



Wisconsin Elections Commission

212 East Washington Avenue | Third Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8005 | elections@wi.gov | elections.wi.gov

DATE: For the June 10, 2020 Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Meagan Wolfe, Administrator

Prepared and Presented by:

Nathan W. Judnic

Attorney and Senior Elections Specialist

Erik Tierney

Legal Intern

SUBJECT: Appeal of Commission Staff Decision: Brandon Jackson (EL 20-29)

On June 8, 2020, the Commission received a sworn statement from Brandon Jackson, 1633 W. Bender Road, Unit 3D, Glendale, WI appealing Commission staff's decision to reject a challenge complaint he attempted to file against Candidate Lena Taylor's nomination papers. The Commission staff did not accept the challenge complaint because it was not received by 4:30 p.m. on the filing deadline, and the Commission's administrative code does not allow the complaint to be accepted unless it was received prior to the deadline.

Mr. Jackson's complaint asserts that his challenge complaint and associated attachments were large, and he had trouble transmitting the documents to the Commission. Mr. Jackson states that he sent the complaint to the Commission via email at 4:29 p.m. on the Thursday, June 4, 2020 deadline. Mr. Jackson also acknowledges that he was informed that his challenge complaint was not received by the Commission Helpdesk until 4:32 p.m. on the deadline. A copy of the email received by the Commission's Helpdesk, showing the time upon which the complaint was received is included with this memorandum.

Mr. Jackson requests that the Commission accept and process his challenge complaint. Mr. Jackson's sworn statement is contained on the Commission's website at the following link: <https://elections.wi.gov/node/6527>

Discussion

Provisions of the Commission's Administrative Code (Chapter EL 6) related to procedure are directly on point, and state that the filing received by Mr. Jackson after the 4:30 p.m. deadline shall not be considered filed.

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

Wis. Admin. Code EL § 2.07(2):

- (a) Any challenge to the sufficiency of a nomination paper shall be filed within 3 calendar days after the filing deadline for the challenged nomination papers.

Wis. Admin. Code EL § 6.04:

...

- (3) Except as provided in sub. (2), where the Wisconsin statutes or rules of the elections commission require that a document be filed no later than a date certain, that document shall be considered timely filed if both of the following occur:
 - (a) A duplicate copy of the document is received by the filing officer, in its offices, by facsimile process or by email process, **no later than the day and hour at which the document is required to be filed.**
 - (b) The signed original of the document is received at the offices of the filing officer with a postmark not later than the filing deadline; or the signed original is delivered to the filing officer not later than the filing deadline.
- (4) **Any document which is filed by facsimile process or by email process under this rule shall be considered received at the time of transmission as recorded and entered by the receiving equipment by the filing officer's staff** when the facsimile copy or email copy is delivered to the filing officer's offices.
- (5) **If, for any reason, transmission of a document is not received at the filing officer's offices, whether because of a failure in the receiving system of the filing officer or because of a failure in the transmitting system of the person attempting to file or for any other reason, a document shall not be considered received or filed until a facsimile copy or email copy is delivered to and received at the filing officer's offices and the signed original is received at the filing officer's offices with a postmark not later than the filing deadline.**
- (6) The burden of establishing that a document has been received by facsimile process or by email process at the offices of the filing officer shall be upon the person who, or the committee or group which, is required to file the document.

The deadline to file nomination papers for the November 3, 2020 general election was June 1. Wis. Stat. § 8.15(1). The deadline to submit challenges against a candidate's nomination papers was June 4 at 4:30 p.m., three calendar days after the deadline for filing nomination papers. Wis. Admin. Code EL § 2.07(2)(a). Despite Mr. Jackson's assertions that he "sent" the complaint at 4:29 p.m. on the deadline, Mr. Jackson's challenge complaint was received by Commission staff at 4:32 p.m. on June 4, which is after the filing deadline for filing challenges.

Mr. Jackson argues that the time at which the challenges were sent, not the time the challenges were received, should be the time considered when determining whether challenges are timely filed. Wis. Admin. Code EL § 6.04(3) states that a document is considered timely filed when a duplicate copy is

received by the filing officer no later than the day and hour at which the document is required to be filed and the signed original of the document is received by the filing officer postmarked no later than the filing deadline. Wis. Admin. Code EL § 6.04(4) clarifies when an email or fax is received by stating that it is considered received at the time of transmission as recorded and entered by the receiving equipment. Finally, Wis. Admin. Code EL § 6.04(5) states that if there is a transmission issue with a filing, the document is not considered filed until a copy is received and a hard copy with a postmark of the same day is received. Therefore, the time at which Commission staff received Mr. Jackson’s challenges must be the time considered when determining whether to accept or reject the challenge complaint.

Commission staff believes, based on the evidence presented, that it properly rejected Mr. Jackson’s challenge complaint because it was not timely filed.

Recommended Motion: The Wisconsin Elections Commission finds that the challenge complaint filed by Brandon Jackson was not timely and affirms the Commission staff’s decision to reject the challenge complaint because it was not received prior to 4:30 p.m. on the June 4, 2020 deadline.

From: [Elections HelpDesk](#)
To: [Judnic, Nathan - ELECTIONS](#); [Tierney, Erik - ELECTIONS](#)
Subject: FW: challenges
Date: Thursday, June 04, 2020 4:36:08 PM
Attachments: [Challenges.pdf](#)
[image001.png](#)

Thank you,

Elections Help Desk

Desk - 608.261.2028

elections@wi.gov

<http://elections.wi.gov>

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Check Your Registration Status at <http://myvote.wi.gov>



From: Brandon Jackson <bvj6868@icloud.com>
Sent: Thursday, June 04, 2020 04:32 PM
To: Lowe, Diane - ELECTIONS <Diane.Lowe@wisconsin.gov>
Cc: Elections HelpDesk <elections@wisconsin.gov>
Subject: challenges

Please see the complaint attached. We are having a hard time with the signature page attaching along with the pages scanned.

Materials will be attached momentarily.

Brandon

www.brandonforchange.com/