be added to the ballot in all fifty states. ECF No. 17, at 2, 4; *see generally* ECF No. 16.

Dr. Ayyadurai believes that his “campaign will be hampered by a variety of state and federal officials who will refuse to permit ballot access to [him] on the basis of his place of birth.” ECF No. 1 ¶ 18. Specifically, the U.S Constitution directs that only “a natural born” citizen is eligible to hold the office of President. U.S. Const. art. II, § 1, cl. 5. Dr. Ayyadurai thus brought this suit against Mr. Garland, in his official capacity as Attorney General of the United States, and Mr. Thompson, in his official capacity as Chair of the District of Columbia Board of Elections.¹ ECF No. 1 ¶¶ 6-7. He raises three counts in his complaint. First, he argues that the First Amendment guarantees his right to run for the office of President of the United States regardless of “qualifications.” *Id.* ¶¶ 22-30. Next, he contends that the provision of the Constitution allowing only natural born citizens to serve as President has been “abrogated and implicitly repealed” by the Fifth and Fourteenth Amendments. *Id.* ¶¶ 31-46. Finally, he maintains that “qualification for President is a non-justiciable political issue that is determined by voters” and thus cannot be “interfered with” by state or federal election officials. *Id.* ¶¶ 47-54. As relief, Dr. Ayyadurai seeks a declaratory judgment that he is eligible to serve as President notwithstanding the natural born citizens clause, and in the alternative, that eligibility for President is a non-justiciable political question that must be determined by the electorate. *Id.* ¶ 1. He also seeks injunctive relief directing BOE to place him on the ballot in the District of Columbia and directing DOJ to ensure that the states do not deny him access to the ballot nationwide. *Id.* at 5-6, 8, 10.

¹ Because the lawsuit targets Mr. Garland in his official capacity, the court will refer to that Defendant as the Department of Justice (“DOJ”). The court will do the same for Mr. Thompson, referring to the District of Columbia Board of Elections (“BOE”).

*2 DOJ moved to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(1), arguing that Dr. Ayyadurai lacks standing to bring suit. ECF No. 14. BOE also moved to dismiss for lack of standing under Rule 12(b)(1) and additionally sought dismissal for failure to state a claim under Rule 12(b)(6). ECF No. 11.

II. Legal Standard

The plaintiff bears the burden of establishing subject-matter jurisdiction. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 559-61 (1992). In reviewing a motion to dismiss for lack of jurisdiction under Federal Rule of Civil Procedure 12(b)(1), the court will “assume the truth of all material factual allegations in the complaint and ‘construe the complaint liberally, granting plaintiff the benefit of all inferences that can be derived from the facts alleged.’” *Am. Nat’l Ins. Co. v. FDIC*, 642 F.3d 1137, 1139 (D.C. Cir. 2011) (quoting *Thomas v. Principi*, 394 F.3d 970, 972 (D.C. Cir. 2005)).

Under Rule 12(b)(6), the court will dismiss a complaint that does not “contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 622, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* In evaluating a motion to dismiss under Rule 12(b)(6), the court will accept the factual allegations in the complaint as true and draw all reasonable inferences in the plaintiff’s favor. *Id.*

When the plaintiff is pro se, as Dr. Ayyadurai is here, the court will “liberally construe” his filings. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); see *id.* (“[A] pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.” (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976))). Nevertheless, a pro se plaintiff must adhere to the Federal Rules of Civil Procedure. *Garlington v. D.C. Water & Sewer Authority*, 62 F. Supp. 23, 27 (D.D.C. 2014). In

assessing whether dismissal is warranted, a court considers all of a pro se litigant’s filings, including attachments and any opposition filed. *Brown v. Whole Foods Market Grp., Inc.*, 789 F.3d 146, 151-52 (D.C. Cir. 2015).


III. Discussion



The court begins, as it must, with jurisdiction. *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 93-94 (1998). Article III of the Constitution limits the jurisdiction of federal courts to “actual cases or controversies,” meaning that plaintiffs “must establish that they have standing to sue” and that a case is “ripe” for decision. *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 408 (2013) (quoting *Raines v. Byrd*, 521 U.S. 811, 818 (1997)); *Nat’l Treasury Emps. Union v. United States*, 101 F.3d 1423, 1427 (D.C. Cir. 1996). To satisfy the constitutional requirement for standing, a plaintiff must plead: “(1) an ‘injury in fact’ that is ‘concrete and particularized’ as well as ‘actual or imminent’; (2) a ‘causal connection’ between the injury and the challenged conduct; and (3) a likelihood, as opposed to mere speculation, ‘that the injury will be redressed by a favorable decision.’” *Ark Initiative v. Tidwell*, 749 F.3d 1071, 1075 (D.C. Cir. 2014) (quoting *Lujan*, 504 U.S. at 560-61). The related doctrine of ripeness also requires the court to “reserve[] judicial power for resolution of concrete and fully crystalized disputes.” *In re Al-Nashiri*, 47 F.4th 820, 826 (D.C. Cir. 2022) (quoting *Cobell v. Jewell*, 802 F.3d 12, 21 (D.C. Cir. 2015)). DOJ and BOE argue that Dr. Ayyadurai lacks standing and that the case is not ripe. ECF No. 11, at 5-7; ECF No. 14, at 3-4; ECF No. 19, at 2-5; ECF No. 20, at 2-6. The court agrees.

*3 The first question is whether Dr. Ayyadurai has established an injury in fact as to both standing and ripeness. *Nat’l Treasury Emps. Union*, 101 F.3d at 1427 (“Ripeness ... shares the constitutional requirement of standing that an injury in fact be certainly impending.”). The court construes Dr. Ayyadurai’s filings to allege that his injury in fact is an inability to appear on the ballot for President—both in the District of Columbia and nationwide—ECF No. 1

¶ 18; *see generally* ECF No. 17, and it concludes that this injury is not sufficiently concrete or imminent to confer standing.

With regard to ballot access in the District of Columbia, as BOE and DOJ explain, Dr. Ayyadurai must fulfill several requirements before he can appear on the ballot. ECF No. 11, at 5-6; ECF No. 20, at 4-5. In the District of Columbia, candidates for President who are not affiliated with a political party, like Dr. Ayyadurai, must petition for placement on the ballot. 3 D.C.M.R. § 1500.5. Among other steps, this requires the submission of a petition that “contains the valid signatures of at least one percent ... of the registered qualified electors of the District,” *id.* § 1503.1, and an affidavit personally executed by the candidate, *id.* § 1500.6(b).



Dr. Ayyadurai admits that he has not taken these necessary steps. ECF No. 17, at 5, 21-22. In his opposition, he lists out the steps to achieve ballot access in the District of Columbia and explains that his campaign is “between” the process of “understanding the rules and procedures” related to getting on the ballot and “acquiring the paperwork of forms and filings.” *Id.* at 5, 22; ECF No. 16-4; ECF No. 16-6. He further states that a volunteer for his campaign called BOE and asked how to get on the ballot, and a BOE employee explained that the required forms would not be available until June 2024. ECF No. 17, at 5-6, 23-24; ECF No. 16-6, ¶ 7. While these actions indicate that Dr. Ayyadurai has a concrete interest in running for President, they provide nothing material to suggest that he will succeed in completing the prerequisites and then be prevented from appearing on the ballot in the District of Columbia because he is not a “natural born” citizen. As Defendants note, it is entirely possible that other obstacles will befall his campaign first, including an inability to obtain the required number of signatures. ECF No. 11, at 5-6; ECF No. 20, at 4-5. In this way, Dr. Ayyadurai's injury concerning ballot access in the District of Columbia rests upon “contingent future events that may not occur as anticipated, or indeed may not occur at all.”  *Texas v. United States*, 523 U.S. 296, 300 (1998) (quoting

 *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 580-81 (1985)); *see*  *Hassan v. Fed. Election Comm'n*, 893 F. Supp. 2d 248, 256 (D.D.C.

2012) (dismissing plaintiff's complaint—which sought declaratory judgment related to the natural born citizen requirement—for failure to establish injury in fact, because although the candidate had created a website, advertised, and participated in interviews, he had not shown he was “actually and imminently ... in a position to be affected by the ... requirement”). Because Dr. Ayyadurai's claim is “too speculative” for the court to determine whether it “will ever need solving,” there is no case or controversy for the court to decide.

 *Texas*, 523 U.S. at 302.


With regard to nationwide ballot access, Dr. Ayyadurai argues that he has suffered an injury in fact because Utah and Wyoming have asked him to confirm that he is a natural born citizen as part of their ballot-access process. ECF No. 17, at 25-27. However, he does not allege that either state has made a definitive decision that he is ineligible to run for President. Unless and until that happens, Dr. Ayyadurai has not suffered a sufficiently concrete injury to confer standing. But even if Utah or Wyoming did render an unfavorable decision on his eligibility, the court would still lack standing because Dr. Ayyadurai has not alleged any causal connection between those decisions

and any actions by DOJ.  *Lujan*, 504 U.S. at 560 (explaining that injuries that are the “result [of] the independent action of some third party not before the court” are not traceable to the defendant (quoting  *Simon v. E. Ky. Welfare Rts. Org.*, 426 U.S. 26, 41-42 (1976))). While Dr. Ayyadurai contends that DOJ has “power and authority to supervise state election compliance with civil rights laws and to enter into consent agreements with states regarding state election law and ballot access,” ECF No. 1, ¶ 6, it is under no obligation to exercise any authority it may have for his benefit, *Voth v. Holder*, 373 F. App'x 78, 78 (D.C. Cir. 2010) (explaining that DOJ has discretion in investigating alleged violations of civil rights laws). Because his alleged injury is not “fairly traceable” to DOJ, Dr. Ayyadurai lacks standing to pursue his claim.

 *Clapper*, 568 U.S. at 402.

*4 Accordingly, the court concludes that it lacks jurisdiction over Dr. Ayyadurai's claims against DOJ and BOE and must dismiss the suit under Rule 12(b)(1).²

2

In his opposition, Dr. Ayyadurai appears to request that the court “sanction Defendants' attorneys” under Federal Rule of Civil Procedure 11 because their motions were based on a “bold-faced lie”—seemingly, the Defendants' assertion that Dr. Ayyadurai's campaign was “theoretical” and insufficiently concrete. ECF No. 17, at 1-2. “Courts do not impose Rule 11 sanctions lightly; such sanctions are an extreme punishment for filing pleadings that frustrate judicial proceedings.”  *Jordan v. U.S. Dep't of Labor*, 273 F. Supp. 3d 214, 241 (D.D.C. 2017). The court declines to

impose sanctions here. Defendants relied on the allegations in the complaint and did not mislead the court in any respect.

IV. Conclusion

For the foregoing reasons, the court will issue a contemporaneous order granting the Defendants' motions to dismiss, ECF Nos. 11 & 14, and dismissing this action without prejudice.

All Citations

Slip Copy, 2024 WL 2015287

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**STATE OF WISCONSIN
BEFORE THE STATE OF WISCONSIN ELECTION COMMISSION**

MICHAEL HOFFMAN,)
)
Complainant,)
v.)
DR. SHIVA AYYADURAI,)
)
Respondent.)

MOTION TO DISMISS COMPLAINANT (“CHALLENGER”) PETITION

Dr. Shiva Ayyadurai (“Dr.SHIVA”), Respondent Pro Se, files this motion to dismiss the Complainant’s (“Challenger’s”) petition pursuant to *Wisconsin Legislature 801* due to the Wisconsin Election Commission’s (“Election Commission’s”) lack of subject matter and personal jurisdiction over the Electors’ nomination papers and Challenger’s lack of standing to proceed against Respondent Dr.SHIVA and Crystal Ellis (hereinafter referred to as “Dr.SHIVA” or “Pledged Candidates”), and otherwise.

Furthermore, the Challenger’s petition has not provided any evidence challenging the Electors’ nomination papers pursuant to *Wis. Admin. Code EL § 2.07* and *Wisconsin Legislature: 8.20* or pursuant to the kind of challenges identified in the publication entitled *Wisconsin Nomination Paper Challenges*.

The Challenger’s petition reflects a basic (perhaps intentional) lack of understanding of how the Electoral College operates, and a gross disdain for the First and Fourteenth Amendment rights afforded to the Electors and voters of Wisconsin, who accurately and diligently in full compliance, submitted the Electors’ nomination papers that have already been accepted and confirmed by this Election Commission.

INTRODUCTION

The Election Commission, when it comes to the accepting and certifying the nomination of Electors for presidential elections, has a narrow area of jurisdiction such as publishing nomination papers, collecting nomination papers, ensuring Electors on nomination papers are citizens and residents of the state with correct names and addresses, counting the number of nomination petition signatures, etc. by adhering to the Wisconsin Election Code (“Election Code”).

When it comes to Presidential elections, any overreach of such jurisdiction by a State emerges from a fundamental lack of understanding of the Electoral College, a foundational element of the American system of democracy in electing the President of the United States. A review of this in plain English provides the basis for why the Challenger’s motion must be dismissed, without question.

The Challenger’s petition is based on wishful thinking. It hopes to wish away the Electoral College. The Electoral College exists, and the Election Commission must respect its existence even though the Challenger may not.

In any State, when it comes to the Presidential election, on November 5, 2024, the registered voters of that State **are not voting** for a “Presidential candidate” Donald J. Trump or Kamala Harris or Dr. Shiva Ayyadurai, **they are in fact voting for a of slate of Electors.** That slate of Electors may be branded under the name “Donald J. Trump” or “Kamala Harris” or “Dr. Shiva Ayyadurai” to represent a particular slate of Electors. They are not voting for the “Office of President,” they rather voting for the “Office of Elector” or slate of Presidential Electors who will on a later date, December 17, 2024, vote for the person for president and vice president. That person for president, **may have the name** “Donald J. Trump” or “Kamala Harris” or “Dr. Shiva Ayyadurai;” however, that is not a guarantee. We recently witnessed, by way of example, how

the name “Joe Biden” was swapped with “Kamala Harris” re-labeling the slate of Electors originally put forward by the Democratic Party.

Specifically, in Wisconsin, pursuant to the *Wisconsin Legislature: 7.75: Presidential Electors*

Meeting:

(1) The electors for president and vice president shall meet at the state capitol following the presidential election at 12:00 noon the first Monday after the 2nd Wednesday in December. If there is a vacancy in the office of an elector due to death, refusal to act, failure to attend or other cause, the electors present shall immediately proceed to fill by ballot, by a plurality of votes, the electoral college vacancy. When all electors are present, or the vacancies filled, they shall perform their required duties under the constitution and laws of the United States.

(2) The presidential electors, when convened, shall vote by ballot for that person for president and that person for vice president who are, respectively, the candidates of the political party which nominated them under s. 8.18, the candidates whose names appeared on the nomination papers filed under s. 8.20, or the candidate or candidates who filed their names under s. 8.185 (2), except that at least one of the persons for whom the electors vote may not be an inhabitant of this state. A presidential elector is not required to vote for a candidate who is deceased at the time of the meeting.

Therefore, pursuant to *Wisconsin Legislature: 7.75(2):*

“[P]residential [E]lectors when convened, shall vote by ballot for that person for president and that person for vice president.”

In summary, on November 5, 2024, the voters of Wisconsin are **not voting** for Dr.SHIVA or the Pledged Candidates. They are voting for the slate of Electors who are labelled under the brand “Dr.SHIVA.” This is patent in *Wisconsin Legislature: 5.10 Presidential Electors:*

Although the names of the electors do not appear on the ballot and no reference is made to them, **a vote for the president and vice president named on the ballot is a vote for the electors of the candidates** for whom an elector's vote is cast. Under chs. 5 to 12, all references to the presidential election, the casting of votes and the canvassing of votes for president, or for president and vice president, mean votes for them through their for them through their pledged presidential electors.

In every State, the registered voters of that State on November 5, 2024, when it comes to Federal election offices, are voting for **candidates** running for the Office of U.S. Senate, the Office of the U.S. House of Representatives, the Office of Elector e.g. **the slate of Electors**. To repeat,

they are NOT voting, on November 5, 2024 Election Day, for the candidates for President and Vice-President of the United States e.g. the Office of President. They are voting for the Office of Elector e.g. the slate of Electors

A. This Election Commission lacks subject matter jurisdiction and personal jurisdiction over the Electors and their nomination papers.

Electors, as aforementioned, are elected at the general election, as defined in Election Code. They are the necessary and proper parties since it is the Electors that filed nomination papers seeking ballot placement on November 5, 2024. Nowhere in the Election Code is there an election (or even nomination) for the office of “President” or “Vice President” by voters of Wisconsin. Rather, delegates are selected at a primary, and Electors directly elected for independent candidates, and each of these Electors then votes in the Electoral College for their candidates for President or Vice President. The Electors’ names and addresses are written upon their nomination papers that were filed. No challenge was filed against the Electors, and their nomination papers are presumed valid.

Challenger has no standing to contest the Pledged Candidates, since neither is a “candidate” on the Wisconsin ballot. Further supporting the Challenger’s lack of standing is the fact that voters do not vote for President or VP – voters in Wisconsin vote for Electors. Thus, there is no standing to challenge potential pledged candidates that Electors may vote for on November 5, 2024.

Naming the proper parties is essential to creating subject matter jurisdiction, and service upon those parties essential to acquiring personal jurisdiction over any candidates. These two (2) requirements are fundamental to affording due process to candidates before they (and their thousands of petition signers) are denied ballot access. Jurisdiction is axiomatic. Challengers herein seek to remove pledged candidates from the ballot, yet, the true people that are going to

be elected on November 5, 2024 are not named in the Challenger’s petition and have not been served with a copy of the Challenger’s petition.

The time for filing challenges has passed, and the Challenger’s petition cannot be amended. It is commonly known that when a court exercises special statutory jurisdiction, that jurisdiction is confined to the language of the act conferring it, and the court has no powers from any other source. For example, in the exercise of special statutory jurisdiction, if the mode of procedure prescribed by statute is not strictly pursued, **no jurisdiction is conferred on the court.** Analogous is the failure to properly name an Election Commission (or challenger/candidate) in a petition for judicial review, and then serve all necessary parties, which divests a court of jurisdiction over a petition for judicial review. These provisions provide guidance for the Election Commission’s statutory authority over nomination papers of the following Electors:

<u>Presidential Electors:</u>		
1st Congressional District	<u>Lisa M Sevey</u>	<u>1189 N School St. Silver Lake WI 53170</u>
2nd Congressional District	<u>Enes Cakir</u>	<u>121 W Gilman St. Unit 1001 Madison WI 53703</u>
3rd Congressional District	<u>Nathan Bord</u>	<u>5320 Richland Heights Ct Wisconsin Rapids WI 54494</u>
4th Congressional District	<u>John F O'Brien</u>	<u>2497 N Oakland Ave Apt 209 Milwaukee WI 53211</u>
5th Congressional District	<u>Lisa Case Burgos</u>	<u>2737 W Bottsford Ave Greenfield WI 53221</u>
6th Congressional District	<u>Richard Thomas Dernulc</u>	<u>5232 Wild Meadow Dr. Sheboygan WI 53083</u>
7th Congressional District	<u>Danielle Dione Koprowski</u>	<u>W3590 Highway 63 Springbrook WI 54875</u>
8th Congressional District	<u>Frank Robert Marshall</u>	<u>4270 White Pine Dr. Pittsfield/Green Bay WI 54313</u>
At Large	<u>Vickie Joy Marshall</u>	<u>4270 White Pine Dr. Pittsfield/Green Bay WI 54313</u>
At Large	<u>Joseph G Stodola</u>	<u>W8441 State Highway 64 Pound WI 54161</u>

Thus, it is appropriate to dismiss this Challenge since the foregoing Electors are not named in this Challenger’s petition, nor have they all been served with a copy of the Challenger’s petition. Service upon proper defendants is required before expiration of the time provided in the statute of limitations. Challenger was aware of the names of all Electors printed upon **their** nomination papers.

Presidential and Vice-Presidential Electors are elected by voters. Candidates to whom Electors have pledged their votes are not elected by voters on November 5, 2024. That is a plain

reading of the Election Code. The election of Electors for the President and Vice President (rather than their potential **pledged** candidates) is confirmed yet again by the Election Code, aforementioned.

Just how a Presidential candidate's name is presented on the general election ballot is of no legal consequence under the Election Code - **the name represents a vote that is cast for the entire list or set of Electors.**

For example, in recent past there has been much public discussion on Pres. Joe Biden's withdrawal, and the replacement candidate Kamala Harris selected at the DNC convention in August 2024. This is certainly possible within the framework of Wisconsin law, since no candidate for such office was individually nominated at the March 19, 2024 primary election - only party delegates were selected. Rather, the **delegates** to the DNC Convention in August 2024 would select their Electors, and within after the selection of Electors for the offices of President and Vice President at the convention would send transmit to the Election Commission a certificate setting forth the names and addresses of all persons nominated by such State convention for electors of President and Vice President of the United States.

Thus, there is no requirement for any individual candidate for President or Vice President to submit a statement of candidacy or nomination papers. Such filings are not required by the Wisconsin Election Code for the offices of US President and Vice President, because these two offices are elected through the Electoral College based on the tally of voting by Electors on November 5, 2024.

Challenger offers no decision or statute that extends this Election Commission's jurisdiction over nomination papers submitted by candidates that do not appear before this Election Commission. No Challenger's petition was filed, with two copies, against Electors. Thus,

the Electors' nomination papers are deemed valid absent a challenge that is in conformity with the requirements of the Election Code.

As a statutorily created entity, the Election Commission may exercise only those powers conferred upon it by the legislature. Accordingly, there is no jurisdiction for the Election Commission to expand the scope of the Challenger's Petition or to entertain Challenger's claims to deny to thousands of bona fide Wisconsin voters their right to nominate and see their Independent Electors on the ballot. Without waiving these arguments, Respondent assert, in the alternative, the following additional arguments.

B. Ballot access is a fundamental and core First Amendment Right.

The Constitutional rights of Electors and thousands of voters who signed the Electors' petition sheets are at issue in this Challenge. Writing for a unanimous U.S. Supreme Court in *NAACP v. Alabama ex rel. Patterson*, 357 U. S. 449, 460 (1958), Justice Harlan stated that it "is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech."

Similarly, the U.S. Supreme Court in *Troxel v. Granville*, 530 U.S. 57 (2000), explained Fourteenth Amendment due process rights as follows:

The Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law." We have long recognized that the Amendment's Due Process Clause, like its Fifth Amendment counterpart, "guarantees more than fair process." *Washington v. Glucksberg*, 521 U. S. 702, 719 (1997). The Clause also includes a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests." *Id.*, at 720; see also *Reno v. Flores*, 507 U. S. 292, 301-302 (1993).
Troxel v. Granville, 530 U.S. 57 (2000)

Wisconsin has generally favored candidate eligibility and ballot access. As is very often cited in many appellate and electoral board decisions, ballot access is a substantial right that may not be lightly denied. In addition, courts have emphasized the fundamental rights of the **voters** themselves in the electoral process generally. See *Bush v. Gore*, 531 U.S. 98, 121 S.Ct. 525, 530 (2000) (“The right to vote is protected in more than the initial allocation of the franchise. Equal Protection applies as well to the manner of its exercise.”); *Nader v. Keith*, 385 F.3d 729, 737 (7th Cir. 2004).

Further, not only has the Wisconsin courts have upheld access to a position on the ballot is a substantial right which should not be lightly denied, but the Supreme Court has also stated that removing candidates from the ballot “affects not only the rights of the candidates but those of the voters.” *Anderson v. Schneider*, 365 N.E.2d 900, 902 (1977). “It is true the rights directly involved here are those of the candidates for office. But the rights of candidates and those of voters ‘do not lend themselves to neat separation’; each statute affecting a candidate has some effect on the voter.” *Id.* at 903. “We must be conscious of the broad interest which is to be served, namely, the rights of individual candidates to avail themselves of political opportunity and those of the voters to be given the opportunity to exercise an effective choice.” *Id.* at 904. In this case, it is draconian, absurd, and legally unsupportable to nullify the wishes of the thousands of voters, 3,197 voters to be specific, of Wisconsin that signed independent Presidential and Vice-Presidential **Electors** petitions, desiring to see more candidate choices upon the ballot.

As a matter of Constitutional ballot access rights, there is no authority in the Challenger’s petition, or the Election Code, to deny those thousands of voters their constitutional right to assemble, to nominate the Electors of their choice, and see their designated Electors and pledged candidate names upon the ballot.

C. Challenger's Petition is Moot

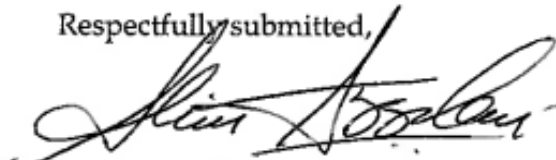
The Challenger's petition seeking the removal of a candidates for President and Vice President of the United States is moot since the relief requested could never be granted by the Election Commission, since the Election Commission lacks subject matter jurisdiction to hear and pass upon the Challenger's Petition against Pledged Candidates because the offices of President and Vice President are not offices filled by Wisconsin residents at the Wisconsin general election.

Even so, the nomination papers attempting to be disqualified by the Challenger are not from Pledged Candidates, but were submitted by the ten (10) Presidential Elector candidates, who are bona fide Wisconsin residents seeking access to the ballot. Per Election Code, the voters of Wisconsin can only vote for Electors who are resident in the State of Wisconsin. Pledged Candidates **are NOT residents of the State of Wisconsin.** One is from Massachusetts; the other is from Nebraska.

Therefore, the Challenger's relief requested is defective and moot because President and Vice President are not offices designated to be filled by Wisconsin voters on November 5, 2024. The Challenger is ignorant of the Election Code, and familiarity with the Electoral College process.

WHEREFORE, Respondent Pro Se, respectfully request that Challenger's petition is dismissed in its entirety for lack of jurisdiction/standing, or for any further relief that is just and appropriate. I, Dr. Shiva Ayyadurai, being first duly sworn, state that Motion to Dismiss herein is true to the best of my knowledge and belief.

Respectfully submitted,



By: /s/ Dr. Shiva Ayyadurai
Dr. Shiva Ayyadurai, Pro Se

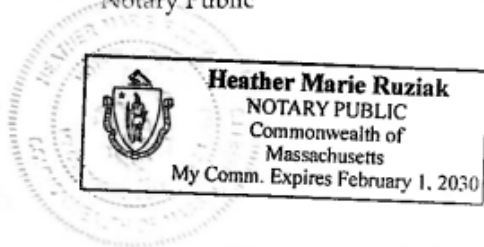
Dr. Shiva Ayyadurai
69 Snake Hill Road
Belmont, MA 02478
Ph (857) 393-7910
Em vashiva@cytosolve.com

State of Massachusetts

County of Worcester

Sworn to before me this 12th day of August, 2024.


Notary Public



**STATE OF WISCONSIN
BEFORE THE STATE OF WISCONSIN ELECTION COMMISSION**

MICHAEL HOFFMAN,)	
)	
Complainant,)	
v.)	
DR. SHIVA AYYADURAI,)	
)	
Respondent.)	

DECLARATION OF ELECTOR FRANK MARSHALL

On August 9, 2024, I, Frank Marshall, received an email from the Wisconsin Election Commission (“Election Commission”) with an attachment containing a challenge filed by Complainant (“Challenger”) against Respondent Dr. Shiva Ayyadurai.

Neither any of the nine (9) other Candidates for Presidential Electors nor I, listed below, are named as the defendants in the challenge nor were we served the challenge, compliant with the Wisconsin Election Code.

<u>Presidential Electors:</u>		
1st Congressional District	<u>Lisa M Sevey</u>	<u>1189 N School St. Silver Lake WI 53170</u>
2nd Congressional District	<u>Enes Cakir</u>	<u>121 W Gilman St. Unit 1001 Madison WI 53703</u>
3rd Congressional District	<u>Nathan Bord</u>	<u>5320 Richland Heights Ct Wisconsin Rapids WI 54494</u>
4th Congressional District	<u>John F O'Brien</u>	<u>2497 N Oakland Ave Apt 209 Milwaukee WI 53211</u>
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At Large	<u>Vickie Joy Marshall</u>	<u>4270 White Pine Dr. Pittsfield/Green Bay WI 54313</u>
At Large	<u>Joseph G Stodola</u>	<u>W8441 State Highway 64 Pound WI 54161</u>

The Election Commission has accepted and approved the filing of the Electors' nomination papers and all required documents pursuant to the relevant Wisconsin Statutes and Wisconsin Election Code for the nomination of the Electors aforementioned.

The Electors, including myself, expect to be listed on the Wisconsin ballot given that no challenge has been served upon our nomination papers as of the deadline August 9, 2024 4:30PM.

I, Frank Marshall, being first duly sworn, state that Declaration herein is true to the best of my knowledge and belief.

Frank Marshall
Signature

8-12-24
Date

State of WI
County of Brown

Sworn to before me this 12th day of August, 2024.

Elizabeth Miller
Notary Public

ELIZABETH MILLER
NOTARY PUBLIC
STATE OF WISCONSIN

STATE OF WISCONSIN
BEFORE THE WISCONSIN ELECTIONS COMMISSION

MICHAEL HOFFMAN,

Complainant,

v.

SHIVA AYYADURAI,

Respondent.

VERIFIED REBUTTAL

Respondent submitted a “motion to dismiss” the Verified Complaint in an attempt to side step the undisputed evidence that Respondent is not qualified to be placed on the ballot in Wisconsin since he was not born in the United States of America. First, Respondent does not even respond to the only challenge to his nomination papers—that he was born in Bombay, India and, therefore, does not meet the qualification of being a “natural born citizen,” as required by the United States Constitution. U.S. Const. art. II, § 1, cl. 5. A failure to contest an argument is deemed as a concession. *Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (Unrefuted arguments are deemed admitted.) As such, it is undisputed that Respondent was not born in the United States.

Second, rather than address the merits of Complainant’s challenge, Respondent argues only inapplicable and irrelevant aspects of the Electoral College. However, none of those arguments pertain to a state’s lawful determination of whether a presidential candidate qualifies for ballot access. “States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election-and campaign-related disorder.” *Stone v. Bd. of Election*

Comm'rs for City of Chicago, 750 F.3d 678, 681 (7th Cir. 2014) (citing *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 357, 117 S.Ct. 1364, 137 L.Ed.2d 589 (1997)). For example, a state is “entitled to raise the ante for ballot access” in order to avoid “frivolous candidacies” *Munro v. Socialist Workers Party*, 479 U.S. 189, 195-196, 107 S. Ct. 533, 538, 93 L. Ed. 2d 499 (1986)

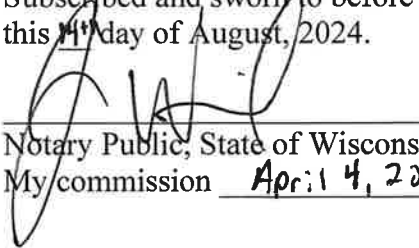
Here, it is undisputed that Respondent is not qualified for the office he seeks. Pursuant Art. II, Section 1, Clause 5 of the U.S. Constitution, only those individuals who are a “natural born citizen,” at least “thirty five years” of age, and a resident of the United States for at least 14 years qualify to be “eligible to the Office of President.” Respondent does not deny that he was born outside the United States—in particular, he was born in Bombay, India. (Verified Compl. Exs. A & B). Accordingly, under no circumstances can Respondent attain the Office of President of the United States, his attempt to do so is frivolous, and therefore his request to seek ballot access should be denied.

For the reasons set forth above, and as previously set forth in the Verified Complaint, Complainant respectfully requests that the Commission deny Respondent access to the ballot for the upcoming November 5, 2024 Presidential Election and determine that Respondent is not eligible to be placed on such ballot.

I, Michael Hoffman, being first duly sworn, states that I have personally read the above, and that the above facts and allegations are true and correct to the best of my knowledge and belief.


Michael Hoffman

Subscribed and sworn to before me
this 14th day of August, 2024.



Notary Public, State of Wisconsin
My commission April 4, 2028 JW



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

DATE: For the August 27, 2024 Meeting of the Wisconsin Elections Commission

TO: Members, Wisconsin Elections Commission

FROM: Meagan Wolfe
Administrator

SUBJECT: Ballot Access for Ballot Status and Independent Candidates for President and Vice President

Background:

Once the Commission has decided ballot access challenges, it will then proceed to considering the approval of all ballot access for all candidates seeking to appear on the ballot for the office of President of the United States of America.

Candidates for president and vice president of the United States gain ballot access in Wisconsin through one of two methods. First, major political parties that have attained ballot status certify the names of their candidates to the Wisconsin Elections Commission (“the Commission”) after their national conventions. Second, independent candidates circulate and submit nomination papers after collecting at least 2,000 signatures. The Commission votes to approve or deny ballot access for major party and independent presidential and vice presidential candidates.

Wisconsin Statute § 8.16(7) governs how a party with ballot access can certify their candidates for the office of President and Vice President to the Commission. In part, Wis. Stat. § 8.16(7) states:

Nominees chosen at a national convention and under Wis. Stat. § 8.18 (2) by each party entitled to a partisan primary ballot shall be the party's candidates for president, vice president and presidential electors. The state or national chairperson of each such party shall certify the names of the party's nominees for president and vice president to the commission no later than 5 p.m. on the first Tuesday in September preceding a presidential election.

Currently, the five ballot status parties include the Democratic Party, the Republican Party, the Constitution Party, the Libertarian Party, and the Wisconsin Green Party. All parties except the Wisconsin Green Party have timely submitted declarations of candidacy for their respective nominees and a certification from either the state or national chairperson for their party. The Greens have until September 3, 2024 to file the necessary document with the WEC. Wis. Stat. § 8.16(7),

Independent candidates for the offices of President and Vice President are required to file Declarations of Candidacy and nomination papers containing a minimum of 2,000 signatures of Wisconsin electors. Wis. Stat. §§ 8.20(8)(am), 8.21. The nomination papers must also contain the names and addresses of

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Administrator
Meagan Wolfe

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electors from each of Wisconsin's eight congressional districts and two electors from the state at large. Wis. Stat. § 8.20(2)(d).

Ballot Access for Independent Candidates for President and Vice President:

In total, four independent tickets for the offices of President and Vice President filed ballot access documents with the Commission . A summary of those filings is as follows:

- 1) On August 1, 2024, Cornel West and Melina Abdullah filed nomination papers with the WEC for the offices of President and Vice President as independent candidates representing the Justice For All party.
- 2) On August 5, 2024, Claudia De la Cruz and Karina Garcia filed nomination papers with the WEC for the offices of President and Vice President as independent candidates representing the Party for Socialism and Liberation.
- 3) On August 6, 2024, Robert F. Kennedy Jr. and Nicole Shanahan filed nomination papers with the WEC for the offices of President and Vice President as independent candidates representing the We The People party.
- 4) On August 6, 2024, Shiva Ayyadurai and Crystal Ellis filed nomination papers with the WEC for the offices of President and Vice President as independent candidates representing the Independent Party.

Staff Review of Presidential Candidate Documents:

Major Party Nominees with Ballot Status

Democratic Party: Kamala Harris and Tim Walz: Staff received the completed Declarations of Candidacies and certification of the nominees from the chairperson of the Democratic National Committee on August 19, 2024.

Republican Party: Donald Trump and JD Vance: Staff received the completed Declarations of Candidacies and certification of the nominees from the chairperson of the Republican National Committee on July 25, 2024.

Constitution Party: Randall Terry and Stephen Broden: Staff received the completed Declarations of Candidacies and certification of the nominees from the chairperson of the Constitution Party of Wisconsin on June 3, 2024.

Libertarian Party: Chase Russel Oliver and Mike ter Maat: Staff received the completed Declarations of Candidacies and certification of the nominees from the chairperson of the Libertarian Party of the United States on July 10, 2024.

Green Party: Jill Stein and Butch Ware: Staff received the completed Declaration of Candidacy from presidential nominee Jill Stein and the certification of the nominees from the chairperson of the Green Party. As of August 21, 2024, staff have not received the completed Declaration of Candidacy from vice presidential nominee Butch Ware. Staff have confirmed with Green Party leadership that the

Declaration from Candidate Ware will be provided to the WEC in the coming days. WEC Staff will provide an updated memo to the Commission once the Declaration of Candidacy is received.

Independent Candidates

Cornel West and Melina Abdullah: Staff completed its review of the West/Abdullah nomination papers on August 5, 2024. Staff found over 4,000 valid signatures in their petition. Both candidates filed Declarations of Candidacy. Staff also verified the addresses of each elector to ensure the eight congressional districts were represented. A challenge to the Declarations of Candidacy for both Dr. West and Ms. Abdullah was timely received by the WEC and is discussed in a separate memo.

Claudia De la Cruz and Karina Garcia: Staff completed its review of the De la Cruz/Garcia nomination papers on August 5, 2024. Staff found 3,811 valid signatures. Both candidates filed Declarations of Candidacy. Staff also verified the addresses of each elector to ensure the eight congressional districts were represented.

Robert F. Kennedy Jr. and Nicole Shanahan: Staff completed its review of the Kennedy/Shanahan nomination papers on August 6, 2024. Staff found 3,789 valid signatures. Both candidates filed Declarations of Candidacy. Staff also verified the addresses of each elector to ensure the eight congressional districts were represented.

Shiva Ayyadurai and Crystal Ellis: Staff completed its review of the Ayyadurai/Ellis nomination papers on August 7, 2024. Staff found 3,014 valid signatures. Both candidates filed Declarations of Candidacy. A challenge to the candidacy of Dr. Ayyadurai and Ms. Ellis was timely received by the WEC and is discussed in a separate memo.

Recommended Motions:

1. Staff recommends that the Commission grant ballot access to the following candidates, who will appear on the November 5, 2024 General Election ballot as the national nominees for President and Vice President for their respective parties
 - a. Kamala D. Harris and Tim Walz as the nominees for the Democratic party.
 - b. Donald J. Trump and JD Vance as the nominees for the Republican party.
 - c. Randall Terry and Stephen Broden as the nominees for the Constitution party.
 - d. Chase Russell Oliver and Mike ter Maat as the nominees for the Libertarian party.
 - e. Jill Stein and Butch Ware as the nominees for the Wisconsin Green party, dependent on the timely receipt of the necessary ballot access documents as described in Wis. Stat. § 8.16(7).
2. Based on the review of the nomination papers, and the conclusion of the challenges, the Commission grant ballot access to the following candidates, who will appear on the November 5, 2024 General Election ballot as independent candidates for President and Vice President: [Please note that this list includes all candidate that have applied. The Commission will add or remove candidates based on their decisions on the challenges.]
 - a. Cornel West and Melina Abdullah as independent candidates representing the Justice For All party.
 - b. Claudia De la Cruz and Karina Garcia as independent candidates representing the Party for Socialist and Liberation party.

- c. Robert F. Kennedy and Nicole Shanahan for the We The People party.
- d. Shiva Ayyadurai and Crystal Ellis for the Independent party



Wisconsin Elections Commission

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(608) 266-8005 | elections@wi.gov | elections.wi.gov

DATE: For the August 27, 2024, Commission meeting

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

FROM: WEC Staff

SUBJECT: Ballot Proofing Best Practices for Clerks

This memorandum provides an overview of both the legal requirements, as well as best practices, for local election officials when proofing their ballots prior to an election. The information contained in this memo is not new, but rather reminders. Ensuring that ballots are correct for the General Election is of paramount importance. County clerks, municipal clerks, and the Wisconsin Elections Commission all play an important role in this process. Each level of government's role in ensuring ballot accuracy is detailed below:

1) County Requirements and Best Practices in Ballot Design and Proofing

County Clerks play a major role in the proofing and distribution of ballots. Wis. Stat. § [7.10](#) defines the role of a County Clerk. Here are the steps a County Clerk follows:

a. *County Receives Information from WEC, Wis. Stat. § [7.08\(1\)\(a\)](#)*

To start the counties process, prior to each election, the WEC is required to issue notices and templates related to the upcoming election. The six-member, bi-partisan Wisconsin Elections Commission will meet in a public meeting before the election to approve ballot templates. This template provides the look, feel, and format of each type of ballot (optical scan, hand count, and direct recording equipment) not the specifics of each ballot's contests and candidates.

The WEC will also issue a Type B notice once they have approved ballot access for an upcoming election. The notices will include information for contests and candidates where the WEC is the filing officer. Clerks also enter contests and candidates for local offices into WisVote.

Once all this information has been entered, clerks can use reports from WisVote to determine which contests and candidates should appear on each ballot style. These documents provide the basis for the County Clerk to begin the process of preparing ballots pursuant to Wis. Stat. § 7.10(1)(a).

b. *County Clerk Prepares/Proofs Ballots, Wis. Stat. § [7.10\(1\)\(a\)](#)*

The County Clerk will construct a ballot style for each of their municipalities. A ballot "style" refers to the combination of different offices that a voter is eligible to vote in based on what districts they reside in and what offices are up for election at that time. Depending on the districts and wards on the ballot for the

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Administrator
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election, a county could have hundreds of ballot styles that they are constructing for their municipalities. The county uses all their available resources from WEC, from their own office as filing officer, and information from municipal and school district clerks to ensure that each ballot style has the correct districts, wards, contests, and candidates. This includes making sure that the instructions are correct (vote for no more than one, vote for no more than 2, etc.), candidates' names are spelled correctly, and referenda displayed correctly.

When proofing your ballots, please consider comparing the ballots to the reports generated from WisVote both as you are preparing the ballots, and again when you have proofs and printed copies of the ballots. You also want to pay special attention to making sure that each of the contests, and the candidates in them, appear on the correct ballot style. For example, beyond just checking the list of candidates to make sure they are all there and are spelled correctly, taking a holistic look at each ballot style to ensure that each office or contest, and corresponding candidates are associated and printed on the correct ballot style.

Special note about new districts! With the recent order of the Wisconsin Supreme Court to update legislative districts it is very important new reports are utilized and not reports from previous elections. County clerks are ultimately responsible for ensuring that the correct contests appear on each ballot style for each of their municipalities. District lines for the new Legislative maps (adopted on February 2024 through [Wisconsin 2023 Act 94](#)) have been implemented in WisVote since April 2024. Multiple trainings have occurred and are available to clerks to assist with redistricting. It is critical that each clerk understand how the new maps impacted their jurisdictions when constructing ballot styles ahead of November.

County clerks are also required to submit one proof of each of their ballot formats to WEC for review. This means if a county has municipalities who use optical scan equipment and hand count, the county should submit to WEC an example of an optical scan ballot and a hand count ballot. County clerks do not send individual ballot styles (each possible combination of contests and candidates) to WEC to proof. WEC will proof the format to make sure that the structure of the ballot complies with what was approved by the Commission. Wis. Stat. § 7.10(1)(a). WEC does not proof ballot styles for the correct contests, candidates, or things like spelling of names or referenda. If WEC notices an error like this in their review, they will alert a clerk, but it is not part of the facial review process.

It's also encouraged that County Clerks work with each of their municipalities during this stage. Before ballots go to print, it's a best practice to have municipalities proof each of their ballot styles to ensure all ballot styles are included, and that all contests and candidates are displayed correctly.

c. ***County Clerk Prints Ballots, Wis. Stat. §[7.10\(1\)](#)***

The County Clerk is responsible for printing ballots to be distributed to their municipalities. Wis. Stat. § 7.10(1). Some counties may use a vendor for printing while others may print their ballots in house. Either way, throughout the ballot printing process, county clerks need to be sure that they are reviewing the ballots through the various stages of printing. Some vendors or printing equipment may make formatting modifications.

It is the county's responsibility to ensure that as ballots are printed, they are tested, and proofed to be sure that there are no consequential changes made to the formatting or to how contests and candidates display. This can also involve inspecting printed ballots to make sure that there are no smudges, scratches, or other print issues that impact the readability of the ballot or the ability of the ballot to be accurately read by electronic voting equipment. If county clerks use vendors for printing, vendor contracts should be reviewed to ensure that there are provisions that account for proofing, fixing errors, and timelines to ensure statutory

timelines can be met if there are any errors identified.

d. *County Clerk Distributes Ballots, Wis. Stat. §7.10(3)*

Once ballots have been prepared and printed, county clerks then distribute ballots to their municipalities. For an election or primary that contains a contest for a federal office, such as President of the United States or Representative to Congress, it is required by federal law and state statute that County Clerks distribute ballots to their municipal clerks no later than the 48th day before the election or primary. For elections or primaries with only state or local level contests it is required by statute that County Clerks distribute ballots to their municipal clerks no later than the 22nd day before the election or primary.

When county clerks distribute ballots to municipalities, it is a good idea to get the “sign off” of each municipal clerk. This could be requiring a signed or emailed acknowledgement that the ballots were received timely and that the municipal clerk has reviewed the ballots they received and acknowledges that they are accurate.

2) *Municipal Clerk Requirements and Best Practices in Proofing Ballots, Wis. Stat. §7.15(2)*

While there is less prescribed in Wisconsin State Statutes about a municipality’s role in proofing ballots, there are certainly some best practices that municipalities should consider so they can ensure that voters receive correct ballots. Municipalities with populations over 500,000 may prepare their own official and sample ballots. Wis. Stat. § 7.15(2)(b). All other municipalities may prepare their own ballots with the consent of their county clerk whenever voting machines or electronic voting equipment are used in elections where there are both local races as well as national, state, or county offices. Wis. Stat. § 7.15(2)(c). If a municipality chooses this option and obtains consent, then they are taking on all of the statutory responsibilities of the county in proofing and preparing ballots as described above. For those who receive their ballots from the County Clerk, here are some best practices:

a. *Municipal Clerk Takes Custody of Ballots*

When the Municipal Clerk takes custody of their ballots from the county, they should check each ballot style to ensure all contests and candidates are correct. Municipal clerks can also utilize deputy clerk staff or experienced poll workers to help proof their ballots. WEC provides reports that the municipality can use to make this verification. Please use these reports, along with any of your own information as candidate filing officer, and information from other offices like school and sanitary districts to make sure that all of the information is correct. The earlier a problem is recognized, the sooner it can be fixed! The goal is to catch errors before ballots are sent to voters. Once ballots are sent to voters, it is much more difficult, and sometimes impossible, to correct.

Counties will likely ask municipalities to review an electronic proof of the ballots before they go to print. Cooperation and coordination with the county during this process is crucial. Municipal clerks are often most familiar with the nuances of their districts, wards, and candidates, so they play an important role in ensuring ballots are correct.

b. *Municipal Clerk Conducts Public Test*

Within 10 days of the election, municipal clerks conduct public tests of their voting equipment. Wis. Stat. 5.84(1). The public test is not optional, and is not just best practice, but it is best practice for municipal clerks to again review their ballot styles during the test to catch any errors or mistakes that may have been missed. While this is too late to catch errors that were made on absentee ballots, it is an important time for municipal clerks to ensure that their ballots and their voting equipment is accurately reflecting contests and

candidates before Election Day. All other proofing should have been completed prior to the public test, however, if there is an issue with the programming of the equipment or the ballot itself that is identified during the test it is important to bring it to the County Clerk's attention and WEC immediately.

c. *Municipal Clerk Send Ballots to Voters*

Municipal clerks are responsible for issuing ballots to voters, whether it is by-mail absentee, in-person absentee, or at the polls on Election Day. In regard to by-mail absentee, for an election or primary that contains a contest for a federal office, such as President of the United States or Representative to Congress, it is required by statute that municipal clerks mail ballots to voters with a request on file no later than the 48th day before the election or primary. Wis. Stat. § 7.15(1)(cm). For elections or primaries with only state or local level contests it is required by statute that municipal clerks mail ballots to voters with requests on file no later than the 21st day before the election or primary. Wis. Stat. § 7.15(1)(cm). For all other absentee voters, municipal clerks must issue a ballot within one business day of receiving the request. Wis. Stat. § 7.15(1)(cm). It is important to know these deadlines to be prepared to receive and proof ballots in time to correct errors and ensure statutory deadlines are met.

Municipal clerks also need to ensure they receive enough ballots from their county clerk to ensure they will not run out of ballots for by-mail absentee, in-person absentee, or election day.

3) WEC Role and Requirements in Ballot Design and Proofing, Wis. Stat. §7.08

a. *WEC Ballot Templates and Notices, Wis. Stat. § 7.08(2)(a)*

The six-member, bi-partisan Wisconsin Elections Commission takes a vote, in a public meeting, before each election cycle to approve ballot templates. Ballot templates are posted to the WEC website once they are approved. Templates provide the basic design of each type of ballot (optical scan, hand count, and direct recording equipment) such as balloting instructions, appearance of categories of contests, and other formatting. WEC templates are not specific to each contest and candidate. The Commission also approves ballot access for candidates and parties for which it is the filing officer, and relays information on statewide referenda through notices. Once the WEC meets in a public meeting to approve ballot access, the official notices are then emailed to the County Clerks and posted to the WEC website.

b. *WEC Proofs Format of Ballots*

WEC also proofs ballots formats submitted by each County Clerk. The WEC staff conducts a review to make sure that the ballot proofs comply with the formatting approved by the WEC for each type of ballot. WEC staff will also review some state and national level contest information.

For example, if a county has both optical scan municipalities and hand count municipalities, then the county will submit two ballot proofs, one for each type of ballot. WEC staff does not proof each name, candidate, and referenda on the ballot proofs. If WEC staff notices a misspelling or other error during their formatting review, they will of course notify the county. That said, counties should not rely on WEC to conduct this type of review. The WEC does have a checklist that is provided to a County Clerk after they have submitted a ballot proof for review. The checklist makes clear what the WEC has and has not reviewed. The checklist utilized for the August 13, 2024, Partisan Primary can be found in Appendix A.

c. *WEC Reports and Lists*

Finally, WEC provides lists and reports from the statewide voter registration database that municipal and county clerks use to ensure the correctness of the contests. The information in these reports is a combination of data entered by WEC staff, County Clerks, and Municipal Clerks. WEC enters information into WisVote for candidates who file with the state office, offices such as Governor, State Senate and

Assembly, and most Judicial races. Counties enter information for county offices, school districts, and sometimes municipal information, while municipalities enter information for municipal races, sanitary districts, and municipal level referenda. All levels must do their part to ensure the data entered into WisVote is correct. For contests where the Commission is the filing officer, multiple staff members review each of the entries for spelling and other specifics. It is suggested that counties and municipalities do the same. When data is entered accurately, these reports are a crucial component to what clerks use to proof their ballots to ensure accuracy.

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