



Wisconsin Elections Commission

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MEMORANDUM

DATE: For the June 10, 2020 Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Meagan Wolfe
Administrator

Prepared by:

Nathan W. Judnic, Attorney/Senior Election Specialist
Erik Tierney, Legal Intern

SUBJECT: **Final 2020 Ballot Access Challenges**

This Memorandum summarizes Commission staff's review of challenges that have been filed to nomination papers of candidates for the 2020 General Election. Seven challenges were filed against six candidates.

The burden of proof applicable to establishing or rebutting a challenge is clear and convincing evidence. Wis. Admin. Code EL § 2.07(4). Below, staff has summarized the challenges and responses, and provided analyses and recommendations. Accompanying this Memorandum as exhibits are staff's Challenge Worksheets which document staff's thorough review of all challenges.

1. Trevor Ford Complaint against Reese Wood, Libertarian Party Candidate for Representative to the Assembly, District 44

Case No. EL 20-22

Signatures required for office: 200
Signatures challenged: 13
Signatures initially approved: 209

Staff assigned: Nathan W. Judnic

This complaint alleges that 13 signatures should not be counted because the signers resided outside the 44th Assembly District. The complaint alleges that 3 of these signatures are from residents of the 43rd Assembly District and 10 of these signatures are from residents of the 31st Assembly District.

Wisconsin Elections Commissioners

Dean Knudson, chair | Marge Bostelmann | Julie M. Glancey | Ann S. Jacobs | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

The Challenger's Complaint, Candidates Response, and staff's Challenge Worksheet can all be found under **Fall 2020 General Election Candidate Challenge And Response Log** at: <https://elections.wi.gov/candidates/nomination-papers>

Correcting Affidavit:

The deadline for candidates to file affidavits to correct errors contained on their nomination papers that were committed by either the circulator or the signer was June 4, 2020. Wis. Admin. Code EL § 2.05(4).

Candidate Wood did not submit any correcting affidavits.

Supplemental Signatures:

Candidate Wood did not file any supplemental signatures by the June 1, 2020 deadline.

Challenges to signatures from outside the district:

For a signature to be counted, a signer of the nomination papers must reside in the district which the candidate named on the paper will represent, if elected. Wis. Stat. §§ 8.15(2) and (3).

The complaint alleges that 13 signatures were obtained from individuals that do not reside within the 44th Assembly District, and includes district map printouts from the Wisconsin State Legislature's website to support the allegation. Commission staff attempted to verify the addresses of the individuals identified in the complaint and determine if those addresses were in fact within the appropriate district. Commission staff uses the WisVote system and MyVote Wisconsin website, as well as the district map on the Wisconsin State Legislature's website to pinpoint addresses and determine the districts that those addresses represent.

Using the WisVote system, staff determined that the addresses of all 13 challenged signatures are from individuals that do not reside in the 44th Assembly District. These signatures were not struck during the staff's initial review. Therefore, staff recommends accepting the challenge to these 13 signatures and reducing the number of signatures verified by staff by 13.

Candidate Response:

Candidate Wood filed a timely, verified response to the challenge complaint on June 8, 2020. Candidate Wood's response acknowledges and admits to the errors and insufficiencies in this challenge against his nomination papers. In his response, Candidate Wood also requests that the Commission consider making an exception to all nomination paper challenges in light of the difficulties caused by the COVID-19 outbreak in Wisconsin.

Recommended Motions:

- 1) Sustain challenges to 13 signatures (Page 4, Lines 3 and 4; Page 6, Lines 7-9; Page 24, Line 1; Page 29, Line 4; Page 32, Lines 2, 3 and 5; Page 39, Lines 5, 6 and 10) because the signers reside outside the 44th Assembly District and reduce the verified number of signatures by 13.
- 2) Verify a total of 196 valid signatures, deny ballot access to Candidate Wood, and direct staff to prepare and issue a Findings and Order consistent with this motion.

2. **Alesha Guenther Complaint against John Baker, Republican Party Candidate for Representative in Congress, District 1**
Case No. EL 20-23

Signatures required for office: 1,000

Signatures challenged: 31

Signatures initially approved: 1,007

Staff assigned: Nathan W. Judnic

This complaint alleges that 31 signatures should not be counted because the signers resided outside the 1st Congressional District.

The Challenger's Complaint, Candidates Response, and staff's Challenge Worksheet can all be found under **Fall 2020 General Election Candidate Challenge And Response Log** at: <https://elections.wi.gov/candidates/nomination-papers>

Correcting Affidavits:

The deadline for candidates to file affidavits to correct errors contained on their nomination papers that were committed by either the circulator or the signer was June 4, 2020. Wis. Admin. Code EL § 2.05(4).

On June 1, 2020, Candidate Baker submitted nomination papers containing 949 valid signatures due to errors made by signers, circulators and the candidate (date issues) which were subsequently corrected via affidavits timely filed on June 3, 2020. The correcting affidavits rehabilitated 58 signatures that were previously struck by staff. As a result, Candidate Baker had 1007 valid signatures prior to the challenge. Correcting affidavits cannot be filed to correct signatures from individuals that reside outside of the correct Congressional District.

Supplemental Signatures:

Candidate Baker did not file any supplemental signatures.

Challenges to signatures from outside the district:

For a signature to be counted, a signer of the nomination papers must reside in the district which the candidate named on the paper will represent, if elected. Wis. Stat. §§ 8.15(2) and (3).

The complaint alleges that 31 signatures were obtained from individuals that do not reside within the 1st Congressional District, and includes district map printouts from the Wisconsin State Legislature's website to support the allegation. Commission staff attempted to verify the addresses of the individuals identified in the complaint and determine if those addresses were in fact within the appropriate district. Commission staff uses the WisVote system and MyVote Wisconsin website, as well as the district map on the Wisconsin State Legislature's website to pinpoint addresses and determine the districts that those addresses represent.

Using the WisVote system, staff determined that the addresses of all 31 challenged signatures are from individuals that do not reside in the 1st Congressional District. These signatures were not struck during the staff's initial review. Therefore, staff recommends accepting the challenges to these 31 signatures and reducing the number of signatures verified by staff by 31.

*Please note that Mr. Baker submitted nomination papers with many duplicate page numbers and oddly numbered pages numbers, therefore the motion below denotes the last name of the signer in addition to the Page and Line number so as to properly identify the recommended action on the signature despite duplicate page numbers.

Candidate Response:

Candidate Baker filed a timely, verified response to the challenge complaint on June 8, 2020. Candidate Baker's response argues that he still believes that some of the signatures are from within the district. The response does not specify which individual signatures he still believes are within the district, nor does the response provide any specific evidence supporting this assertion other than two broad maps of Congressional District 1 that do not provide sufficient detail to support his response. The response also seeks to note Candidate Baker's belief that the nomination paper signature collection process is very unfair to first time candidates under the present circumstances.

Recommended Motions:

- 1) Sustain challenges to 31 signatures (Page 10, Line 5-Hintz; Page 5, Line 2-Masters; Page 3, Lines 2-Cotton and 3-Hughes; Page 2, Lines 5-Weber, 4-Webber, and 10-Smith; Page 9, Line 6-Krueger; Page 8, Line 4-Swanson; Page 10, Line 5-Yeager; Page 4, Lines 3-Schueller and 10-Gardner; Page 8, Line 3-Murphy, Page 8, Line 3-Nelson; Page 3, Line 1-Kantor; Page 10, Line 7-Kantor; Page 9, Line 3-Landry; Page 7, Lines 6-Boyd and 7-Boyd; Page 81, Line 9-Hawthorne; Page 98, Line 1-Jaeger; Page 98, Lines 2-Slipperly, 3-Slipperly, 4-Garny and 5-Garny; Page 5x, Lines 8-Balfanz and 9-Diermeier; Page 4, Line 7-Fox; Page 86, Line 7-Dawes; Page 1, Line 7-Heyk; Page 4bY, Line 2-Sarenac) because the signers reside outside the 1st Congressional District and reduce the verified number of signatures by 31.
- 2) Verify a total of 976 valid signatures, deny ballot access to Candidate Baker, and direct staff to prepare and issue a Findings and Order consistent with this motion.

3. **Jackson Weber Complaint against Enrique Murguia, Democratic Party Candidate for Representative to the Assembly, District 8**
Case No. EL 20-24

Signatures required for office: 200

Signatures challenged: 76

Signatures initially approved: 253

Staff assigned: Nathan W. Judnic

This complaint alleges that 76 total signatures should not be counted because 63 signers reside outside of the 8th Assembly District, 1 signature is dated after the date contained in the circulator's certification, 7 signatures contain dates that are missing or are ineligible, and 5 signatures do not include complete names.

The Challenger's Complaint, Candidates Response, and staff's Challenge Worksheet can all be found under **Fall 2020 General Election Candidate Challenge And Response Log** at: <https://elections.wi.gov/candidates/nomination-papers>

Correcting Affidavit:

The deadline for candidates to file affidavits to correct errors contained on their nomination papers that were committed by either the circulator or the signer was June 4, 2020. Wis. Admin. Code EL § 2.05(4).

Candidate Murguia did not submit any correcting affidavits.

Supplemental Signatures:

Candidate Murguia filed supplemental nomination papers prior to the June 1, 2020 deadline containing 6 valid signatures. Supplemental signatures are only processed if a candidate's initial submission of nomination papers results in a number of valid signatures which is below the minimum to qualify for ballot access.

Challenges to signatures from outside the district:

For a signature to be counted, a signer of the nomination papers must reside in the district which the candidate named on the paper will represent, if elected. Wis. Stat. §§ 8.15(2) and (3).

The complaint alleges that 63 signatures were obtained from individuals that do not reside within the 8th Assembly District, and includes district map printouts from the Wisconsin Legislature's website to support the allegation. Commission staff attempted to verify the addresses of the individuals identified in the complaint and determine if those addresses were in fact within the appropriate district. Commission staff uses the WisVote system and MyVote Wisconsin website, as well as the district map on the Wisconsin State Legislature's website to pinpoint addresses and determine the districts that those addresses represent.

Using the WisVote system, staff determined that 60 of the challenged signatures (Page 44, Lines 3-6, 9; Page 31, Line 8; Page 30, Lines 4-8; Page 29, Line 3; Page 32, Line 7; Page 28, Lines 1, 3 and 8; Page 45, Lines 4 and 5; Page 38, Lines 1-4; Page 39, Line 5; Page 40, Lines 2 and 3; Page 31, Lines 3 and 4; Page 36, Lines 1 and 2; Page 33, Lines 1, 4 and 5; Page 34, Lines 2-5; Page 26, Lines 3-5; Page 21, Lines 1 and 3; Page 14, Lines 1, 3 and 4; Page 15, Line 5; Page 12, Lines 3 and 4; Page 9, Lines 2-4; Page 4, Line 4; Page 10, Line 2; Page 17, Lines 3 and 4; Page 35, Line 4; Page 12, Line 2; Page 43, Lines 4 and 5; Page 48, Lines 1 and 2) are from individuals that do not reside in the 8th Assembly District. Therefore, staff recommends accepting the challenges to these 60 signatures and reducing the total number of signatures verified by staff by 60.

Using the WisVote system, staff determined that 3 of the challenged signatures (Page 29, Line 6; Page 5, Line 4; Page 49, Line 2) were from individuals that reside in the 8th Assembly District, and therefore recommend the challenges to those signatures be rejected.

Candidate Response:

Candidate Murguia filed a timely, verified response to the challenge complaint on June 8, 2020. Candidate Murguia responded specifically to the allegation that certain signers resided outside of the 8th Assembly District. Candidate Murguia's response stated that 18 of the signers identified in the challenge complaint did in fact live within the 8th Assembly district, and therefore the challenges to those signatures should be rejected.

Commission staff reviewed the 18 signatures identified by Candidate Murguia in his response and the information he provided does not change the recommendations for sustaining challenges and rejecting challenges listed above.

Signature date after date contained in circulator's certification:

Signatures may not be counted when the signature date is after the date contained in the circulator's certification. Wis. Admin. Code EL § 2.05(15)(b). Circulators of nomination papers are permitted to add or correct signatory date information if the correction information is within their personal knowledge. Such additions or corrections may be made to the signatory date on the nomination paper prior to the circulator completing their certification or through a correcting affidavit if filed by the deadline. Wis. Admin. Code EL § 2.05(4).

The complaint alleges that 1 signature from Candidate Murguia's nomination papers should be struck because the signature was dated after the date contained in the circulator's certification. Commission staff reviewed the signature subject to this challenge and believe the challenge to the signature on Page 24, Line 4 should be sustained. The date of signer is clearly May 22, 2020 and the date of the circulator's certification is clearly May 15, 2020. Commission staff recommends that this signature be struck from Candidate Murguia's total under Wis. Admin. Code EL § 2.05(15)(b).

Candidate Response:

Candidate Murguia did not submit a response to this portion of the challenge.

Signature dates are missing or illegible:

A signature may not be counted when the date of signing is missing unless the date can be determined by reference to the date of other signatures on the paper. Wis. Admin. Code EL § 2.05(15)(a). A missing or incomplete date can be bracketed ([]) if valid and complete dates appear on the line above and the line below the signature line with the missing or incomplete date. See Nomination Paper Review Guide, October 2019 found here: <https://elections.wi.gov/publications/video/NomPaperReviewGuidance>. If the date of the first or last signer is incomplete, it cannot be bracketed, and that signature should not be counted. *Id.*

The complaint alleges that 7 signatures have dates that are missing or are illegible. The Commission staff reviewed the challenged signatures and determined that all 7 of the challenged signatures (Page 31, Lines 6, 7 and 9; Page 25, Lines 9 and 10; Page 47, Lines 3 and 4) are acceptable due to the bracketing rule, or are legible and were signed within the allowable circulation period.

The signatures on Page 31, Lines 6, 7 and 9 can all be bracketed as Lines 5 and 10 both contain complete dates that are within the allowable circulation period. The signatures on Page 25, Lines 9 and 10 clearly contain a date of "5/18/20" and therefore Commission staff recommends rejecting the challenges to those signatures. The signatures on Page 47, Lines 3 and 4 contain a date of "5/28/20" and therefore Commission staff recommends rejecting the challenges to those signatures.

Candidate Response:

Candidate Murguia responded to this portion of the challenge complaint. Candidate Murguia's response was consistent with the Commission's recommendations, as the Commission staff agreed that valid dates did exist for the 7 signatures challenged. Commission staff's recommendation has not changed as a result of the response, which is to reject the challenges to these 7 signatures as requested by Candidate Murguia.

Printed name is illegible:

In 2014, the Government Accountability Board (G.A.B.) adopted staff recommendations regarding nomination paper standards and review relating to 2013 Wisconsin Act 160. This Act amended Wis. Stat. § 8.15(2) to state that for a signature to be valid, "each signer of a nomination paper shall legibly print his or her name in a space provided next to his or her signature." The G.A.B. adopted a guidance document that set forth the standard for reviewing the legibility of printed names. The Commission staff continues to consult the same guidance when reviewing printed names for legibility under the requirements of Wis. Stat. § 8.15(2):

1. *The filing officer shall confirm that the signer has completed information in both the "Signature" box and the "Printed name" box of the nomination paper or other election petition. The signature may be marked as the signer customarily marks his or her*

- signature, including by using an “X” or by using either traditional printed letters or a handwritten signature. Similarly, the signer’s printed name is not required to include only letters that are separated from one another.*
- 2. If the filing officer can discern no part of the printed name, it should be deemed illegible and the signature should not be counted.*
 - 3. If the filing officer can discern a possible name, but may not be certain of the exact spelling of the name, the printed name is deemed legible and the signature may be counted if otherwise valid.*
 - 4. The filing officer is not required to consult extrinsic sources of information (voter registration records, telephone directories, etc.), but may do so if it assists the filing officer in discerning a possible name.*
 - 5. The signer must print his or her name, and the signer must execute a correcting affidavit if the printed name is missing or insufficient for the signature to be counted. However, a circulator may print the name of a signer with a disability who requests such assistance.*

The guidance further states:

The above standards are intended to preserve the presumption of validity for the information contained on the petition, but also ensure that invalid signatures are not counted when there is absolutely no readable information to determine the name of the signer. This standard for legibility requires more than an unintelligible mark, but also provides filing officers with the flexibility to find a printed name to be legible even when 100% of the letters in that name cannot be determined.

The review standards described in this memorandum will govern only the filing officer’s review. If signatures are subsequently challenged based on the legibility of the printed name, then the filing officer must consider all the evidence presented by both parties, and reject signatures where the challenger has met their burden of providing clear and convincing evidence that overcomes the presumption of validity. Wis. Adm. Code EL § 2.07(4).

The complaint alleges that 5 signers of Candidate Murguia’s nomination papers did not legibly print his or her name as required by Wis. Stat. § 8.15(2). Commission staff reviewed each of the challenged signatures to determine if the signer’s printed name met the legibility and completeness standards as set forth above.

While determining the legibility of printed names can be somewhat subjective, Commission staff recommends sustaining the challenge to the signature contained on Page 15, Line 4 because the signer did not fully complete the printed name box and include a fully printed last name. Under the standards referenced above, Commission staff were able to discern the printed names, even though Commission staff may not have been certain of the exact spelling of the name for the remaining 4 challenges. Commission staff therefore recommends rejecting the challenges to the signatures contained on Page 18, Line 1; Page 22, Line 2 and Page 15, Line 5; Page 17, Line 4 because the printed names met the legibility standards used by staff to determine validity.

Candidate Response:

Candidate Murguia responded to this portion of the challenge complaint. Candidate Murguia attempted to clarify the names provided on his nomination papers and argued that the

presumption of validity requires the 5 challenged signatures to be counted. Commission staff reviewed the information provided by Candidate Murguia. Commission staff was already recommending rejection of 4 of the challenged signatures. For one of the signatures, Commission staff still recommend sustaining the challenge, because the individual did not provide a printed last name in the printed name box, which is required under the guidance used by the Commission to review printed names. Candidate Murguia's response does not change the Commission staff recommendations as to sustaining and rejecting challenges in this section of the complaint.

Recommended Motions:

- 1) Sustain challenges to 60 signatures contained on Page 44, Lines 3-6, 9; Page 31, Line 8; Page 30, Lines 4-8; Page 29, Line 3; Page 32, Line 7; Page 28, Lines 1, 3 and 8; Page 45, Lines 4 and 5; Page 38, Lines 1-4; Page 39, Line 5; Page 40, Lines 2 and 3; Page 31, Lines 3 and 4; Page 36, Lines 1 and 2; Page 33, Lines 1, 4 and 5; Page 34, Lines 2-5; Page 26, Lines 3-5; Page 21, Lines 1 and 3; Page 14, Lines 1, 3 and 4; Page 15, Line 5; Page 12, Lines 3 and 4; Page 9, Lines 2-4; Page 4, Line 4; Page 10, Line 2; Page 17, Lines 3 and 4; Page 35, Line 4; Page 12, Line 2; Page 43, Lines 4 and 5; Page 48, Lines 1 and 2 because the signers fail to reside in the 44th Assembly District; reject challenges to 3 signatures contained on Page 29, Line 6; Page 5, Line 4; Page 49, Line 2 because the signers do reside in the 44th Assembly District.
- 2) Sustain the challenge to 1 signature contained on Page 24, Line 4 as the signature date was after the date contained in the certification of circulator.
- 3) Reject the challenges to 7 signatures contained on Page 31, Lines 6, 7 and 9; Page 25, Lines 9 and 10; Page 47, Lines 3 and 4 because the signature dates were valid due to the bracketing rule and were otherwise legible and within the applicable circulation period.
- 4) Sustain the challenge to 1 signature contained on Page 15, Line 4 because the signer did not fully complete the printed name box and include a full printed last name and reject the challenges to the remaining 4 signatures contained on Page 18, Line 1; Page 22, Line 2; Page 15, Line 5 and Page 17, Line 4.
- 5) Verify a total of 197 valid signatures, deny ballot access to Candidate Murguia, and direct staff to prepare and issue a Findings and Order consistent with this motion.

4. Richard Coelho Complaint against Reese Wood, Libertarian Party Candidate for Representative to the Assembly, District 44

Case No. EL 20-25

Signatures required for office: 200

Signatures challenged: 17

Signatures initially approved: 209

Staff assigned: Nathan W. Judnic

This complaint alleges that 17 signatures should not be counted because the signers resided outside the 44th Assembly District.

The Challenger's Complaint, Candidates Response, and staff's Challenge Worksheet can all be found under **Fall 2020 General Election Candidate Challenge And Response Log** at:

Correcting Affidavit:

The deadline for candidates to file affidavits to correct errors contained on their nomination papers that were committed by either the circulator or the signer was June 4, 2020. Wis. Admin. Code EL § 2.05(4).

Candidate Wood did not submit any correcting affidavits.

Supplemental Signatures:

Candidate Wood did not file any supplemental signatures.

Challenges to signatures from outside the district:

For a signature to be counted, a signer of the nomination papers must reside in the district which the candidate named on the paper will represent, if elected. Wis. Stat. §§ 8.15(2) and (3).

The complaint alleges that 17 signatures were obtained from individuals that do not reside within the 44th Assembly District, and includes district map printouts from the Wisconsin State Legislature's website to support the allegation. Commission staff attempted to verify the addresses of the individuals identified in the complaint and determine if those addresses were in fact within the appropriate district. Commission staff uses the WisVote system and MyVote Wisconsin website, as well as the district map on the Wisconsin State Legislature's website to pinpoint addresses and determine the districts that those addresses represent.

Using the WisVote system, staff determined that the addresses of 16 challenged signatures are from individuals that do not reside in the 44th Assembly District. These signatures were not struck during the staff's initial review. Therefore, staff recommends accepting the challenge to these 16 signatures and reducing the number of signatures verified by staff by 16. One challenged signature on Page 47, Line 5 was in Assembly District 44, therefore staff recommends rejecting the challenge to this signature.

Candidate Response:

Candidate Wood filed a timely, verified response to the challenge complaint on June 8, 2020. Candidate Wood's response acknowledges and admits to the errors and insufficiencies in this challenge against his nomination papers. In his response, Candidate Wood also requests that the Commission consider making an exception to all nomination paper challenges in light of the difficulties caused by the COVID-19 outbreak in Wisconsin.

Recommended Motions:

- 1) Sustain challenges to 16 signatures (Page 3, Line 3; Page 35, Lines 3 and 4; Page 39, Lines 2, 5, 6, and 10; Page 47, Lines 4, 5, and 7; Page 32, Lines 2, 3, and 5; Page 36, Line 2; Page 50, Lines 1 and 2; Page 24, Line 1) because the signers reside outside the 44th Assembly District and reduce the verified number of signatures by 16; reject the challenge to 1 signature (Page 47, Line 5).
- 2) Verify a total of 193 valid signatures, deny ballot access to Candidate Wood, and direct staff to prepare and issue a Findings and Order consistent with this motion.

5. **Richard Coelho Complaint against Dennis C. Walton, Independent Candidate for Representative to the Assembly, District 16 - WITHDRAWN**

Case No. EL 20-26

Signatures required for office: 200

Signatures challenged: 309

Signatures initially approved: 309

Staff assigned: Nathan W. Judnic

This challenge complaint has been withdrawn by the Challenger.

Since the withdrawal occurred after the printing of the Candidate Tracking Report, Mr. Walton is listed as pending. With the withdrawal of the challenge, he would be placed in the approved category. The recommended motion below is necessary to grant Candidate Walton ballot access.

Recommended Motion: The Commission grants ballot access to Candidate Dennis C. Walton, to appear on the November 3, 2020 General Election ballot.

6. **Richard Coelho Complaint against Robert Slamka, Democratic Party Candidate for Representative to the Assembly, District 78**

Case No. EL 18-18

Signatures required for office: 200

Signatures challenged: 80 (Challenger stated in narrative that 72 signatures were being challenged, but specific challenges are present for 80 signatures)

Signatures initially approved: 225

Staff assigned: Nathan W. Judnic

This complaint alleges that 63 signatures should be struck because the certificate of circulator was completed prior the signatures being collected, 8 signatures were obtained from individuals who had already signed another candidates nomination papers, 1 signature is a duplicate signature, 2 signers reside outside of the 78th Assembly District, 1 signer uses an address that is a commercial business, and 5 signatures failed to include the date or were invalidly dated.

The Challenger's Complaint, Candidates Response, and staff's Challenge Worksheet can all be found under **Fall 2020 General Election Candidate Challenge And Response Log** at: <https://elections.wi.gov/candidates/nomination-papers>

Correcting Affidavits:

The deadline for candidates to file affidavits to correct errors contained on their nomination papers that were committed by either the circulator or the signer was June 4, 2020. Wis. Admin. Code EL § 2.05(4).

Candidate Slamka did not submit any correcting affidavits to the Commission.

Supplemental Signatures:

Candidate Slamka did not file any supplemental nomination papers prior to the June 1, 2020 deadline.

Certification of circulator was improperly completed:

Wis. Stat. § 8.15(4)(a) states, in relevant part: “The certification of a qualified circulator...shall appear at the bottom of each nomination paper, stating he or she personally circulated the nomination paper and personally obtained each of the signatures...and that he or she is aware that falsifying the certification is punishable under [Wis. Stat. § 12.13(3)(a)].” “No signature on a nomination paper shall be counted unless the elector who circulated the nomination paper completes and signs the certificate of circulator and does so after, not before, the paper is circulated.” Wis. Admin. Code EL § 2.05(14).

The complaint alleges that 63 signatures contained on Candidate Slamka’s nomination papers were contained on pages where “it appears that the certification, including the name, address, and signature of the circulator was pre-filled and/or photocopied onto the nomination form prior to the collection of the elector signatures.” The complaint states that this determination was made “based on the exact identical nature of each certification’s name, address, and signature” as well some extraneous marks that are clear on Page 42 and are evident on other alleged “pre-filled pages” identified in the complaint. Additionally, the complaint alleges that circulator signatures “were clearly traced over at a later date or time” on certain pages “with the intent of obscuring the fact that each circulator certification was pre-signed prior to circulation.” The complaint also alleges that on Page 44, Candidate Slamka added an additional signature to the alleged pre-filled page. Finally, the complaint includes a short 7 second video intended to demonstrate “that two identical signatures were present on pages 42 and page 30, but that page 30 has had obscuring marks added to the signature.” The complaint concludes that pre-filling signatures of the circulator prior to circulation is a violation of the plain language of Wis. Admin. Code EL § 2.05(14), and that tracing over a pre-filled signature does not eliminate the pre-filling violation and it “calls into question whether it was indeed the Respondent who personally collected these signatures.”

“The burden is on the challenger to establish any insufficiency. If the challenger establishes that the information on the nomination paper is insufficient, the burden is on the challenged candidate to establish its sufficiency. The invalidity or disqualification of one or more signatures on a nomination paper shall not affect the validity of any other signatures on that paper.” Wis. Admin. Code EL § 2.07(3)(a). “The filing officer shall examine any evidence offered by the parties when reviewing a complaint challenging the sufficiency of the nomination papers of a candidate for state or local office. The burden of proof applicable to establishing or rebutting a challenge is clear and convincing evidence.” Wis. Admin. Code EL § 2.07(4).

Commission staff do not believe the challenger has met his burden of proof to overcome the presumption of validity attached to Candidate Slamka’s nomination papers. Commission staff do not believe the “evidence” provided with the complaint is clear and convincing, so as to invalidate the signatures contained on those pages. None of the “evidence” establishes that the circulator completed the certification before the signatures were obtained on those pages. The challenger makes assumptions about how Candidate Slamka circulated the pages in question (photocopying and pre-filling of the certification) and what was done after circulation (tracing of pre-filled information) including a video clip on how tracing could have occurred. Speculation of what may have happened, without providing evidence such as sworn affidavits from individuals that signed the nomination paper and could attest that the certification was already completed, could provide some clear and convincing evidence of what was alleged, but no such evidence was included, and not before the Commission.

Commission staff recommends rejecting all 63 challenges to signatures on the following pages as the challenger has failed to meet his burden of proof to establish that the signatures should be

invalidated by the filing officer: Page 13, Lines 1 and 2; Page 17, Lines 1 and 2; Page 21, Lines 1 and 2; Page 24, Lines 1 and 4; Page 25, Lines 1 and 2; Page 27, Lines 3-9; Page 29, Lines 1 and 2; Page 30, Lines 1-10; Page 33, Lines 1 and 2; Page 35, Lines 1 and 2; Page 41, Lines 1, 2, 4 and 5; Page 42, Lines 1 and 3-6; Page 43, Lines 1-6 and 10; Page 44, Lines 3-10; Page 45, Lines 1 and 2; Page 51, Lines 1-4.

Candidate Response:

Candidate Slamka filed a timely, verified response to the challenge complaint on June 8, 2020. Candidate Slamka responded specifically to this portion of the complaint. Candidate Slamka states that the challenger has not presented any proof that any signature of circulator was present prior to circulation of the pages subject to the challenge. Candidate Slamka argues alternatively that even if a printed signature of circulator was affixed to the pages prior to circulation, the challenger admits in his complaint that the candidate had clearly signed pages 13, 17, 21, 24, 25, 27, 29, 30, 33, 35, 41, 44 and 45 with a wet signature. Candidate Slamka states that the presence of a wet signature “in its own right makes those pages valid.” Candidate Slamka argues that the presence of a printed signature of circulator prior to circulation would be at most an error that could be corrected by affidavit. Candidate Slamka argues that the presence of his wet signature at the bottom of the certification of circulator certifies the information contained on the page and therefore the signatures contained on those pages are sufficient. Candidate Slamka questions the violation of Wis. Stat. § 8.15(4)(a) noted in the complaint as he does not believe the challenger provides any explanation or justification for the allegation.

The Commission staff’s recommendation to reject all 63 challenges remains the same following Candidate Slamka’s response.

Nomination paper signed for two candidates for the same office by the same person:

“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 is invalid.” Wis. Stat. § 8.04. “Only one signature per person for the same office is valid.” Wis. Stat. § 8.15(2); Wis. Admin. Code § EL 2.05(11).

The complaint alleges that 8 signers of Candidate Slamka’s nomination papers signed the nomination papers of Candidate Lisa Subeck on an earlier date, and therefore the signature on Candidate Slamka’s nomination paper with the later date should be struck. Commission staff recommend sustaining the challenges to signatures on Page 30, Lines 7 and 8; Page 51, Lines 1 and 2 because it is clear that the 4 individuals signed the nomination papers submitted by Candidate Subeck on a date earlier than the nomination papers of Candidate Slamka. Commission staff recommend rejecting the challenges to signatures on Page 21, Lines 1 and 2; Page 27, Line 3 and Page 42, Line 3 because the duplicate signatures appear on supplemental nomination papers submitted by Candidate Subeck which were not counted and are not included in Candidate Subeck’s total number of valid nomination paper signatures.

Candidate Response:

Candidate Slamka responded specifically to this portion of the complaint. Candidate Slamka states that some of the duplicate signatures included in the challenge appear on pages that were either never turned in by Candidate Subeck or were not part of her validated total because they do not contain any page numbers. Candidate Slamka states that because the signatures were never counted for Candidate Subeck, those signatures should be allowed to be counted on his nomination papers. Finally, Candidate Slamka points out that the challenged signature on Page 42, Line 3 contains a different last name on Candidate Subeck’s nomination papers, and therefore that challenge should be rejected because the challenge has not proven that they are the same person.

Commission staff's recommendations remain the same following Candidate Slamka's response.

Individual signed the candidate's nomination papers more than once:

"Only one signature per person for the same office is valid." Wis. Stat. § 8.15(2). If an individual signs a nomination paper of the same candidate more than once, the first signature is valid and all subsequent signatures of that individual are invalid.

Commission staff reviewed the two pages of Candidate Slamka's nomination papers alleged to contain the same individual's name and determined that the same person did sign on May 4, 2020 (Page 9, Line 5) and again in May 20, 2020 (Page 17, Line 1). Commission staff recommend sustaining the challenge to the signature contained on Page 17, Line 1 as a duplicate.

Challenges to signatures from outside the district or otherwise invalid:

For a signature to be counted, a signer of the nomination papers must reside in the district which the candidate named on the paper will represent, if elected. Wis. Stat. §§ 8.15(2) and (3).

The complaint alleges that 2 individuals that signed Candidate Slamka's papers reside outside of the 78th Assembly District. Commission staff attempted to verify the addresses of the individuals identified in the complaint and determine if those addresses were in fact within the appropriate district. Commission staff uses the WisVote system and MyVote Wisconsin website, as well as the district map on the Wisconsin State Legislature's website to pinpoint addresses and determine the districts that those addresses represent.

Using the WisVote system, staff determined that the signer on Page 15, Line 1 did reside in the 78th Assembly District, and the signer on Page 39, Line 4 did not reside in the 78th Assembly District. Therefore, Commission staff recommend rejecting the challenge to the signature on Page 15, Line 1 and sustaining the challenge to the signature on Page 39, Line 4.

The complaint also alleges that one signer listed an address that is not a residential address, but is in fact a Steep N Brew coffee shop located in a strip mall on the west side of Madison. Commission staff did verify that the address provided is in fact the commercial address cited in the complaint, and therefore recommends sustaining the challenge to the signature on Page 9, Line 9 for the signer failing to provide their residential address on the page.

Signature dates are invalid:

A signature may not be counted when the date of signing is missing unless the date can be determined by reference to the date of other signatures on the paper. Wis. Admin. Code EL § 2.05(15)(a). A missing or incomplete date can be bracketed ([]) if valid and complete dates appear on the line above and the line below the signature line with the missing or incomplete date. See Nomination Paper Review Guide, October 2019 found here: <https://elections.wi.gov/publications/video/NomPaperReviewGuidance>. If the date of the first or last signer is incomplete, it cannot be bracketed, and that signature should not be counted. *Id.*

The complaint alleges that 5 signatures have dates that are missing or are illegible. The Commission staff reviewed the challenged signatures and determined that all 5 of the challenged signatures (Page 30, Line 5; Page 48, Lines 2 and 3; Page 39, Line 3; Page 9, Line 3) either contain a valid signature date or they are acceptable due to the bracketing rule. Commission staff recommend rejecting the challenges to the 5 signatures referenced above.

Candidate Response:

Candidate Slamka responded to this section of the challenge complaint. Candidate Slamka states that the challenge to the signatures on Pages 30, 39 and 9 appear to be related to the dates of signing being out of sequence, which has no bearing on whether they were obtained during the circulation period. Candidate Slamka also states that the signatures on Page 48 should be allowed under Wis. Admin. Code EL § 2.05(15) which allows a date to be determined by reference to other dates contained on the same page.

Commission staff's recommendation does not change after Candidate Slamka's response to this section.

Recommended Motions:

- 1) Reject 63 challenges to signatures contained on Page 13, Lines 1 and 2; Page 17, Lines 1 and 2; Page 21, Lines 1 and 2; Page 24, Lines 1 and 4; Page 25, Lines 1 and 2; Page 27, Lines 3-9; Page 29, Lines 1 and 2; Page 30, Lines 1-10; Page 33, Lines 1 and 2; Page 35, Lines 1 and 2; Page 41, Lines 1, 2, 4 and 5; Page 42, Lines 1 and 3-6; Page 43, Lines 1-6 and 10; Page 44, Lines 3-10; Page 45, Lines 1 and 2; Page 51, Lines 1-4, as the challenger has not met his burden of proof to invalidate these signatures on Candidate Slamka's nomination papers.
- 2) Sustain 4 challenges to signatures on Page 30, Lines 7 and 8; Page 51, Lines 1 and 2 due to individuals signing the nomination papers of another candidate for the same office prior to signing the nomination papers of Candidate Slamka. Reject 4 challenges to signatures on Page 21, Lines 1 and 2; Page 27, Line 3; and Page 42, Line 3 because the signatures appearing on a candidate for the same office prior to Candidate Slamka's nomination papers were supplemental pages of the other candidate that were not included in the validated total of the other candidate.
- 3) Sustain 1 challenge to the signature on Page 17, Line 1 for signing Candidate Slamka's nomination papers more than once.
- 4) Sustain 1 challenge to the signature on Page 39, Line 4 as the signer's address is outside of the 78th Assembly District. Reject 1 challenge to the signature on Page 15, Line 1 as the signer's address is within the 78th Assembly District.
- 5) Sustain 1 challenge to the signature on Page 9, Line 9 as the signer listed a commercial address on the nomination paper instead of their residential address.
- 6) Reject 5 challenges to the signatures on Page 30, Line 5; Page 48 Lines 2 and 3; Page 39, Line 3; Page 9, Line 3 as the addresses listed were valid within the circulation period or the addresses were valid due to the bracketing rule.
- 7) Verify a total of 218 valid signatures, grant ballot access to Candidate Slamka, and direct staff to prepare and issue a Findings and Order consistent with this motion.

7. Roger S. Polack Complaint against Josh Pade, Democratic Party Candidate for Representative in Congress, District 1

Case No. EL 20-28

Signatures required for office: 1,000

Signatures challenged: 37

Signatures initially approved: 1,021

Staff assigned: Nathan W. Judnic

This complaint alleges that 2 signatures are invalid because the signature date is later than the date contained in the circulator's certification, 10 signatures are invalid because the signor signed nomination papers for more than one candidates for the same office in the same election, 7 signatures are invalid because the signer resides outside of the 1st Congressional District or the residency could not be determined using the information provided on the nomination paper, 18 signatures are invalid because the certification of circulator was improperly made.

The Challenger's Complaint, Candidates Response, and staff's Challenge Worksheet can all be found under **Fall 2020 General Election Candidate Challenge And Response Log** at: <https://elections.wi.gov/candidates/nomination-papers>

Supplemental Signatures:

Candidate Pade did not file any supplemental signatures.

Correcting Affidavits:

The deadline for candidates to file affidavits to correct errors contained on their nomination papers that were committed by either the circulator or the signer was June 4, 2020. Wis. Admin. Code EL § 2.05(4). Candidate Pade did not file any correcting affidavits with the Commission.

Signature date after date contained in circulator's certification:

Signatures may not be counted when the signature date is after the date contained in the circulator's certification. Wis. Admin. Code EL § 2.05(15)(b). Circulators of nomination papers are permitted to add or correct signatory date information if the correction information is within their personal knowledge. Such additions or corrections may be made to the signatory date on the nomination paper prior to the circulator completing their certification or through a correcting affidavit if filed by the deadline. Wis. Admin. Code EL § 2.05(4).

The complaint alleges that 2 signatures from Candidate Pade's nomination papers should be struck because these signatures were dated after the date contained in the circulator's certification. Commission staff reviewed the signatures subject to this challenge and believe the challenge to both signatures (Page 1, Lines 3 and 4) should be sustained. The date of signers is clearly May 28, 2020 and the date of the circulator's certification is clearly May 20, 2020. Commission staff recommends that both of these signatures be struck from Candidate Pade's total under Wis. Admin. Code EL § 2.05(15)(b).

Candidate Response:

Candidate Pade filed a timely verified response to the challenge complaint on June 8, 2020, but did not address this section of the challenge in his response.

Nomination paper signed for two candidates for the same office by the same person:

"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 is invalid." Wis. Stat. § 8.04. "Only one signature per person for the same office is valid." Wis. Stat. § 8.15(2); Wis. Admin. Code § EL 2.05(11).

The complaint alleges that 10 individuals signed both Candidate Polack and Candidate Pade's nomination papers, which is not permitted under the applicable statutory provisions and administrative code provisions above. The complaint contains two separate scenarios regarding an individual that signed both sets of nomination papers: the individual signed the paper of both

candidates on different days or the individual signed the paper of both candidates on the same day. For papers clearly signed for one candidate earlier in time than the other, Commission staff recommend sustaining the challenges to the signatures on the candidate's papers which is later in time. For the other category, to overcome the presumption of validity attached to all nomination papers filed, unless there is clear and convincing evidence presented that one signature was obtained earlier in time for one candidate over the other on the same day, Commission staff recommend finding that the signature is valid and the challenge is rejected due to a lack of clear and convincing evidence that would cause the filing officer to find the signatures insufficient.

With that background, Commission staff recommends sustaining the challenges to the signatures contained on Page 2, Line 1 (Signed Polack paper on May 6, 2020 and Pade paper on May 28, 2020); Page 49, Line 5 (Signed Polack paper on May 9, 2020 and Pade paper on May 23, 2020); Page 67, Lines 2 and 3 (Signed Polack paper on May 9, 2020 and Pade paper on May 26, 2020); Page 96, Line 1 (Signed Polack paper on May 15, 2020 and Pade paper on May 18, 2020). Commission staff recommends striking 5 signatures and removing them from Candidate Pade's verified total due to individuals signing the nomination papers of two candidates for the same office.

Commission staff recommends rejecting the challenges to signatures on Page 88, Lines 1 and 2 (Signed Polack and Pade paper on May 21, 2020 – Polack paper was also supplemental and not part of his total); Page 96, Line 2 (Signed Polack paper and Pade paper on May 18, 2020); Page 96, Line 3 (Signed Polack paper and Pade paper on May 18, 2020); Page 96, Line 4 (Signed Polack paper and Pade paper on May 20, 2020) because the challenger has not met his burden of proof by failing to provide clear and convincing evidence that the individuals challenged signed the Polack paper earlier in time than the Pade paper.

Candidate Response:

Candidate Pade responded to this section of the challenge complaint. Candidate Pade pointed out that the challenger had not met his burden to present clear and convincing evidence that the signature on his papers was obtained after the signature that appeared on Candidate Polack's papers, and therefore the challenges to signatures in that category should be rejected.

Commission staff's recommendation does not change in light of Candidate Pade's response to this section.

Challenges to signatures from outside the district or the signer's residency could not be determined using information contained on the nomination paper:

For a signature to be counted, a signer of the nomination papers must reside in the district which the candidate named on the paper will represent, if elected. Wis. Stat. §§ 8.15(2) and (3). "An individual signature on a nomination paper may not be counted when any of the following occur:... (c) The address of the signer is missing or incomplete unless residency can be determined by the information provided on the nomination paper." Wis. Admin. Code EL § 2.05(15).

The complaint alleges that 7 signatures were obtained from individuals that do not reside within the 1st Congress District or based on the information provided by the signer on the page, it could not be established that the signer resided within the 1st Congressional District due to some legibility concerns. The complaint includes copies of the nomination paper containing the pages for which the challenger could not establish that the signer resided within the 1st Congressional District as well as district map printouts from the Wisconsin State Legislature's website to support the allegation when necessary. Commission staff attempted to verify the addresses of the individuals identified in the complaint and determine if those addresses were in fact within the appropriate district. Commission staff uses the WisVote system and MyVote Wisconsin

website, as well as the district map on the Wisconsin State Legislature's website to pinpoint addresses and determine the districts that those addresses represent.

Using the WisVote system, staff was able to determine that the addresses of 3 of the challenged signatures are from individuals that do not reside in the 1st Congressional District. These signatures were not struck during the staff's initial review. Therefore, staff recommends sustaining the challenge to these 3 signatures (Page 66, Line 8; Page 152, Line 3 and Page 152, Line 10) and reducing the number of signatures verified by staff by 3. Staff was able to determine that 4 challenged signatures (Page 31, Line 6; Page 50, Line 1; Page 142, Line 2 and Page 153, Line 4) were from individuals residing in the 1st Congressional District (See Challenge Worksheet for additional details on each signature), therefore staff recommends rejecting the challenges to these 4 signatures.

Candidate Response:

Candidate Pade responded to this section of the challenge complaint. Commission staff's recommendations are in line with the arguments made by Candidate Pade in his response on these signatures with the exception of the signature on Page 66, Line 8, as the signer did not provide a house number or street name and instead listed a phone number.

Certification of circulator was improperly made:

Wis. Stat. § 8.15(4)(a) states, in relevant part: "The certification of a qualified circulator...shall appear at the bottom of each nomination paper, stating he or she personally circulated the nomination paper and personally obtained each of the signatures...and that he or she is aware that falsifying the certification is punishable under [Wis. Stat. § 12.13(3)(a)]."

"The burden is on the challenger to establish any insufficiency. If the challenger establishes that the information on the nomination paper is insufficient, the burden is on the challenged candidate to establish its sufficiency. The invalidity or disqualification of one or more signatures on a nomination paper shall not affect the validity of any other signatures on that paper." Wis. Admin. Code EL § 2.07(3)(a). "The filing officer shall examine any evidence offered by the parties when reviewing a complaint challenging the sufficiency of the nomination papers of a candidate for state or local office. The burden of proof applicable to establishing or rebutting a challenge is clear and convincing evidence." Wis. Admin. Code EL § 2.07(4).

The complaint alleges that the circulator who executed the certification on pages containing at least 18 signatures was not the individual that personally obtained the signatures from the signer. The complaint presents facts intended to overcome the presumption of validity that is attached to all nomination papers submitted by candidates. *See* Wis. Admin. Code EL § 2.05(4). According to the complaint, Candidate Polack and Candidate Pade held a joint nomination paper signing event along with other candidates for office in their area (Greta Neubauer – Assembly 66 and Connie Cobb Madsen – Racine County Register of Deeds). This event was held in Racine on May 9, 2020 from 10:00 a.m. to 1:00 p.m.

The allegation is that for 17 signatures submitted by Candidate Pade containing a May 9, 2020 signing date and a certification of circulator completed by Candidate Pade's spouse (Jessica Randazza-Pade) are improper, because she was not present at the joint signing event to personally obtain the signatures. The challenger provides the following facts to support the allegation: All of the candidates participating at the joint signing event were present for the full duration of the event; Candidate Polack states that at no time during the event did he observe Candidate Pade's spouse in attendance at the event; Candidate Polack states that Ms. Cobb Madsen "has also confirmed to me that at no time did she observe Ms. Randazza-Pade in attendance" at the event; the names of individuals that contain the May 9, 2020 date on

Candidate Pade also appear on the nomination papers of Ms. Cobb Madsen and Ms. Neubauer with the same May 9, 2020 date – implying that the signer attended the same joint signing event at which Candidate Polack and Ms. Cobb Madsen did not observe Candidate Pade’s spouse.

To support the premise that the May 9, 2020 signatures on Candidate Pade’s nomination papers were obtained at the joint signing event, the challenger includes copies of signatures also obtained by Ms. Cobb Madsen and Ms. Neubauer on May 9, 2020. Commission staff reviewed the documents provided with the challenge to support this premise and found that in 16 of the 17 instances set forth in the complaint, a signature of an individual dated May 9, 2020 appeared on Candidate Pade’s nomination papers and appeared on either one or both of Ms. Cobb Madsen or Ms. Neubauer’s papers as well, and also dated May 9, 2020. The exception was the signature on Page 183, Line 1 (Davidson) which did appear on both Candidate Pade’s papers and Ms. Cobb Madsen’s papers, dated May 9, 2020, but the circulator on both pages was the signer himself, Mr. Davidson. Therefore, the challenge to this signature on the grounds that Ms. Randazza-Pade improperly circulated that page is incorrect, and the Commission staff therefore recommends rejecting the challenge to the signature on Page 183, Line 1.

The Commission staff also recommends rejecting the challenges to the remaining 16 signatures (Page 123, Line 1; Page 124, Line 1; Page 125, Line 1; Page 126, Line 3; Page 127, Line 1; Page 128, Line 1; Page 129, Line 1; Page 134, Line 1; Page 135, Line 1; Page 136, Lines 1 and 2; Page 181, Line 1; Page 182, Lines 1 and 2; Page 185, Line 1; Page 187, Line 1) because the challenger does not meet his burden of clear and convincing evidence to rebut the presumption of validity attached to all nomination papers filed.

While the complaint certainly provides support for the premise that signatures that appear on Candidate Pade’s papers also appear on the papers of other candidates that were present at the May 9, 2020 event, the evidence provided does not meet the legal burden to establish that the certification of circulator was improperly completed. The evidence provided to support that allegation is the statement from Candidate Polack, in his sworn complaint, that at no time did he observe Candidate Pade’s spouse at the event, and that Ms. Cobb Madsen “confirmed to me” that at no time did she see Candidate Pade’s spouse at the event either. Most notably missing from the complaint, is any information about who Candidate Polack believes is the proper circulator for the 17 signatures challenged. Without more reliable evidence, the Commission staff believes the burden to prove that Ms. Randazza-Pade did not personally circulate the pages in question has not been met, and therefore the challenges to the 16 signatures specifically referenced above should be rejected on those grounds.

Candidate Response:

Candidate Pade responded to this section of the challenge complaint. As an initial matter, Candidate Pade states that the signature on Page 183, Line was obtained by Walter H. Davidson (signer as well) and therefore the challenge to that signature should be rejected. Regarding the challenge to signatures collected on May 9, 2020 that contain a certification executed by Jessica Randazza-Pade (collectively referred to as the “May 9 documents”), Candidate Pade asserts that the claims made in the complaint were made upon “information and belief” which does not begin to approach the “clear and convincing evidence” standard required. Candidate Pade cites a 2000 Wisconsin Court of Appeals decision (*Webb v. Ocularra Holdings, Inc.*, (2000 WI App 25) that states that assertions made upon “information and belief” are not “evidence” of any sort. Additionally, Candidate Pade asserts that some of the challenges under this section of the complaint are premised on hearsay. Candidate Pade states that the complainant attaches no affidavit or anything else from any of the electors he claims to have contacted.

Candidate Pade acknowledges that 16 signatures dated May 9, 2020 that are subject to challenge were certified by Ms. Randazza-Pade. He asserts that the allegations that Ms. Randazza-Pade was not present at the May 9, 2020 signing event were again made “upon information and belief” and only with a hearsay statement from Ms. Cobb Madsen who was herself present at the event. Candidate Pade acknowledges that he was present at the May 9 event and he collected the signatures in question and explains the discrepancy by stating that, “[t]o the best of his knowledge and belief, these pages were inadvertently inserted into a stack of Ms. Randazza-Pade’s pages for her to certify, and she did so in error.” Candidate Pade asks the Commission to accept his verified correction of the certification and accept these signatures.

The Commission staff’s recommendation remains the same after receiving the response from Candidate Pade, and is rooted solely in the fact that the challenger has not met his burden of proof to invalidate the signatures. The response received from Candidate Pade caused much discussion in the office, but ultimately, the Commission’s administrative code is very clear on the point that there is a presumption of validity attached to all nomination papers submitted, and a challenger must first establish that an insufficiency in a candidate’s nomination papers exists by presenting clear and convincing evidence of a deficiency that shifts the burden to the candidate to prove the information is valid (emphasis added). Only after the burden has been shifted to the candidate must they then provide evidence to support a finding that the signature or page is sufficient. In this case, while Candidate Pade acknowledged in his response that an error had been made when his spouse completed the certification of circulator for signatures collected on May 9, the evidence submitted by the challenger in the first instance was not sufficient to require such a response to the allegation, and the presumption of validity ultimately prevails. The Commission may have differing opinions on how to rule on these challenges given Candidate Pade’s response, but in the Commission staff’s opinion, the burden of proof was not met in the initial complaint, which is the first step in determining the sufficiency of signatures when a challenge is filed.

The complaint also alleges that 1 additional signature (Page 91, Line 1) should be struck because Ms. Randazza-Pade did not personally circulate the page, yet she completed the certification of circulator. The basis for this allegation is that the signer “confirmed to me that she mailed in the nomination paper that she signed and that no one contacted her by any means regarding the nomination paper or her signature thereon.” Commission staff also recommend that the challenge to this signature be rejected as the challenger has not met his burden of proof to rebut the presumption of validity attached to all papers filed. While the confirmation that Candidate Polack received from the signer, Ms. Lee is certainly concerning, a sworn statement or affidavit stating that she signed the nomination paper on May 21, mailed it back to Candidate Pade, left the certification of circulator blank and no one contacted her to correct it by signing as the circulator could have been sufficient evidence to deem the signature invalid and require Candidate Pade and Ms. Randazza-Pade to respond to the allegation. Unfortunately, such evidence was not presented and is therefore not before the Commission to consider. The Commission staff recommend rejected the challenge to the signature on Page 91, Line 1 as the challenger has not met his burden of proof to overcome the presumption of validity of that page.

Candidate Response:

Candidate Pade responded to this section of the challenge complaint. Candidate Pade asserts that the challenger has not met his burden of proof on the signature on Page 91, Line 1 because it is again made upon information and belief, it is based on a hearsay comment of some of the signers and there is no affidavit from any of the individuals in question. The Commission staff recommendation does not change in light of Candidate Pade’s response to this section of the complaint.

General challenge to validity of certification of circulator:

Finally, the complaint challenges an additional 6 signatures contained on Pages 88 and 96, which were already challenged on different grounds, (challenges to Page 88, Lines 1 and 2 were rejected; challenges to Page 96, Lines 2-4 were rejected and the challenge to Page 96, Line 1 was (signatures appearing on both Polack and Pade's papers) to support the concern "that the certification of circulator may have been improperly made by Ms. Randazza-Pade with respect to a substantial number of the respondent's nomination papers." The evidence presented to support this more general allegation about an undetermined number of pages that were circulated by Ms. Randazza-Pade is that some of the signers on Pages 88 and 96 also mailed in nomination papers signed for Candidate Polack but the certification of circulator was blank when it arrived. Candidate Polack and his campaign team were unable to reach the signers on Page 88 and let them know they needed to complete the certification of circulator prior to sending them back in (Candidate Polack submitted the page anyway as a supplemental page). One of the signers on Page 96 was contacted by Candidate Polack's campaign team, and they were told that the signer did not realize that the certificate of circulator needed to be completed by him prior to mailing it in.

It would appear Candidate Polack presents this information to imply that individuals that were mailed a nomination paper form by Candidate Pade were not aware that the person that circulated the page (could be a single-signed and circulated page) needed to complete the certification before sending it back to Candidate Pade, and that Ms. Randazza-Pade may have signed as the circulator of pages submitted by mail by these same individuals, which would be improper. Commission staff recommend that the general challenge to papers with Ms. Randazza-Pade as the circulator, and the specific signatures on Pages 88 and 96 be rejected as the challenger has not met his burden of proof to rebut the presumption of validity attached to all papers filed. Similar to the allegations above, the information presented by the complaint establish that individuals that completed nomination papers and sent them in to Candidate Polack had not completed the certification of circulator, and may not have had realized that they needed to complete the certification of circulator for Candidate Polack's papers. The fact that this occurred when these individuals signed nomination papers for Candidate Polack, has little bearing on the facts surrounding their signing of Candidate Pade's papers. Again, most notably missing here, is a sworn statement or affidavit from one of the individuals mentioned that says they did not complete the certification of circulator before sending the paper in by mail to Candidate Pade. Such evidence could have been enough to establish that Ms. Randazza-Pade improperly completed the certification of circulator when it was received back in the mail by one of these individuals, but such evidence was not included and is not before the Commission. The challenger simply fails to meet his burden of proof to invalidate the signatures subject to challenge in this section.

Commission staff recommends rejecting the challenge to the 6 signatures on Page 88 and 96 on the grounds that the certification of circulator was improper.

Candidate Response:

Candidate Pade responded to this section of the challenge complaint. Candidate Pade asserts that the challenger failed to meet his burden of proof as he "offers no actual admissible evidence in support of his contentions." Commission staff's recommendation does not change in light of Candidate Pade's response.

RESPONSE TO SIGNATURES DISQUALIFIED BY THE WEC

Part 2 of Candidate Pade's response to the challenge, is titled "Response to Signatures Disqualified by the WEC." The information provided by Candidate Pade in this section of his response is not related specifically to any challenges levied, rather he is asserting that decisions initially made by the Commission staff during its 2 rounds of review were not correct, and therefore signatures should be "reinstated" that were originally struck by Commission staff.

Challenges to the initial staff determinations made during the rounds of review are allowed to be presented to the Commission for its review prior to certification. These types of allegations are normally separated from the response to a challenge and are set forth in a complaint that challenges an election official's decision under Wis. Stat § 5.06. The review of these challenges to staff decisions is on the agenda for today's meeting at Agenda Item E. Prior to the Commission voting on the recommended motions below, Commission staff will address the issues raised by Candidate Pade and provide an additional recommendation below.

Candidate Pade alleges that 34 signatures originally struck by the Commission staff should have been counted. After receiving Candidate Pade's response, Commission staff researched each of the items, and recommends the following action by the Commission regarding these pages and signatures:

- 1) Page 151, Line 7: Signature should have been **accepted**. Name is present and acceptable under applicable standard.
- 2) Page 117, Line 6: Signature was properly **rejected**. Bracketing rule does not apply to the signature in question.
- 3) Page 115, Line 8: Signature should have been **accepted**. Name is present and acceptable under applicable standard.
- 4) Page 112, Line 7: Signature was properly **rejected**. Printed name does not meet the applicable standard (no last name).
- 5) Page 162, Line 5: Signature should have been **accepted**. A part of the last name can be deciphered, even if unsure of exact spelling, so acceptable under applicable standard.
- 6) Page 162, Line 10: Signature should have been **accepted**. House number and street are within the 1st Congressional District, although the legibility is somewhat difficult.
- 7) Page 161, Line 1: Signature should have been **accepted**. Legible.
- 8) Page 161, Line 7: Signature should have been **accepted**. First name is legible, last name is questionably legible but can discern part, therefore acceptable under applicable standard.
- 9) Page 139, Line 5: Signature should have been **accepted**. Possible name can be discerned, and additional information provided in Ex. G assists in confirming that the signer exists and is within the proper district.
- 10) Page 139, Line 10: Signature should have been **accepted**. Possible name can be discerned, and additional information provided in Ex. H assists in determining that the address of the signer is within the proper district.
- 11) Page 123, Line 2: Unable to discern challenge to staff decision, no line 2 exists on that page.

- 12) Page 172, Line 2: Signature was properly **rejected**. No signature present.
- 13) Page 90, Line 1: Signature should have been **accepted**. Address is within proper district.
- 14) Page 90, Line 2: Signature should have been **accepted**. Address is within proper district.
- 15) Page 87, Line 1: Signature should have been **accepted**. Address is within proper district.
- 16) Page 86, Line 1: Signature should have been **accepted**. Address is within proper district.
- 17) Page 86, Line 2: Signature should have been **accepted**. Address is within proper district.
- 18) Page 73, Line 3: Signature should have been **accepted**. Address is within proper district, possible name can be discerned, therefore acceptable under applicable standard.
- 19) Page 18, Lines 7 and 8: Signatures were properly **rejected**. Signer date for both signatures is after the circulator date, cannot file affidavits to correct this information past the June 4, 2020 deadline.
- 20) Page 98, Line 3: Signature should have been **accepted**. Date of signing is within appropriate circulation period.
- 21) Page 98, Lines 4, 5 and 6: Signatures were properly **rejected**. Signer date for all signatures is after the circulator date, cannot file affidavits to correct this information past the June 4, 2020 deadline.
- 22) Page 78, Line 7: Signature was properly **rejected**. Incomplete last name, does not meet applicable standards.
- 23) Page 68, Line 9: Signature should have been **accepted**. Sufficiently legible and the individual is registered to vote in the WisVote system which provides additional reliability.
- 24) Page 66, Line 7: Signature was properly **rejected**. Signer did not list an address, listed phone number instead.
- 25) Page 46, Line 9: Signature was properly **rejected**. No printed last name, does not meet applicable standard.
- 26) Page 42, Line 7: Signature should have been **accepted**. Bracketing rule applies.
- 27) Page 42, Line 8: Signature should have been **accepted**. Bracketing rule applies.
- 28) Page 39, Line 1: Signature was properly **rejected**. Date not present, bracketing does not apply.
- 29) Page 39, Line 2: Signature was properly **rejected**. Date not present, bracketing does not apply.
- 30) Page 30, Line 10: Unable to discern challenge to staff decision, no line 10 exists on that page.
- 31) Page 25, Line 5: Signature should have been **accepted**. Signer resides in the proper district.

After Commission staff review, the staff recommends that an additional 19 signatures be added to Candidate Pade's certified signature total as indicated above.

Recommended Motions on Challenge:

- 1) Sustain challenges to 2 signatures at: Page 1, Lines 3 and 4 due to the date of circulator being after signature dates.
- 2) Sustain challenges to 5 signatures at: Page 2, Line 1 (two candidates); Page 49, Line 5 (two candidates); Page 67, Lines 2 and 3 (two candidates); Page 96, Line 1 (two candidate) and reject the remaining challenges for the reasons set forth above.
- 3) Sustain challenges to 3 signatures at: Page 66, Line 8 (out of district); Page 152, Line 3 (out of district) and Page 152, Line 10 (out of district) and reject the remaining challenges for the reasons set forth above.

Recommended Motion on Section 5.06 and Challenge Results Combined:

- 1) Verify a total of 1030 signatures (1011 after the challenge and an additional 19 as a result of the Section 5.06 challenge = 1030) grant ballot access to Candidate Pade, and direct staff to prepare and issue a Findings and Order consistent with this motion.
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