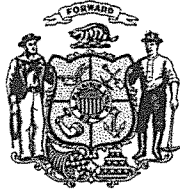


# WISCONSIN ELECTIONS COMMISSION

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## MEMORANDUM

**DATE:** For the June 11, 2018 Commission Meeting

**TO:** Members, Wisconsin Elections Commission

**FROM:** Meagan Wolfe  
Interim Administrator

Prepared and Presented by:  
Michael Haas, Staff Counsel

**SUBJECT:** Request to Withdraw Nomination Papers

Timothy Comer has requested that the Elections Commission permit him to withdraw his nomination papers and deny him ballot access despite the Commission staff's determination that he has filed sufficient valid signatures to qualify for the 2018 Partisan Primary ballot for the office of Representative to the 36<sup>th</sup> Assembly District in the Democratic Party.

Commission staff initially determined that Mr. Comer filed 177 valid signatures, which would not meet the required minimum of 200 valid signatures for the office of State Representative. Staff informed Mr. Comer that many of the struck signatures could be rehabilitated through a correcting affidavit. On May 31, 2018, Mr. Comer filed a correcting affidavit to certify that the date of the circulator's certification should be after the date of the signatures on several nomination papers. As a result of the correcting affidavit, staff determined that 39 additional signatures should be counted, bringing the total number of valid signatures to 216.

On June 1, 2018 at 1:36 p.m., Mr. Comer sent an email to the Staff Counsel requesting that the Commission disregard his correcting affidavit and that he has ended his campaign. On June 6, 2018, Mr. Comer sent the attached correspondence stating that he was rescinding his correcting affidavit and requesting that his name be eliminated from the ballot.

Wis. Stat. § 8.35(1) states as follows:

Any person who files nomination papers and qualifies to appear on the ballot may not decline nomination. The name of that person shall appear upon the ballot except in the case of death of the person.

Based on this statutory language, the Commission staff has advised local clerks that once an individual has filed nomination papers with a filing officer, and has qualified for ballot placement, nomination papers or other ballot access documents cannot be withdrawn to remove a person's name from the ballot.

Commission staff previously published an answer to a Frequently Asked Question (FAQ) on this very question which can be found here: <http://elections.wi.gov/node/105> The answer to the FAQ was prepared by the staff of the Commission's predecessor agency, but the statute has not changed and Commission staff believes the answer is still correct. The answer states:

Once a candidate qualifies for ballot status, her name appears on the ballot. The candidate cannot withdraw and have her name removed. Only in case of death of the candidate can the name be removed from the ballot. S. 8.35, Wis. Stats. The candidate can make a statement to notice to the electors that she no longer wishes to seek the office by election, but her name will appear on the ballot. Should the candidate win the election, she may decline to hold that office. This creates a vacancy that is filled following the provisions of Ch. 17.

Generally, once ballot access documents including nomination papers have been physically transferred to the filing officer, they are considered filed for purposes of Wis. Stat. § 8.35(1). If all ballot access documents have been filed and deemed sufficient, the individual qualifies for ballot access and their name will appear on the ballot (with the exception of death of the individual).

Although in a slightly different context (retention of records), Wis. Stat. § 7.24 supports the interpretation that once nomination papers have been transferred and accepted by the filing officer, they are filed. Wis. Stat. § 7.24 states that “[t]he filing of a nomination paper...or other form or statement with the appropriate official or agency responsible for accepting such materials under chs. 5 to 12 irrevocably transfers the legal title to such official or agency, regardless of the sufficiency of the filing. The official or agency shall retain all election materials until destruction or other disposition is authorized under s. 7.23.” Agency staff historically has presumed that, once a candidate appears at the Commission's office with their nomination papers (or papers are received by mail) and submits them to be stamped as received, their papers are considered filed, and they can no longer change their mind or request that their papers be returned to remove their name from the ballot.

Mr. Comer's initial nomination papers were not sufficient to qualify for ballot access. He filed a subsequent correcting affidavit which became a part of his nomination papers, and then decided that he would like to terminate his candidacy and not be placed on the ballot. Based on the statutory language Commission staff does not believe it can remove his name from the list of candidates who have qualified for ballot access, and that it would be up to the Commission to determine whether it could grant Mr. Comer's request. In doing so, the Commission could consider that Mr. Comer requested that Commission staff disregard his correcting affidavit shortly before the deadline for filing nomination papers, and that final approval of ballot access is not granted until the Commission certifies candidates.

**Recommended Motion:**

Based upon the statutory language of Wis. Stat. 8.35(1), the Commission denies Timothy Comer's request to withdraw his nomination papers and to remove his name from the list of qualified candidates for the 2018 Partisan Primary.

receipt  
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06-06-2018

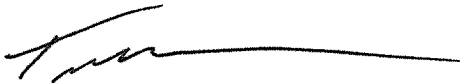
Michael Haas  
Staff Counsel  
Wisconsin Elections Commission

Dear Mr. Haas,

Re: Affidavit concerning Circulator signatures on nomination papers for Representative to the Assembly for the 36th District.

I am rescinding the affidavit submitted to the WEC on Thursday, May 31, 2018 and request my name be eliminated from the ballot on November 6<sup>th</sup>, 2018.

Sincerely,



Timothy J Comer